The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

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

Let us pray.

Almighty and everlasting God, increase our faith, hope, and love. Give our lawmakers more faith to trust You when the skies are dark and to believe that in everything You are working for the good of those who love You. Give them more hope to refuse to despair, to accept disappointments without cynicism, and to experience failure yet try again. Give them also more love to be loyal to You, to persevere, though pressed by many a foe, and to do unto others as they would have others do unto them.

We pray in Your merciful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable Kirsten E. Gillibrand led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The bill clerk read the following letter:

U.S. SENATE, PRESIDENT PRO TEMPORE, Washington, DC, November 9, 2011.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Kirsten E. Gillibrand, a Senator from the State of New York, to perform the duties of the Chair.

Daniel K. Inouye, President pro tempore.

Mrs. Gillibrand thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. DURBIN. Madam President, following leader remarks, the Senate will be in morning business for 70 minutes, with the Republicans controlling the first 40 minutes and the majority controlling the final 30 minutes. Following morning business, the Senate will consider the motion to proceed to S.J. Res. 6, regarding net neutrality, with up to 4 hours of debate. Upon the use or yielding back of time, the Senate will resume debate on H.R. 674, the 3% Withholding Repeal and Job Creation Act with the veterans jobs amendment.

Madam President, I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

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

NET NEUTRALITY REGULATIONS

Mr. McCONNELL. Madam President, later today the Senate will take up S.J. Res. 6, Senator Hutchison’s resolution of disapproval of the FCC’s net neutrality regulations. I would like to start by thanking Senator Hutchison for her leadership on this important issue.

While we all understand the importance of an open Internet, I think we can also agree that the growth of the Internet in the last 15 years is an American success story that occurred absent any—heavyhanded regulation here in Washington. We should think long and hard before we allow unelected bureaucrats to tinker with it now.

Everywhere I go in Kentucky, I hear from businesses large and small that they are struggling to comply with the mountains of rules and regulations coming out of Washington. At a time when the private sector would like to create jobs and grow the economy, it
seems as if too many here in Washington want to create regulations and grow government. So, like many Americans, I was heartened 2 months ago when the President came to the Capitol and laid out a very specific test for judging the merits of Federal regulation. Like most of my colleagues, I applauded when the President told us that "we should have no more regulation than the health, safety and security of the American people require. Every rule should meet that commonsense test."

As it turns out, the FCC didn't get the memo. The net neutrality regulations we are debating today clearly fail that commonsense test. They are a solution in search of a problem. It is an overreaching attempt to fix the Internet when the Internet is not broken. According to the FCC's own data, 93 percent of broadband subscribers are happy with their service. If Americans weren't happy with their provider or felt they were getting less in return for what they paid, they wouldn't have switched providers. But now the FCC says its regulations are necessary because of what might happen in the future—what might happen in the future—if broadband providers have incentives to favor one type of content over another, despite the fact that after 15 years, there is no evidence of this occurring in any significant way. If Internet providers were so interested in doing this, wouldn't they have done it by now? Instead, the FCC has exceeded its authority to grow the reach of government under the guise of fixing a problem that doesn't even exist.

So why should this matter to anyone? Simply, the growth of the Internet is one of the great success stories of our lifetime. Just 15 years ago, the thought that you could read a book, watch a ball game, and video conference with your kids all on a device the size of a magazine would have been something from science fiction. Today, it is reality. The Internet has transformed society precisely because people have been able to create and innovate largely free from government intrusion.

Businesses are free to invest and grow on the Internet, safe in the knowledge that consumers and technology will determine their fate, not the whims of Washington regulators. This free and open structure is the cornerstone of our high-tech economy, which employs nearly 3.5 million Americans. But the FCC's regulations could jeopardize its future growth by dictating what sort of return businesses can earn on their investment. As my colleague Senator Hutchison and I recently noted, "Lower returns mean less investment, which in turn means fewer jobs." Some estimates suggest we could lose 300,000 jobs as a result of these rules.

Thankfully, it is not too late to act. A bipartisan majority in the House voted to overturn these rules earlier this year. The Senate should take the opportunity to do the same. In order to protect the growth of the Internet and its ability to create the jobs of the future, I would encourage my colleagues to support the Hutchinson resolution.

BIPARTISAN JOBS CREATION

Madam President, I wish to speak now on another need—one where I think we can find common ground. When something good happens here in the Senate, I think it is important that we all acknowledge it. So I would like to start this morning by thanking our universities for being the first to finally agreeing to join us in making some progress on the nearly two dozen bipartisan jobs bills the House has already passed, and I want to urge them to keep at it, to keep pressing ahead with jobs bills both parties will actually support. That way, we will show the American people we are capable of accomplishing something together up here when it comes to jobs.

For months, House Republicans have been executing on a plan to identify and then support those proposals that would attract strong bipartisan support. For weeks, I have been urging the Democratic majority in the Senate to take up these bills so they can become law. This week, Senate Democrats finally agreed to move ahead with two of these bipartisan proposals—a repeal of the 3 percent withholding rule that would ease the burden on government contractors and a veterans bill which not only helps returning service men and women find jobs but which also helps those who hire them. Neither of these bills is going to solve the jobs crisis, but they will help a lot of Americans who deserve it, and they will go a long way in showing the American people there is plenty we can agree on up here.

My suggestion now is that we don't stop there. Let's keep it up. Let's make sure the rest of the bipartisan jobs bills House Republicans have already passed with bipartisan support right across the dome. I have highlighted one of those bills already this week, one that makes it easier for businesses to raise the capital they need to expand and create jobs. This morning, I would like to highlight another—the Shareholder Registration Thresholds Act, H.R. 1965. This is a bill that increases the number of shareholders in banks who are organized into a community bank before that bank is required to shoulder costly new burdens from the SEC.

For 3 years now we have been talking about the urgent need for growing businesses to have access to capital so that they can expand and hire. Yet, because of an outdated law, the smaller community banks that want to make loans to help these growing businesses are subject to burdensome regulations that shouldn't even apply to them. H.R. 1965 will increase the number of shareholders that triggers the requirement from 500 to 2,000. A companion bill in the Senate that would do the same thing is co-sponsored on the Republican side by Senator Hutchison, among others, and on the Democratic side by Senator Pryor, among others. And Senator Toomey has a bill—S. 1825—to expand the number of shareholders controlling the first 40 minutes and the majority controlling the final 30 minutes.

Now, we should take up these bills in the Senate and pass them as soon as possible with the same show of bipartisan support the two parties mustered on the House floor. H.R. 1965 last week. Just like the bipartisan House-passed jobs bill I highlighted yesterday, H.R. 1965 passed the House last week with nearly unanimous support. The vote was 420 to 2, with 184 Democrats voting in support. Only 2 people out of the entire 435-Member House voted against the bill.

The President's jobs council has endorsed the idea, and top Democrats have been vocal proponents of this legislation proposed by House Republicans. Here is House minority leader Congressman Hoeyer on H.R. 1965 just last week:

"We need to see lending to small businesses and homeowners, but they're hamstrung in their attempt to raise capital by outdated SEC registration requirements."

I completely agree with Congressman Hoeyer. Here is Congresswoman Jackson Lee:

"Small businesses need access to loans and other lines of credit in order to build their businesses and to create jobs. Before us is a measure that would allow small businesses to get the support they need."

I completely agree with Congresswoman Jackson Lee. Look, it is not every day that Congresswoman Jackson Lee and I agree on legislation. So I think we should lock this down. Let's pocket another bipartisan accomplishment right here and help the job creators who need it. This is precisely the kind of approach we should be taking here in the Senate—putting aside these giant partisan bills that Democrats know Republicans won't support and focusing on smaller proposals that can actually garner support from nearly everyone and make it onto the President's for a signature. These are small steps but they are progress. Let's keep at it.

Madam President, I yield the floor.
The Senator from Nebraska, Mr. JOHANNS, Madam President, I ask unanimous consent to enter into a colloquy with my Republican colleagues, Senator GRASSLEY of Iowa and Senator COBURN of Oklahoma, for up to 30 minutes.

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

HEALTH INSURANCE

Mr. JOHANNS. Recently, the Des Moines Register reported that an Iowa-based insurance company has decided to exit the insurance market, abandoning insurance sales directly to individuals and families. So what is the net effect of all of that? Thirty-five thousand policyholders will lose their insurance. It calls to mind the famous promise by the President: If you like your plan, you can keep it.

The story doesn’t stop there. It has an even more profound impact on the lives of real people. The impact goes on. One hundred ten employees will lose their jobs. Seventy of those employees are in Nebraska. That calls to mind Speaker PELOSI’s broken promise: The law will create 4 million jobs—400,000 jobs almost immediately.

The driving factor for all of this is a Health and Human Services regulation required by the health care law which micromanages how insurance companies can spend their revenues.

Unfortunately, this job loss in Nebraska is not an anomaly. A recent survey of nearly 2,400 independent health insurance agents and brokers from all over came to this conclusion. One month after this HHS regulation took effect, more than 70 percent had experienced a decline in their revenues. And, more shocking, nearly 5 percent had lost their jobs.

The Government Accountability Office reported that most of the insurers they interviewed were reducing individuals’ commissions. These are not the big insurance companies that were rallied against in the health care debate, but the big insurance companies that are being squeezed. The good folks who are being squeezed are the mom-and-pop agencies that we find in the local high school, the local 4–H club, whatever the civic cause may be. And yet, with unemployment hovering around 9 percent, the health care law puts the hammer on these people. I reached the conclusion long ago that the health care law is bad for job creation and it is bad for keeping your job.

The National Federation of Independent Businesses said:

Small business owners everywhere are rightfully concerned that the unconstitutional new mandates, countless rules and new taxes in the health care law will dissuade their businesses and their ability to create jobs.

What we are seeing with this law is a massive amount of overregulation. According to a recent Wells Fargo–Gallup small business poll, government regulations are the most important problem facing our small business owners. If we just focus again on the health care law, that legislation alone has resulted in 10,000 pages of new Federal regulations and notices—10,000 pages. How could any small business comply?

The employer mandate penalizes employers for growing. It is as simple as that. It forces employers who do not provide acceptable coverage to pay a penalty of $2,000 per full-time employee. But, you see, the penalty is applied to firms with more than 50 employees. And as a small business owner in the Bellevue, NE, area recently explained to me:

I’m not growing my business over 50 employees. I don’t want to deal with your health care law.

Well, as I mentioned, this discussion starts, at least today, with that article in the Des Moines Register.

With me today is the very respected Senator from the State of Iowa, Senator GRASSLEY. I would ask Senator GRASSLEY, what impact does he see arising out of this health care law in his State and, even more broadly, across this country?

Mr. GRASSLEY. I thank Senator JOHANNS for his leadership in this area. He has spoken on regulations quite regularly on the Senate floor and also in our caucus, and I thank the Senator for his leadership in that area.

No. 1, I would say there is certainly iron and bronze in the President who is going around the country now and talking about, We have got to pass legislation to create jobs, at the very same time as the Senator demonstrated in his remarks that there is a health care bill law being instituted that is making people unemployed.

There is also a certain irony in what the President does and the Secretary of HHS does with what Speaker PELOSI said at the time the bill was up: You know, Joe, we’ll see what this bill does. Well, now we are finding out what it does, and people don’t like what it does.

You spoke about regulations causing unemployment, and you spoke about 10,000 pages of regulations. That is probably 10,000 pages of regulations out of the 66,000 pages of regulation that we have had this year, and 10,000 of that deals with health care. But think about the other 57,000 pages that deal with other pieces of legislation that are of interest, particularly small businesses. I guess it is a problem for all business, but particularly for small business. And so far, a few regulations have been issued adding up to that 10,000 pages.

People can read this 2,700-page bill and understand what is in it, and most of them read it and understood what was in it before Speaker PELOSI said, “You know, Joe, we’ll see what this bill does.” Nobody told me what was in it, and I didn’t like what was in it. But in this bill, there are 1,693 delegations of authority to write regulations. So if you have 10,000 pages so far based upon the new regulations that have been written, just think what is going to be all of the pages are printed for the 1,693 regulations. So I think we are at the tip of the iceberg so far in this legislation, and the damage that is done to employment and lack of job creation has just started. That is my comment on that.

I have some remarks I wish to make, if it is okay with the Senator; and if he has to go to a committee meeting, I understand.

This is not the first time this situation has happened in Iowa, and it is coming at a time when people need stability. American families are struggling to put food on their table, pay their utility bills as winter arrives, and purchase health insurance as costs are skyrocketing.

In other words, the President has promised: Pass this legislation and it is going to keep health care premiums down, but that is misleading people, and at a time when, as Senator JOHANNS said, another promise made was: If you like what you have, you are going to be able to keep it.

Well, I don’t know exactly the figure—I have got it here coming up. There is a figure of several thousand people in our State who aren’t going to be able to keep the health insurance they like and they already have because of this company closing down individuals’ policies.

Unemployment continues to hover around 9 percent and 1 million Americans are underemployed, and here we have a health care bill that is causing more people to be unemployed, as well as not keeping the health insurance they want. With the economic situation our country is facing, Congress must reexamine its actions and realize the errors that were made because of partisan votes. This bill was an entirely partisan piece of legislation, unlike most social contracts in America that have been passed, such as Social Security, Medicare, and Medicaid, civil rights legislation. Those were bipartisan pieces of legislation because it was felt that when you are making this difference in America, you ought to have a broad consensus, the major changes such as this ought to be made. But in this particular case, it was very partisan.

I want to go over to what Senator JOHANNS said about the Des Moines Register’s article. The American Enterprise Group, a company participating in individual health insurance markets in Iowa and Nebraska, is leaving the market. This action
shows the importance of repealing and replacing the health care overhaul passed by Democrats in Congress and signed by the President last year before the situation deteriorates even further. Just think what it is going to be like when we get the rest of these 1,693 delegations of authority to the bureaucracy to write regulations.

American Enterprise notified 110 employees in Iowa and Nebraska that they will lose their jobs sometime during the next 3 years. American Enterprise has been leaving the individual health insurance market as a result of the instability caused by the implementation of this health care reform bill. American Enterprise stated it will no longer sell individual health insurance policies because of the regulatory environment created by the health care reform bill.

This isn’t an isolated incident for Iowa, this one company, because the Principal Financial Group left the small group market in July 2010, and Principal Financial isn’t a small Main Street operation. It is one of the major financial groups in the United States, but still, they could not find it to be competitive to stay in the individual insurance market.

This has cost many Iowans their jobs, while leaving scores of small businesses and their employees to choose from health insurance plans in a health insurance market where there is less competition and less competition is the culprit. What happens in this instance is a medical loss ratio regulation of this legislation. The cost of health insurance companies to leave parts of the health insurance market is a reality, and the regulatory environment created by the health care law is having a profound impact on the companies that leave this market.

This regulation requires insurers to pay a certain percentage of premiums in claims. I know supporters will defend the regulation as “keeping insurers in check.” But the real world effect is to force insurers to leave the market, thereby reducing competition and choice available to consumers—not exactly what the President promised.

This regulation has been in place since the health care overhaul passed by Congress in 2010. Principal Financial is leaving the individual insurance market as a result of the instability caused by the implementation of this health care reform bill. American Enterprise stated it will no longer sell individual health insurance policies because of the regulatory environment created by the health care reform bill.

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have just as severe an impact. I would like to spend a minute or two talking about the destructive taxes that are in this legislation.

When we add it all up, the new health care law basically requires new taxes of about $1 trillion to pay down the national debt, not to solve the Nation’s debt woes but to create a new entitlement. The Treasury Department’s Inspector General for Tax Administration has looked at the impact of the health care law on the Tax Code and said this is the largest set of tax law changes in 20 years.

That is no small undertaking when we think about all that has happened over the last couple of decades, that we ended up with an impact on the Tax Code that is the largest set of tax law changes in 20 years, according to the Treasury expert who looked at this. There are 42 separate provisions adding to or amending the Internal Revenue Code in the health care law. So much of that is put together in the last days of this debate, people were scrambling around trying to read it and understand it and get information out to their constituents.

Speaker Pelosi said: We will probably have to pass this law to figure out what is in it. And we are now figuring out what is in it, and it is so much more than a health care law. There are 42 separate provisions that add to or amend the Internal Revenue Code. The Boston Globe weighed in on this. They pointed out the 2.3-percent excise tax on medical device suppliers, according to the Globe, “will force industry leaders to lay off workers and curb the research and development of new medical tools.” There is no question about it. When we add up the tax law changes, the impact from a regulatory standpoint and the other provisions of this law, this is not going to result in the promised jobs that Speaker Pelosi spoke of. It is a job killer.

If we look at what this law is doing, it will actually shrink the labor force, actually create a disincentive to work or to receive a pay raise. I referenced earlier in my comments a small business owner in the Bellevue, NE, area. I was sitting in a Business Roundtable a little more than a year ago. We were just going around the room, and I was listening to small businesses describe to me some of the challenges they face. A small business owner, I said to me: MIKE, we have studied this health care law every which way we can. I am right on the edge of having 50 employees. I am told if I go over 50 employees, I am now subject to all of the ramifications of the health care law. After looking at this I have decided I will not grow my business beyond 50 employees. I do not want to deal with this health care law.

Her discussion with me has stuck with me all of these months. Why is it that Washington would actually pass legislation that would discourage her from hiring additional employees to grow her business? It makes no sense whatsoever. Why are we here in Washington creating a disincentive for the small business owner? Why are we costing Americans jobs?

The Congressional Budget Office has looked at this legislation. They have come to the conclusion that the American labor supply will be reduced by 100,000 workers. The CBO quote is this: The law will encourage some people to work fewer hours or to withdraw from the labor market.

The more we learn about this health care law, the more we come to realize this is flawed policy. It passed and it was signed into law by the President of the United States, but it goes beyond flawed policy. It impacts real people who are trying to make a real living. My comments today started with a story about 50 Nebraskans who lost their jobs or are about to lose their jobs because of the health care law. I am concerned that it is not going to stop there; that as employers are more and more burdened with the thousands of pages of regulations, they will come to realize their best strategy is to try to figure out how to deal with these new requirements and they will pull back on hiring, which is exactly what we do not want to have happen in this economy.

With that, I conclude my remarks and our colloquy today. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ENZI. I also ask unanimous consent that the Senator from Illinois and the Senator from Tennessee be allowed to enter into a colloquy with me for the time that is allotted.

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

MARKETPLACE FAIRNESS ACT

Mr. ENZI. Mr. President, I am going to talk about a problem I have tried to solve for 14 years. Today, I think we have a new solution and “the” solution—The Marketplace Fairness Act. The act requires that taxes that are not being collected at the present time. It is a loophole in the tax law.

I used to be a retailer. I never thought it was fair that I had to collect the sales taxes but the people from out of State did not have to collect the same sales tax. I used to be a mayor, and this bill is a jobs bill and an infrastructure bill. A lot of people do not realize that sales taxes help pay for schools, police and firemen. They may not get to read about infrastructure, such as streets and sewers. I always tell people it is a little tough to flush the toilet over the Internet.

The enactment of the Marketplace Fairness Act would allow States—not require States—to be able to have the out-of-State online sales providers, providing they sell more than $500,000 in a year, to collect the State sales tax. I have also been a State legislator, and I can tell you we never intended to pass a law to tax the people on Main Street who buy the yearbooks and participate in community activities to be the ones to collect the tax, and anyone from out of State to not have to do it. This bill cleans up what we did at the same time. Does it make much of a difference? Yes.

We are being asked as a Congress to give money to the States for their teachers, their firemen, and their infrastructure. It is because there is a decreasing amount of revenue going to them through sales taxes that are owed, but are not currently being collected. People may not realize it, but when they buy something online, if the tax is not collected by the seller, they still owe it. This is not a new tax; it is a tax that is already on the books. No legislator ever intended for it to just be for Main Street retailers. If States so choose, sales taxes should be collected by all retailers. In our attempts to fix this problem, we have received a number of support letters for this new bill. I hope everybody will take a look at them. They can view them online. I ask unanimous consent these letters be printed in the RECORD.

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

NATIONAL CONFERENCE OF STATE LEGISLATURES,

November 9, 2011.

Hon. RICHARD DURBIN, U.S. Senate, Washington, DC.
Hon. LAMAR ALEXANDER, U.S. Senate, Washington, DC.
Hon. MICHAEL ENZI, U.S. Senate, Washington, DC.
Hon. TIM JOHNSON, U.S. Senate, Washington, DC.

DEAR SENATORS DURBIN, ALEXANDER AND JOHNSON: On behalf of the National Conference of State Legislatures (NCSL) we would like to express our support and appreciation for your introduction of the Marketplace Fairness Act, which will provide those states that comply with the simplification requirements outlined in the legislation, the ability of states to collect sales taxes and anyone from out of State to not have to do it. This bill cleans up what we did at the same time. Does it make much of a difference? Yes.

At a time when states continue to face severe budget gaps—states closed shortfalls totaling $72 billion leading into the FY 2012 budget process—it is essential states be allowed to collect the revenue generated by uncollected sales taxes. In 2012, states will collectively lose an estimated $23.3 billion in uncollected sales taxes from out-of-state sales, with more than $11.3 billion alone from electronic commerce transactions, according to a study by the University of Tennessee. The amount of uncollected sales taxes will continue to grow, especially with the unprecedented growth of online commerce. The enactment of the Marketplace Fairness Act is imperative in light of the current deliberations by the Joint Select Committee...
on Deficit Reduction and resulting sequestration if the "Super Committee" is unsuccessful. Under either scenario, states will likely face hundreds of billions in reductions in many state-federal programs. While the $23.3 billion in uncollected sales taxes will not match any funding reductions, it will provide states with some fiscal relief. In the words of Senator Roy Blunt, a sponsor of this legislation, it is "fiscal relief for the states that does not cost the federal government a dime."

The Marketplace Fairness Act is also a win for local main street businesses throughout the country by leveling the playing field between these main street businesses who have to collect sales taxes and out-of-state merchants who currently do not. Allowing some remote sellers to avoid collecting this tax is unfair to the main street merchants that make up the bloodline of our local communities. The legislation also removes the liability for businesses collecting sales taxes, ensuring that sellers are held harmless for calculations and collections using the information and certified technology provided by the states that have complied with the Act.

There will be some who claim that this is a new tax; nothing could be further from the truth. This legislation will not require any state to levy a sales tax on any product or means of buying a product. It merely corrects a problem that if not closed now, will only get worse and possibly push states to seek new revenue sources to make up the lost revenue of their local communities. The legislation also removes the liability for businesses collecting sales taxes, ensuring that sellers are held harmless for calculations and collections using the information and certified technology provided by the states that have complied with the Act.

On behalf of our colleagues across the country, we thank you for introducing this vital legislation and in doing so, enhancing state sovereignty and fiscal federalism.

Sincerely,

Senator Stephen Morris,
President, Kansas Senate,
NCSL President.

Senator Richard Moore,
Massachusetts Senate,
NCSL Life Senate Past President.

STREAMLINED SALES TAX GOVERNING BOARD, INC.,
November 9, 2011.

Hon. Richard Durbin,
Hon. Tim Johnson,
Hon. Mike Enzi,
Hon. Lamar Alexander,
U.S. Senate,
Washington, DC.

Dear Senators Durbin, Enzi, Johnson and Alexander: The 24 Streamline states want you to know they support your introduction of the Marketplace Fairness Act. Online retailers enjoy a competitive price advantage over brick-and-mortar retailers harming the brick-and-mortar retailers. Many main street businesses are little more than showrooms where consumers go to "kick the tires" on products they later buy online harming the local business and the community depending on the sales tax from that sale. A time when Main Street retailers face enormous competitive challenges it is appropriate for Congress to end this unfair treatment.

After our ten years of effort to simplify sales tax administration we are encouraged by your effort to get Congress to level the playing field for all retailers.

Sincerely,

Senator Luke Kenley,
President.
businesses. This is because the current system disadvantages in-state “bricks and mortar” stores to the advantage of out-of-state businesses and this Act will help improve business opportunities in our states and the employment these in-state businesses generate.

We look forward to working with you during the legislative process to enact final legislation into law.

Sincerely,

Patrick T. Carter
President
NATIONAL RETAIL FEDERATION
Washington, DC, November 8, 2011.

Hon. Michael B. Enzi
Ranking Member, Committee on Health, Education, Labor & Pensions, U.S. Senate, Washington, DC.

Hon. Richard J. Durbin
Assistant Majority Leader, U.S. Senate, Washington, D.C.

Hon. Lamar Alexander
Chairman, Committee on Banking, Housing & Urban Affairs, U.S. Senate, Washington, DC.

Hon. Tom Johnson
Chairman, Committee on Banking, Housing & Urban Affairs, U.S. Senate, Washington, DC.

Dear Senator Enzi, Senator Durbin, Senator Alexander and Senator Johnson:

On behalf of the National Retail Federation (NRF), I am writing in support of the Marketplace Fairness Act, which levels the playing field between local and out-of-state merchants with respect to collection of sales taxes.

As the state of retailing evolves and internet sales become a more prominent portion of total retail sales, it is critical that the tax laws not discriminate between similar businesses based on how their products are distributed. The Marketplace Fairness Act will eliminate this discrimination by removing the constitutional limitation on your State’s authority to collect sales and use taxes on purchases made online if the vendor does not collect it at the point of sale, leaving consumers vulnerable to penalties, interest and increased scrutiny from state auditors. If enacted, the Marketplace Fairness Act would allow you to remove this burden from your constituents and in the process empower states to address their budget deficits without having to raise taxes—all without any cost to the federal government.

In closing, we strongly support the Marketplace Fairness Act to eliminate this anti-competitive loophole and view it as critical to preserving Main Street businesses and the millions of Main Street retailers that enjoy a government-sanctioned competitive advantage. This loophole is costing jobs on Main Street while shortchanging state budgets by an estimated $23 billion in uncollected state sales taxes annually, a figure that will only increase as Internet commerce continues to grow. But even if their state requires them to pay the sales tax on purchases made online if the vendor does not collect it at the point of sale, leaving consumers vulnerable to penalties, interest and increased scrutiny from state auditors. If enacted, the Marketplace Fairness Act would remove this burden from your constituents and in the process empower states to address their budget deficits without having to raise taxes—all without any cost to the federal government.

In closing, strongly support the Marketplace Fairness Act to eliminate this anti-competitive loophole and view it as critical to preserving Main Street businesses and the jobs they provide. Thank you again for your leadership on this important issue.

Sincerely,

Katherine Lugar
Executive Vice President
Public Affairs
INTERNATIONAL COUNCIL OF SHOPPING CENTERS, INC.
Washington, D.C.

Dear Senators Alexander, Durbin and Enzi:

On behalf of the more than 42,000 members of the International Council of Shopping Centers (ICSC), I would like to thank you for your leadership on the Marketplace Fairness Act. We strongly support this bipartisan legislation that levels the playing field for community-based retailers by offering long-overdue sales tax fairness.

ICSC was founded in 1967 and is the premier global trade association of the shopping center industry. Our members include shopping center owners, developers, managers, investors, retailers, suppliers and brokers, as well as academics and public officials.

Under the current system, not all retail sales are treated equally. While brick-and-mortar retailers must remit sales and use taxes, many remote sellers, such as catalog and online vendors, are exempt from such requirements. Our current sales tax policy unfairly impacts local retailers—many of whom have also been hit during the recession—and places an illegal burden on taxpayers and consumers, costing state and local governments billions in much-needed revenue.

The Marketplace Fairness Act would eliminate the present system’s lopsided man-
ner of taxing community-based retailers, remove the liability currently being pushed onto consumers, and promote community investment. More importantly, it would provide support for local government and necessary revenue to states without adding to the federal deficit, establishing new taxes or increasing existing taxes. This bill is a true stimulus for our states and local communities.

It is time for the federal government to allow states to enforce their laws and provide for local government and community-based and internet retailers to thrive in the 21st Century marketplace.

Thank you again for the dedication and strong leadership that was required to create this important legislation.

Sincerely,

Betsy Laird
Senior Vice President
Office of Global Public Policy

Mr. Enzi. Some of the groups include: One is from the National Conference of State Legislatures, one from the National Association of Counties, the National League of Cities, the Federation of Tax Administrators, The National Retail Federation, the Retail Industry Leaders Association, the International Council of Shopping Centers, and the Governing Board of the National Association of Counties.

Amazon strongly supports enactment of your bill and will work with you, your colleagues in Congress, retailers, and the states to get this bipartisan legislation passed. It’s a win-win resolution—and as analysts have noted, Amazon offers customers the best price, with or without tax.

If enacted, your bill will allow states to require out-of-state retailers to collect sales tax at the time of purchase and remit those taxes to the state or local government. This will facilitate collection on behalf of third party sellers. Thus, your bill will allow states to obtain additional revenue, reduce taxes or federal spending and will make it easier for consumers and small retailers to comply with state sales tax laws.

Amazon is grateful for your hard work on this issue, and we look forward to working with you and your colleagues in Congress to pass this legislation.

We have a number of other supporters in addition to the others I just mentioned. We are grateful for their support and look forward to working with them to get this bill enacted.

The Marketplace Fairness Act is a bipartisan bill. The original cosponsors of the Senate bill are five Republicans—Senators Alexander, Boozman, Blunt, Corker, and me and five Democrats—Senators Durbin, Tim Johnson, Reed, Whitehouse, and Pryor. A key person in this debate has been the Senator from Illinois, Mr. Durbin, who introduced a previous version of the bill. We encourage our colleagues to take a look at Senator Durbin’s previously introduced legislation.
bill and the Marketplace Fairness Act to see the differences—I think our bipartisan bill is a very passable bill.

At this point, I would ask Senator DURBIN if he has any comments he would like to share as he has been an integral part of making the bill strong and realizing the plight the retailers and the state and local governments are in.

Mr. DURBIN. I thank my colleague, Senator ENZI. I want to give fair warning that this bill is not a bipartisan bill, nor does this bill do that. What it is is a pretty impressive array. One of the most impressive suggestions he has read a letter from is Amazon—to think that one of the largest online retailer in America endorses this bill. When I think back on all of the battles that have been fought in all of the States by every retailer who has been trying to address this, I believe it is telling that they have stepped forward and said: Here is a solution that can work. And if the largest online retailer in America—or one of the largest—feels that to give it a chance each of their retail colleagues who don’t want to destroy that part of our economy, and I certainly don’t.

This is a positive step in the right direction. I thank Senator Tim JOHNSON, Senator BOOZMAN, Senator JACK REED, Senator BLUNT, Senator WHITEHOUSE, and many others who are going to join Senator ENZI, Senator ALEXANDER, and myself in this effort to pass this bipartisan bill. Let’s get this done. Let’s work together on a bipartisan basis to solve a problem that has haunted us for over a decade and do it in a fair fashion that does not create any new taxes but gives the States the right to collect those taxes that are already on the book.

I yield the floor.

The PRESIDENT. The Senator from Tennessee. The minority has 20 seconds left.

Mr. ALEXANDER. I ask consent to extend the colloquy into Democratic time.

The PRESIDENT. Is there objection?

Mr. DURBIN. No objection.

The PRESIDENT. Without objection, it is so ordered.

Mr. ALEXANDER. I wish to congratulate Senator ENZI and Senator DURBIN and say how pleased I am to join as a cosponsor of their legislation. Here is what I want to congratulate them for. Senator ENZI said he came to this as a former retailer, and as a former legislator. I come as a former Governor.

In our constitutional framework, I have always thought it was our business as a former retailer, as a former shoe shop owner, and as a former legislator, I come as a former Governor.

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In our constitutional framework, I have always thought it was our business as a former retailer, as a former shoe shop owner, and as a former legislator, I come as a former Governor.
Enzi and Senator Durbin, with this legislation, in my opinion, have solved the problem, and this is going to happen. I am not presumptuous enough to predict what the Congress will do and what we will signify. I think I have been around long enough and I have watched Congress enough to say this is going to happen. And if I were Governor, if I were an online retailer, or if I were a catalog retailer, I would make my plans to conduct my business. Why do I say that? Well, for one thing, times have changed.

This morning, I got up and looked up the weather in my hometown. So I went online and put in weather. 10°F--that is my ZIP Code—and back came the information. Under the bill Senator Durbin and Senator Enzi have proposed, the State would create a system for Amazon, let's say as an example, an online seller. All they would have to do, if I sell on zip code 53203, is they put my name in, they put in my ZIP code, and the software the State has provided will tell them what the tax is and will even electronically transfer the tax money back to the State. In other words, Amazon will do the same thing the appliance store in Gillette, WY, and the online seller will do the very same thing. They will collect the sales tax that is already owed from the purchaser and they will send it directly to the State, which has been the way things have worked for a long time.

This is an issue about preserving the States' rights to collect not to collect their own sales tax. It is about closing a tax loophole. It is about stopping the subsidization of some businesses over others, of some taxpayers over others.

I will conclude my remarks in a moment, but first here is what William F. Buckley said about it:

> The mattress maker in Connecticut . . . does not like it if out-of-State businesses sell practical items subsidizing some businesses over others, that is what the non-tax amounts to. Local concerns are complaining about traffic in mattresses and books and records and computer equipment which, ordered through the Internet, come in, so to speak, duty free.

Of course, Governors and legislators are up in arms as well. This loophole costs States $23 billion. Tennessee could use this money to walk off a State income tax which we don't have and we don't want. Amazon will collect the sales tax that is already owed from the purchaser and they will send it directly to the State to provide the revenue to reduce its property tax. Other States might reduce rising college tuitions, or they might reward outstanding teachers.

This has been a problem for the last 20 years, but Senator Enzi and Senator Durbin, with their legislation, have solved the problem. I will stop where I started. This is not a new tax, it is an existing tax. It is not a tax on the Internet; it is on all sales. Senator Enzi and Senator Durbin, with their legislation, have solved the problem, and I predict that because of the voluntary agreements and the ease of out-of-State vendors doing the same thing Main Street vendors do, that very soon we will eliminate these subsidies and loopholes. I congratulate them for their years of work in this area. I am happy to join 10 Senators—5 Republicans, 5 Democrats—in cosponsoring this legislation.

Mr. President, I ask unanimous consent to include the article by Al Cardenas, the head of the American Conservative Union; the essay by William F. Buckley; and a letter from Governor Bill Haslam of Tennessee, endorsing the Enzi-Durbin legislation.

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

From National Review Online, Nov. 8, 2011

THE CHIEF THREAT TO AMERICAN COMPETITIVENESS: OUR TAX CODE

By Al Cardenas

More than three years after America’s financial system hit a crisis point, the state of our economy remains in turmoil. As our nation’s leaders grapple with immediate challenges through dueling jobs plans and the Joint Select Committee on Deficit Reduction tries to come to agreement on a trillion and a half in reductions, we must also consider long-term measures to strengthen our economic security. As it stands now, the number one threat to the future of American competitiveness isn’t other countries. It’s our tax law.

The United States Tax Code is difficult to understand and even harder to navigate, for families and businesses. It has been patchworked, reformed, and tinkered with for decades, giving us an antiquated and irrational system. Our corporate tax rate is among the highest in the world. We refuse to shift to a Territorial Tax System that would stop punishing our companies for bringing overseas income back to the U.S. for reinvestment. Tax rates for small businesses remain high and inconsistent.

Instead, a robust free-market system requires a level playing field, where the government doesn’t get to pick the winners and losers. We should require the same of our system of taxation. We need a flatter tax code that removes loopholes, subsidies, and credits, one that lowers rates across the board and expands the percentage of Americans paying their fair share of taxes.

When it comes to sales tax, it is time to address the area where prejudice is most apparent—tax policy towards Internet sales. At issue is the federal government exempting some Internet transactions from sales taxes while requiring the remittance of sales taxes to identical brick and mortar locations. It is an outdated set of policies in today’s super information age, when families every day make decisions to purchase goods and services on the Internet. Moreover, it’s unfair, punitive to some small businesses and corporations and a boon for others.

This is why the American Conservative Union applauds Rep. Steve Womack for his sponsorship of the Marketplace Equity Act of 2011, one of the first sincere attempts to modernize our tax policy for the 21st century.

As conservatives we know that governmental power can be used to destroy entrepreneurship, innovation and the free market. There is no more glaring example of misguided government power then when taxes or regulations affect two similar businesses completely differently.

Over time, the company that has to comply with a tax or a regulation will lose market share to its competitor who is carved out of these tax and revenue obligations. In these cases the winner is not the company who pays taxes, but the one who gets special privileges from the government.

At its inception, the Internet was every- one’s darling, the latest in American innovation and ingenuity. Internet sales represented a miniscule portion of the total retail market, and the novelty led to tax loopholes and unintended consequences. Now, according to Forrester Research, Internet sales account for nearly 10 percent of all sales of products and services in America, with an annual growth rate of about 9 percent.

If we do not confront this issue, state and local governments dependent on sales taxes will be forced to look for other revenue streams as Internet sales continue to expand. Policy which allows for both online and brick and mortar retailers to be susceptible to the same taxes will—and should—allow for commensurate reductions in sales tax rates. For instance, if Internet sales tax revenues will add 10 percent in revenue to a governor’s coffers, a corresponding overall reduction in rates should apply.

The current system is also inconsistent with states’ rights, and the Congress ought to carefully consider enacting revenue neutral tax reform policies consistent with the Tax Reform Act of 1986.

The free-market system can only operate effectively on a level playing field of free and
fair competition. Whether it’s the Department of Energy’s disastrous Solyndra project, or levying sales taxes, or a multitude of other policy decisions that impact the private sector, the government’s critics say winners and losers is a perversion of the free market system. Lawmakers on Capitol Hill—especially conservatives—ought to at least acknowledge the dire consequences of the tax code.

But, sigh, that was three years ago, which means we have to come to terms with the inevitable—true reform will be impossible for Congress to wrestle with the problem without yielding to legitimate demands of the states spending the money on education, public safety, and other services, and depriving them of revenue.

The question has not come up in the current welter of proposals, but we have to watch carefully to prevent the United States Postal Service from getting into the act. The most calamitous exposure of the postal service since the days of mail-train robberies is of course factoring in. These are, for all intents and purposes, absolutely free transactions. One hundred messages can be sent out, or for that matter one thousand, for less than the cost of a first-class postage stamp. A rumor swept about the medium, a communication sent out on the Internet. These are, for all intents and purposes, absolutely free transactions. One hundred messages can be sent out, or for that matter one thousand, for less than the cost of a first-class postage stamp.

The Internet has changed the way we do business and provides small businesses the opportunity to compete on a level playing field. The Marketplace Fairness Act would bring the tax system up to date and give the American small businesses the chance to compete on a level playing field. The Marketplace Fairness Act would bring the tax system up to date and give the American small businesses the chance to compete on a level playing field.

Mr. DURBIN. I thank the Senator from Illinois.

Mr. ENZI. Mr. President, you yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. REED. I ask unanimous consent to return to morning business.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. REED. Mr. President, let me also correct the record. I am a co-sponsor of the VOW to Hire Heroes Act because I too am a cosponsor of this legislation, and I think it does represent a remarkably thoughtful and bipartisan approach to the problem of providing resources to local States and communities so they can carry out the very challenging issues of local governments. I am not surprised that Senator ALEXANDER is a key element in this product. Both Senator Enzi and Senator DURBIN deserve to be complimented. I thank them for their leadership.

VOW TO HIRE HEROES ACT

Mr. REED. Mr. President, I rise specifically to speak in strong support of the VOW to Hire Heroes Act of 2011. This legislation incorporates key components of the American Jobs Act and other bipartisan proposals designed to help veterans find jobs, including the Senator Enzi and Senator ALEXANDER VOW to Hire Heroes Act, of which I am a proud cosponsor. These are common-sense policies that Congress can and should pass immediately.

We are in the midst of an unemployment crisis that is obvious to every American, and it is a growing problem that is sapping not only our economic strength but indeed our sense of national purpose and our morale. The national unemployment rate has been hovering around 9 percent, and that means 14 million Americans are looking for work in one of the toughest economies since the Great Depression. But what is unfortunate—some might
even say shameful— is that almost 1 million of those Americans looking for work are veterans returning home after valiantly serving our country. The unemployment rate for veterans of Afghanistan and Iraq is an indefensible 12.1 percent. It represents a significant blow to men and women who are returning home after serving their country in very difficult circumstances. In 2010, 36 percent of Afghanistian and Iraq-era veterans were unemployed for longer than 26 weeks. Again, that is a shameful statistic.

This unfortunate trend is mirrored in my home State of Rhode Island. We have a very high unemployment rate—10.5 percent, one of the highest in the Nation. We have been unfortunately in that category for almost 2 years now. But for veterans, the rate is 11.1 percent. They are doing even worse than other non-veterans in the unemployment category. That is one more reason, by the way, that we should extend the unemployment compensation legislation that is so necessary. I have joined Senators DURBin, WHitEHOUSE, LEVIN, MERkLEY, and GILLIBRAND, and we have proposed to do this with the Emergency Unemployment Compensation Act of 2011. We will have people coming back from Afghanistan; we still have people who are holding on to a job but very well might lose it. They need these benefits, and if we don’t pass this legislation, then beginning next January, there is a very real possibility that they will not be able to get these benefits which are so essential.

We have to work together. I think it is a very good example of the work Senator ENZI, Senator ALEXander, Senator DURBin, myself, and others have done with respect to this legislation on sales tax. But we have to work across the aisle, particularly for our American veterans, but also for American workers throughout this country. Again, we have a component of the American Jobs Act before us. This bill is focused on veterans, but the jobs act overall should be passed. We have argued for it endlessly, because it will put Americans to work, it is fully paid for, and it will be an investment in our infrastructure and in other programs that are long-term needs of this Nation.

This particular legislation before us targets tax incentives for businesses to hire these veterans, including a tax credit of $2,400 for hiring a veteran who has been unemployed for more than 4 weeks but less than 6 months, a $5,600 tax credit for hiring a veteran who has been looking for a job for more than 6 months, and a $9,600 tax credit for hiring veterans with service-connected disabilities who have been looking for a job more than 6 months. These incentives will help veterans secure employment and they should be passed immediately.

These veterans deserve our help as they transition from their military service to their civilian careers. They have incredible skills of leadership, of diligence, of dedication, of self-discipline that add to their technical skills and make them incredibly important for the growth of our economy, and they have to have the opportunity to use these skills for the benefit of their communities. And they did to defend their country. This legislation provides that critical assistance.

It has other aspects to it. First, it would provide opportunities for military personnel who are leaving active service for transitional assistance to be able to participate in workshops sponsored by the Department of Defense, the Department of Labor, and the Department of Veterans Affairs. The workshops will help them write resumes, receive career counseling, and other things.

Second, it expands education and training opportunities for older unemployed veterans by essentially providing an additional year of Montgomery GI bill benefits for use at community colleges and technical schools. It also allows servicemembers to begin to seek civilian jobs in the Federal Government prior to formally separating from their military service.

Earlier this week I was with the President when we announced these initiatives and more. After that visit to the Rose Garden, I went to Walter Reed National Military Medical Center in Bethesda to visit those young men and women who have served and who are now wounded warriors. Trust me, their spirit is undeterred, as is their commitment to their country. We owe them much more than we can ever repay, and the first payment of that huge debt is passing immediately—this week—this legislation to help our veterans. So as we celebrate Veterans Day with speeches, we will have a real accomplishment to bring to the American people veterans who serve and defend us today.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.
The former Democratic FCC Chairman, William Kennard, stated in 1999 “[t]he fertile fields of innovation across the communications sector and around the country are blooming because from the get-go we have taken a deregulatory, competitive approach to our telecommunications industry—especially the Internet.”

The present FCC is reversing that policy that has been successful beyond our expectations. Broadband Internet networks have powered the information revolution and the Internet, which in 2009 accounted for more than 3.5 million high-paying jobs and about $1 trillion in economic activity.

This industry has been an engine for major economic growth even during these difficult times. Yet the FCC’s rules could severely jeopardize this industry’s vast potential. Net neutrality is intended to limit how Internet service providers develop and operate their broadband networks. The net neutrality rules, according to the FCC, would give broadband providers what kind of business practices are reasonable and unreasonable. The FCC, however, did not bother to clearly define in its rules what the agency considers to be reasonable.

This point is vital to understand. With such an arbitrary and yet poorly defined standard, companies will be forced to err on the side of caution. Rather than risk possible punishment from the FCC, many companies will simply decide: Maybe we will not invest right now in new technologies. Maybe it is too risky to develop and deploy new services. At the very least, it will delay such investment.

This kind of regulatory uncertainty will be crippling for companies and particularly small providers. We have heard exactly that from a small wireless Internet provider in Wyoming called LARIAT. This is a provider that is serving remote areas and trying to expand to other unserved years. LARIAT testified before Congress that presently exists for the Internet is serving remote areas and trying to expand to other unserved years.

That is the law today. The FCC has lost this fight already in the courts. If the Senate does not strike down the FCC’s legal theory is left unchallenged, the FCC will have nearly unbounded authority to regulate almost anything on the Internet. It is Congress’s role, not the FCC’s to determine the proper policy framework for the Internet.

As Senators REID, NICKLES, and STEVENS said at the time of this bill’s passage, “Congressional review gives the public the opportunity to call the attention of politically accountable, elected officials to concerns about new agency rules. If these concerns are sufficiently serious, Congress can stop the rule.”

We believe the concern about the FCC’s net neutrality rules is sufficiently serious to warrant the consideration of Senate Joint Resolution 6, the disapproval resolution Senator MCCONNELL and I introduced to nullify the FCC’s net neutrality order under the Congressional Review Act. The Congressional Review Act allows Congress to review a rule before it takes effect and even to nullify that rule if Congress finds it is inappropria...
Mr. ROCKEFELLER. Mr. President, I rise today to oppose the Senate Joint Resolution 6, which was brought under the Congressional Review Act—about which I wish to talk—to disapprove the FCC’s open Internet rules, as they are.

Americans want the Internet to be free and open to them. They want to go where they want to go, see what they want to see, do what they want to do on the Internet. They don’t want to be limited to one or two service providers. They want to be able to choose to use who they want to use. They want to be able to develop new businesses, and they want to read and watch video. They want to reach out to friends and family and community. And they want to do it online. They want to do all of these things on the Internet—without having to ask permission from their broadband provider. The FCC has promulgated balanced rules that let Americans do all of these things, and keep the Internet open and keep the Internet free.

Let us be clear from the outset. No matter how S.J. Res. 6 is dressed up in language that suggests it will promote openness, it will not do that. The resolution is misguided. It will add uncertainty, in fact, into the economy, and it will hinder small businesses dependent upon fair broadband access, where otherwise they might be put into a slower lane. They want to be able to compete with other parts of the country. This resolution will, in fact, undermine innovation. It will hamper investment in digital commerce. It will imperil the openness and freedom that has been the hallmark of the Internet from the very start.

The FCC’s rules were the product of very hard work, consensus, and compromise. The agency had extensive input from stakeholders from all quarters. They opened up and said send in your comments. In fact, they had written input from more than 100,000 commenters. About 90 percent of those filing supported the adoption of open Internet rules. On top of this, the rules are based on longstanding and widely accepted open Internet principles, which were first articulated during the second Bush administration.

These rules do three basic things. First, they oblige broadband providers to fully disclose to consumers accurate information regarding the network management practices of broadband Internet service. This means that all broadband providers are required to publicly disclose to consumers accurate information regarding the network management practices of broadband Internet service. This means that all broadband providers are required to publicly disclose to consumers accurate information regarding the network management practices of broadband Internet service. This means that all broadband providers are required to publicly disclose to consumers accurate information regarding the network management practices of broadband Internet service. This means that all broadband providers are required to publicly disclose to consumers accurate information regarding the network management practices.

Second, the rules prohibit fixed broadband providers from blocking lawful content, application, services, and devices. This means consumers and innovators will continue to have the right to send and receive lawful Internet traffic. With mobile broadband service providers subjected to a more limited set of prohibitions. I will speak about that in a moment.

Third, the rules aim to ensure that the Internet remains a level playing field by prohibiting fixed broadband providers from unreasonably discriminating in transmitting lawful network traffic—which they have done. The FCC’s effort—under the open Internet Act—to apply with the complementary principle of reasonable network management, which provides broadband providers the flexibility to address congestion or traffic that is harmful to the network. These are principles that I believe everyone can support. I see nothing wrong with them. The word “reasonable” somehow doesn’t scare me. Maybe it should, but it doesn’t.

I ask my colleagues, what is wrong with transparency? Why would we want to promote Internet blocking or discrimination? Why would we want to have some people on the fast lane and some on the slow lane, depending on whether you paid your Internet provider enough money? What is unreasonable about reasonable network management?

I believe that the FCC’s effort, along with ongoing oversight and enforcement, will protect consumers, and I believe it will provide companies with the certainty they need to make investments in our growing digital economy.

While many champions of the open Internet would have preferred a stricter decision—and I am one of them—I do not believe it would have real impact. The very real impact is on people who are treating wireless broadband differently from wired broadband—I think the FCC’s decision was nevertheless a meaningful step forward. In a moment, I will talk about other people who feel the same.

Supporters of the joint resolution fail to acknowledge that the FCC’s open Internet rules have received overwhelming support from broadband Internet service providers, consumers, and civic groups. And unions, as well as high-tech companies.

AT&T CEO Randall Stephenson stated earlier this year that while he wanted “no regulation,” the FCC’s open Internet order “ended at a place where we have a line of sight and we know and can commit ourselves to investments.”

Time-Warner Cable said at the time of the order’s release that the rules adopted “appear to reflect a workable compromise between protecting consumers’ interests and preserving incentives for investment and innovation by broadband Internet service providers.”

Numerous analysts from major investment banks have found that the open Internet order removes what they call regulatory overhang and allows telecom and cable companies to focus on investment.

Google, Facebook, Twitter, eBay, Skype, and other leaders in innovation all urged the FCC to adopt “common-sense baseline rules,” critical to ensuring that the Internet remains a key engine of economic growth, innovation, and global competitiveness.”

The PRESIDING OFFICER (Mr. SCHUMER). The senior Senator from the great State of West Virginia.

November 9, 2011  CONGRESSIONAL RECORD — SENATE S7241

more innovators? Probably not. That is not the mix we need to assure that our economy will get back on track in this country.

Studies indicate that net neutrality rules could significantly affect our country’s ability to regenerate capital investment in broadband infrastructure by even 10 percent, it could cost our country hundreds of thousands of jobs over the next decade.

We must preserve the openness of the Internet for innovation and economic growth. We must keep the competitive advantage that we have in this country for innovation. The last thing we ought to be doing is putting restrictions on our providers, when many countries that are also advanced in this area are not doing the same thing. So when we go to global competitiveness, we are putting our companies at a disadvantage. Why would we do that?

We must stop the job-killing regulatory overreach by our government today in so many areas, and we can start right here, right now, by keeping the Internet free, voting for this resolution of disapproval, and saying to the regulatory bodies in this town: Congress has a delegation of authority for your agency to pass rules, and especially when Congress is in disagreement with those rules.

This is a key policy decision for our body. We need to step up to the responsibility that Congress has. Our Constitution divided the powers between three branches of government. If Congress doesn’t stand up for its one-third of the powers of this government and lets unelected bureaucrats run over our prerogatives, we will become a weaker branch, and our government will become weaker for it. We need to have three equal branches of government, and that means each branch must fulfill its responsibilities under the Constitution, must delegate authority explicitly for a rule to be made. That is the way the Constitution intended for Congress to fulfill its job as the elected representatives of the people of our country.

The House has passed this resolution. I hope the Senate will tomorrow. I hope the people will speak and say that even if you disagree on the basic issue of net neutrality, it is not the right of the FCC to pass sweeping regulations that will affect the economy of this country. It is a delegation explicit authority from Congress, which it does not have.

Mr. President, I ask my colleagues to come to the floor if they want to speak on this resolution. There is 4 hours, equally divided, and that time is now running that Congress has. Our colleagues that we have quite a list of those who want to speak. They must know that the time will run out in about 3½ hours now. I ask them to contact me if they wish to speak.

I yield the floor to the Senator from the great State of West Virginia.
More than 150 organizations wrote Congress to oppose this joint resolution. I hate reading lists, but I am going to do it anyway: the Communications Workers of America, the AFL-CIO, the NAACP, the U.S. Conference of Catholic Bishops, the American Library Association, the American Association of Independent Music, the Leadership Conference on Civil and Human Rights, the League of United Latin American Citizens, the National Organization for Women, and Technet. These organizations see that the Net has a lot at stake. I have their letters here.

I ask unanimous consent that these letters be printed in the RECORD.

Without objection, the material was ordered to be printed in the RECORD, as follows:

OCTOBER 14, 2011.

DEAR MAJORITY LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN ROCKEFELLER AND RANKING MEMBER HUTCHISON: We write to urge your support for the FCC's open Internet rule and rejection of S.J. Res 6, a resolution that would nullify the Federal Communications Commission's Open Internet Act. Americans have come to depend on reliable open Internet access for their daily life and work. Yet without a light touch, the FCC rule, households, students and small businesses of any recourse at all if their Internet Access Provider (IAP) decides to prioritize its own content and affiliated services or block other end user choices.

The FCC's December 2010 decision was adopted after several lengthy proceedings and unprecedented public input. The result is a very modest rule designed to preserve open, non-discriminatory Internet access. In deference to the wishes of IAPs, the FCC completely avoided Title II common carrier regulation. The rule allows flexible network management and does nothing to inhibit broadband network deployment, while it affirmatively facilitates innovation and investment in new online services, content, applications and access devices by providing some minimal assurance they will not be blocked arbitrarily. CRA of course would actually leave the American public worse off than with no open Internet rule, as it would also rescind FCC authority in this area. Congress has repeatedly acted with a duty to protect the public interest in nationwide communications by wire and radio. No other agency can help your constituents with Internet access trouble if FCC authority is terminated.

Sincerely,

ED BLACK
President & CEO, CCA.

REY RAMSEY
President & CEO, Tech Net.

OPEN INTERNET COALITION.

Washington, DC, November 4, 2011.

Hon. John D. Rockefeller IV,
Chairman, Senate Committee on Commerce, Science, and Transportation, Washington, DC.

Hon. Kay Bailey Hutchison,
Ranking Minority, Senate Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR CHAIRMAN ROCKEFELLER AND RANKING MEMBER HUTCHISON: The Open Internet Coalition ("OIC") respectfully submits this letter to indicate our opposition to a vote under the Congressional Review Act to vacate the Federal Communications Commission's Open Internet Order, which would preclude any future action in this area by the Commission.

The OIC believes that such a vote would hurt consumers and innovation, and respectfully asks the Senate to reject the CRA measure.

Sincerely,

THE OPEN INTERNET COALITION.

OCTOBER 12, 2011.

Majority Leader Harry Reid,
Minority Leader Mitch McConnell,
U.S. Senate,
Washington, DC.

Chairman Jay Rockefeller,
Ranking Member Kay Bailey Hutchison,
U.S. Senate Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR MAJORITY LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN ROCKEFELLER, AND RANKING MEMBER HUTCHISON: We write, as leaders and communicators representing many diverse religious traditions, to write share our strong support for Internet freedom. Specifically, we support the Federal Commission's Open Internet rules and urge you to oppose S. J. Res 6 which would repeal these rules using the Congressional Review Act. These rules are important for underserved communities as well as the faith community.

The Internet is a critical tool for non-profits and religious organizations. In particular, institutional networks such as health care providers and institutions of higher learning, and social service agencies and community organizations use the Internet for communication, organizing, and learning. The Internet is an increasingly important tool that helps needy persons access the education and services they need to improve their lives and the lives of their families. In these difficult economic times, the Internet is the only tool for those seeking to get back on their feet.

Not only are the open Internet rules important for these faith community services, it is important for all those in the community itself. As the National Council of Churches Communications Commission recently stated, Internet communication is "vital" to faith groups to enable them to communicate with members, share religious and spiritual teachings, promote activities the Church is involved in, and particularly—youth members—of younger persons—in their ministries.

As the resolution noted, "Faith communities have experienced uneven access to and coverage by mainstream providers, and the opportunity to create their own material describing their faith traditions." Without robust open Internet protections, our essential communications and the general public could be impaired. Communication is an essential element of religious freedom: we fear the day might come when religious individuals and institutions would have no recourse if we were prevented from sharing a powerful message or a call to activism using the Internet.

We are particularly concerned about the way Congress has chosen to address this issue. Members of Congress have already initiated action under the Congressional Review Act to eliminate all open Internet protections. Even for legislators who might not agree with every aspect of the FCC's new rules, the proposed use of the Review Act is extreme.

After many months of public hearings and reviewing thousands of public comments, the FCC last December sought to strike a balance between the needs of Internet providers and the general public. The agency's comments stated that the Commission was committed to guard against the most severe forms of abuse. The result was a set of regulations that competing parties in the industry and public sector were able to support. The new rules are critical to ensuring that all citizens can gain access to high speed Internet.

Among other things, the new disclosure rules will make it easier for low-income families to choose an Internet provider at a price they can afford. In addition to new policies, the rules adopted last year reestablished a number of non-controversial common-sense FCC policies, including preventing the Net from being a conduit for spam and viruses. Congress will instead work to preserve open Internet protections for all people, particularly people of faith, are able to take full advantage of the power of the Internet.

Sincerely,

Andrea Cano, Chair, United Church of Christ, OC Inc.; Rev. Robert Chase, Founding Director, Intersections International; Barby Powell, United Church of Christ, Publishing, Identity, and Communication; Rev. Dr. Ken Boothe, Director, Justice Action Network; Reverend Peter B. Panagore, First Radio Parish Church of America; Gradye Parsons, Stated Clerk of the General Assembly of the Presbyterian Church (USA); Dr. Rissott-Potterveld, President, Pacific School of Religion; The Rev. Eric C. Shafer, Senior Vice President, Odyssey Networks; Dr. Sayyid M. Syeed, National Director, Office for Interfaith & Community Affairs, Islamic Society of North America; Rev. Jerry Varnum, Director, Presbyterian New Service, Presbyterian Church, Chair, Communications Commission, National Council of Churches; Linda Walter, Director, The AMS Agency, Seventh-day Adventist Church.

THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS.

OCTOBER 11, 2011.

Hon. Kay Bailey Hutchison,
Ranking Member, U.S. Senate,
Washington, DC.

Hon. John D. Rockefeller IV,
Chairman, U.S. Senate,
Washington, DC.

Hon. Harry Reid,
Majority Leader, U.S. Senate,
Washington, DC.

Hon. Mitch McConnell,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN ROCKEFELLER, AND RANKING MEMBER HUTCHISON: on behalf of The Leadership Conference on Civil and Human Rights and by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, along with the undersigned organizations, we write to urge you to oppose the use of the Congressional Review Act (CRA), S. J. Res. 6, to repeal the Federal Communication Commission's (FCC) Open Internet rules. Though the organizations represented by this letter have taken different views on the Open Internet rules, we are united in the view that congressional action to overturn these rules using the CRA would cause significant harm, particularly to the constituencies represented by our organizations, and that Congress should instead work on other critical media and telecommunications issues that are so vital to our nation's economic and civic life.

November 9, 2011
The CRA, 5 U.S.C. 801-808, is a blunt instrument. The terms of the Act require complete repeal of the agency action in question in a simple “yes or no” vote. For this reason, use of the CRA would mean that critical long-estab-
lished rules will be replaced with newer proposals adopted for the first time in December. Use of the CRA would eliminate the FCC’s authority to enforce its reason-able Open Internet principles, includ-
ing their private blocking of constitutionally-protected speech.

A free and open Internet is of particular concern to civil rights organizations because the Internet is a critical platform for free speech. It is also a tool for organizing mem-
bers and engagement; a channel for online education and advancement which is essential to economic development and job creation; a means by which to produce and distribute diverse content; and an opportu-
nity for small entrepreneurs from diverse communities who might not otherwise have a chance to compete in the marketplace.

As you know, the FCC adopted Open Internet rules in December after an extensive and detailed process. As a result, the Commission for the first time adopted a set of enforce-
able rules that many diverse parties agree will protect against severe abuse, promote free expression on the Internet, and encour-
age investment in broadband networks. These rules include a number of non-controversial commonsense policies, such as the right of a consumer to reach any lawful content via the Internet while pre-
serving network providers’ ability to manage their networks. The rules adopted in Decem-
ber will help get all Americans online: for example, consumers with low incomes will be better able to select a service at a price they can afford under the Commission’s new transparency rules.

We also urge Congress and the Commission to move forward on other critical media and telecommunications policy initiatives. As we explained to the FCC last fall, we believe it is critical for the Commission to renew its focus on expanding broadband adoption among people of color; closing the digital div-
ide; extending universal service support to broadband; protecting provider pricing plans to protect consumer privacy; and implementing the 21st Century Communications & Video Accessibility Act of 2010.

In closing, we strongly urge you to oppose the use of the Congressional Review Act to re-
peal the Federal Communications Commis-
sion’s Open Internet rules. We also hope that Congress and the Commission will move for-
ward expeditiously to implement the Na-
tional Broadband Plan to expand deployment and adoption of advanced technologies and high-
speed Internet for all Americans. Should you require further information or have any questions regarding this issue, please con-
tact the American Library Association’s Communications Task Force Co-Chairs, Cheryl Leanza, at 202–466–5670, Christopher Calabrese, at 202–715–0839, or Corrine Yu, Leadership Conference Managing Policy Di-

Sincerely,

Gary A. Jackson,
President & CEO, American Library Association;
Lynda Bird Johnson Robert, President & CEO, American Library Association; Lynne Bradley, Executive Director, Association of Research Libraries (ARL);
William G. O’Neill, Executive Director, American Library Association; and
David O’Brien, Director, American Library Association.

American Association for the Advancement of Science; American Civil Liberties Union; Common Cause; Communications Workers of America; Disability Rights Education & Defense Fund; NAACP; The Leader-
ship Conference on Civil and Human Rights; National Hispanic Media Coali-
tion;塞浦路斯; National Women’s Political Caucus; National Association of Non-Profit Women; United Church of Christ, Office of Communication, Inc.
clear, enforceable rules of the road for the Internet, whether accessed on personal computers or mobile devices. We are not convinced that the FCC's recent action is far enough to preserve the dynamics that make the Internet such a unique and promising marketplace for creative commerce. We are particularly concerned about the clarity of the mobile space, as well as the possibility of our sector being priced out of the most desirable online delivery mechanisms.

Nonetheless, it seems shortsighted for Congress to seek to eliminate the FCC's ability to oversee this vital space, as it is an essential part of the market driven by prizie, ingenuity and competition. We therefore urge the United States Senate to forego any attempt to stymie the FCC's authority to preserve the underlying dynamic of the Internet.

Sincerely,

THE AMERICAN ASSOCIATION OF INDEPENDENT MUSIC (AAIM)

FUTURE OF MUSIC COALITION,
Washington, DC, November 4, 2011.
Hon. JAY ROCKEFELLER,
Chairman, Committee on Commerce, Science & Transportation, Hart Senate Office Building, Washington, DC.
Hon. MITCH MCCONNELL,
Ranking Member, Committee on Commerce, Science & Transportation, Russell Senate Office Building, Washington, DC.
Majority Leader, Hart Senate Office Building, Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, Russell Senate Office Build-
ing, Washington, DC.

DEAR SENATORS, Since its inception, the Internet has represented a powerful tool for the exchange of information and ideas. In recent years, it has also contributed greatly to the emergence of novel platforms for the dissemination of creative content. It is as members of the arts community who have come to depend on these structures that we write to you today.

Creators, in particular, depend on open internet structures to engage in a variety of ways, including direct interaction with audiences, fans and patrons, as well as collaboration with fellow artists and service organizations. Today’s creative community depends on the Internet to connect and contribute to the rich tapestry that is American culture.

Today’s creators are taking advantage of technologies fostered by the internet to deliver a diverse array of content to consumers, while creating efficient new ways to “do for ourselves” in terms of infrastructure. The access and innovation inspired by the web have allowed us to meet the challenges of the 21st century as we contribute to local economies and help America compete globally.

It hasn’t always been so. Traditionally, the media has been heavily dependent on hierarchical chains of ownership and distribution, controlled by powerful gatekeepers such as large TV and movie studios, commercial radio conglomerates, major labels and so forth.

It would be tremendously disadvantageous to creative entrepreneurship if the Internet were to become an environment in which innovation and creativity face tremendous barriers to entry due to business arrangements between broadband providers and industry players.

This is why we support clear, enforceable and transparent rules to ensure that competition and free expression can continue to flourish on the Internet. Many members of the creative community believe that the recent FCC Order does not go far enough in its protections (particularly with regard to mobile broadband access), we recognize the importance of having a process in place by which concerns can be addressed and transparency pursued.

We believe that the FCC has a role to play in establishing guidelines that preserve a competitive, accessible internet where free expression and entrepreneurship can continue to flourish. We also believe that stripping the FCC's ability to enforce these core principles as proposed in S.J. Res. 6 runs counter to the values shared by members on both sides of the aisle, as well as prior and current FCC leadership. Therefore, we strongly urge against a broad repudiation of the Commission's Order.

Sincerely,

FRACTURED ATLAS.

FUTURE OF MUSIC COALITION.

NATIONAL ALLIANCE FOR MEDIA ARTS AND CULTURE.

OCTOBER 13, 2011.

Hon. HARRY REID,
Senate Majority Leader, Hart Senate Office Building, Washington, DC.
Hon. MITCH MCCONNELL,
Senate Minority Leader, Russell Senate Office Building, Washington, DC.
Hon. JOHN BAYLOR HUTCHISON,
Chairman, Russell Senate Office Building, Washington, DC.
Hon. KAY BAILEY HUTCHISON,
Ranking Member, Senate Office Build-
ing, Washington, DC.

DEAR MAJORITY LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN ROCKERFELLER, AND RANKING MEMBER HUTCHISON:

The below signed organizations support an open Internet and oppose S. J. Res 6, legislation that would repeal the Federal Commu-
nication Commission's (FCC) Open Internet rules through the Congressional Review Act. Utilizing the Congressional Review Act would only eliminate the current FCC rules, it would eliminate the FCC’s ability to protect innovation, speech, and commerce on broadband platforms on behalf of the Ameri-
can people.

The Internet has been and must remain an open platform. Regardless of political or so-
cial values, an Open Internet increases op-
portunities for all people and communities, increases diversity of opinions and thought, and ensures that consumers and entre-
preneurs alike can engage in and benefit from the economic growth driven by access to the Internet. An Open Internet is also an en-
gine for economic growth, innovation, and job creation.

The FCC has adopted a framework that the agency believes will preserve the Open Internet. We wholeheartedly support preservation of the FCC’s authority to implement such a framework. Instead, we hope that Congress will work to preserve openness online and to move forward expedi-
tiously in implementing the National Broadband Plan. Undertaking such initia-
tives would improve broadband deployment and adoption opportunities for all Ameri-
cans, including individuals in typically rural and other underserved populations and in communities of color too often denied a meaningful opportunity to participate in the new economy.

For these reasons, we urge you to ensure that all your constituents can continue to benefit from an Open Internet, and we stand ready to work with Congress to preserve an Open Internet.

Respectfully submitted,
Access Humboldt; ACLU; AFL-CIO; Alli-
ance for Retired Americans; Applied Research Center; Arizona Progress Action; Art is Change; As-
socia-
tion of Free Community Association of Research Libraries; Bold Ne-
braska; Breakthrough.tv; CCTV Center for Media and Democracy; Center for Democracy and Technology; Center for Media & Democracy; Center for Rural Strategies; Center for So-
cial Inclusion; Coalition of Labor Union Women; Communications Workers of Amer-
ica; Consumer Federation of America; Con-
sumers Union; Democracy for America; Dur-
ham Community Media; Esperanza Peace and Justice Center; Evanston Community Media Center; Free Press; Future of Music; Coalition; Global Action Project; Harry Potter Alliance; Highlander Research & Edu-
cation Project; Houston Interfaith Worker Justice; Institute for Local Self Reliance; International Brotherhood of Electrical Workers; Keystone Progress; Labor Council for Latin American Advancement; LAMP; Latinos for Internet Freedom; Latino Print Network; League of United Latin American Citizens; Line Break Media; Main Street Project; Media Access Project; Media Mobilizing Project; Mid-Atlantic Community Papers Association; NAACP; Center for Media, Art, and Culture; National Consumers League; National Hispanic Media Coalition; National Latino Farmers and Ranchers Trade Association; National Network for Immigrant and Refugee Rights; Native Public Media; New America Foundation; Ohio Val-
ue; One Wisconsin Now; OnShore Networks; Open Access Connections; Open Source Democracy Fund; Participatory Culture Foundation; Peoples Project: Project People House; Philly CAM; Progress Now Nevada; Progress Now Ohio; Prometheus Radio Project; Public Radio Exchange; Reel Orzis; Southwest Organizing Project; Southwest Workers Union; The Highlander Research & Education Center; The Peoples Channel; The Praxis Project; The Writers Guild of America; Unity Coalition for Color; Women In Media & News; Youth Media Project.

Mr. ROCKEFELLER. Mr. President, to use a familiar phrase, there are those who disagree with the FCC's open Internet rules, and there is an avenue for these complaints. It is called the judicial system. Some are using it. Two companies have filed lawsuits claiming that the FCC went too far. Several public interest groups have filed lawsuits claiming that the FCC did not go far enough. It is their legal right to go to the courts, and when they choose to do that, they can do so.

Let's think for a minute what a world would look like without a free and open Internet.

In a world without a free and open Internet, consumers and entrepreneurs would have no transparency as to how their broadband providers manage their network—no ability to make informed decisions about their broadband providers.

In a world without a free and open Internet, the FCC would be the gatekeepers of content steering them only their to preferred providers, which would prevent their broadband providers from preventing any or their to preferred Web sites and services, therefore limit-
For rural Americans, broadband Internet access has the power to erase distances and allows them to have the same access to shopping, educational matters, and employment opportunities as those living in urban areas. That's a time-honored principle around here—but not if the Web site they seek to access is blocked by their broadband providers. Consumers, entrepreneurs, and small businesses need the certainty they can access lawful Web sites of their choice when they want, period.

In a world without a free and open Internet, there would be nothing to stop broadband providers from blocking access to Web sites that offer products that compete with those of its affiliates. That happens, Mr. President.

In a world without a free and open Internet, companies could pay Internet providers to guarantee their Web sites open more quickly than their competitors.

In a world without a free and open Internet, companies could pay Internet providers to make certain their online sales are processed more quickly than their competitors with lower prices.

Well, that is not the American way. This is particularly disturbing in times like these.

In a world without a free and open Internet, there would be nothing to prevent Internet service providers from charging users a premium in order to guarantee them access to the "fast lane." If someone is trying to start a small business, struggling to make ends meet and cannot afford to pay the toll, they run the risk of being left in the "slow lane"—that is not good—with inferior Internet service—that is not right—unable to compete with larger companies.

That is very wrong.

What if an innovator or a start-up company has the next big idea? With broadband, the next big idea does not have to come from a suburban garage or from Silicon Valley. It can come from rural America or from anywhere. A free and open Internet is all that is required to give that big idea a global reach.

In a world without a free and open Internet, the ability of the next revolutionary idea to reach others—to make it to the greater marketplace—would be entirely dependent on a handful of entrenched broadband gatekeepers and toll operators.

I am not totally opposed to the Congressional Review Act, but I have to say it is an extraordinarily blunt instrument. It means all of the rules adopted by the FCC must be overturned at once. This would even mean tossing out caution in the "fast lane." People would not know what is coming, they see it is encouraging investment, they see what the Wall Street investment bankers are saying about it, they see it is encouraging investment, and they like and trust that. So they take risks they might not otherwise take because they trust.

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What if an innovator or a start-up company has the next big idea? With broadband, the next big idea does not have to come from a suburban garage or from Silicon Valley. It can come from rural America or from anywhere. A free and open Internet is all that is required to give that big idea a global reach.

In a world without a free and open Internet, the ability of the next revolutionary idea to reach others—to make it to the greater marketplace—would be entirely dependent on a handful of entrenched broadband gatekeepers and toll operators.

I am not totally opposed to the Congressional Review Act, but I have to say it is an extraordinarily blunt instrument. It means all of the rules adopted by the FCC must be overturned at once. This would even mean tossing out caution in the "fast lane." People would not know what is coming, they see it is encouraging investment, they see what the Wall Street investment bankers are saying about it, they see it is encouraging investment, and they like and trust that. So they take risks they might not otherwise take because they trust.

In a world without a free and open Internet, there would be nothing to prevent broadband providers from charging users a premium in order to guarantee them access to the "fast lane." If someone is trying to start a small business, struggling to make ends meet and cannot afford to pay the toll, they run the risk of being left in the "slow lane"—that is not good—with inferior Internet service—that is not right—unable to compete with larger companies.

That is very wrong.
The PRESIDING OFFICER. There is no order after that.

Mr. KERRY. Mr. President, I ask unanimous consent that I be recognized for the time I have—I think it is about 15 minutes—after that.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Mississippi.

Mr. WICKER. Mr. President, I rise as a cosponsor and strong supporter of this resolution of disapproval.

Once again, we are witnessing a government regulation we do not need. There is a reason when we talk about today's regulatory order that we talk about the cost of government overreach. Unnecessary regulations put a wet blanket on job creation, and they work against getting our economy back on track. This is a perfect example of the government standing in the way of growth and investment.

The Internet and its associated applications should be allowed to develop without excessive FCC red tape. The Internet-default subject to reasonable network management. It goes on to say that providers shall not unreasonably discriminate in transmitting lawful network traffic over a consumer's broadband Internet access service.

But the terms "lawful" and "reasonable" are not easily defined. Under the order, what is lawful and what is reasonable would be determined by unelected bureaucrats. The FCC would rule as a de facto police of the open and free Internet. The FCC would be the final arbiter of what broadband service providers can and cannot do. Its judgments—not the market or the consumer—would determine how networks would be managed. The FCC is claiming to have an authority that the American public did not grant it.

The hands of the Internet service providers will be tied when the FCC has this kind of power. Without being able to run their own networks, service providers cannot maximize the online experience for the vast majority of their customers. They are, in essence, prevented from doing what they were established to do.

Equally troubling is that the Commission's order is trying to fix a problem that does not exist. Today's consumers have greater access to more Internet services than ever before. Where is the problem? Businesses have invested tens of billions of dollars in new broadband Internet infrastructure. Entrepreneurs continue to offer new services to broadband users. There is no economic justification for this unprecedented intrusion into the marketplace. Policy should benefit the public, and these FCC rules do not.

In conclusion, we have seen this movie before, with regulation where regulation is not needed. Again, here we have a regulatory recipe that would produce far-reaching and damaging effects. The current landscape has allowed the Internet to grow exponentially. It is a free market of competition, productivity, and growth. The FCC's regulatory intrusion is completely unwarranted.

I yield the floor.

The PRESIDING OFFICER. The senior Senator from Alabama.

Mr. SHELBY. Mr. President, I wish to associate myself with the remarks of the Senators from Texas and Mississippi and to say that I think a lot of people probably mean well but are often misguided when they say we are going to regulate this sector of the economy or we are going to regulate that sector.

The market, as you well know, is the driving force in our economy—not just in the United States but worldwide. It is going to be the market that will decide what we do as far as job creation for our people everywhere, and I believe the Internet is an example of gosh, let's not overregulate it. Let it grow, let it do its job, and it will.

I would also like to speak about some commonsense steps that Congress can take right now to help our struggling economy. For the first time in decades, the pace of capital growth is stagnant. Congress needs to lift the regulatory burden that is stifling capital formation. The Senate has before it several bills that would help private businesses raise the capital they need to grow and to create jobs.

This is an issue that should enjoy the support of both Republicans and Democrats in the Senate. Access to capital, as the President Officer well knows, is what allows entrepreneurs to transfer new ideas into living companies. Novel products, new services, and, most importantly, good jobs can be created.

Unfortunately, overregulation has made it progressively harder for small businesses to access capital in this country. I will give some statistics. They are clear.

In the 1990s, an average of nearly 570 initial public offerings took place each year, compared with an average of just 192 per year after 1999. Small initial public offerings now make up only 20 percent of the total. In contrast, they made up 80 percent of the total in the 1990s, when we were creating so many small jobs.

In addition, the number of new businesses being launched each year is falling. In 2010, it was the lowest it has been since the Bureau of Labor Statistics started tracking the number in 1984.

The SEC has been slow to address these problems, even though it has the authority to do so. The Chairman of the SEC has spoken of the need for action, but we have not seen tangible results yet.

One year ago, one SEC Commissioner remarked:

My hope is that, as an agency, the Commission will move beyond talking about small business capital formation and will take concrete steps that actually foster it.

I believe we, the Senate and the American people, can no longer wait for the SEC to do its job. The time has come for Congress to take action. Our economy cannot afford to wait any longer.

The first thing I believe we should do to improve capital formation is to bring up for consideration several bipartisan bills that would implement important regulatory reforms. One bill would modernize the SEC's regulation A, which was initially designed to make it easy for small businesses to access our capital markets. Unfortunately, regulation A is outdated and rarely used.

Another set of bills would raise the thresholds for reporting so small banks and small companies are not subject to burdensome SEC reporting requirements.

These bills would still leave investors protected and ensure that public companies provide meaningful disclosure. Most important, investors would still be protected by the SEC's antifraud rules. These bipartisan bills represent a few steps we can take right now, but they are not comprehensive by any means.

Much more needs to be done to make sure registration requirements are tailored to the size and type of businesses. The existing one-size-fits-all approach means that small companies have to bear the same costs that large companies do when they go public. These inequities need to be addressed; it stifles job creation.

One would think that we could agree in the Senate on removing unnecessary restrictions on capital formation. Yet for the past 3 years, the majority party has dramatically increased government involvement in the economy. They have imposed one costly mandate after another on businesses. They have crowded out the private sector with massive government programs, resulting in persistently high unemployment and stagnant economic growth.

Basically, I think it is time for a new approach. It is time to revitalize the free markets in America. We can begin this effort by taking these small steps to help entrepreneurs find the capital they need to build their businesses and to create jobs.

I hope my Democratic colleagues will now do more than talk about creating
So they are trying to say to the American people that they want to liberate the Internet, when, in fact, what they want to do is imprison the Internet within the hands of the most powerful communications entities today to act as the gatekeepers who will control the ability of the Internet to do the very kind of development that brought us here. What they are talking about, their concept, this CRA challenge is that wolf in sheep’s clothing. It is that simple. So I think colleagues need to step back and think about how the Internet got to be what it is today when it was developed.

I know the Senator from West Virginia, the chairman of the committee, and I were members of the Commerce Committee back in the 1990s when we wrote the Telecommunications Act of 1996, and we thought we were pretty clever and we wrote a good act. Within 6 months of writing that act, it was obsolete because all our conversation was about telephony at a moment where, because of the Internet, the entire discussion was about to become about data transmission and the movement of information over the Internet. That has never been fully revisited. But the reason we have a Google today, the reason we have had this incredible development of Internet retail business, of all these Web sites, of Facebook, and so many more is because of the open architecture of access to that Internet—which, I would remind everybody, was created by government money in government research. It came out of an effort to develop a communications system for our country in the case of nuclear war. So we created, through DARPA, ARPA, research that produced the Internet. Then the private sector saw the opportunity, and a whole bunch of very creative people rushed in and made the Internet what it is today.

Overturning the rules, as the CRA proposes to do, would put the very open architecture that has created this extraordinary agent of communication, of commerce, and family communication, and all these things it has done for business, it would put it at risk and discourage investment in companies at the very moment that companies like the next Google or the next Amazon. Overturning these rules would actually hurt our competitiveness and economic growth and they would diffuse the creative energy that has driven the Internet to be what it is today. Because if we overturn what they are doing today, we take the reality of the Internet and we put it in the hands of the gatekeepers.

Everything that goes over the Internet today goes either through our telephone at home or television or whatever, through cable, out of our house or the airwaves. But if we are not having an open Internet, if we go back to a numen then the people who control those access points can start discriminating about who gets access at what speed; and if they control who gets access at what speed and begin to charge more for that, you begin to have a profound impact on the ability of any business to develop and a profound impact on the access that consumers have come to anticipate with respect to the Internet.

Think about this. We are talking about neutrality. We are standing here trying to defend neutrality. The other side is coming in here trying to create a new structure where the process will be gamed once again in favor of the most powerful. This is part of the whole debate that is going on in America today, about the 99 percent who feel like everything is gamed against them and the system is geared by the people who have the money and the people who have the power who get what they want. That is what this debate is about.

The network neutrality rules the FCC has promulgated are based on the principles that everybody should support of promoting transparency of broadband service operations, preventing the blocking of legal content and Web sites, and prohibiting discrimination of individuals, applications, and other Web sites. That is what we are for. This CRA is an effort to undo the FCC’s ability to protect those principles.

Establishing those principles has actually brought about certainty and predictability to the broadband economy. It ensures that anyone can create a Web site, anyone can deliver an Internet-enabled service with the certainty that is going to be made available to everybody else on the Internet. Innovators now know they are not going to have to go ask a big telephone company like AT&T, will you guys please let us have access so we can go do this thing? Oh, well, maybe we will do that, but we are going to charge you in order to do that.

They completely destroy the openness that is provided, this ability for anybody in America to sit in their home or school or somewhere and come up with an idea and innovate. That freedom to innovate, the freedom to innovate is what has made the Internet the platform for economic and social development it is today, and a vote for the CRA is a vote to stifle that.

On the side of those favoring the FCC’s action are venture capitalists and the companies that have made the Internet what it is today, civil rights groups, civil liberties advocates, academics, scholars who have studied and testified to the virtues of open networks. Let me quote a few of them. John Doerr is somebody whom many of us have come to know by virtue of his business acumen and the legendary venture capitalist efforts he was engaged in. He was an early backer of Amazon, an early backer of Google, for years he has been on the board of Electronic Arts, Netscape, and a number of other innovators whose creations have driven the growth of the Internet. Here is what he says:

Maintaining an open Internet is critical to our economy’s growth . . . and this effort is a pragmatic balance of innovation, economic growth, and crucial investment in the Internet.

Ray Ramsey, the president and CEO of TechNet, a national bipartisan network of more than 400 technology sector CEOs, said of the vote at the Commission in favor of the network neutrality rules:

The vote by the FCC is a pragmatic recognition of the need for codifying principles for protecting nondiscrimination and openness for the Internet.

Charlie Ergen, the president and CEO of Dish Network, said:

The Commission’s order is a solid framework for protecting the open Internet. The new rules give companies, including Dish Network, the framework to invest capital and manpower in Internet-related technologies without fear that our investment will be undermined by carriers’ discriminatory practices.

Others supporting the order include the Communications Workers of America, civil rights organizations, consumer advocates. In sum, those who support the rules include those who fund the development of Internet companies, those who use the Internet, and advocates who favor open discourse and debate. I think we in the Senate ought to listen to the people who created it, the people who did it, the people who are taking it to the next generation, and the people who use it.

The Los Angeles Times editorialized on Sunday in favor of the rules of the FCC, saying:

The agency’s net neutrality rules are a reasonable attempt to protect the innovative nature of the Internet and should not be overturned.

Despite all of what I just said, some have argued, what I have called the "wolf in sheep’s clothing” argument, the false argument that network neutrality rules regulate the Internet—that they actually regulate it—and this is an opportunity to keep it open and impose a condition on innovators.

I don’t know how asking innovators to get permission from somebody else to be able to go do what they have already done since the 1990s is going to improve things. The truth is, network neutrality rules govern not the Internet but they govern the behavior of the firms that own and operate the gateways to the Internet. That is what is at stake. When the airwaves that carry
the information that connects us to everyone else in the Internet is in the hands of a few and subject to their control, we are in trouble.

The rules we are debating today state that those gateways should not be used to favor some companies over others in some firms over others on the Internet. That is what is at stake. That is what this fight is about. The truth is, if the rules are overturned, every innovator on the Internet will be exposed to the risk that, before they innovate, before they produce something, they are going to have to go to somebody and say: Mother, may I do this? Then there will be a price attached to it.

Beyond the false argument that network neutrality constitutes regulation of the Internet rather than anti-competitive behavior, opponents to the rule predicted the FCC action was going to have negative economic repercussions. Yet even in an economy that has struggled, that prediction has proven to be wrong.

In the time since the FCC voted on the rule to preserve the open Internet, investment in networks that support wired and wireless broadband grew by more than 10 percent compared to the same quarter a year before. Venture capital investments in Internet-specific companies surged, with $2.3 billion going into 275 companies in the second quarter of 2011. It may well be that 2011 is going to be the biggest year for tech IPOs in more than 10 years. That seems to indicate strong investor confidence in the companies that rely on the open Internet already exists, and we should not disrupt that.

Having lost the argument that network neutrality hurts innovation or the economy, they therefore want to create a new argument; that is, the FCC acted outside its legal authority in protecting the free flow of communication on the Internet.

A key theme for that decision to be made, is going to make that decision. But, again, the argument actually challenges common sense. It challenges the basic understanding of reasonableness. To argue that the FCC, the agency that Congress created in order to regulate communications by wire and radio, somehow has no jurisdiction in this very space is to argue that communications over the Internet are not, in fact, conducted over a wire or over the airwaves. It is completely lacking in any consideration in common sense and certainly in the law.

The law we created grants the FCC the authority in the Telecommunications Act to “make such rules and regulations, and impose such orders, not inconsistent with this Act, as may be necessary for its functions.”

That is the power we gave to them. Under title II, title III, title VI of that act, it encourages the FCC to protect the public interest and encourage just and reasonable rates through competition. That is precisely what net neutrality achieves. It is precisely what we achieve under the rules of the FCC.

Under title VII, the FCC is mandated to take immediate action to remove barriers to infrastructure investment and promote competition in the telecommunications market if advanced telecommunications is not being deployed in a reasonable and timely fashion. That can be determined on a case-by-case basis, and we obviously can continue as we have since the early 1990s to do this. So there is no good reason for this debate to fall along party lines.

I hope this will not be just Democrats who vote to preserve this rule. I hope we will maintain an open Internet technology and support the open Internet order.

The Acting President pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I know the Senator from Minnesota has been waiting to speak, and I certainly will yield to him. I would like to be recognized after he speaks to answer some of the concerns that were raised by the Senator from Massachusetts.

The Acting President pro tempore. Without objection, it is so ordered.

The Senator from Minnesota.

Mr. FRANKEN. Madam President, I appreciate the courtesy of the Senator from Texas. My understanding is that Senator MUKROWSKI from Alaska is on her way down. I am scheduled to sit in the chair at 12, and I don’t want to step on the opportunity the Senator from Alaska to speak.

The Acting President pro tempore. The Senator is recognized.

Mr. FRANKEN. Madam President, I rise today to urge my colleagues to vote against the motion to proceed to the joint resolution of disapproval of Senator HUTCHISON, which would repeal the FCC’s net neutrality rules.

As many of you know, I have repeatedly said net neutrality is the free speech issue of our time. I still believe that is the case, and I am here to state why we need to do everything we can to stop this partisan resolution in its tracks.

But before I get into the reasons we should oppose this resolution, I think it is important to step back and remember what the American people expect of us. I do not need to tell anyone in this body that the approval rating of Congress is at an all-time low. Why is Congress under such pressure? It is with the fact that we are using our extremely limited, valuable time to debate partisan proposals like this one rather than working together to create jobs, stimulate our economy, and get Americans back to work.

When this resolution of disapproval passed the House back in April, I hoped that would be the end of it. I hoped my colleagues would recognize we should let agencies do their jobs and not employ an arcane procedure to erase a rule the FCC started thinking about in 2004 under Republican chairman Michael Powell, and again in 2005 when a different Republican chairman, this time Kevin Martin, adopted a unanimous policy statement on net neutrality.

When the White House issued a statement indicating the President would veto this resolution of disapproval if it came to his desk, his colleagues would be sensible and would recognize that this was not only unnecessary and foolhardy, but it was also a pointless exercise and would be just a giant waste of everyone’s time. Alas, this is not the case. Here we are spending valuable time on two resolutions of disapproval when we should be turning to legislation that will get our economy back up and running again.

If the votes we take tomorrow will send a strong message that we need to stop these political stunts and work together to create jobs, jobs, and more jobs.

But let’s get to the substance of why I stand today. As you know, the internet is the free speech issue of our time. I still believe that is the case, and I am here to talk about net neutrality. Net neutrality is a simple concept. It is the idea that all content and applications on the Internet should be treated the same, regardless of who owns the content or how it is presented. This is not a radical idea. It certainly is not a new one. We may not realize it, but net neutrality is the foundation and core of how the Internet operates every day and how it has always operated. When scientists and engineers were creating the basic architecture of the Internet, they decided they needed to establish some basic rules of the road for Internet traffic. One of the fundamental design principles on the Internet was that all data should be treated equally, regardless of what was being sent or who was sending it. That is net neutrality. It is the same principle we rely on every day when we use the Internet to send e-mail, when we turn to legislation that will get our economy back up and running again.

This principle of nondiscrimination is baked into the DNA of the Internet. This is not radical or new. This is about having a platform that is free and open to all, regardless of whether one is a big corporation or a single individual and regardless of whether one pays a lot of money to speed up how fast their content gets to their customers. Net neutrality is what we all experience today when we log on to our computers, and it is what we have always experienced since the very beginning of the Internet.

It is important to focus on that point for a minute because our opponents are telling us something quite different—and they are wrong. Net neutrality is not about a government takeover of the Internet, and it is not about changing anything. Net neutrality and the rules the FCC passed are about keeping the Internet the way it is today and the way it has always been.
We take for granted that we can access Google’s search engine as easily as we can access Yahoo or Bing or that Netflix videos download as easily as the videos our friends uploaded onto YouTube last night. We expect that emails arrive at their destinations at the speed of light, regardless of who is sending them, and we take for granted that the Web site for our local pizzeria loads as fast as the Web site for Dominos or Pizza Hut. That is one of the reasons I care so very much about this issue.

This is not just about freedom of speech, it is also about protecting small businesses and entrepreneurs of all sizes. In my mind, net neutrality is and always has been about protecting the next Bill Gates and the next Mark Zuckerberg. Facebook and Microsoft do not need our help today, but the 20-year-old whiz kid working in his parent’s garage to develop the app or software or Web site to revolutionize our lives does need net neutrality, and so does the small bookstore or local hardware store that wants their Web site to load just as fast as Amazon or Home Depot.

I have been on the floor of the Senate talking about the beginnings of YouTube because it is such a powerful example of why we need to protect net neutrality. When YouTube started, it was headquartered in a tiny space over a pizzeria and a Japanese restaurant in San Francisco. At the time, Google was a competing product, Google Video, that was widely seen as inferior. If Google had been able to pay AT&T or Verizon or Time Warner large amounts of money to block YouTube or to make Google Video’s Web site faster than YouTube’s site, guess what would have happened. YouTube would have failed. But, instead, thanks to net neutrality, YouTube became the gold standard for video on the Internet. YouTube didn’t have to pay billions of dollars to Google for $1.6 billion just 2 years after its start. I love that story because it is a testament to the power of the Internet to turn people with great ideas into overnight successes, and it happened because we had net neutrality.

The story of the Internet is a story about the triumph of the little guy over the big, slow-moving corporation. The past 20 years are littered with tales of entrepreneurs who, given the right tools, went from nothing to something. The innovation and creativity that is the lifeblood of our economy needs a level playing field, which net neutrality helps provide.

Here is what we will not hear from our opponents: Facebook and YouTube and countless other Web-based products might not have existed today if it were not for net neutrality. Without net neutrality, Myspace or Friendster—remember them—could have partnered with Comcast to gain priority access or to block Facebook altogether. Blockbuster could have paid AT&T to slow down or completely block streaming of Netflix videos. Barnes & Noble could have paid Verizon to block access to amazon.com. Imagine a world where the only way to check the balance of your Facebook book can control what we see and how fast we access content on the Internet.

Fortunately, that is not the world we live in today and thanks to the FCC the telecom industry has been held for all it is worth. The FCC’s rules will ensure that no matter how much money or power they have, a young kid working in her parent’s basement in Duluth can outinnovate the biggest corporation simply because she has the best idea. This is exactly why top Silicon Valley venture capital and angel investment companies support these rules. These companies are the ones funding the next Mark Zuckerberg, Larry Page or Sergey Brin so he can get his product to market. They are funding companies funneling millions and millions of dollars to entrepreneurs, which is why I think we should listen to them. The CEOs of eBay, Netflix, Amazon, Facebook, and YouTube have joined in a letter supporting the FCC’s rules. They say: “Common sense baseline rules are critical to ensuring that the Internet remains a key engine of economic growth, innovation and global competitiveness.”

I think we should listen to them and companies such as Microsoft, Yahoo, Google, IBM, and Qualcomm. These companies also support the FCC’s rules because they recognize they could not have grown to be the tremendously successful companies they are today without a free and open Internet, and that is what we are asking for. That is all we are asking for.

When our opponents get up and tell us these rules will stifle innovation and kill jobs, the first thing they need to tell us is what they are saying. I want us to ask ourselves: Why would so many of the leading technology companies over the last two decades support what the FCC is doing if they think it will hurt innovation? It doesn’t make any sense because it isn’t true. Net neutrality and the FCC rules will protect the innovators and entrepreneurs who have made the Internet what it is today and what it will be tomorrow.

Don’t believe them. Listen to the experts from Bank of America, Goldman Sachs, Citibank, Wells Fargo, Merrill Lynch, and Raymond James. These companies have all stated they do not believe the FCC’s current rules will hurt investment. Citibank said the FCC’s rules were “balanced.” Gold- man Sachs said they were “a light touch” and created “a framework with a lot of wiggle room.” That is even more telling is that investment in networks that support consumers has jumped since the announcement of the FCC’s rules. In fact, investment is more than 10 percent higher in the first half of 2011 than in the same period last year. Venture capital firms poured $2.3 billion into Internet-specific companies in the second quarter of 2011. I think these numbers speak for themselves. They tell a story of surging investor confidence following the FCC’s vote on the rules that is verified here.

Protecting innovation in this country is particularly important given the state of the telecom industry today. We don’t need to tell you that telecom corporations have grown larger and fewer. We know, in part, because we have seen our cable, Internet, and telephone bills rising and rising. What else have we seen? Customer service that has gone straight out the window. When we are angry we wasted another day waiting for a Comcast repairman to come and install a cable Internet line in our house or we have been put on hold by Verizon for the fifth time in a single call. For many, we finally switch, but we don’t want to. We don’t need to tell you that telecom corporations have grown larger and fewer. We know, in part, because we have seen our cable, Internet, and telephone bills rising and rising. What else have we seen? Customer service that has gone straight out the window. When we are angry we wasted another day waiting for a Comcast repairman to come and install a cable Internet line in our house or we have been put on hold by Verizon for the fifth time in a single call. For many, we finally switch, but we don’t want to. We don’t need to tell you that telecom corporations have grown larger and fewer. We know, in part, because we have seen our cable, Internet, and telephone bills rising and rising. What else have we seen? Customer service that has gone straight out the window. When we are angry we wasted another day waiting for a Comcast repairman to come and install a cable Internet line in our house or we have been put on hold by Verizon for the fifth time in a single call. For many, we finally switch, but we don’t want to. We don’t need to tell you that telecom corporations have grown larger and fewer. We know, in part, because we have seen our cable, Internet, and telephone bills rising and rising. What else have we seen? Customer service that has gone straight out the window. When we are angry we wasted another day waiting for a Comcast repairman to come and install a cable Internet line in our house or we have been put on hold by Verizon for the fifth time in a single call. For many, we finally switch, but we don’t want to. We don’t need to tell you that telecom corporations have grown larger and fewer. We know, in part, because we have seen our cable, Internet, and telephone bills rising and rising. What else have we seen? Customer service that has gone straight out the window. When we are angry we wasted another day waiting for a Comcast repairman to come and install a cable Internet line in our house or we have been put on hold by Verizon for the fifth time in a single call. For many, we finally switch, but we don’t want to. We don’t need to tell you that telecom corporations have grown larger and fewer. We know, in part, because we have seen our cable, Internet, and telephone bills rising and rising. What else have we seen? Customer service that has gone straight out the window. When we are angry we wasted another day waiting for a Comcast repairman to come and install a cable Internet line in our house or we have been put on hold by Verizon for the fifth time in a single call. For many, we finally switch, but we don’t want to. We don’t need to tell you that telecom corporations have grown larger and fewer. We know, in part, because we have seen our cable, Internet, and telephone bills rising and rising. What else have we seen? Customer service that has gone straight out the window. When we are angry we wasted another day waiting for a Comcast repairman to come and install a cable Internet line in our house or we have been put on hold by Verizon for the fifth time in a single call. For many, we finally switch, but we don’t want to.
Internet is not just responsible for an upheaval in how campaigns and advocacy occur; it is also responsible for an upheaval in the print media world because the Internet is also the printing press and library of the 21st century. This is why, when we say that we want to make sure the corporations providing Internet service play by the rules and are not able to profit by speeding up or slowing down our access to certain news Web sites or other places we go to access information, we are not making an idle threat. We would not want the Liberal Government to show their hand by making access to Facebook in the middle of protests in that country for the same reasons we do not want a corporation controlling what information and Web sites we are able to access in order to benefit their bottom line.

You know I have been a proponent of net neutrality for a long time. You have heard me over and over on how net neutrality is about keeping the Internet the way it is. But the truth is, the FCC’s rules, while a step in the right direction, are very conservative. I wish the FCC had done more, but the FCC wanted to reach a consensus, and they made a concerted effort to address many concerns of telecommunication companies, large and small, when they drafted these rules. For my opponents to now claim the FCC ignored public opinion or failed to consider the impact these rules would have on businesses is not true.

First, I think we could all stand a bit of history on the bipartisan nature of this rule. Net neutrality is something that two Republican chairmen of the FCC, Michael Powell and Kevin Martin, championed in 2004 and 2005. Chairman Powell first articulated a set of net neutrality principles and Chairman Martin, 1 year later, achieved unanimous Commission endorsement of the FCC’s open Internet policy statement.

In 2006, 11 House Republicans voted in favor of net neutrality on the floor. The Gun Owners of America, the Christian Coalition, and the Catholic Bishops joined with the ACLU, moveon.org and leading civil rights groups to advocate for the same principles for openness and freedom on the Internet.

This debate started 7 years ago, and only after reviewing more than 100,000 public comments and holding 6 public workshops did the Commission finally issue these rules. I claim this was premature, rushed or not carefully considered is just plain wrong. I also think it is completely inaccurate for my opponents to claim the Commission never analyzed the costs and benefits to this rule.

In fact, there is an entire section of the rule entitled “The Benefits of Protecting the Internet’s Openness Exceed the Costs.” I urge my colleagues to read this section of the Commission’s order. It covers four pages. It contains over 25 lengthy, detailed, analytical footnotes. It is clear the Commission considered the costs and benefits of acting, and they concluded that “there is no evidence that prior open Internet obligations have discouraged investment,” and that “open Internet rules will increase incentives to invest in broadband infrastructure.”

I recognize that a couple companies are challenging the FCC’s rules in court, and that we’re right every right to do so. But this resolution of disapproval amounts to little more than political gamesmanship from fringe organizations. I think it is important to know that not a single large telecommunication company supports this resolution of disapproval. They are not wasting their time with an arcane process, and we should not either. That is not to say Congress cannot and should not have a discussion about the merits of net neutrality. We can and we should. Frankly, I have been disappointed by the quantity of misinformation that has been such a large portion of this debate in the past.

The rhetoric heard during the House debate last April was disappointing. It is not the type of debate Americans deserve. I encourage a frank and in-depth discussion on net neutrality. I hope one day soon we will consider making a statutory change to the FCC’s authority that will clarify that we want the FCC to make sure the Internet stays open and free. That will put the issue to rest for good. It is, frankly, the process we should be relying on. By forcing an up-or-down vote through the Congressional Review Act, we are short-circuiting the normal legislative process and ignoring the FCC’s tremendous work on this issue.

This resolution of disapproval is a procedural stunt that wastes limited time which should be used to address the real problems Americans face every day. At the end of the day, the problems of Americans are why we are here. I love hearing from Minnesotans, and I got a great e-mail the other day. The letter was from a group of five self-proclaimed “highly credentialed computer geeks,” including a professor, a startup founder, an ex “Google-er” and a “non-ex-IBMer.” In their e-mail they wrote:
The free market will drive innovation in the Internet, but careful regulation is needed to preserve the freedom of the markets from coalitions of companies that will seek to reduce competition.

They noted:

History promises that the leading companies will only success as long as they can control so they can make more money and . . . disrupt innovation.

I am glad they and thousands of Minnesotans have taken the time to write and call to tell me how much preserving net neutrality means to them. These highly credentialed computer geeks are right: the free market will drive Internet innovation as long as that market is truly free and open—free from corporate control and open to all content providers equally. These millions of Americans don’t want Congress engaged in political sparring matches designed to appease a few vocal critics.

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Many of the regulations—and, unfortunately far too many coming from the EPA—unnecessarily raise the cost of energy and other vital goods and services. I, as the ranking member on the Energy Committee, have spent a lot of time focusing on what the agencies are doing in this country to help reduce our energy costs. Unfortunately, far too often we are seeing increased costs to our families and to our businesses because of the regulations that come at them. While we all support responsible environmental regulation, I want EPA to do its job—we also want to protect other vital national interests such as affordable and reliable energy and a strong economy.

Remember too that unreliable or unduly expensive energy has broad negative impacts on all aspects—public health—all aspects of our day. When I hear from Alaska's business owners, they say two things. I told my colleagues what the first one was, which is get government out of the way, and let us get to work. Business owners across the country agree—there was a Gallup poll last month—small business owners indicated that complying with government regulations is the most important problem they face today.

The No. 1 issue on the minds of small business owners is the fact that complying with government regulations is burying them. What we hear from businesses is that they need the regulatory agencies to implement the laws they have passed, not stepping in to regulate in an area where the laws simply did not contemplate.

When it comes to regulation, in my opinion, this administration has gone further—they have pushed past that rule of law in striking that proper balance. What we are seeing is a level of overreach, which I think is unprecedented, by the agencies reaching out and expanding their jurisdiction, if you will, and setting policy as opposed to implementing the laws that have been passed.

The resolutions of disapproval will have before us for a vote tomorrow. I yield the floor to push back against the EPA in an area where the EPA was, for all intents and purposes, setting policy when it came to greenhouse gas emissions in this country. I strongly and firmly believe the role of the agencies is to implement the laws we have passed, not to set policy. So I share the concerns Senator Hutchinson and Senator Paul have raised with the two rules that are at issue today. They are utilizing a tool provided by the Energy Policy Act which allows us as a Congress to step in when Federal agencies go overboard with trying to make businesses comply with costly regulations, in effect, that overreach.

Let's first discuss very briefly Senator Paul's resolution of disapproval regarding the Environmental Protection Agency's cross-State air pollution rule. It is sometimes referred to as the acronym CSAPR or “zapper,” but because neither one of those sounds like anything we can relate to, I will refer to it as the cross-State pollution rule. This rule should not go forward at this time for many reasons, but not the least of which is its potential impact on electric reliability.

Independent grid operators and the independent professionals whom we count on to assess electric reliability have expressed concerns about subjecting generators of electricity to the rule, especially on the current timetable they are dealing with. The EPA simply needs to take another look at those impacts and what this rule will do to electricity costs.

There have been a number of independent studies that have pointed to the impact of EPA's rules generally, including the cross-State pollution rule and what that impact would be on existing electric generation capacity. The predictions differ on magnitude, but project the retirement of as much as 8 percent of the Nation's installed electric generating capacity. Again, I will grant you, there is a range of difference here, but potentially as much as 8 percent of our current installed generating capacity could be brought offline. That is significant. I have asked for a reliability analysis. We have gone back and forth in terms of getting that assessment. There will be a technical conference at the end of the month that hopefully will lead to a better understanding, but the long and the short of it is right now, we know that we don't know exactly how much could be impacted by this rule and others.

More specifically, the rules generally and the cross-State pollution rule alone could lead to more intense regional impact. Texas, for example, wasn't even included in the proposed rule but, as a consequence of the final rule, could see some very significant powerplant retirements and hence potentially significant adverse impact on reliability. The Midwest, according to the grid operator there, could also see retirements of electric capacity with attendant challenges for keeping the lights on.

In addition to the reliability impact, there is also going to be a cost impact. The cross-State pollution rule is the first of a number of pending rules to go final and the EPA has made some major changes between that proposed rule and the final rule. The agency has even proposed significant technical adjustments as recently as last month, even though the rule is slated to go final by the beginning of this next year.

Putting aside the merits of the corrections—and I understand they don't go far enough—the EPA should be sent back to the drawing board to learn more, understand more about the potential reliability impact, and then should amend the substantive requirements of the cross-State pollution rule so that those required to comply can comply. If EPA feels at that time-reliability impact in the first place, there probably wouldn't be reason for the delay, but they acted in haste, and haste makes waste.

I wish to speak quickly to Senator Hutchinson's resolution of disapproval regarding the FCC net neutrality rule. The rule put into place by the FCC in 2010 circumvents Congress. It assumes an authority that this body never consented to. We cannot allow the executive branch to go down this road. We just should not allow it. No provision of any statute explicitly gives the FCC the authority to impose these sweeping rules on the Internet. In fact, section 230 of the Communications Act makes clear the policy of the United States is “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” The Internet, we all agree, has been a huge boon for small businesses and jobs throughout our country. We recognize that. We want to ensure that policy continues in that way.

I quote FCC Commissioner McDowell from a Wall Street Journal op-ed:

Net-neutrality sounds nice, but the web is working fine now. The new rules will inhibit investment, deter innovation and create a bilable-hours bonanza for lawyers.

So unless the administration is trying to create jobs for lawyers, I don't find any justification to expand the government's reach to regulate the Internet as the FCC proposes. Once again, what we have is an agency stepping in to regulate in an area where the laws simply did not contemplate.

For all of these reasons, and because the Federal Government needs to stop overburdening our country with costly regulations at a time when we can least afford it, I support the resolution of disapproval from Senator Hutchinson as well as the resolution of disapproval from Senator Paul.

I yield the floor to the Presiding Officer.

The PRESIDING OFFICER. Mr. FRANKEN. The Senator from Oregon.

Mr. WYDEN. Mr. President, soon the Senate will vote on the Hutchinson resolution that, as the Presiding Officer himself said very eloquently, would overturn the decision of the Federal Communications Commission on what has come to be known as net neutrality. The bottom line for me is straightforward. A vote for the Hutchinson resolution will enable a handful of special interests to occupy the Internet. These elites will then have the power to crowd out the voices for change and the ideas of the future. The Internet
would become a glidepath for a relatively small number of people to gain enormously rather than an opportunity for all Americans to prosper.

I think some of the ideas that have been offered up with respect to the Hulu case is that it gave us a chance to deal with smut and some of the junk families have been so upset with without squelching the potential for the net. It enabled content sharers to grow, even since we struck that thoughtful approach, rather than just go to a censorship regime. I have heard that somehow net neutrality would undo that particular provision. Nothing could be further from the truth. Net neutrality is exactly about what I sought to do in section 230 of the Communications Decency Act. It was to make sure that all voices could flourish—not just the voices of a few but all voices could flourish.

If anybody wants to talk a bit more about section 230 in the Communications Decency Act, I am happy to have that discussion, but as the author of that provision, it is something I and a lot of other people who have worked in this field have felt was essential to the growth of the Internet, and we share that view just as we believe that, as the Presiding Officer does, net neutrality is critical to the growth of the Internet in the years ahead because the fundamental principles that underlie both section 230 and net neutrality are the same.

The debate about the Federal Communication Commission's decision goes right to the heart of what the Internet is all about. It has always been a platform where all the actors are equal, where everybody has that opportunity as the Presiding Officer suggested, at the American dream. It is a place where, whether it is one dissenting voice screaming out for democratic change or one brilliant idea that forever changes the way that people and society organize, everyone has that opportunity.

I chair the Senate Finance Subcommittee on International Trade. I think just one example of what we have going on today, the Internet is going to shape the shipping lane of the 21st century. This is the way societies are going to organize. This is the way people are going to come together. This is the way business is going to be conducted. Basically, net neutrality protects everybody's access to that shipping lane. It is not just going to be a place for the old-world business models. You bet the old-world business models are threatened by net neutrality. I understand that. I understand they are threatened by it. They have been able to count on big, powerful, and well-connected interests and organizations to help them to dominate industry, and the Internet overturned that kind of thinking because it is the equalizer, it is the democratizer.

It just seems to me that when we open our morning newspaper day after day and see that the hope of the country is in new ideas—it is not just in Silicon Valley, it is all over the country and all over the world—the last thing we want to do here in our country is adopt rules that would retard that development. And that is what the power of the Internet—the network—best utilized when content can move freely through it, and that is whether it is free from taxes, from liability, and certainly free from the kind of discrimination that would be allowed if the net neutrality rules were overturned.

Again, I touched on section 230 of the Communications Decency Act and why that was so important to the growth of the net and why I think net neutrality is consistent with that. It is the same kind of legislation I believe in. It is the same kind of legislation in which I have been heavily involved.

I had the privilege of being one of the coauthors of the Internet Tax Freedom bill. That was all about was trying to protect the Internet from discrimination and to leave it all together but discrimination. That, too, is a fundamental principle of the net neutrality rules, is trying to make sure the net is not going to be singled out by a handful of special interests who could, in effect, devise what amounts to their own lanes on the Internet and force everybody else to pay for it.

So despite what may even be the interests of some of these powerful interest groups—and I know they are all saying now that they have no intent to discriminate against content over their networks. History shows that they cave every time when shareholders come and say: Look, you have to take this step to generate a profit. I think that has been the张某. We should stop those kinds of decisions vulnerable to what is inevitably going to be the cry from shareholders and others to maximize profits.

One last point, if I might. I see other colleagues waiting to speak. I think the Internet and the economy in this country that is driven by the Internet represent perhaps our greatest comparative advantage. I touched on the Internet being the shipping lane of the 21st century. It is important to leave those kinds of decisions vulnerable to what is inevitably going to be the cry from shareholders and others to maximize profits.

We see the American brand is something very special, very special all over the world. The fact is, we have small businesses, and we heard from them in hearings. I know the distinguished chairman of the Commerce Committee is here, Senator Rockefeller and others. The Internet is the network. I don’t wish I was back being a member of the Senate Commerce Committee because it is such an important committee, it does such important work. We saw in some of those first hearings on the Internet—we started looking at taxes and regulation and liability and the Communications Decency Act—we saw how small businesses that really could operate only in a relatively small market and years suddenly, after they paid their Internet access charges, could go wherever they want, when they want, how they want, and they were equal to the most powerful groups and voices in the country. That is internet democracy. That is their chance to get their brand all over the world.

We ought to make sure we take no action that is going to make it harder for small entrepreneurs to exchange their goods and services far beyond their communities. We ought to be making judgments that allow them to get into every nook and cranny of the world with the American brand.

I hope my colleagues will reject this resolution just as the Presiding Officer said that this was something of an issue for geeks, and from time to time, people have said I am one of those. But I will tell you, it is not something that comes quickly as a response to the concerns of 2011. The Internet has thrived precisely because of the principles of net neutrality. It has contributed to the American economy and to job creation because consumers ultimately get to see and get what they want when they want it. It is going to be an important vote.

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entrepreneurs and the startups and the innovators who are providing the path forward in a very difficult economy. I think you will see that the policies we have laid out for the last 15 years, whether it is the Communications Decency Act or when it is other legislation—Chairman ROCKEFELLER remembers when we wrote the digital signatures law in the Commerce Committee—these votes, these laws have all become law because they essentially were built on the very same principles of net neutrality, and that is freedom for all and a democratic Internet to provide opportunity to all Americans and not just the elites, not just a handful of special interests.

I commend Chairman ROCKEFELLER and Senator FRANKEN for their good work.

I often agree with Senator HUTCHISON. This is not one of those opportunities.

I hope my colleagues, when we have this vote on the extraordinarily important resolution involving net neutrality, will vote against the Hutchison resolution. I yield the floor.

The PRESIDING OFFICER. The Senator for Wyoming.

Mrs. HUTCHISON. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. There is 79 minutes 14 seconds.

Mrs. HUTCHISON. I yield to 10 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, I come to the floor today to support Senator HUTCHISON and to talk about this role that is being played now by the Federal Communications Commission in terms of regulating the Internet for the very first time.

I oppose having these bureaucrats regulating the Internet. I support the resolution of disapproval that is now on the Senate floor.

In the 2008 Presidential campaign, then-Candidate Obama made it very clear that he was for empowering Washington’s bureaucracy through more redtape. The President was not looking to make Washington more efficient, in my mind, or more effective, but to make Washington bigger, to centralize power in Washington. One of his campaign promises was a new regulation and a new competition reality. It appears to me that the President then appointed one of his school friends and basketball buddies to be Chairman of the FCC, possibly with this in mind.

So here we are in 2011, and it seems to me that Congress is now being asked to make a decision. I want Congress—I am asking Congress and my colleagues to reverse the course of the bureaucracy.

The administration did not even deem this rule to be what they call significant.

A significant rule is one that has an impact on the economy of at least $100 million. I believe this is a significant rule. I support Senator HUTCHISON in her resolution because it will keep the Internet free and open.

Republicans and Democrats agree. Earlier this year, the House of Representatives passed a similar resolution, and I support it.

Net neutrality is very real. The time to act is now. We will be voting in the next day or so, and the reason we need to act now is that the rules of having more bureaucrats行使government control go into effect in just a few weeks—November 20, 2011.

It does seem Congress is being disregarded. Congress has never delegated authority to the FCC to regulate in the past.

The Communications Act of 1996 had a goal, which was to “promote competition and reduce regulations.” In 1996, Bill Clinton was President. This is what it said—the Communications Act of 1996: The goal is to “promote competition and reduce regulation.”

Instead, we have unelected, unelected bureaucrats, who are ignoring Congress and voting for regulations of the Internet.

Let’s look at the overall economy. Right now, we have 14 million Americans who are out of work. The number again this month is 9 percent unemployment in this country. The administration is now making it a priority—a priority—to regulate another sector of our economy over jobs.

The FCC has opened the door for Washington bureaucrats to take over one-sixth of our economy. They ought to be focusing on creating jobs, making it easier and cheaper for the private sector to create jobs. But between health care, banking, and now technology, this administration is taking over our economy sector by sector and making it more expensive and harder for the private sector to create jobs.

The FCC’s actions threaten innovation and investment in America. Regulations are the biggest burden being faced by small businesses in this country today. If we believe, just ask them. The polling of small business owners has said it is regulations coming out of Washington that are their biggest burden today.

Technology pioneer and Apple co-founder Steve Jobs warned President Obama about Washington redtape. There is a new biography about him by Walter Isaacson. He said this: “(Jobs) described to Obama how easy it was to build a factory in China, and said that it was almost impossible to do these days in America, largely because of regulations and unnecessary costs."

This rule we are looking at transfers the future of the Internet out of the hands of American people, and it makes government the gatekeeper of Internet services.

Former FCC Commissioner Meredith Baker said this: “The rules will give government, for the first time, a substantive role in how the Internet will be operated and managed.

This means the future of Internet technology—whether on a smartphone, iPad or computer—will be in the hands of Washington bureaucrats.

Engineers and entrepreneurs will not be able to give us the Internet we want, at a price we want.

Former FCC Commissioner Baker also noted: “By replacing market forces and technological solutions with bureaucratic oversight, we may see an Internet future not quite as bright as we need, with less investment, less innovation, and more confusion.”

No American wants that, but that is what this government is giving to the American people. To me, this means recent Internet service innovations such as 3G and 4G wireless speeds and new fiber networks now become riskier investments.

Less investment means every American’s ability to access the Internet he or she wants may be affected. Less investment means fewer jobs.

Four months ago, President Obama revealed he had a problem with independent agencies such as the FCC. He issued an executive order asking independent agencies to review burdensome redtape. Instead of reviewing redtape, they have rolled out even more of it. The Presidential review has faltered woefully.

The President asked independent agencies to produce a plan to reduce regulations within 120 days. Well, 120 days was yesterday. So the 120 days have come and gone, and what have we received? Once again in this President is more rhetoric and little by way of results.

If there was ever an example of an independent agency rule that needs to be put against the President’s rhetoric, it is this net neutrality rule.

Net neutrality picks winners and losers. It threatens smaller and rural providers.

Brett Glass of LARIAT, a wireless Internet service provider in Wyoming, wrote the FCC about the effects on smaller providers. He said the redtape will hurt his “ability to deploy new service to currently underserved and unserved areas.”

He warns that many broadband providers are small businesses that are serving rural communities. Mr. Glass wrote: “The imposition of regulations that would drive up costs or harm innovation would further deter future outside investment in the economy and others like it.

So here we are. Americans have made it very clear that they oppose Washington worsening the Web. Over 60 percent of voters oppose Washington putting its hands on the Internet.

This regulation we are debating is a classic example of Washington trying to fix something that is not broken.

Ninety-three percent of Americans are satisfied with their broadband service. Ninety-one percent of Americans are satisfied with their broadband service. The Internet is working remarkably well.

There is a fundamental disconnect with those in Washington who seek a
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more powerful bureaucracy and those at home in the 50 States of our Union who are seeking a stronger economy.

The warnings are real in Wyoming, my State, and all across this country. Congress must step in where the bureaucrats in Washington have overspent. Senator HUTCHISON’s resolution of disapproval should be supported on both sides of the aisle.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. RUBIO. Mr. President, I rise in support of this resolution to disapprove the FCC’s open Internet order.

The FCC wants to regulate the Internet. Why? There must be some sort of market failure that needs correcting or some Internet issue that needs fixing or out-of-control provider that needs regulating, right?

That is not the case at all. We are talking about one of the most successful sectors of our economy—one that has flourished with limited government regulation and continued to create jobs in the midst of a very deep recession and economic downturn.

Since the Internet was privatized in the midnineties, it has prospered. The industry has expanded with market impact on our economy, as well as its development of new, life-changing technologies and applications, is staggering.

Twenty years ago, the Internet as we know it did not exist. Today over 2 billion people use the Internet and it is still expanding. YouTube, and Skype did not even exist, and hundreds of millions of people are now users.

Five years ago, mobile applications didn’t exist. At the end of last year, there were over half a billion apps, applications, and well over 10 billion will be downloaded this year. Hopefully, they will soon be downloading mine. We came up with one yesterday for our office.

Two years ago, the iPad didn’t exist. Now, over 25 million have been sold. All these advancements expanded broadband access and encouraged private investment.

In 2003, only 15 percent of Americans had access to broadband and now over 95 percent do. This growth will only continue.

In its annual report on the Internet, Cisco projected that the Internet will quadruple in size over the next 4 years, and the 1-year growth, from 2014 to 2015, will be equal to all the Internet traffic in the world last year.

Clearly, the Internet industry is growing and innovating at lightening speed. Why has the industry been able to do this? It is because the environment for innovation and job creation has been ripe, with government regulation not getting in their way.

Imagine that, the government has stayed out of the way, taken the “light touch” approach, and the industry has prospered as a result.

The broadband expansion we have seen, the innovation that has occurred with computers and tablets and explosion of smartphones and mobile devices and the increased job creation have all occurred without the FCC’s open Internet order.

So why does the government want to start regulating now? Why, because the Internet is not endangering public health or environment? Clearly not. Yet the proponents of Internet regulation claim the freedom and growth of the Internet are in jeopardy. Quite frankly, in my opinion, that is ridiculous.

To suggest any type of regulation is needed flies in the face of the growth of the Internet economy. This is one of the problems facing our economy and plaguing our country. We are regulating where regulation is not needed. We are regulating based on speculation and in search of a problem.

This is not how we encourage innovation. This is not how we create certainty in the marketplace, and this is definitely not how to encourage job creation.

Over the past few weeks, all we have talked about is jobs and rightfully so because, throughout America, the No. 1 issue facing Americans is jobs—or the lack thereof.

Yet here we are debating whether to overturn a regulation on one of the few growth areas of our economy, one of the few sectors that has created and is creating good, high-paying jobs.

This should be common sense. It is no wonder people watching think that in this place, Washington, DC, the Federal political process is out of touch and dysfunctional.

As the FCC drafted the open Internet order, the Commission heard from broadband providers, including small businesses, about the problems the order would create and the negative impact it would have on consumers.

One small Internet service provider stated that the imposition of network management rules will hinder its ability to obtain investment capital and deploy new services in unserved areas.

The regulations would also increase costs and hamper innovation, which would only further discourage outside investment in the company.

In other words, the Internet regulation we are talking about today would lead to lower quality of service and would raise operating costs, which would result in higher prices on consumers.

So we can clearly see the impacts of Internet regulation—less investment, less innovation, higher prices for consumers, lower quality services, increased business costs and, ultimately, fewer jobs.

Companies will spend more money on compliance, basically complying with regulations, instead of investing in innovation and driving down prices. More money will be spent on lawyers, not on engineers.

Let me be clear. The Internet will still exist if Washington bureaucrats get their way. But the order’s impact will be profound, and it is going to disrupt what has become one of America’s proudest entrepreneurial and industrial achievements in our history.

I have heard proponents say this regulation will preserve the open Internet as it exists today. But it is my humble opinion this is absurd.

Personally, I don’t want to continue using the Internet of today. I want the Internet of tomorrow. I want the devices and applications I use today to soon be obsolete and out of date because the industry has continued to churn out something newer, something better and faster.

I want technologies to continue to develop and industries to continue to emerge. We are now using fewer devices for more telecommunication services, and it is not hard to imagine a day when we will use one device for all of them.

The industries are headed in that direction. When we throw the government in the middle of it, the pace will slow, uncertainty will enter the marketplace, and future innovations may just go unrealized.

One of the beautiful aspects of the Internet industry is that we don’t know what is around the corner in terms of new technologies and innovations. If a few years ago we had told someone we would Google them, they probably would have been offended. But today that actually means something.

Going forward, we have no idea what the future holds. We don’t know what innovations or ideas or technologies will be. We know technologies we cannot even imagine today will very soon be part of our everyday lives. The question is whether we are going to encourage that and particularly whether we are going to encourage that to happen here or whether we are going to discourage that from happening.

Regulating the Internet—and this specific measure we are trying to knock down today, if it passes—will discourage that development.

The FCC and Federal Government cannot keep pace with the Internet and technology industries, and the government should not attempt to catch up through regulation or legislation. That is important. We are asking this government—this bureaucratic structure, which struggles to keep pace with issues we have been facing for the last 20 years—to somehow keep pace with the future and technology that will punch through regulation or legislation. That is important.

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noise we hear every time we turn on the television—there is no reason this 21st century should not be every bit as much the American century as the last century. One of the reasons I believe that is because of the advances our entrepreneurs, innovators are making in this field of the Internet.

If there is any sector of our economy that will ensure that the next century is the American century, it is the Internet and the technology sector. That is an industry where we are the leader, and it is the one where we must continue to lead. To do that, we must encourage innovation, incentivize investment, provide certainty in the marketplace, and promote the competitive environment this dynamic industry needs.

That will require passage of this resolution of disapproval. So I urge my colleagues to vote yes on the resolution.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. Udall of New Mexico). The Senator from Texas.

Mrs. HUTCHISON. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. There is 60 minutes remaining.

Mrs. HUTCHISON. Sixty?

The PRESIDING OFFICER. Sixty minutes, yes.

Mrs. HUTCHISON. I thank the Chair.

Mr. President, I have been looking for a time when the floor was open to refute some of the comments and concerns raised earlier on the Senate floor. I want to start by taking on a comment that was made by the Senator from Minnesota, Mr. FRANKEN, who said YouTube started above a pizzeria in 2005 and sold for $1.6 billion 2 years later to Google, and that wouldn't have been possible without net neutrality.

Well, Mr. President, I must point out that we didn't have net neutrality in 2005. We haven't had Federal regulation of the Internet in this country such as we have seen during this last year put forward by this administration. In fact, YouTube and Google were both created in a marketplace without net neutrality regulations. Other online successes—Facebook, Hulu, Twitter, and new devices such as the Apple iPhone and Amazon Kindle—all happened without net neutrality regulations. These are innovations that have changed communication patterns not only in our country but around the world as well. So we have had these innovations without the heavy hand of government.

It is very interesting to hear the debate on the Senate floor because we seem to hear that net neutrality is something that will keep the Internet open. The opposite is true. It is beginning to put the clamps on the successes that we have had by having an open Internet. All these companies they are talking about needing net neutrality to come into being but are the companies that have done exactly that without net neutrality regulations.

What we should do is assure that we don't put a blanket over the Internet and start saying to everybody who has a new idea or a new product or a new service provider: You better go to the FCC before you go forward with that or you could be in jeopardy. You could be penalized. You could be thought to have an “unreasonable” product on the Internet because we don't know what is reasonable. We just know you have to be reasonable because we have a new regulation now that says you must be reasonable. We must have a reasonable definition of what this FCC—which had no authority to go into this area—is going to determine is a “reasonable” product that would not interfere with anything else.

Mr. President, we haven't had net neutrality before. All the successes I have heard about in this debate have happened without the heavy or the light hand of government stopping the originality and innovation that has marked the American century.

Earlier, Mr. KERRY, the Senator from Massachusetts, said the Internet made the 1996 Telecommunications Act obselete 6 months after it was enacted. But if the 1996 act did not sufficiently address the Internet, thus making it obsolete, how can that same law be the genesis and basis of the FCC's assertion it has the power to regulate the Internet? We have to have one or the other, and it is our assertion the FCC did not get authorization from Congress to regulate the Internet that is required for Congress to give it in order to make rules in this area. So Senator KERRY can't have it both ways. He can't say the Telecommunications Act was obsolete but it is also the basis of these new restrictive regulations.

Senator KERRY sent a “Dear Colleague” letter to everyone in the Senate asking them to vote against this resolution. What I think Senator KERRY is saying in that letter is that net neutrality is not a regulation of the Internet because it is just a regulation of the onramp. In other words, we are not trying to support the FCC regulating the whole Internet; they are just doing the gateway, they are just doing the onramp.

Well, that was the position the FCC took when they made this regulation. But we can't argue that net neutrality is not regulation of the Internet because it is just a regulation of the onramp. In other words, we are not trying to make it harder for the American consumer to come back. If anybody in this country with any common sense is going to say we have a thriving economy right now. So it does defy common sense to say we are going to allow regulations Congress has not approved into the RECORD a letter from, among others, Americans for Tax Reform, Taxpayers Protection Alliance, Hispanic Leadership Fund, and Americans for Prosperity.

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

NOVEMBER 8, 2011.

Re Rating Senate Joint Resolution 6, Net Neutrality.

U.S. SENATE.

Dear Senator: We write to inform you that each of our organizations, together representing millions of Americans, will consider rating a vote in favor of Senate Joint Resolution 6 to overturn the Federal Communications Commission’s (FCC) Net Neutrality Internet regulations in our respective congressional ratings.

The FCC enacted these Net Neutrality rules despite a complete lack of Congressional authorization and after being told by
a court that they lack jurisdiction. The FCC nevertheless insists on government regulation of how data travels across the Internet without any showing of consumer harm or other justification.

The FCC’s order also runs contrary to the broad and bipartisan conversation in Washington about how best to grow the economy and spur job creation. President Obama and Members in Congress on both sides of the aisle have called to rein in overbearing regulations that harm economic growth.

The FCC’s Net Neutrality rule is a prime case of unnecessary rules emanating from unelected bureaucrats that will cause economic harm and job losses. Hundreds of thousands of American jobs, as numerous studies have pointed out. But regardless of whether you support Net Neutrality rules, the process by which they were created cannot be allowed to stand.

Under the U.S. Constitution, it is your role in the U.S. Senate to craft laws—not the role of federal agencies that are bypassing Congress. Senate Joint Resolution 6, sponsored by Sen. Kay Bailey Hutchison, is a simple, commonsense measure that uses the Congressional Review Act to reject these rules, placing legislating authority back in the hands of Congress where it belongs.

We urge you to vote for Senate Joint Resolution 6 and to reject these rules, placing legislating authority back in the hands of Congress where it belongs. We urge you to vote for the resolution and for letting your vote in our annual Congressional scorecards. A vote against this measure is a vote to abdicate your responsibility and to instead rubber stamp the job-killing and unwarrented regulatory actions of an unelected and unaccountable federal agency.

Sincerely,

GROVER NORQUIST,
President, Americans for Tax Reform (WILL RATE).

PHIL KERVEN,
Vice President for Policy, Americans for Prosperity (WILL RATE).

DAVID WILLIAMS,
President, Taxpayers Protection Alliance (WILL RATE).

THOMAS SCHATZ,
President, Council for Citizens Against Government Waste.

MARIO H. LOPEZ,
President, Hispanic Leadership Fund.

Mrs. HUTCHISON. Mr. President, in part, the letter says:

The FCC enacted these Net Neutrality rules despite a complete lack of Congressional authorization and after being told by a court that they lack jurisdiction.

Remember, Mr. President, in the Comcast case, basically said to the FCC: You and all the other regulatory agencies that are independent must have specific authority from Congress to regulate in this area.

They failed in the Comcast case they did not have such jurisdiction. Once again, citing from the letter in support of passing S.J. Res. 6—which is signed by Grover Norquist, Phil Kerpen, David Williams, Thomas Schatz, and Mario Lopez—it says:

The FCC’s order also runs contrary to the broad and bipartisan conversation in Washington about how best to grow the economy and spur job creation. President Obama and Members in Congress on both sides of the aisle have called to rein in overbearing regulations that harm economic growth.

Here we have yet another regulation on top of the EPA and the NLRB and the NMB coming forward to put a damper on our economy.

Mr. President, I would like to read from an opinion piece written by Phil Kerpen, who is with the Americans for Prosperity. I thought this was relevant to the debate.

Network neutrality sounds nice. Originally, it was the idea that all of the traffic on the Internet should be treated exactly the same way. But engineers cried foul, because the routers that make the Internet work are highly sophisticated with millions of lines of code; the routers prioritize different types of traffic. Streaming video can’t tolerate delays of a few seconds whereas as an e-mail could.

So network neutrality morphed into something even more dangerous, empowering the FCC bureaucrats to play traffic cops, micro-managing networks, and deciding which traffic can or can’t be prioritized. The result would be a precipitate decline in private investment because the companies that spent billions of dollars building networks could no longer be certain how the FCC bureaucrats would allow those networks to be used.

I am reading from this letter, and I will continue. The letter says:

A recent study from New York University found that millions of jobs would be lost. The tech sector—the brightest spot in our economy—would be burdened by Federal regulations the way the rest of the economy has been.

So these are excerpts from Mr. Kerpen’s opinion piece that say it is now crunch time to stop the FCC’s Internet takeover.

I think these outside groups that are weighing in are showing that just regulatory concerns—I heard the list of groups that are supporting this rule that has come out. But the citizens who are for free markets and tax reform and for letting our businesses grow and thrive through the American innovation—I like some of the things they have said. I think are very important in this debate.

I urge my colleagues to look at whether we are exercising our responsibility as Members of Congress when we would vote against stopping a Federal agency that has not had a delegation of authority from Congress to regulate in this area. The House of Representatives has already voted in favor of this resolution. We need to send it to the President and say to the President: Congress did not delegate our authority.

It is overstepping its bounds, and furthermore it is going to put a damper on the most thriving part of our economy today, and that is the tech sector. It is where we are bands down, ahead in the world because we have kept the free markets. Why would we give that up to unelected Federal agencies that have not been asked by Congress to regulate in this area? And if we did, we should be required, we should be—it is our constitutio南京市 responsibility that need to say exactly what we would ask a policy to be in a new regulation. We have not done that, and we should not allow the Federal agencies, which are appointed but not elected, to take over this area that is so important for our economy.

If we have any guts at all in this Senate, we should stand up for our one-third of the balance of power in the Federal Government and ourselves to keep control over runaway Federal agencies that do not answer to anyone.

Mr. HELLER. Mr. President, the Senate has now voted to overturn the open Internet order, widely known as net neutrality. This measure that was passed days before the start of the 112th session of Congress by the Federal Communications Commission is a rule that many believe via FCC had no legal right to make and will harm job creation in the technology sector of our economy.

Plain and simple, this measure will cost the Nation good-paying jobs. That is why I insist on keeping net neutrality and will vote in favor of the resolution of disapproval to overturn it.

Since privatizing the Internet in 1994, the FCC and Congress led by both Democrats and Republicans have handled the Internet with a light regulatory touch by classifying it as an information service. This classification originated from a Democrat-led FCC, and the U.S. Supreme Court supported efforts to classify the Internet as an information service when it upheld the FCC’s Cable Modem Order on June 27, 2005.

The FCC’s policy has been that subjecting providers of enhanced services, even those offering wireless services, to title II common carrier regulation was unwise given the fast moving, competitive market to which they were offered. In other words, the FCC, led by Democrats and Republicans, has been consistent in its treatment of the Internet the same way we regulate land telephone lines even if those lines are used to connect to the Internet was counterproductive to good public policy given the speed of innovation and the competition present. Even the U.S. Supreme Court supported this position.

So Congress has never passed a law that gives the FCC the power to regulate the Internet, the FCC has gone to great lengths to avoid regulating the Internet, and the U.S. Supreme Court has supported previous FCC administration policy toward zero regulation of the Internet. Yet here we are voting to overturn a Federal Communications Commission order to regulate the Internet.

Make no mistake, as FCC Commissioner Robert McDowell said, “To say the net neutrality rules don’t regulate the Internet is like saying that regulating on-ramps, off-ramps, and its pavement doesn’t equate to regulating the highways themselves.”

But why does this matter? Why don’t we just say: You know what, these unelected bureaucrats at the FCC know so much more than Congress and the Supreme Court. Let these rules go through.
Because they will cost us jobs. U.S. broadband has seen an investment of hundreds of billions of dollars in infrastructure expansion and upgrades over the last 10 years and that has led to hundreds of thousands of jobs in this industry.

The broadband providers are estimated to invest over $60 billion in their networks. That is more money than the Federal Government has spent on highways in previous years.

I am well aware that the FCC insists the regulation would not have a significant impact on the industry, but they did little to prove this. Minus a market or cost-benefit analysis, there is no way of knowing what exactly the impact of this regulation will be.

That is why I asked the FCC to conduct a market benefit analysis to prove the exact impact on jobs and the economy. The FCC stated the analysis was in the Internet order, but I still have not been able to find what they are referring to. I suspect the analysis was not actually done. If it was completed, the FCC would have seen that the costs of net neutrality would be significant and justifying the rules would not have been possible.

The fact is, net neutrality regulation is costly. As explained by the Federal Trade Commission in 2007 when they said in part:

Policy makers should proceed with caution in evaluating calls for network neutrality regulation. . . . No regulation, however well-intentioned, and it may be particularly difficult to avoid unintended consequences.

Policy makers should be very wary of network neutrality regulation . . . simply because we do not know what the net effects of potential conduct by broadband providers will be on consumers, including among other things, the prices that consumers may pay for Internet access, the quality of Internet access and other services that will be offered, and the choices of content and applications that may be available to consumers in the marketplace.

The FTC clearly stated that Congress must proceed with caution because we cannot fully quantify what the reaction by broadband providers would be if they were not able to manage their networks.

Again, let me state, some reports have said that over the next 5 years, there will be hundreds of billions of dollars invested in broadband infrastructure, which will result in half a million jobs.

If broadband wire line and wireless service providers rolled back their investment by just 10 percent because of this regulation, the benefits of regulation would never outweigh the costs of job loss.

I assure you, these companies will roll back their investments if this rule is allowed to move forward, which will in turn eliminate jobs.

Because of the unpredictable nature of the Internet and evolving consumer demands, broadband providers must have the ability to change their business models to ensure maximum utilization of their network. These net neutrality rules impose restrictions on how a broadband provider can offer Internet service, which means broadband providers can’t adapt to an evolving Internet. If a broadband provider does not have the ability to manage the maximum profits, the incentive to invest diminishes. If you minimize investment, you lose jobs. Estimates have put the number of jobs lost because of this regulation at 500,000 over the next 10 years. In Nevada, the unemployment level is at 13.2 percent, the highest in the Nation. Any regulation that increases unemployment both nationally and in my State is unacceptable.

Finally, some people believe we need this regulation to ensure competition in the industry. I believe this is as ridiculous as saying that this measure will not cost jobs.

Fixed and mobile broadband Internet access is growing rapidly. In 2003, only 15 percent of Americans had access to broadband. In 2010, 95 percent of Americans do. Competition, innovation, and job creation are all growing because of the light touch policy-makers and the FCC have put on the Internet.

We are in this wonderful era of innovation and investment where people can use an I-pad to read their e-mail in the Sierra Nevadas because the government did not regulate the Internet. Now our friends on the other side of the aisle and the FCC are saying: Yes, but in order to continue this amazing innovation, we must regulate.

Competition is robust in this industry, and when weighed against the loss of hundreds of thousands of jobs, the need for this regulation is simply not there. Net neutrality should not be enacted. It makes no sense for Nevada and will cause unnecessary job loss nationwide.

I urge my colleagues to vote for this measure and disapprove of the FCC’s net neutrality order.

Mr. TOOMEY. Mr. President, I rise today to speak in favor of the resolution of disapproval offered by the Senator from Texas. I commend her for leading this effort, and I was pleased to be an original cosponsor of the resolution.

Like many of my colleagues, I was dismayed last December when the Federal Communications Commission chose to impose heavyhanded and burdensome new regulations on the Internet. There was no market failure or consumer harm requiring FCC action, and the FCC Chairman’s determination to deliver on a misguided Presidential campaign promise is very disappointing. It is especially troubling in light of the unanimous DC Circuit Court of Appeals ruling in Comcast v. FCC, authored by a Clinton appointee and Democratic administration aide, stating that the Commission lacked the statutory authority under the Communications Act to regulate the Internet in this manner. Unfortunately, this decision, coupled with concerns expressed by Members of Congress, was completely ignored by an outcome-driven majority at the FCC.

I doubt the Commission’s lawyers will receive a warm welcome from the DC Circuit when they return to defend a policy the court struck down just last year.

Shortly after the Federal appellate court ruled in the Comcast case, recognizing that net neutrality rules adopted under the Commission’s title I authority would have difficulty surviving a judicial challenge, Chairman Genachowski shockingly announced that he would reclassify broadband as a title II telecommunications service and apply a 19th-century regulatory framework to an innovative 21st-century technology. This decision ignored the successful history of treating broadband as a lightly regulated title I information service, which has been the policy of the FCC and Congress going back to the Clinton administration.

Keeping regulators’ hands off of the Internet has historically been supported by FCC Commissioners and Members of Congress on both sides of the aisle. For example, on March 20, 1998, a bipartisan group of Senators sent a letter to the FCC stating: ‘[W]e were pleased to see that nothing in the 1996 Act or its legislative history suggests that Congress intended to alter the current classification of Internet and other information services to expand traditional telephone regulation to new and advanced services.’ They continued: ‘[W]ere the FCC to reverse its prior conclusions and suddenly subject some or all information service providers to telephone regulations, it would chill the growth and development of advanced services necessary to drive our economic and educational well-being.”

I couldn’t agree more.

Then Democratic FCC Commissioner William Kennard shared their view, stating: ‘[C]lassifying Internet access as telecommunication services could have significant consequences for the global development of the Internet. We recognize the unique qualities of the Internet, and do not presume that legacy regulatory frameworks are appropriately applied to it.”

Had traditional telephone common carrier regulations been applied to the Internet more than a decade ago, it is unlikely we would have the broadband access and speed we enjoy today. It is amazing what can happen when the Federal Government’s regulatory policy for a particular industry is hands off.
Fortunately, after a bipartisan majority of Congress wrote to the Commission objecting to the FCC Chairman’s proposed radical shift in policy, the FCC did not officially reclassify broadband as a title II telecommunication service. In order to justify placing these new regulations on the Internet, the FCC’s first time found that broadband was not being deployed to all Americans in a “reasonable and timely” manner. This is an absurd claim that quickly falls apart when you look at the facts. According to the FCC’s own broadband plan, 85 percent of Americans have access to broadband. In the early 2000s, that number was equal to or below 20 percent. In addition, terrestrial wireless and satellite broadband services continue to improve in terms of speed and availability. We are rapidly approaching the point where wireless Internet access is as good as a terrestrial service. This rapid rate of deployment and technological advances occurred absent the heavyhanded regulation we will be voting to repeal today.

For my colleagues who may be unaware, I would like to point out that the FCC determined that the broadband marketplace was competitive and should remain unregulated in 2002, 2005, 2006, and 2007. Proponents of regulations and new services have failed to demonstrate what has changed to warrant Federal intervention. Most consumers have a choice of multiple broadband providers, and the suite of services and applications available on home computers, mobile smartphones and tablets, and Internet-connected televisions continues to grow. Even through tough economic times, broadband providers continue to invest and create jobs. I also find it perplexing that despite the recognition that it may require $350 billion in new investment to achieve the goals of the National Broadband Plan, the agency nevertheless willfully adopts rules that will have a chilling effect on future investment.

The Commission also makes the novel argument that section 706 of the 1996 Communications Act, which directs the FCC to “remove barriers to infrastructure investment,” authorizes the adoption of new Internet regulations. This is completely contrary to the plain language of section 706. When the Commission imposed new rules on broadband service providers, they built new barriers to infrastructure investment.

Support for Internet regulation seems to rely on baseless theoretical claims that consumers may be harmed by “Internet gatekeepers at some point in the future. Despite the fact that the FCC Chairman has said he will use fact-based analysis when reviewing proposed rules, the facts indicate that consumers are not being harmed and broadband providers are not blocking access to content. A fact-based analysis leads one to conclude that the market is healthy and competitive. I have significantly more faith in a competitive market rather than bureaucrats who are shielding consumers from harmful business practices. In addition, current consumer protection laws, such as section 5 of the Federal Trade Commission Act, will effectively address real consumer harms were they to actually ever occur in the broadband space.

Lastly, it should be noted that while there have been attempts by some in Congress to impose similar regulations on the Internet, those attempts have all been unsuccessful. Unelected bureaucrats have now usurped Congress’s authority and have taken it upon themselves to change the law. Opponents and supporters of net neutrality both argue their position on that, and I urge my colleagues to support the resolution of disapproval.

Mr. MCCAIN. Mr. President, I am pleased to support the resolution before us that would express congressional disapproval of the Federal Communications Commission’s move to regulate the Internet. The historically open architecture and free flow of the Internet should not be subject to onerous federal regulation.

As a member and former chairman of the Commerce, Science and Transportation Committee, I have fought to prevent the FCC from unilaterally implementing network neutrality regulations for many years. When Congress introduced the Internet Freedom Act of 2009, which would have prevented the Commission from regulating the network management practices of Internet service providers. And this congress, I am a proud cosponsor of S.J. Res. 6.

Skeptical consumers and American entrepreneurs should rightly view these new rules exactly for what they are—another government power grab perpetual over a private service provided by a private sector competitive marketplace. Sadly, and to the detriment of consumers and our national economy, the FCC is the latest in a growing list of Federal agencies under the Obama administration that have chosen to use government influence over the free market. In a little less than 3 years, this administration has moved to control and exert more government influence over the auto industry, the energy sector, doctor-patient relationships, and now through this vote, the FCC, it wishes to control high-tech industries by regulating its very core: the Internet.

According to a report recently released by the House Government Oversight and Reform Committee, the Obama administration has imposed 75 new major regulations costing more than $380 billion over 10 years. More importantly, this report also points out that there are 219 more “economically significant regulations” in the works which will cost businesses $100 million or more each year for a minimum cost of $21 billion over 10 years. These new barriers and added costs come inspite of Presidential Executive orders to reduce burdensome regulatory redtape.

The government’s politically motivated decision to regulate the Internet, like so many others, will stifle innovation, in turn further slowing our economic turnaround and depressing an already anemic job market. The technology industry is one of our Nation’s bright spots and one of the fastest growing industries in the country. It is a source of innovation and job growth.

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Mr. President, I rise today in opposition to the open Internet rules. I ask unanimous consent that the order for the quorum call be rescinded. The bill clerk proceeded to call the roll. The PRESIDING OFFICER. That is correct.

Mr. ROCKEFELLER. Mr. President, I would like to respond to some things, but I understand we only have 42 minutes remaining.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, how will Americans gain on our side?

The PRESIDING OFFICER. There is 44 minutes.

The PRESIDING OFFICER. I suggest the absence of a quorum.

Mr. BOOZMAN. Mr. President, I rise in support of S.J. Res. 6, which seeks to put an end to the FCC's misguided net neutrality rules. The FCC's rules regulating the Internet are yet another in a series of unnecessary and economically harmful regulations from President Obama's administration. These rules will stifle innovation, investment, and ultimately undermine the continuation of this administration's obsession with picking winners and losers in almost every marketplace.

We live in a world where we no longer have to wait for the morning edition of the newspaper. We don't have to wait for a delivery from the postman to get a message from a loved one. We do not have to get in our car and head to the store to watch a movie or to shop for clothes, books, and groceries. We have the ability to do these from the comfort of our homes, thanks to the Internet. It is clear the Internet has changed the way we live. This helps promote and encourage economic growth, facilitates innovation, and reshapes the way we do business, all the while creating millions of jobs. This was able to happen because of the government's hands-off policy.

The Federal Communications Commission admits the Internet has thrived because of its freedom and openness. Then why is this agency taking steps to limit the openness and freedom of the Internet?

Last December, the FCC voted to impose new net neutrality rules to regulate the Internet. This is nothing more than the government interfering and threatening small providers and forcing networks to operate services in ways determined by unelected bureaucrats.

What is worse is the FCC is working to fix a problem it acknowledges does not exist. The agency is relying on speculation of future harm. This attack on the Internet is irresponsible and is irresponsible governing. While our economy struggles, the Internet remains a beacon of light that continues to grow, but this rule risks stifling innovation and investment in jobs.

A study by a telecom economist with the Brattle Group found that the net neutrality rules could lead to a job loss of 350,000 in the broadband industry within the next 10 years. This is not the type of policy we need to adopt, especially as our country staves at 9 percent unemployment. That is why I am supporting S.J. Res. 6, which will put a stop to the FCC's misguided net neutrality rules.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. Mr. President, I rise today in opposition to the joint resolution of disapproval that will reject the open Internet or the net neutrality rule that was put forward this year by the Federal Communications Commission.

I am a strong supporter of the principle of network neutrality that the open Internet rule seeks to protect, and I believe we should oppose this effort to reverse the FCC order. The rule this resolution seeks to eliminate—the open Internet rule—was adopted by the FCC in December of 2010, and it will go into effect on November 20 of this year.

Simply put, this rule creates commonsense obligations and requirements for broadband Internet providers, such as telephone and cable networks, in order to keep the Internet free and open. I know the open Internet rule will provide the certainty needed to foster job-creating investments and innovations while protecting broadband Internet consumers. Why is this important? Well, net neutrality is a way of saying the Internet ought to be free and open. It is a fundamental concept that is underpinned with some of the most powerful ideas of our time. The Internet is the most powerful tool we have to ensure that our government policies are in the best interest of our consumers and our economy.

We have heard about the open Internet through the eyes of the telecommunications industry and the Internet service industry, but we must not forget the voices of those who depend on Internet access everyday. We have heard about the open Internet through the eyes of the government, but we must not forget the voices of those who are counting on Internet freedom to collaborate, pursue their passions, and participate in the democratic process. As the Chairman of the Federal Communications Commission, I have heard the voices of the public through our open forum and at the many town hall meetings I have held around the country.

As I travel in my State of Colorado—I see firsthand the importance of these tough economic times we face—it will provide predictability for both Internet providers and Internet innovators.

As I have said, what is so important about this debate is that in these economic times, net neutrality is also about jobs and economic development. As I travel in my State of Colorado—and I know the Presiding Officer travels his State of New Mexico—the refrain I hear from businesses and business leaders is that they need predictability in order to invest in their companies and create good-paying American jobs.

Thousands of entrepreneurs who have built small Internet companies can only be successful if they can reach their customers. However, if we don't preserve this net neutrality rule and content blocking is prevented, there
will not be any guarantees that the next great online innovation or pioneering application will even be able to access the Internet. For example, the next Google or Amazon or Twitter will only be able to grow and be successful if they can reach their customers without the Internet through cumbersome barriers, broadband providers that might want to preference another more established competitor.

So what we are talking about is the FCC is promulgating a commonsense rule that will provide predictability for those broadband providers and the Internet innovators. The certainty of knowing the rules broadband providers have to follow will give the confidence needed for investors to help the next Groupon breakthrough or many of the other numerous applications we are all familiar with online.

Innovation and job creation is what will finally lift our economy out of the slump from which we have been desperately seeking. We must ensure neutrality to ensure that innovation thrives and that the next great product, service, or way of doing business is not inhibited by market manipulations or restrictive online policies.

I cannot in good conscience urge my colleagues to vote against this resolution. It only serves to distract us from the hard work we have to do to foster job growth and get our economy back on track. Let's agree to cement fair and reasonable rules of the road, as the FCC charted itself on a collision course with the legislative branch as well as with the Federal judiciary, which has already struck down a similar attempt that the FCC lacked the authority to do so.

Now we find ourselves debating a measure which in a roundabout way attempts to accomplish the same thing that might be disguised in some other way. The Commission is using a provision of the Communications Act, which was enacted to allow the FCC to "remove barriers to infrastructure investment." Why would we want to do that? Why would we want to remove barriers to infrastructure investment? Why would we have passed that law? Because we want to encourage infrastructure investment by removing barriers. The regulatory process the FCC is using was actually de-regulatory, not regulatory. They are basing this on a law that said they could do something 180 degrees different from what this rule would do.

Repeated government economic analysis has reached the same conclusion: There is no concentration; there are no abuses of market power in the broadband space. And even if there were, we have a lot of laws to deal with that. We have antitrust laws. We have consumer protection laws. There are plenty of ways to approach that if it happens, but nobody thinks it is happening.

The Commission, like many other Federal agencies, has often been put in a position of constantly having to monitor new innovations on the Internet. This will be a position of constantly having to monitor new innovations on the Internet. The Commission's own National Broadband Plan, last year 95 percent of Americans had access to broadband. Between 2003 to 2010, 15 percent to 95 percent—it sounds to me as if that access is doing what you want it to do and occurring how you want it to occur by mobile broadband Internet access, expanded and improved upon by the private sector, is the fastest growing technology in history. In only 7 years, 95 percent of Americans got to where 15 percent were earlier.

Competition in this field is robust. Technology advances, network buildout, and infrastructure improvements are happening quickly, to the tune of billions of dollars of investment and innovation and an ever-expanding array of applications for consumers. More competition is on the way as providers make use of increased amounts of spectrum coming online and lay new networks of fiber to connect Americans in rural areas in the country.

The telecommunications sector contributes more than $60 billion annually to our economy. Net neutrality would slow that down.

With the order that was set forth, the Commission will begin to speculate on what might happen as opposed to what clearly is happening.

First, the kind of anticompetitive action the Commission seeks to remedy is already illegal.

Second, the competition in this space is far too fierce. Their rule is far too repressive. Most Americans already have two options for wired broadband access at work or at home, and the number of wireless competitors available is exponentially higher.

No government has ever succeeded in mandating investment and innovation, and until this order nothing has held back Internet investment and innovation in this country, and that is why it has done so well.

Broadband buildout is a thriving success story on which virtually all Americans now count. We now even take it for granted. It is incumbent upon us to look at this rule to understand the negative impact it will have on a thriving wireless competition, the ability to do business, and to talk to each other, and to reject this rule and let this system continue to develop with the same innovation,
the same intensity, and the same incredible success it has had in the past 7 years. I yield the floor.

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

Mrs. HUTCHISON. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. There is 19½ minutes remaining.

Mrs. HUTCHISON. I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, I yield up to 5 minutes of our time to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. DOEJEGERTY. Mr. President, I thank the Senator from Texas for the time. This is a critical subject she is dealing with right now, but the thing in common is the problem we are having right now with regulation. I think we are going to be talking about that this afternoon.

I only wanted to get one thing in, and that is about something the Chair is fully aware of because he was there all morning. Something very significant happened in North Carolina. In our Environment and Public Works Committee we passed out a highway reauthorization bill. We have not done this since 2005, and this morning we did. This is one where we sat down—one of the few times that Democrats, Republicans, liberals, conservatives, can get in a room and hammer out their differences and get things done. I wish the committee would be successful in doing that as we were this morning in getting this done. So we are going to have a highway bill at the current spending level which, if my colleagues remember back in 2005, it was $286.4 billion, and that was for a 5-year bill. That spending level right now would be, to sustain that, somewhere between $40 billion and $42 billion a year for 2 years. This is a 2-year bill, and the 2-year bill cannot pass until we locate an additional $12 billion to make this happen. I think a lot of us don’t want to take what would constitute a 34-percent cut in funding for our roads and highways and bridges throughout America and be able to sustain that. This is a life-and-death type of issue.

I wanted to say how proud I am of the staff and the Environment and Public Works Committee who made this happen this morning. So while we have much more we are concerned about, I think it shouldn’t go unnoticed at this time that we have now started that ball rolling and that is good news.

One last thing I wish to say about overregulation. When we talk about the jobs bill—and we always are talking about revenue and jobs and all of this—we seem to forget that the over-regulation is costing us a lot. I can remember fighting the cap-and-trade bills ever since back during the Kyoto convention, and imposing upon people that the other side would cost between $300 billion and $400 billion a year. That is every year, not just the first year. Right now, since they have not been able to pass that here, they are trying to do that with regulations through Environmental Protection Agency. Congressman Frank Upton over in the House and I had legislation that would take away the jurisdiction of the EPA to get this done. I think this is going to be offered as an amendment this afternoon. I think it is very critical that we pass that.

I thank the Senator from Texas for giving me this time.

I yield the floor.

Mrs. HUTCHISON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair.

The bill clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. I yield up to 7 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. Mr. President, I thank the Chair. I thank Senator Hutchison for her efforts here in stopping another regulatory nightmare. I am beginning to think the FCC stands for Fabricating a Crisis Commission because they are trying to create a new regulation for a problem that does not exist. The overriding problem here is, as the government intervenes increasingly into the Internet, that investment is going to dry up as uncertainty is increased.

I have seen in my State where private investors have put together the money with companies to put down broadband in rural areas only to find that there are some companies operating with a government grant or some government money to compete with them.

Under President Obama, the FCC has become an activist bureaucracy that is inventing a crisis here in order to take control of the Internet.

The Internet is one thing in our country that is working vibrantly. It is a showcase of free enterprise. It does not need to be regulated. For years liberals have warned us that, if the government does not take action, the Internet will not be competitive or accessible. The opposite has happened. More people are using the Internet and having access to cutting-edge technology and devices than ever.

This is yet another misguided big-government solution in search of a problem. Last year, the courts ruled in the Comcast decision that the FCC does not have the authority to mandate how private companies can enter into business agreements and limit the ways they provide Internet services. That did not stop the advocates and instead is at it again with its Open Internet Order, which is vague, baseless, and built on an even weaker legal foundation than their activities in Comcast. Congress did not authorize such actions and the courts have ruled against them. The FCC should not try to get around it by redefining clear legislative language passed by Congress.

There has been no demonstrable need to which the FCC needs to respond. They cannot give us a case where competition is not growing, where the expansion of broadband is not growing. In fact, new technologies are exceeding the pace that the FCC admits these new rules were not imposed due to any previous or existing wrongdoing. That is important for us to recognize.

If a regulatory agency is issuing an order that intervenes into the private sector, there needs to be substantial harm being addressed. The FCC claims the government must regulate the Internet in order to protect consumers from future harms that could occur. That is not the point of the regulatory structure.

I heard all of these arguments back in 2006 when the Senate was debating how to update our telecommunications laws. If the regulation advocates had won in 2006, today we had the Internet of 2006. I do not want the Internet of 2006 in 2011, and I do not want the Internet of 2011 in 2016. I want it to grow and improve and evolve just as it is doing now. The government should not be trying to impose control over the development of the Internet, which the FCC is trying to do.

The Internet does not need a government stimulus. It is a free market industry that is working. Right now, the technology sector has a 3.5-percent unemployment rate, far below the national average. Over the years, communications companies have invested
hundreds of billions of dollars in broadband technology and development, and no deficit-expanding stimulus was required!

If the government really wants to allow the Internet and related businesses to prosper and thrive, it should stay out of it. The Internet is not taken, but our government is. The private telecommunications sector knows how to create jobs; our government does not. The things that work best in our society—businesses, charities, volunteers—are the things that government does not control. Consumers should be in control, not unelected activist bureaucrats intent on taking over the most successful parts of our economy.

I encourage my colleagues to support this resolution to undo the FCC's power grab. Three unelected bureaucrats should not be permitted to simply give themselves the power to regulate the Internet's infrastructure in the face of the statutory language dictating them to do just the opposite.

The FCC should not be permitted to circumvent Congress and essentially enact laws that will impact vital services we all depend on. To keep the Internet economy thriving, this decision must be reversed. I commend Senator HUTCHISON for bringing this up and using the powers of Congress to take back control of our legislative responsibility.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has 18 minutes under his control.

Mr. ROCKEFELLER. I would yield it to the distinguished Senator from Washington.

Ms. CANTWELL. I thank the chairman of the Commerce Committee for his leadership on this important issue. I am glad to be on the Senate floor to set the record straight because we are here to talk about Internet freedom and about making sure the Internet does not have undue costs and expenses for consumers.

If you liked TARP and you liked the bailout of the big banks, well, guess what. Then you should vote for this resolution because this resolution is about whether you are going to let the communications companies that want to make the Internet more expensive by various technologies have their way.

If you believe the FCC should establish some rules to protect the freedom of the Internet, then you should oppose the Hutchison resolution. I prefer legislation that I have introduced, and some of my colleagues support, called the Freedom of the Internet Act, that goes further than what the Federal Communications Commission has done. I implement true net neutrality. I would prefer that, and maybe in the future my colleagues will be working on such legislation.

But as it is today, the Federal Communications Commission has taken a half step, if you will, by proposing some rules that will set in place some protections for consumers to make sure they are protected on important aspects of keeping Internet costs down. The problem is the FCC rules is they only apply in some cases to fixed broadband and not to mobile broadband.

So if you think about it this way, the Internet is a mobile broadband platform; that is, our handheld devices, whether they are a Blackberry or phone or what have you. So many more Americans are accessing the Internet that way. So the FCC has come up with rules on transparency and no blocking; that is, to make sure there is no content blocked or slowed down for any undue cost or reason, and a nondiscrimination rule.

Unfortunately, those two last points, no blocking and unreasonable discrimination, do not apply to the mobile side. So we have work to do to make sure the youth of America who are consuming so much content online through their mobile devices are not going to be artificially charged more or slowed down because all because the telecommunications industry wants to have its way with the Internet.

My colleagues have been out here talking about innovation. I can tell you that there is a ton of innovation and a ton of content creation, all because there has been an even playing field and net neutrality. The fact now is that the telecommunications companies are debating an important issue, and the lines get blurred between telecommunications and the Internet, and it is clear we do not have all of the rules in place to make sure consumer interests are protected.

But today we have one thing: the FCC rules to slow down telecommunications companies from artificially either blocking or making content on the Internet more expensive. Again, when we go to the mobile phone model and we are being charged for time and data transfer, the fact that the data transfer and time take longer means we are going to have more expensive phone bills. That is why I said it was TARP-like, because the "cha-ching" we are going to hear from the phone companies on the money they are going to make from this is unbelievable.

So thank God the FCC took a half step and said: Whooa. Slow down. We are not going to let you do that. That is why people like Vint Cerf and Tim Berners-Lee and inventors pushing the Internet, have said what a bad idea it is to not make sure that net neutrality is the law of the land.

I notice my colleague who just spoke said, well, there have not been any problems. There have not been any issues. I read the online publications. Larry Lessig, someone I trust, was recounting in one of his interviews exactly what happened. Comcast went in and basically blocked large data files of peer-to-peer transfer, which is called bit torrent traffic.

First, Comcast said: No, no. We do not do that. We did not block that. We do not do it. But when it was basically found out that they did, they said: Oh, no, we did not block it. We just slowed it down. They sent little messages, as Mr. Lessig says in his article, to do the opposite of the regulations they proposed and basically disrupt their traffic. OK? So that is what is happening.

These providers think if they can control the pipe, now they can control the flow. That is also, as Mr. Lessig said later in this article, as if the entire electricity grid, our refrigerators and our Toasters and our dryers, all of a sudden would start charging different rates on different things because the electricity company would decide it had the ability to charge different rates. Would we put up with that? No, we would not put up with that.

So why would we put up with allowing telcos to run at will on the Internet charging consumers anything they want based on the fact that they think they have the control of the switch?

I am so proud the chairman, Senator ROCKEFELLER, has led this fight for the freedom of the Internet to drive down costs, to keep innovation, and to protect net neutrality. The FCC rules do not go far enough. We cannot continue to have this half step and not clearly, on the mobile side, give consumers the protection they need.

But for today, if you want to vote with Internet consumers and Internet users on driving down the costs of the Internet, then vote against this resolution and keep the minimal FCC rules in place until we can get stronger legislation passed. Make no mistake about it, the other side is talking about, well, they do not want to regulate the Internet. That is true. They do not want to regulate telcos that want to take advantage of the fact of blocking the pipe and can charge a lot more.

I am glad the FCC at least took this measure. We should make sure it stands until we can even get stronger Internet freedom protection.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I think this is the distillation of where Senator for her remarks and actually fully agree with them in that mobile is kind of left alone, and it should not be because it is everything that is happening in the future. But it is a step, and it was a wonderful step.

It occurs to me that I do not think we have anybody left to speak on this side. I am not sure about Senator HUTCHISON, but it may be a good time to yield back our time.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, how much time remains on our side?

November 9, 2011
The PRESIDING OFFICER. The Senator has 4 minutes.

Mrs. HUTCHISON. Mr. President, I would like to just wrap up, and then I will yield back the rest of my time and we can close this debate because our vote is tomorrow.

I just want to summarize what we have heard today. I just heard the distinguished Senator from Washington State say that without net neutrality we would have more expense to consumers. I really do view this in a different way because I view the potential delay, the regulatory processes, the hurdles that are going to have to be overcome for any kind of preclearance to put a new product on the Internet, gatekeeping for innovation—that is what, in my opinion, is going to increase the cost and cause delays if not freeze many of the innovations that have occurred in our open Internet system.

We now have, because of the FCC’s ruling, the requirement for reasonable standards for access to the Internet. There is no definition of “reasonable.” I heard the Senator from Minnesota say we need net neutrality in order for Google, YouTube, Facebook, and Twitter to be able to grow and prosper. Those entities have grown and prospered—without the net neutrality regulations. They have grown and prospered because we have had free and open access to the Internet. We and our competitors overseas have had open and free access. That has been the beauty of the success of the Internet.

Now we see government coming in and saying: You have to be reasonable in what you offer. So if there is a major dump of millions of pages onto the Internet and it is going to slow down, for instance, a hospital network offering rural health care on an emergency basis or some kind of video-streaming that is necessary to have to be able to let the providers have the judgment and let the marketplace work. If there is a problem it was not pointed out by the FCC when they decided to intervene in the Internet among 134 pages of regulations with just 3 paragraphs about possible problems, all of which concluded with the rules that are in place today.

This is clearly a problem that isn’t there, which is being manufactured in order to put another government regulation on the books. When the Senator from Massachusetts said this order doesn’t regulate the Internet, just the gateways or the on-ramps, that doesn’t hold water because if we regulate the on-ramp, we are regulating the Internet. We are companies that are providing broadband to not have control of their networks but instead will now have to go before the FCC to justify a new product or service that will give emergency access or quicker access for users who need to have that kind of access.

I hope the Senate will say the FCC has extended beyond any authority Congress has given them, and I hope we will stand for our prerogative in Congress to make the laws and only have regulations come out when we delegate specifically to an agency to put out rules in a particular area, which has not happened in this case. I urge my colleagues to support this resolution.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, before I yield the floor back on our side, I have listened to the entirety of this debate. It seems to me it has been fairly clear that on one side the government regulates and messes things up, and on the other side things are going swimmingly.

I can’t help but pay attention to all those people out at TechNet, the AT&T people, Moody’s, Hamilton’s, and all these people who take a very dour view of government intervention and a very sensitive view as to whether that intervention is in fact stopping investment. The answer is usually it does. That is why I feel very happy that this was referred to by a number of major players in this field as a very “light touch” of regulation, which gave them a sense of where they were going to be, how far down they could look toward their future and therefore allow them to invest the money they wanted to invest.

That is not to say they would not have done it anyway. But there is nothing like encouraging capital investment in something as important as the Internet. I think the net neutrality legislation does that very well. I hope when we vote on it tomorrow, it will not pass.

Having said that, I yield back all time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. ROCKEFELLER. I suggest the presence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

3% WITHHOLDING REPEAL AND JOB CREATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 674, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 674) to amend the Internal Revenue Code of 1986 to provide for a 3% withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs, and for other purposes.

PENDING:
Working together with my colleague from Kentucky, Senator Paul, and Senator Portman of Ohio, we have put together a series of proposals and ideas that have been generated both within this body and outside of this body, and we believe, with the possible exception of a few of the least-sincere—there should be areas in this proposal that we and our colleagues on the other side of the aisle could come to agreement on. We wish to see this entire package. We think it is important that there is no doubt in our minds that when you look at the 9-percent approval rating Members of Congress have with the American people, they certainly want to see us do something constructive as well.

It got me to thinking why my colleague from Kentucky how he thinks we should have put this package together, what we should have included, and what haven’t we included. What is the situation in his home State as far as a need for this kind of legislation?

Before going to my friend from Kentucky, let me add that I talk to large and small businesses all over this country, and they all tell me the same thing. They have no certainty as to what the future holds for them, which then causes them not to invest or to create jobs. Overseas, they are sitting on $1 trillion. Here in the United States they are sitting on a $1.5 trillion and not investing because they do not know when the next regulatory act is going to come down. They do not know when the next regulation is going to be issued. They do not know when the next tax increase is going to occur. I saw on television the other day that the owner and founder of Home Depot, Kenneth Langone—and he also wrote a piece for the Wall Street Journal—said he could not open the first day today. He couldn’t start it today because of the environment that exists. Intended or not—and I know my colleagues on the other side of the aisle have the most honorable of intentions—the result of this legislation has been a climate which has restrained investment, which has then restrained and killed job creation and caused this economy to be mired in the doldrums. Obviously, that has had a terrible impact on every-day Americans.

Before my colleague comments, I first want to thank the Senator from Kentucky for the key role he has played in putting this package together, and I hope this is the beginning of our fight for passage of this legislation.

Mr. Paul. I hope this is the beginning of a conversation with the other side and with the President. I told the President that I would have the possibility of supporting the President if my colleagues on the other side of the aisle could come to agreement on. We have 14 million people out of work, with 2 million additional people out of work since this administration began. So we are serious about our Republican jobs plan, and there can be some areas of some common interest.

There currently is a supercommittee talking about some of these tax reform ideas. Our side is putting forth a message, we are putting forth a plan, and we are willing to work with the other side. The problem is, it is my understanding the other side has walked away from the table. The other side is unwilling to talk or to engage with us. We have talked about this plan. I don’t think we can’t come to Capitol Hill and talk to us. I have talked with the members of the supercommittee and have indicated we are willing to work with them.

We have some good ideas to create jobs, and somehow the other side has already agreed to. Lowering the corporate income tax. There are Members of the other party who understand we need to be competitive with the rest of the world. So lowering the overall rates, simplifying the code, and getting rid of some of these loopholes. These are things the President talks about as he campaigns. But if he were serious, he would come and talk to us. Instead, what I have heard at his campaign stops is Republicans are too stupid to understand his plan so he is going to break it up. Well, that may get laughs at his campaign rallies, but it isn’t getting anything done.

I think the American people need to know our colleagues on the other side want to create jobs, and we are willing to talk with the President and with the other side. I think we are willing to get things done, and I think we have important things in the bill that will do that. Mr. President, my friend from Kentucky and I can talk about many of the various provisions in this legislation. There are a lot of provisions that were based on input from outside and inside this body. Some of this, by the way, closely mirrors legislation which has already passed the House of Representatives as well.

We lead off with a requirement for a balanced budget amendment to the Constitution. I was here many years ago when President Reagan and his amendment failed by one vote. When you ask the American people if government, and the Congress, shouldn’t live under the same constraints they have, they are in total support of that. I have seen polls—and I wonder if my friend from Kentucky has—that show 80 to 90 percent of the American people support a balanced budget amendment to the Constitution when informed what it is. At the very least we ought to put up the rule in this body.

Mr. Paul. Yes. Routinely, decade after decade, polls show anywhere from 75 or 80 percent or more support a balanced budget amendment. We need it, because we have shown ourselves to be fiscally irresponsible. Through the years, we have had Gramm-Rudman-Hollings and we have had all different kinds of restraints, but we disobey our own rules. We say, oh, it is an emergency. But then suddenly all the routine spending we do becomes emergencies, and the debt gets bigger and bigger.

Those in the debt commission say the most predictable crisis in our history is the coming debt crisis in this country. They are seeing it in Europe. We need to be serious in our country and fix these problems before we get to a crisis situation. That is what our Republican jobs plan does. It addresses it—a balanced budget amendment, tax reform, and keep our colleagues on the other side of the aisle from having to keep hearing on new regulations that put us at a competitive disadvantage with the rest of the world.

Mr. McCain. I want to go back a second to the point that Senator Paul made in Kentucky. Congress cannot bind future Congresses. I was here at the time of Gramm-Rudman-Hollings, and Gramm-Rudman-Hollings was one of the most strict budgetary requirements ever passed by this body. It required automatic spending cuts in the event that budgets were exceeded and excess spending was, obviously, taking place. But one Congress cannot bind future Congresses. So over time—over a very short period of time—the restraints imposed by Gramm-Rudman-Hollings went into the mist and we went back to business as usual.

I will be very candid with my colleague. There are people who have legitimate concerns about a balanced budget amendment and what it would take to get there and the Draconian measures that may be entailed. But I ask, what is the alternative? What is the alternative? Mortgaging our children—mortgaging our grandchildren? I believe currently that stands at a $44,000 debt for every man, woman and child in America. So why don’t we in this body have a debate over a balanced budget amendment to the Constitution and find out exactly where people are? At the same time, we have learned over the years that Congress cannot bind future Congresses, and so that is the problem with enacting automatic spending cuts, or whatever spending cuts the other members of this body think are here. We cannot bind future Congresses, appropriately. So the only way to address this issue is by amending the Constitution of the United States, which I know the Senator from Kentucky and I do not view as a measure taken lightly. I have been opposed to most changes in the Constitution. I think our Founding Fathers got it pretty well right. But this is an issue that I think has to be addressed.

Mr. Paul. Those who say balancing the budget would be extreme. I think what is extreme is a $1.5 trillion deficit. We are en route now, at the rate we are spending money, to a decade within which the budget will be consumed by entitlements and interest. There will be nothing left for national defense or for anything else if we keep on the same spending pattern. So we do have to do something.

What we have shown so far is that fiscal restraint has been an utter failure. After Gramm-Rudman-Hollings we had pay as you go. That was broken 700 times in the first five years we were supposedly paying as
you go by simply saying it is an emergency. Every routine expenditure became an emergency and so we went around it. So that is a good context for the Republican jobs plan—that everything will be in the context of balancing the budget.

But then there are other important matters, such as tax reform. Historically, the one thing government can do to create jobs or to lessen unemployment is to lower the upper rate. Kennedy in 1969, and unemployment was cut in half. Reagan cut the top rate from 70 to 50 and unemployment was cut in half. And interestingly, as you cut the top rate, you didn't cut revenue. Revenue stayed at 18 percent of GDP through all the lowering of the top rate.

What lowering the top rate does is it unleashes economic growth. The other side has this vision they are going to hire more people in government and somehow fix unemployment. You can hire hundreds of thousands of people and you don't put a dent in it. To cure unemployment, or lessen unemployment, you need to have millions of people hired in government and somehow fix unemployment. I think that is the difference in the vision between our side and their side. Our vision is unleashing private sector, and theirs is to hire and their side. Our vision is unleashing competitive work—to get our economy moving.

Mr. PORTMAN. Absolutely. That is a fact that Americans are not only very unhappy because of the economic condition we find ourselves in but also because they perceive an inequity and an inequality in our economy today? In other words, they see financial institutions on Wall Street making record profits and paying record bonuses. They see large corporations that pay no income taxes—or sales taxes or whatever taxes they are still paying. It seems to me that tax reform would address these inequities.

I note that Senator PORTMAN from Ohio is here, and he knows this better than anybody, having been, in his previous incarnation, the head of the Office of Management and Budget. Over the years, we have carved out loophole after loophole that can only be done in the private sector. I think that is the difference in the vision between our side and their side. Our vision is unleashing the private sector, and theirs is to hire a few more people to dig ditches and fill them and hire more government workers.

Mr. MCCAIN. Isn't it a fact that Americans are taxed too much in America, yet at the same time we also find corporations paying no taxes?

Mr. PORTMAN. By bringing the rate down to 25 percent on a revenue-neutral basis, what we do is get rid of a lot of the preferences, the exclusions, the credits, the tax deductions that enable companies right now to pay little or no taxes. We think everybody should be paying taxes. We think everybody should be subject to a fair tax system. We think we should not have to spend billions a year in complying with a Tax Code that is so complex. So instead of hiring more tax lawyers, we want people to get out there and hire more Americans to do the work—productive work—to get our economy moving.

Tax reform is a way to give this economy a shot in the arm right now. It is one of many structural reforms that is in this legislation that the Senator from Kentucky and the Senator from Arizona have put together with me. It is very consistent with this idea that America’s best days are ahead of her, if we restructure some of these basic parts of our economy:

Tax reform, necessary: lowering health care costs, absolutely critical; allowing us to explore for energy on our shores and create jobs and economic opportunity; being sure we are reducing the regulations that strangulate small businesses. These are all structural reforms we can and should do. By the way, there is bipartisan support for every single one of those elements.

So I commend the Senator from Arizona for raising the interest for his passion for them, and the Senator from Kentucky. I hope the Senate will give us the opportunity to vote on this, and it should be a bipartisan vote because so many of these issues are issues that transcend partially, and in each case there are Democrats and Republicans who understand the need to move our economy forward by making these structural changes.

Mr. MCCAIN. For just a minute, I would like to discuss with the Senator from Kentucky and the Senator from Ohio that enhanced rescission or what used to be known as line item veto.

The Senator from Ohio once had the most famous—he was the wheat bumper—he was the wheat bumper, not here on Earth—of being the head of the Office of Management and Budget and saw these appropriations bills come over, and many of them were that thick. Going through line by line, we find these special interests, special deals we call pork barrel projects which have no justification, which were never debated, which were never discussed, which were never brought to the light of day except occasionally, and in each case it contributed enormously to our debt and deficit.

So he had the option of going to the President of the United States and saying: Veto the whole bill and send it back and it may be overridden or accept these pork-laden, big, thick appropriations bills.

Isn't that a dilemma we should not force the President of the United States to have, that kind of Hobson's choice?

Mr. PORTMAN. Absolutely. That is one of the elements of this jobs bill. It was particularly tough on defense bills because we have our national defense at stake and we have our soldiers and marines and sailors out there, and the bill comes to the President of the United States, and is he going to sign it? If he doesn’t sign it, there is a risk that the bill will be at least partially overridden; if not, as you say, be overturned. So there is a lot of pressure to sign it.

What happened, the President signed these pieces of legislation with the earmarks in them, and we have more spending than we were spending is not going to the priorities. It is not going to the national priorities.

So this legislation is simple. It says, back in the late 1980s, 1990s, Clinton signed a line-item veto bill. Constitutionally, it was questionable, and sure enough the Supreme Court overturned it. Now we have come back with another way to do this so-called enhanced
Mr. PORTMAN. Absolutely. Let me give an example of where we could come together on something simple, and again it is something the Senator from Arizona and the Senator from Kentucky have included in their legislation.

Everybody knows the Federal regulators are putting more and more pressure on small businesses all around the country. We hear it every time we go home. For example, I have been home at a plant tour where somebody hasn’t raised with me a Federal regulation that is causing them difficulty because it is increasing the cost of hiring somebody.

At a time of over 9 percent unemployment, we have to do everything we can to get this economy moving, and one is to lessen that regulatory burden and make sure it is smart.

So one of the pieces of the legislation we are working on is to go to the Federal agencies: Go through a cost-benefit analysis, including looking at what the impact is going to be on jobs. Who could be against that? That needs to be done not just in the so-called executive branch agencies but also in the independent agencies which are not subject to these current cost-benefit rules. It is more cost-benefit rules looking at jobs but also making sure everybody has to comply with it.

Then, when they come up with an idea for a regulation, make sure it is consistent with the policy of the elected representatives because too often we will see the regulators go off on their own and come up with ideas that they think might be good for the economy. That is one reason we have—according to some statistics now—as much of a cost on the economy from regulations as from taxes.

Finally, it says when you come up with something, it has to be the least burdensome alternative. If the EPA had done this, for instance, in some of the legislation that the Senator is concerned about, the Senator from Kentucky, they would not be able to come up with the most common sense because they would have to come up with a cost-effective way to meet the policies set out by the Congress. They don’t have to do that now. Who could be against that?

So these are specific items that are within this bigger project of getting America back on track, increasing our jobs, dealing with the fact that America’s competitiveness is at risk that are commonsense, bipartisan ideas every one should be able to agree with.

I again encourage the Senate to allow us to have a vote. Let’s encourage a full debate on both sides of the aisle. Let’s have a bipartisan vote on it. Let’s show people whom, after all, this business is for. Let’s come together as Republicans and Democrats and deal with the real problems facing our economy.

Mr. McCAIN. I see the Senator from Washington is here, and I don’t want to encroach on her time.

I just wanted to say we are going to spend a lot more time today on this issue and this proposal. The American people want change in Washington. They want us to address the concerns and problems they face, and we believe we have a great blueprint for moving forward in that direction. As my friends from Ohio and Kentucky have said, we are eager to sit down with our colleagues on the other side of the aisle and put together a bipartisan vote that can come together as Republicans and Democrats and deal with the real problems facing our economy.

Mr. PAUL. I think the overriding message—and I appreciate the comments from the Senator from Ohio—is that we have a jobs plan and we have our ideas. There is overlap in our ideas with some of the ideas from the other side.

The message is, we are willing to talk to the other side. We are willing to say these are some proposals, and let’s try to find areas of agreement.

We think it is more important than a campaign right now. We think it is more important, the joblessness and the economy, that we try to do something to help our economy and come together on something simple, and again it is something the Senator from Arizona and the Senator from Kentucky have included in their legislation.

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and I can tell you that veterans have never been a partisan issue. We have all made a promise to those who signed up to serve, and we all need to keep it. That is why I have been so pleased to work to help put this amendment together in a comprehensive and bipartisan fashion.

This amendment brings all ideas to the table, Democratic and Republican, Senate and House, those from the President and from Members of Congress, and it uses all those ideas to address some of the most daunting and immediate problems facing our Nation’s veterans—finding work.

On this Veterans Day, after almost 10 years of war, nearly 1 million American veterans will be unemployed. It is a crisis that faces nearly 13 million other Americans. But for our veterans, many of the barriers to employment are unique.

That is because those who have worn our Nation's uniform, and particularly for those veterans who spent the last decade being shuttled back and forth to war zones half a world away, the road home isn’t always smooth. The readjustment is often long, and the transition from the battlefield to the workplace is never easy.

Too often today our veterans are being left behind by their peers who didn’t make the same sacrifices for their Nation at a critical time in their lives. Too often they don’t realize the skills they possessed and their value in the workplace is real. Too often our veterans are not finding open doors to new opportunities in their communities.

But as those who know the character and experience of our veterans understand well, that shouldn’t be the case. Our veterans have the leadership ability, discipline, and technical skills to not only find work but to excel in the economy of the 21st century. That is why I began an effort to ease the transition from the battlefield to the working world. It is a bill that will allow our men and women in uniform to capitalize on their service while also making sure the American people capitalize on the investment we have made in them.

For the first time it requires broad job skills training for every service-member as they leave the military as part of the military's Transition Assistance Program. It requires service members to begin the Federal employment process prior to separation in order to facilitate a truly seamless transition from the military to jobs in our government, and it requires the Department of Labor to take a hard look at what military skills and training should be translatable into the civilian sector in order to make it simpler for our veterans to get the licenses and certifications they need.

All of this is a necessary step to put our veterans to work. Today they are being combined with the other great ideas in this comprehensive amendment that is now before the Senate, including an idea championed by my House counterpart, Chairman Miller, that will ease the employment struggle of our older veterans by providing them with additional education benefits so they can train for today’s high-demand jobs, and an idea that has been championed by President Obama, Senator Barcenas, and many others that provides a tax credit for employers who hire veterans.

With this amendment we are taking a huge step forward in rethinking the way we treat our men and women in uniform after they leave the military. For many of us, particularly those who grew up with the Vietnam war, we are also taking steps to avoid the mistakes of the past, mistakes that I believe we stand perilously close to repeating.

We must avoid the mistakes about every skyrocketing suicide statistics, substantial abuse problems, and even rising homelessness among the post-9/11 generation of veterans. While there are lots of factors that contribute to those challenges, failure to give our veterans the self-confidence, the financial security, and dignity that a job provides often plays a very crucial role.

On this Veterans Day we need to redouble our efforts to avoid the mistakes that have cost our veterans dearly and have weighed on the collective conscience of this Nation. We can do that agreeing to this amendment, but also by looking back at when we stepped up to meet the promises we made to our veterans.

I mentioned on the Senate floor many times that my father was a veteran of World War II. But what I do not always talk about is the fact that when he came home from war, he came home to opportunity—first at college and then to a job, a job that gave him pride, a job that helped him and my mother raise seven children who have gone on to support their own. This is the legacy of opportunity we have to live up to for our Nation’s veterans. The responsibility we have on our shoulders does not end on the battlefield. It does not end after the parades on Friday. In fact, it does not end.

I urge my colleagues to put aside our differences, to come together and meet the challenges of putting our Nation’s veterans to work.

I yield the floor.

The PRESIDING OFFICER (Mr. Merkley). The Senator from Wisconsin, Mr. JOHNSON of Wisconsin, I ask to be recognized for not more than 10 minutes.

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

Amendment No. 928

Mr. JOHNSON of Wisconsin. Mr. President, I rise to speak in support of the McCain amendment, which is Jobs Through Growth Act. I do not think there is any question that the No. 1 solvent to the dangerous hole in which we find ourselves in this country today is in economic growth. The fact is, we do find ourselves in a very deep financial hole. Within a day or two, or certainly within the next week, we will surpass the $15 trillion landmark in this country. That would be a problem, $15 trillion worth of debt, if our economy was $100 trillion large, but it is not. It is about $15 trillion large. So our debt-to-equity ratio has now reached 100 percent, which is a very dangerous metric.

In order to understand how that affects our economy I ask people to understand or think about how their own personal economic situation is affected if they are in debt, deep, deep into personal debt. The fact is, you are in debt over your head you simply cannot increase your consumption because any extra money you have, just beyond the basics, is spent servicing that debt.

The exact same thing happens with our Nation. We find ourselves in way too much debt. Unfortunately, there is no end in sight. The last 3
years we added $4 trillion to our Na-
tion’s debt, and the prospect for this
year is that we will add another $1 tril-
lon. During President Obama’s term
we will have added $5 trillion to our
Nation’s debt. This scares consumers,
and it scares business investors as well.
We all know that the government gets
into this much debt and spends so
much money that it does not have,
eventually it will have to take from all
of us—either in the form of inflation or
in the form of taxes.

We see in the press coming to grips
with the problem. I like to put things
into historical perspective as we talk
about supposedly cutting our budgets.
Ten years ago, in 2001, our Nation spent
$1.9 trillion. This year we spent $3.6
trillion. We doubled spending in just 10
years. The debate in which we are en-
gaged right now is whether, according
to President Obama’s budget, 10 years
in the future we will spend $5.7 trillion
or, as the House budget calls for, $4.7
trillion.

Let’s take a look at 10-year spending.
In the last 10 years we spent $28 tril-
lon. Again, the debate is whether in
the next 10 years we will spend $46 trillion
or, as President Obama budgeted, or
whether we would spend only $40 tril-
lon. I don’t care how we look at it, $40 or
$46 trillion is not a cut in comparison
to $28 trillion. Unfortunately, the
supercommittee that is charged with
finding $1.2 trillion worth of savings is
at an impasse, and it is at an impasse
because it looks like my colleagues on
the other side of the aisle have walked
out. I am afraid they simply do not want
a deal because President Obama is
already in reelection mode, and he
do not want a result so he can run
against a do-nothing Congress.

I am one Senator who came here will-
ing to work with anybody willing to
acknowledge the problem and who is
willing to engage with those on the oth-
side to seriously address the problem.
That is exactly what the six Members,
the Republicans on that committee,
were trying to do.

We all recognize the No. 1 solution to
our debt and deficit crisis is economic
growth. What is holding back growth?
What is holding back economic growth
until the unemployment rate
gets into this much debt and spends so
much money that it does not have,
eventually it will have to take from all
of us—either in the form of inflation or
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don’t think that is asking too much. I hope my colleagues don’t think that is too much either. I don’t think it is too much to ask Congress—both parties, without the politics, in a bipartisan effort—to honor our veterans by passing a veterans jobs bill the President can sign into law.

As we approach Veterans Day, as our last troops come home from Iraq, as our military presence around the world enters a post-Iraq era, we need to commit a nation to helping every one of our men and women in uniform, particularly in these hard economic times. This year, with the unemployment rate for veterans at almost 12 percent nationally, as it is in New Jersey, with nearly 1 million unemployed veterans nationwide, I would hope we can find bipartisan support for something we should all be able to agree on; that is, jobs for veterans. That is the VOW to Hire Veterans Act. Veterans cannot and should not have to wait for the help they deserve. No delays, no filibusters, no politics—just a bill for the President to sign and help for our Nation’s veterans now. To me, that is about fairness and it is about keeping our promise to our veterans.

It is simply not always done better for our veterans and their families, and every veteran deserves better. Our duty to them is not just remembering their service. It is not just saying “thank you” once or twice a year on Veterans Day or Memorial Day, but it better be able to look every veteran in the eye when he or she comes home from service and say: We meant what we said, and we will keep our promise. We must deliver on that promise. I certainly am. I come to this Chamber on behalf of every New Jerseyan to say to every man and woman who has served in uniform and to the more than 450,000 veterans in my home State of New Jersey that we will keep working for fairness for every veteran and their family. There will always be political obstacles in our way, but we will fight the good fight to keep our promise to you, as you have served us. Be assured that you have the respect and thanks of a grateful nation for the sacrifices you and your families have made. To me, that thanks is ultimately demonstrated not by what we say but by how we act.

May God bless our troops, and may this opportunity be an example of our willingness to come together on behalf of those who wear the uniform and serve the Nation and have the gratitude of a grateful country.

I yield the floor.

Mr. MCCAIN. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senator’s second-degree amendment is the pending question.

Mr. MCCAIN. That is the pending business before the Senate?

The PRESIDING OFFICER. It is the pending question.

Mr. MCCAIN. Is there any unanimous consent to postpone?

The PRESIDING OFFICER. There is not.

Mr. MCCAIN. Mr. President, I will continue to discuss the pending amendment to be considered, and I would yield such time, without yielding the floor, as the Senator from Tennessee may use.

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

The Senator from Tennessee.
does. Our plan phases out Fannie and Freddie over 10 years, but it does so in a way that allows for feedback from the markets. Gradually reducing the guarantee share of new mortgage-backed securities allows us to see the market reassess risk. We believe it is time empowered this organization to make market decisions and involve in the marketplace. I hope Republicans and Democrats will join us and try to make this bill better if they wish to do that, but certainly move us in a direction of doing something that is thoughtful and will move us along toward a private market in residential finance.

Thank you very much. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank my colleague from Tennessee. As Senator CORKER knows, we had an amendment on the Dodd-Frank bill to do away with Fannie and Freddie over a 5-year period. He obviously knows that the Senator from Tennessee has done a lot of homework and in-depth examination of this issue. But I think the Senator from Tennessee would agree that what went on with Fannie and Freddie is one of the worst crimes inflicted on the American people during the 1990s and well into 2000 and which was a major contributor to the housing collapse, which then triggered the financial collapse which we still haven’t recovered from. I wonder if the Senator from Tennessee would agree also.

Mr. CORKER. Well, I don’t think there is any question. I know the Senator from Arizona has been a reformer all of his life. What we find in this body is we end up having a corporate welfare system built around many of the things we do here. As much as I hate to say it, both sides of the aisle through the years have been complicit in this. I think there is a whole industry as long as we are hearing that Fannie and Freddie are worth less than their mortgage guarantee share of new mortgage-backed securities allows us to see the market reassess risk. We believe it is time empowered this organization to make market decisions and involve in the marketplace. I hope Republicans and Democrats will join us and try to make this bill better if they wish to do that, but certainly move us in a direction of doing something that is thoughtful and will move us along toward a private market in residential finance.

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Nearly half the homes in my home State of Arizona are under water. They are overvalued, and this needs to be. I know the Americans the Senator from Arizona so well represents and cares so deeply about these transgressions on our citizens—I know they will support this if we will allow this type of legislation to come to the floor and be voted on.

Mr. MCCAIN. I think the Senator from Tennessee—and I want to get back to the jobs bill—but I think the Senator from Tennessee would agree, as long as Fannie and Freddie are in existence and have this opportunity to behave in a manner that they did in the past, we risk another housing bubble followed by a housing collapse. That is why I think the Senator’s proposal is something that deserves our attention and that of the country, so we don’t have a repetition of the pain that the people in Tennessee and Arizona are experiencing today.

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Mr. CORKER. It is interesting, when we think about how much the bubble has taken on tough issues, and maybe I am responding longer than he wants me to. This is the least of those issues where I know that many people back home—candidly, there is a whole industry that is built around this, and I know a lot of times people don’t want to take on something, don’t want to change something like that because they know it is tough back home. I am glad the Senator from Arizona has championed this issue the way he has. As he mentioned, we have done a lot of work on it also. I think this is a sensible bill that will allow our country to get back where it needs to be. I know the Americans the Senator from Arizona so well represents and cares so deeply about these transgressions on our citizens—I know they will support this if we will allow this type of legislation to come to the floor and be voted on.

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There is no gauge there to slow the process when the bubble is becoming overheated. That is one of the huge contributing factors that I know the Senator has talked about a great deal to what we saw.

Can it be said that the reason the Senator is offering this jobs bill today is because we have been through such a financial crisis and it has brought our country to its knees. On top of that, we have had a tremendous amount of regulation that, in the slowdown, doesn't even apply. But the fact is, I would say to the Senator from Arizona, he might not be offering this piece of legislation that he has done such a great job leading on today had it not been for this bubble that was created. He might not even be here today. We might be talking about a totally different subject on the Senate floor.

I thank the Senator for his leadership and for his time, and I yield the floor.

Mr. MCCAIN. I thank the Senator from Tennessee, and he also has been one who is more than willing to take on the tough challenges and issues we face, and I commend him to a bipartisan approach that I think we all need. I thank the Senator from Tennessee.

(Mrs. HAGAN assumed the chair.)

Mr. MCCAIN. Madam President, I wish to inform my colleagues that I have a lot to say about this jobs bill. There is no unanimous consent agreement. I believe this is of transcendent importance. I see the Senator from Minnesota here. I apologize ahead of time, and I will try until the new morning to address this issue. This is a compelling issue for this Nation. I intend to talk for a fairly extended period of time.

For the benefit of my colleagues, this amendment is identical to the Jobs Through Growth Act which was introduced on October 17. I am pleased about joining most of my Republican colleagues—and I wish to highlight the hard work done by my colleagues Senators PORTMAN in putting this legislation together. In fact, I wish to thank all of the Senators, and some of them bipartisan, who put this jobs bill together. It requires a lot of discussion. There is an area of transcendent importance.

I don't have to tell any American how difficult our economic times are, how slow the recovery has been, if at all, the risk of further recession, and it is time to change direction. I would point out to my colleagues that for 2 years the other party had control of this body and had control of the House of Representatives—for 2 years, until the 2010 election. During that period, if you looked at a stimulus bill, we passed health care reform, we passed other bigger spending bills, all on the promise that the American economy would recover. It didn't. In fact, by any measurement, things are far worse than they were in January of 2009.

As the President has a jobs bill and the majority leader has put forward legislation as part of that jobs bill, we Republicans have a jobs bill. I know my friends on the other side of the Capitol also agree wholeheartedly with the majority of what we are proposing today. The difference between our plan and the President's bill is that they want to create jobs through government spending, through spending and borrowing and taxing. That doesn't work. What they have proposed amounts to nothing more than another stimulus bill, and I'm not sure how it's going to add to our debt and our deficit, and we lost jobs.

Today, my colleagues and I are putting forth a plan to create jobs through sound policies. Economic growth is a fundamental part of long-term, sustainable job creation, and that is what our plan offers the American people.

I wish to quote from an article in Forbes magazine by Peter Ferrara entitled "The GOP Jobs Plan vs. Obama's." Senate Republicans have taken the lead in proposing a jobs plan alternative to President Obama's in the form of the Jobs Through Growth Act, led by Senators John McCain, Arizona, and Rob Portman of Ohio. Republicans are remarkably unified behind these economic and jobs growth ideas, with House Republicans having already long supported the even passed several components of that plan.

The 28 components of their plan add up to exciting prospects for finally sparking the long overdue economic recovery, based on proven economic logic, and proven experience concerning what works in the real world. Most important are the proposals for both corporate and individual tax reform, closing loopholes in return for reducing the rates.

Lower marginal tax rates are the key to providing the necessary incentives for economic growth and prosperity. The marginal tax rate is the rate on the next dollar to be earned from any investment, enterprise, or productive activity. The lower the rate, the higher it determines how much the producer is allowed to keep out of the next unit of what he or she produces.

At a 50% marginal tax rate, the producer can keep only half of any increased production. If that rate is reduced to 25 per cent, the producer can keep 50 percent of the new money, all the way up to three fourths. That powerfully increases the incentives for more productive activity, such as saving, investing, starting new businesses, expanding existing businesses, creating jobs, entrepreneurship, and work.

The Republican Jobs Plan involves closing the special loopholes that enable Obama corporate cronies such as General Electric to get away with paying no taxes on $14 billion in corporate profits, in return for a reduction in the international competitiveness levels. The U.S. suffers virtually the highest corporate tax rate in the industrialized world, nearly 40 percent, with a 35 percent federal rate, and another nearly 5 percent in state corporate rates on average.

Even Communist China enjoys a 25% corporate rate. In the supposedly most socialistic European countries, the average is even lower than that. In former socialists Canada, the federal corporate rate is 16.5%, going down to 15% next year. The GOP plan cuts the federal 35% rate to 25%, which is the minimum reduction to restore international competitiveness for American companies. Note that closing loopholes may well raise the average corporate rate, on which Democrats and liberals have focused, but it is the marginal tax rate that drives the economy.

The GOP Jobs Plan also includes reducing the top personal, individual income tax rate from 39.6% to 25% and closing corporate loopholes. The Ryan budget already passed by the House would apply that rate to family incomes over $300,000, with a 10% rate applied to incomes below. Reductions would powerfully boost incentives as well, as proven by the dramatic response to the Reagan tax rate reductions in the 1980s. . . .

Another critical area of overregulation is energy. The Republican program would require the Interior Department to move forward quicker to free the development of drilling on public lands offshore. It also eliminates EPA foot dragging on air permits necessary for offshore drilling, and requires EPA authority in any area that burdensome greenhouse gas regulation altogether. This deregulation would ensure a steady supply of low cost energy, essential to booming economic growth.

Another critical area of overregulation is the REINS (Regulations from the Executive In Need of Scrutiny) Act, which would require Congressional approval of all major federal regulations imposing more than $100 million a year in costs. This will reestablish the original Congressional check on the executive, and democratic accountability for regulatory burdens, so politicians can no longer hide behind faceless bureaucrats to evade public scrutiny for regulatory drains on our freedom and prosperity. This would provide an important solution to excessive regulatory burdens and costs across the economy. The Tea Party will favor the plan's plank for a Balanced Budget Amendment to the Constitution, which would include necessary limits on both taxing and spending limits. Also included is a statutory line item veto, giving the President more power to cut spending. Reduced government spending, debt, and debt interest would mean a drain on resources in the private economy needed to create jobs and growth.

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Finally, the plan even includes a provision for free trade, giving the President renewed fast track authority to negotiate further trade agreements eliminating foreign trade barriers and expanding new markets for American goods. For nearly 3 years, President Obama failed to even send to Congress free trade agreements President Bush had negotiated with Colombia and Panama. But that didn’t stop him from political rhetoric blaming Congress for failing to pass them, though Congress did approve them with votes of Obama finally submitting them. That abusive rhetorical style veers into dishonorable.

The GOP program is an exciting, comprehensive strategy for creating another generation-long economic boom. It includes all the components of Reaganesque under Congressional control—lower tax rates, deregulation, and restrained spending. Besides the economic logic of each of these components discussed above, the experience with Reaganesque proves the plan will work within a year or so of adoption to get the economy booming again.

After Reaganesque was adopted in 1981, the economy was a 25-year economic boom in late 1982, what Art Laffer and Steve Moore have rightly called the greatest period of wealth creation in the history of the planet. New jobs were ranked in the first 7 years alone, even while an historic inflation was tamed. American economic growth during the 80s was the equivalent of the United States largest economic growth in the world, West Germany, to the American economy.

By contrast, Obama’s Jobs Plan is recycled, bad news. Keynesian economics already tried and failed throughout the Obama Administration, and all around the world for decades before wherever it has been tried. It is about 100% of the jobs by the year 2009 stimulus plan proven to work. Then they can insist he try this plan, and it is a fairly long one, almost three years, to the end of the second year of a booming economic recovery. In sharp contrast to Reaganesque, such Keynesian Obamanomics has already failed miserably to generate a timely recovery coming out of the recession of the last American economy. Before this last recession, since the Great Depression, recessions in America have lasted an average of 10 months, with the longest being 27 months. But here we are 46 months after the last recession started, and still no real economic recovery, with unemployment still at [at] 9%, the longest unemployment that high since the Great Depression. Moreover, it cannot be said this is because the recession was so bad, as the experience in America during the Great Depression was the stronger the recovery. Based on these historical precedents, we should be nearing the end of the second year of a booming economic recovery now. In this crisis, for Obama to now just advocate more of the same, with only new, warmed over rhetoric, is a complete abdication of leadership. Moreover, at this point, outdated economists still peddling hoary Keynesian failacies should be subject to civil liability for fraud.

As I explain in my new publication just out this week by Princeton, “Obama and the Crash of 2013,” more likely than recovery is a renewed double dip recession in 2013, with all the tax rates increase, regulatory burdens building to a crescendo, rising interest rates by then, etc, resulting from Obamanomics. Congressional Republicans should just tell Obama thanks, but no thanks, on his Jobs Plan, and pass their own plan proven to work. Then they can insist he explain to the public why he stands in the way.

It is a very interesting article there in Forbes, and it is a fairly long one, but I think it puts in adequately the argument for adoption of this legislation, but it also points out one of the results.

I would point out, in Investors Business Daily, an editorial entitled “Better in Rwanda.” It says:

The U.S. has slipped again in world rankings that assess the ease of starting a new business. If we're to bring down our stubborn 8.9% unemployment rate, this trend has to be reversed.

According to the World Bank’s “Doing Business 2012” report, America is 13th among 183 countries in the “Ease of Doing Business” category. In the 2011 report, the U.S. ranked 11th. The year before, it was No. 8.

In 2009, the U.S. was ranked No. 6. It was fourth in 2008 and third in 2007. These are not Republican documents. This is not a Republican assessment. This is the assessment according to the World Bank: that doing business in the United States of America has gone from the third best country to do business in, in 2007, to 13th in 2012.

This is amply and adequate proof that we have borrowed too much, we have spent too much, and so many regulations that we have people such as Mr. Langone, the founder of Home Depot—who I would quote from in a minute—who says that today he could not start Home Depot all over again. And it’s small businesses—which employ more than half of the domestic nongovernment workforce—that generate the bulk of new employment opportunities.

For this reason:

Our own research shows that small businesses create more than 80% of the new jobs in this country. This isn’t some fantasy we’ve cooked up. It’s been confirmed in the New York Times, Lohr, who wrote in September that it’s an “irrefutable conclusion that small businesses are this country’s job creators. Two-thirds of all new jobs are created by companies with fewer than 500 employees.” Lohr wrote, “which is the government’s definition of a small business.”

But job creation is more than a function of size. Lohr cites a National Bureau of Economic Research report that says the age of a business is the biggest factor. “Start-ups,” says John C. Haltiwanger, a coauthor of the study and an economist at the University of Maryland, “are where the job creation really actually occurs.

Yet it’s the small and new businesses that are being choked by government policy. The 2012 tax rate on top income is held more than a year. Lohr wrote, directly impacts angel investors’ role in providing seed capital for startups. This is a rate that the administration wants to raise to 20% to 25% on households earning more than $250,000 a year.

That’s just a single instance of poor public policy. There are many more in the 16,000 pages of federal regulations and in the web of state and local rules that squeeze small businesses. We will not get jobs from people who simply cannot hire. Until this burden is lifted, America’s jobs problem is not going to get any better.

Quite an indictment that the United States of America, the beacon of liberty and hope and freedom, an example to all the world, has gone from the third best place to do business, to start a business in the world, now to No. 13 in just 5 short years.

So what is the result? I would point out to my colleagues that a person such as Mr. Langone, whom I have watched on television on several occasions, certainly an outspoken individual to say the least, says he could not start his business again under the present environment.

I quote from a Wall Street Journal article, October 15, 2010, entitled, “Stop
Bashing Business, Mr. President,” by Ken Langone.

The subtitle is, “If we tried to start The Home Depot today, it’s a stone cold certainty that it would never have gotten off the ground.” I quote from his article.

If we tried to start Home Depot today, under the kind of onerous regulatory controls that you have advocated—

Mr. Langone is writing to the President in this—

If we tried to start Home Depot today, under the kind of onerous regulatory controls that you have advocated, it’s a stone cold certainty that our business would never get off the ground, much less thrive.

It is quite an indictment. He goes on to say:

Rules against providing stock options would have prevented us from incentivizing worthy employees in the start-up phase—never mind the incredibly high cost of regulatory compliance overall and mandatory health insurance. Still worse are the ever-rampant trial lawyers.

He goes on to say:

I stand behind no one in my enthusiasm and dedication to improving our society and especially our health care. It is worth adding that it makes little sense to send Treasury checks to the people in the form of Social Security. That includes you, me and scores of members of Congress. Why not cut through that red tape, apply a basic means test to that program to make sure that money actually reduces federal national spending and isn’t simply shifted elsewhere.

So it is a very interesting article. He says:

A little more than 30 years ago, Bernie Marcus, Arthur Blank, Pat Farrah and I got together and founded The Home Depot. Our dream was to create a new kind of home improvement center catering to do-it-yourselfers. The concept was to have a wide assortment, a high level of service, and the lowest pricing possible. We opened the front door in 1979, also a time of severe economic slowdown. Yet today, Home Depot is staffed by more than 325,000 dedicated, well-trained and highly motivated people offering outstanding service and knowledge to millions of consumers.

Then he goes on to say:

If we tried to start Home Depot today, under the kind of onerous regulatory controls that you have advocated, it’s a stone cold certainty that our business would never get off the ground, much less thrive.

A man by the name of Jim McNerney is the CEO of Boeing Company. He writes: “What Business Wants From Washington.” Again, I quote from October 29, 2011. Mr. McNerney says:

America works best when American business and government complement one another: Business plays the vital role in economic growth and job creation, while government oversees the environment in which businesses can innovate and compete. This approach fueled prosperity for generations and produced the largest and most powerful economy. We seem far adrift of that ideal today. The regulatory climate is a perfect example. A tsunami of new rules and regulations among the alphabet soup of federal agencies is paralyzing investment and increasing by tens of billions of dollars the compliance costs for small and large businesses.

No one wants to discard truly meaningful public safety or environmental regulations.

But what we face is a jobs crisis and regulators charged with protecting the interests of the people are making worse the problem that is hurting them most. Regulatory relief in the energy sector alone could create up to two million new jobs and we won’t have to borrow a penny to pay for it.

He goes on to talk about the super-committee. He says the White House and Congress are on that momentum and “enact comprehensive pro-growth tax reform that benefits everyone; proceed with regulatory reform; and reform and restructure existing entitlement programs.”

If Washington can find the ability to mix democracy and effective governing, American business will once again unleash America’s economic potential.

So Mr. McNerney, in his article, reflects the views of everybody I talk to, small businesses and large. They want tax relief. They want regulatory relief. In fact, what they want more than anything else is some kind of certainty about the economic future and the tax environment which they say will lay the foundation on which they will have to compete. Will there be increasing regulatory burden? Will there be a raise in taxes, as is facing us in 2013? Can we have a tax code they can understand and comprehend that is fair to one and not to the other?

Can the billions in savings accounts and the money they have kept in reserve and invest and hire with some confidence that there will be a return on that investment, that they will succeed for themselves and their children?

That is what this jobs bill is all about. That is what we are trying to get done. This is an attempt to look at the problems America faces today, which, by the way, do spill over into our national security problems, as the former Chairman of the Joint Chiefs of staff pointed out.

So it affects all of America. It hurts us in so many ways. Yet we sit here, and apparently the select committee, the super-committee, is called is at some kind of gridlock. We sit here today with one amendment here, one amendment here, back and forth, and then run right out to the media and attack each other for being uncooperative and why are we not more congenial and why are we not willing to compromise?

Well, I will plead guilty for perhaps not being willing to compromise on some issues because some issues are a matter of principle. The second compromise principle, I have found out.

But we do come forth with proposals and try and find those on which we can agree. I do not know why we do not agree on a balanced budget amendment to the Constitution. Every State, every mayor, every city councilman, every county supervisor, every one of them is faced with the first problem of a balanced budget.

Why should we exempt ourselves? Why can’t we go together and work out the details of creating a balanced budget amendment to the Constitution? The overwhelming majority of Americans would have a sigh of relief if we ever did that because then they would know we would be more careful stewards of their tax dollars. It seems to me we could move forward with that.

Enhanced rescission authority. I believe the President of the United States should have enhanced rescission authority, which we used to know of as the old line-item veto, taking those lines in appropriations bills he objects to and vetoing them—and I will not go through the complexities of how it is done—but have them taken out, with certain restrictions as to how many times he could do it. Then, like every Governor—not every Governor but most Governors in America have—to line-item veto, without having to veto the entire appropriations bill, sometimes maybe even causing damage to our ability to govern.

I am well aware if we voted for an enhanced rescission by the Congress of the United States, the President, the President would probably line-item veto some programs that I would object to him doing so. I am willing—more than willing—to take that pain as opposed to today where we could be forced to have to pay for the bills which in many cases people have not read or truly understand.

Tax reform. Every place I go to people talk to me about the need for tax reform. I have yet to meet an American who understands completely the Tax Code. I have yet to meet an American who believes our Tax Code is fair. I have yet to meet an American who says: If you would just give me three tax brackets, a lower number of deductions, and then I could fill out my tax return on a post card or in the case of some of the countries—the Baltic countries that used to be under the Soviet Union—on my computer. Then you would have to do a lot of work to convince a country of great sympathies, you would see less of a need for the IRS, and you would see Americans more than willing to pay their fair share if they believed the system was fair.

It is not fair when major corporations and individuals pay no taxes because they have bright lawyers, and they take advantage of all of the loopholes and deductions they have been able to get put into the Tax Code over the years with the help of very powerful lobbyists in this town.

Repatriation and territorial reform. The Presiding Officer, the Senator from North Carolina, and I have proposed a pretty simple proposal; that is, the trillion dollars sitting overseas because they will not bring it back because of the tax situation; that we could bring that money home, and we could provide a permanent incentive with that for repatriating those foreign earnings.

I say to my friend from North Carolina, I have been kind of astonished at some of the resistance to this where people say it would not do any good. Help me out. How could it not do any good to bring $1.4 trillion back to the United States of America? Do we really believe that would just go in peoples’ wallets and purses? Of course not.
The Senator from North Carolina and I have talked to too many people, corporation executives, who have said: Yes, I will not only create jobs and invest that money, but I will give you a plan. I will give a plan that we will implement with that money—that IBM or Boeing or any of the big corporations that have this money parked overseas.

They are enthusiastic about it. Yet, unbelievably, there are people who argue that it would have no effect whatsoever on our economy. It is hard to understand.

Now we obviously get into ObamaCare. I noticed that the latest polling showed, I believe, that some 54 percent of the American people want the health care law repealed. Thirty-some percent still support it. The fact is that over time, as Americans learn more and more about the health care law we passed, they have become more and more opposed to it. They are angry because the whole purpose of the health care law was to provide all Americans with health care that is affordable but also to bend the curve of the inflation of health care in America because we all know the present inflation of health care is unsustainable. It is unrealistic to think what has been the result since the passage? Inflation of health care continues to go up; the cost of health care, whether it be to the men and women serving or average citizens, continues to go up, and it has to stop. I want you to look at what has happened in Texas today, they passed medical malpractice reform. In Texas today, they passed medical malpractice reform, and it seems to work, and most people are happy with it.

The Dodd-Frank bill—it still is stunning to me that we passed this regulatory reform bill; they called it a financial takeover that the Dodd-Frank bill is commonly known as—the whole purpose of it was that we would have legislation that would ensure that never again—where any institution is too big to fail because the taxpayers never again should have to bail out any financial institution. Is there anybody who believes that these huge institutions on Wall Street haven’t grown bigger, that they are not bigger to fail than they used to be? The fact is that they are. What did we get? We got a whole bunch of regulations and different bureaucracies, some of them less accountable than others, and obviously a damper on some of the financial activity.

We need to make sure no financial institution is too big to fail. We need to assure the American people that never again will they suffer the way they have during this period of time because of the malfeasance of other. Unfortunately, the Dodd-Frank bill did not achieve that goal.

We need to have a moratorium on regulations. Senator JOHNSON of Wisconsin has a bill that prohibits any Federal agency from issuing new regulations until the unemployment rate is equal to or less than 7.7 percent. Senators SNOWE and COBURN have introduced legislation that is part of this Freedom from Restrictive Excessive Executive Demands and Onerous Mandates Act, which strengthens and streamlines the regulatory act by requiring regulators to include “indirect economic impacts” in small business analyses, during the review and sunset of existing rules, and expanding business review panels as a requirement for all Federal agencies instead of just the Environmental Protection Agency and the Occupational Safety and Health Administration.

I notice my colleague, Dr. BARRASSO, from Wyoming on the floor, who knows more about programs in the health care reform act. I will try to be polite and refer to it today as the health care reform act.

I ask unanimous consent to engage in a colloquy with the Senator from Wyoming.

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

Mr. MCCAIN. Does Senator BARRASSO believe or could he tell us, perhaps, the effects on the cost of health care since passage of this legislation and perhaps what we need to do to really fix health care in America, which we all agree needs to be fixed?

Mr. BARRASSO. I agree with my colleague from Arizona. I thank him for his leadership and congratulate him for the piece of legislation that is currently on the floor. I am here to speak in support of it because I want to get small businesses hiring again and get people back to work.

We need to find ways to make it easier and cheaper for the private sector to create jobs. This health care law my colleague has asked me about is one thing the President promised, saying: If you pass it, health insurance for families will go down—he said about $2,500 per family per year. Instead, we have seen—in response to the Senator from Arizona—and reforming the small business and health insurance rates go up. Across the board, people agree they have gone higher and faster than if the law had never been signed.

I think it was interesting and telling yesterday that the voters of Ohio went to the polls and voted overwhelmingly—almost 2 to 1—to say they don’t want to be forced to participate in the President’s so-called health care law. What people in Ohio and people in my State and in all of the States around the country are saying for—and this is my goal—is to provide people with the care they want from the doctor they want—the care they need from the doctor they want at a cost they can afford.

There are things we need to do, but to put these additional expenses and mandates on the small businesses of this country, the job creators, just makes it harder and more expensive for those small businesses to hire more people. At a time in this Nation when we have 14 million Americans out of work and either unemployed, we need to take positive steps to help them get back to work. I view this health care law and the expenses as a heavy, wet blanket on small businesses that are trying to hire people. We know of small businesses around the country that know that the penalties are significant when they hire that 50th employee. We have businesses that could grow, but they are not going to hire that extra person because of the significant expenses to the business. They need some certainty. They are getting so much uncertainty out of Washington with rules, regulations, redtape, the expense of the health care law, and the threats that keep coming of increased taxes. Small businesses and businesses are just not hiring.

That is why I am here to commend and compliment my colleague from Arizona for bringing forth to the American people a positive proposal to put people back to work.

Mr. MCCAIN. I ask the Senator this question because of the additional costs not included in the health care reform act, which is the issue of medical malpractice, which the Senator, Dr. BARRASSO, has had a lot of personal experience with. The other is this—which I think is symptomatic of really the way we cobbled this whole thing together, which is that we have now found a provision in the bill that cannot be and will not be enforced, the so-called CLASS Act.

Mr. BARRASSO. Both of those are areas where there can be significant savings.

Folks have said that if they do this sort of legislative approach to remove the resulting abuses to the Federal budget would be about $50 billion over the budgeting timeframe—$50 billion. Any physician, nurse, practitioner, or physician assistant would say the savings would even be greater because of the additional costs not included in the so-called defensive medicine that is practiced in an effort to protect hospitals, physicians, health care providers from the possibility of a lawsuit. They do a lot of extra diagnostic studies—x rays, CAT scans, MRIs—to not miss something, which is very unlikely, but they want to protect themselves from a suit. I think the savings would be even greater, but even the government accountants say it would save $50 billion.

The other is the so-called CLASS Act—something one of my Democratic colleagues said was comparable to a Ponzi scheme that even Bernie Madoff would be proud of. It was an accounting gimmick, a bookkeeping device used during debate and passage of the so-called health care law. It was aimed at trying to bring money in in the first 5 years of an accounting scheme where they would then not have to pay for any services and to start paying for services about the sixth year, and then the expenses would go up and up. What they have now realized and what we realized on this side of the aisle initially, right away, and pointed out on the floor, is that this could not work long term.

In an effort to try to use this scheme to say the health care law would pay
for itself, they forced this through, crammed it through, as they did with the rest of the health care law. Now we find out that even the administration says this cannot work, it is not going to work. OK, just repeal that part of the law. Oh, they sure don’t want to do that. They would admit it was a scheme from the beginning.

Mr. MCCAIN. Would it not also disturb the predictions as far as the fiscal impact of the CLASS Act as well?

Mr. BARRASSO. It would. It would undermine the argument of the President, who says this is going to pay for itself, when, in fact, it is not.

It is interesting, if you ask people watching at home or when you go to townhall meetings, do you think under this health care law your health care will be better or worse, they will say worse. Very few think it will be improved under this law the President forced through. And then if you ask the same people, a cross-section of people in our States, if they think the cost of their care will go down, as the President promised, or go up, they all say it is going to go up. So they are going to have to pay more, get less, and be unhappy with it, which is why I think that Ohio two-thirds went to the voters who turned out—and the margin was over a 1 million voters difference between those for and against. They overwhelmingly voted to say: We don’t want to have to live under the Obama health care law; we want to be able to opt out of that, which is all small businesses want to do. They don’t want to have to deal with these expensive bandaids. Let’s work together and within our States and work with other small businesses, but we don’t want to live under these very expensive Washington mandates, which makes it that much harder for us to hire people.

Mr. MCCAIN. Can we return just for a minute to malpractice reform because many people, when you talk about that, believe there has to be appropriate compensation when malpractice occurs. We all know malpractice occurs, so we don’t want the innocent victims of medical malpractice—however it occurs in the health care scenario—to not be able to get just compensation in the case of malpractice on the part of the caregiver.

Mr. BARRASSO. That is exactly right, I agree. Studies have shown that in the system we live under today, less than one-third of the money actually goes to people who are deserving and ought to be receiving that money, and the other two-thirds goes to the system lawyers who come in and expect windfall fees that were sealed from public view.

There are ways to do a better job of that with significant savings in the process—that is, that sure people are appropriately compensated if an injury occurs but at the same time getting savings out of a system which is overwrought with money going to the wrong place and which also results in so many unnecessary tests being done in efforts of doctors and nurses and hospitals to protect themselves.

Mr. MCCAIN. I thank the Senator. I appreciate his unique expertise in the health care field and the role that he’s still transcendent in this country. I thank him for his enormous contributions. I want to continue with some of this legislation.

Mr. BARRASSO. The Unfunded Mandates Accountability Act, which was originally an act of Senator PORTMAN’s, requires agencies specifically to address the potential effect of new regulations on job creation and to consider market-based and non-governmental alternatives to regulation, broadens the scope of the Unfunded Mandates Reform Act to include rules issued by independent agencies and rules that impose direct or indirect economic costs of $100 million or more requires agencies to adopt the most cost-effective regulatory options and achieves the goal of the statute authorizing the rule and creates a meaningful right to judicial review of an agency’s compliance with the law. If there is anything that has grown out of this administration, this is government regulations. First, we had a trickle, but now it is a flood, of government regulations, which then impose additional costs, which then take money away from job creation and, in turn, make it harder and worse. Very few think it will be improved.

Section 8 of the Jobs Through Growth Act is the Employment Protection Act, introduced by Senator TOOMEY. It requires the Equal Access to Justice Act by disallowing the reimbursement of attorneys’ fees for individuals that repeatedly sue the Federal Government. The bill requires that all reimbursement for individuals, small businesses, veterans, and others who must fight in court against wrongdoing government action by eliminating taxpayer-funded reimbursement of attorneys’ fees for wealthy special interest groups. The legislation helps eliminate repeated procedural lawsuits that delay permitting exploration and land management.

I want to continue with some of this legislation.

Mr. BARRASSO. Madam President, I would like to comment. Section 8 of this Jobs Through Growth Act is the Government Litigation Savings Act. This was something introduced in the House by CYNTHIA LUMMIS, a Member of Congress from Wyoming, and myself in the Senate. This legislation will return the Equal Access to Justice Act—or what I refer to as EAJA—to back to its original purpose.

The small business entity or individual citizen should not have their individual liberty overturned by Washington. EAJA was meant to provide people with limited financial resources—veterans, Social Security claimants, small business owners—the ability to defend themselves against harmful government actions. That is how it was intended to be used. It allows individuals to sue the Federal Government, to recover part of their attorneys’ fees and the costs.

Mr. MCCAIN. I thank my friend. Included in this package is the Employment Protection Act, introduced by Senator Toomey. It requires the EPA to analyze the impact on unemployment levels and economic activity before issuing any regulation, policy statement, guidance document, endangerment finding or denying any permit. Each such action shall also require the inclusion of a description of estimated job losses and decreased economic activity due to the denial of a permit, including...
any permit denied under the Federal Water Pollution Control Act.

Senator JOHANNS has contributed the Farm Dust Regulation Prevention Act, which prevents the EPA from regulating dust in rural America while still maintaining protections to public health under the Clean Air Act.

The National Labor Relations Board reform was introduced by Senator GRAHAM of South Carolina. From backdoor card and targeted jobs in South Carolina, the out-of-control National Labor Relations Board is paying back union officials at the expense of worker rights and jobs. To create more jobs, legislation prohibiting the NLRB from stopping new plants and legislation to prevent coercive, quick-snap union elections should be passed.

I am sure my colleagues are very well aware of the unprecedented and incredible action by the NLRB that basically proves of prominent aircraft manufacturing company from locating in the State of South Carolina, where it is a right-to-work State—an unbelievable overreach by a Federal bureaucracy— which still staggered the imagination, but it also shows that elections have consequences.

There is also the Government Neutrality and Contracting Act. It repeals the President’s order requiring government contracts and federal construction projects to only use union labor. This would reduce costs of Federal jobs projects by as much as 18 percent. That was Senator VITTER’s contribution.

Senator SHELBY has introduced the Financial Regulatory Responsibility Act, which requires financial regulators to conduct consistent economic analysis on every new rule they propose, provide clear justification for the rules, and determine the economic impacts of regulatory burdens, the Energy Tax Prevention Act, which prohibits the EPA from using the Clean Air Act to regulate greenhouse gases.

With so many of these pieces of legislation I am talking about, a lot of Americans might say: Don’t we do that already? If we don’t, we don’t.

Senator ROBERTS has the Regulatory Responsibility for our Economy Act, which codifies and strengthens President Obama’s January 18 Executive order that directs agencies within to review, modify, streamline, expand or repeal those significant regulatory actions that are duplicative, unnecessary, overly burdensome or would have significant economic impacts on Americans.

Congressman Gingns, over on the House side, has the Reducing Regulatory Burdens Act, which eliminates a new duplicate EPA regulation that will cost millions of dollars to implement without additional environmental protection.

On domestic job energy promotion we have, from Senator VITTER, the Domestic Jobs, Domestic Energy, and Deficit Reduction Act that would require the Department of the Interior to move forward with offshore energy exploration and create a timeframe for environmental and judicial review.

Senator MURKOWSKI has included the Jobs and Energy Permitting Act, which eliminates the confusion and uncertainty surrounding the EPA’s decision-making process for air permits, which is delaying energy exploration in the Alaska and outer continental shelf. It will create over 50,000 jobs and produce 1 million barrels of oil a day.

There is no one in this body who knows as much about these issues as the distinguished Senator from Alaska. Senator BARRY has brought forward the American Energy and Western Jobs Act. The bill streamlines the preleasing, leasing, and development process for drilling on public land and requires the administration to create goals for American oil and gas production.

The Mining Jobs Protection Act by Senators MCCONNELL, INHOFE, and PAUL requires the EPA to use or lose their 404 permits unless the Department of the Interior objects within 45 days. This will streamline the permitting process for domestic energy and mineral production on BLM lands without compromising environmental analysis.

Senator INHOFE has contributed the Energy Tax Prevention Act, which prohibits the EPA from using the Clean Air Act to regulate greenhouse gases.

The Public Lands Job Creation Act of Senator HELLER eliminates the burdensome and unnecessary delay in approval of projects on Federal lands by allowing the permitting process to continue at the Department of the Interior objects within 45 days. This will streamline the permitting process for domestic energy and mineral production on BLM lands without compromising environmental analysis.

Senator MCCONNELL has introduced the renew trade promotion authority, which would provide the President with fast-track authority to negotiate trade agreements that will eliminate foreign trade barriers and open new markets for American goods.

We all know trade promotion authority is vital to the eventual enactment of free-trade agreements. I am incredibly depressed that we would not have that trade promotion authority along with the passage of the long overdue free-trade agreements we just passed through this body.

The President and my colleagues on the other side of the aisle have become very good at funding small projects to create foreign jobs and pushing America back on a path to fiscally prosperity. Nothing could be further from the truth. As I have just laid out in the plan before us today, we have compiled many job-creating measures offered by our colleagues in the Senate.

Furthermore, since January, our colleagues in the House of Representatives have passed at least 22 job-creating bills. Guess how many of the bills that were passed by the House of Representatives have gotten consideration in the Senate. Five.

Similar to our plan, our colleagues in the House have focused a great deal of attention on empowering small businesses and reducing government barriers to job creation. Here are just a few of the commonsense, job-creating measures passed by the House, none of which have been considered by the Senate. These include eliminating regulatory burdens, the Energy Tax Prevention Act, the Clean Water Cooperative Federalism Act, Consumer Financial Protection and Soundness Improvement Act, Protecting Jobs From Government Interference Act, Transparency and Regulatory Analysis of Impacts on the Nation Act, Cement Sector Regulatory Relief Act, and the EPA Regulatory Relief Act.

So the next time we hear the President and my colleagues say Republicans are blocking or have failed to take up or failed to bring forward a proposal, we have proposals, and we have measures that have been passed by the House. The proposals in this job plan bill deserve the consideration of this body.

We need to prove to the American people that we will do everything we can to eliminate the waste of their hard-earned dollars. Enacting an enhanced rescission authority to give the President statutory line-item veto authority to reduce wasteful spending is an issue we have been looking at for years.

Why do we need to grant the President enhanced rescission line-item veto authority? According to a database created by Taxpayers Against Ear- marks, washingtonwatch.com, and Taxpayers for Common Sense, for fiscal year 2011, Members requested over 30,000 earmarks totaling over $130 billion. Just last December, we were forced to consider, at the very last minute, an Omnibus appropriations bill that was 1,924 pages long and contained the funding for all 12 of the annual appropriations bills for a grand total of $1.1 trillion. In the short time I had to review that massive piece of legislation before it was brought to the floor, I identified approximately 6,488 earmarks, totaling nearly $8.3 billion.

We need an enhanced rescission act. Thankfully, the massive omnibus was not enacted. But these earmarks, and the process by which they make their way into spending bills, are evidence that the system is badly broken and in need of reforms.

I have more to say, and I have taken too much time in the eyes of many of my colleagues, perhaps, and I want to apologize to any of my colleagues who had planned to speak on the floor and have been preempted by my long re- marks. But I feel that we have an obli- gation to the American people to address the issues that are of greatest concern and the greatest amount of
pain to them today, and that is jobs and the economy—jobs and the economy.

I care a lot about our national security challenges and I care a lot about what is going in the world. But when I go home and stand up at a townhall meeting with her two children and says, I don’t have a job and I am being kicked out of my home next week; when we have people who are being thrown out of their homes, and over half of the homes in my home State of Arizona are under water—in other words, worth less than the mortgage payments they are required to make—when we have chronic unemployment that in some cases, such as down in Yuma, AZ, is well into double digits, then we have to get going on getting some jobs and the economy back on the right track.

I want to repeat—and I don’t mean to be confrontational with my colleagues, but we were, we are, and the other side had the majority in the House and the Senate and they had passed major pieces of legislation that were advertised to get our economy back on track—they didn’t—can’t we try something different? Can’t we try the kind of things that have brought us out of other recessions? Can’t we ask our colleagues in the Senate to create a simplified tax system that the Heritage Foundation says, by lowering the corporate rate to 25 percent, the number of jobs the United States would grow on an average of 581,000 annually from 2011 to 2020? Can’t we look at this regulatory system, which has put such a damper on small businesses and large? Can’t we give American people a break from the flood of new regulations that continues to come down and is a major factor in this environment of uncertainty amongst businesses small and large?

The approval rating of the American people of Congress is now, the latest poll I saw, 9 percent. That is something that I joke about, but it is also something that grieves me a great deal because I believe the overwhelming majority of the Members of Congress are here and are dedicated to serving their constituents in the most honorable fashion and in the best possible way they can, according to their values and their principles.

But it is a fact that the American people are very angry and they are very upset. One of the major reasons is, of course, they have not seen progress in the economy. And that is very understandable. We are now seeing these Occupy Wall Street people. The tea party activists will probably be rejuvenated. We are seeing expressions of anger and frustration all over the country, and it is unfortunate. But I believe that a couple of things are going to happen unless we act in a more efficient fashion that addresses the concerns of the American people. And that is that I am going to see the rise of a third party in this country, and I think you also will see greater and greater manifestations of opposition to business as usual here in Washington.

As I said at the beginning of my remarks, I am more than easier to sit down with my colleagues on the other side of the aisle and come together particularly on some of the issues that clearly we have strong on both sides we are in favor of.

Again, my apologies to my colleagues whose time I may have preempted on the floor. But I think this issue of jobs, which will be voting on tomorrow, is one that deserved more than passing attention.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Connecticut.

Mr. BLUMENTHAL. I thank the Senator from Arizona for his remarks, and certainly for me, at least, he owes no apology for having spoken his mind. I always welcome the opportunity to listen, and I have done so, and am honored to follow him.

AMENDMENT NO. 927

Today I speak as we approach Veterans Day, and I believe this Veterans Day may be particularly significant for our Nation because we have the opportunity in this Chamber to honor some very special veterans, the Montford Point marines, who graced us with their presence yesterday as we celebrated the 236th birthday of the U.S. Marine Corps. They were present then in 1942, when they stepped forward to serve and fight for this Nation. They are African Americans who fought and served for this Nation at a time when they anticipated no recognition and certainly no honor, and we have the opportunity between now and Veterans Day to approve a measure that would grant them the Congressional Gold Medal, which they richly deserve and they have earned through their service. They are the epitome of the Marines—they happen to be marines—and of the service men and women whom we honor on this Veterans Day. They happen to be men of the “greatest generation,” the World War II generation. They are among the greatest of that generation.

I had the great honor to be with them yesterday, in fact to be the honored guest in the Russell Building when the commandant and I had the privilege to honor them. Their presence yesterday reminded me of the continuing obligation to all veterans and of the need to make the well-being of our veterans a priority, as I have sought to do.

Indeed, my first bill, entitled Honoring All Veterans Act, allowed companies to take the Transition Assistance Program, known as TAP, an interagency workshop coordinated by the Departments of Defense, Labor, and Veterans Affairs for up to 1 year after separation at any military facility. The bill before us makes participation in the program mandatory. Low participation rates in this program are especially concerning, as junior members tend to be those most in need of the services provided by TAP, and the benefits available through the VA for many skills such as simple skills, writing resumes or interviewing have never been needed or learned before. Not having such skills, not knowing how to interview or write a resume puts them at a severe disadvantage when they are attempting to enter and succeed in the workplace after they exchange their military uniform for civilian clothes.

Section 222 of the VOW to Hire Heroes Act authorizes an assessment of
the equivalence between skills developed in military occupational specialties and qualifications required for civilian employment with the private sector.

I like to say that when you call out the 3 million veterans you call out truly the very best in America. When you call out the Connecticut National Guard, you call out truly the very best in America. The military recruits the most talented men and women in America to serve, and trains them very, very well in those skills and their professional development. Yet when they enter the civilian world, very often those skills are simply unrecognized by laws requiring separate training or licensure, and we ought to do more to recognize the expertise and experience the military gives to these brave men and women. That is why I authored a similar provision in theHonoring All Veterans Act to ensure that civilian employers and educational institutions recognize a veteran’s military training.

The Iraq and Afghanistan Veterans of America reported—and I am quoting—61 percent of employers do not believe they have a complete understanding of the qualifications ex-servicemembers offer. Many of our veteran members with college degrees earn on average almost $10,000 less than their nonveteran counterparts. I applaud my colleagues for including section 222 in the VOW to Hire Heroes Act. It is a vital step we must take to help make the transition from the military to the civilian workforce. We need to provide them with the training and resources they need to transfer those skills to the private sector. We need to encourage our business owners to employ some of our country’s most highly trained, highly ambitious, and highly motivated individuals.

The VOW to Hire Heroes Act does just that. It provides a tax credit of up to $5,600 for hiring veterans. For our wounded warriors it includes a tax credit of up to $9,600—for hiring veterans with service-connected disabilities. It requires our service men and women transitioning to the civilian workforce to participate in the Transition Assistance Program that provides services such as resume writing workshops and career counseling to help these individuals land the jobs that are available. It expands education and training opportunities at our community colleges and technical schools for 100,000 unemployed veterans who served prior to September 11.

I am pleased to say that some provisions of this legislation are very similar to a bipartisan bill that Senator SCOTT BROWN and I introduced earlier this year. The priorities this legislation focuses on are not Democratic priorities. They are not Republican priorities. Supporting our veterans is and has always been an American priority. We need to do it to them, but we also owe it to our future.

I hope many saw the August cover story in Time magazine that described our veterans returning from Iraq and Afghanistan as “the next greatest generation.” If you have not read it, I highly encourage you to do so. The author, Joe Klein, whom I met on a military transport plane in Afghanistan, spent the past 5 years traveling with
Iraq and Afghanistan veterans across the country, including two best friends he met from North Carolina. These friends, Dale Beatty and John Gallina, whom I met last year in Charlotte, joined the North Carolina National Guard. Dale and John are both active guardsmen and nearly died together when their humvee was blown up by an antitank mine. Dale lost both his legs and John suffered a traumatic brain injury.

When a local homebuilders association informed Dale and John that Dale was a Vietnam veteran and John was a World War II veteran, Dale and John were both inspired to assist other handicapped veterans. Today, their nonprofit Purple Heart Homes, headquartered in Statesville, NC, helps build and adapt homes for service-disabled veterans.

Dale and John represent, as ADM Mike Mullen said, “part of a generation who is flat out wired to contribute, flat out wired to serve.” As GEN David Petraeus told Time magazine, “These have had to show incredible flexibility, never knowing whether they’re going to be greeted with a handshake or a hand grenade. They’ve been exposed to experiences that are totally unique. . . . I believe they are our next great generation of leaders.”

There are many more Dale Beatty’s and John Gallinas out there, but we cannot leave our next great generation of leaders standing in an unemployment line. We must come together and fight for our veterans and their families just as hard as they have fought for our freedoms. We must pass the VOW to Hire Heroes Act.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. BEGICH. Mr. President, I rise today to express my strong support for the VOW to Hire Heroes Act. Very simply, it is a bill that will help our returning heroes get good jobs as they transition back into civilian life.

The bill is supported by Democrats and Republicans alike. I look forward to the passage of this bill tomorrow—perfect timing as our country prepares to honor the bravery, sacrifice, and commitment of our American veterans.

Since I have served in this Chamber nearly 3 years ago, it has been a great privilege to serve on the Committee on Veterans’ Affairs. I am also proudly serving on the Armed Services Committee. From these positions I have seen on behalf of the 74,000 veterans who call Alaska home and the more than 28,000 Active-Duty and Reserve component men and women serving our great country.

My State of Alaska, for all its unique geography and demographics, has the distinction of being the home of the largest proportion of veterans per capita of any other State in our country.

Alaska has a proud history of defending our country. This poster shows our troops preparing for battle on Alaska’s soil during World War II. Although many Americans are still not aware, there was fierce fighting in the Aleutian Islands that produced a diversionary attack in preparation for the Battle of Midway. One of my most rewarding moments so far as a Member of this body was making sure that two dozen brave members of the Alaska Territorial Guard, finally received their recognition they earned for their courageous service to this Nation more than a half century ago. We can see by this poster, a few of them here long before Alaska was a State and our country was engaged in World War II, these Alaskan heroes answered their Nation’s call on America’s most remote frontlines.

In 2009, the Senate approved an amendment to the National Defense Authorization Act that I sponsored with my colleague, Senator MURkowski, that President Obama signed into law. Twenty-five surviving territorial Guardsmen finally received their recognition they earned for their courageous service to this Nation more than a half century ago. We can see by this poster, a few of them here long before Alaska was a State and our country was engaged in World War II, these Alaskan heroes answered their Nation’s call on America’s most remote frontlines.

The VOW to Hire Heroes Act will create new direct credits for employers who hire veterans and wounded veterans who have been looking for work. It will improve the transition process as servicemembers leave the service and enters our workforce. This legislation also expands training opportunities at community colleges and technical schools for 100,000 unemployed veterans who served before September 11. It expands additional Montgomery GI benefits for older veterans for up to 1 year.

Let me take a few moments to talk about an additional challenge faced by veterans in my home State. Many of Alaska’s returning warriors come home to the most remote areas of America, Alaska boasts unsurpassed beauty. It can also be a challenging and dangerous place to live.

Mr. President, you have been an incredible advocate on health care issues. When you try to do health care rehabilitation and services and take someone from a rural community and take
them to a large community, the odds are the rehabilitation will go slower or the service will not be as effective. We have to do what we can to ensure that they have the service closer to their homes and their families and at a lower cost.

As we approach Veterans Day, I would like to recognize the Arctic warriors serving our country. The members of the 4th Stryker Brigade Combat Team from Fort Wainwright, AK, have been serving with distinction in Afghanistan since May of this year. The 4th Airborne Brigade Combat Team will deploy to Afghanistan at the end of this month for a total of more than 9,000 Alaskan-based troops on the ground there.

In addition, there are 550 airmen and soldiers still in Iraq today but will be coming home by the end of the year. Our Alaska National Guard units and members are in both countries, Iraq and Afghanistan.

To our Arctic warriors, thank you. Thank you for your service and sacrifice to our country, and thank you to the families who are supporting our Arctic warriors as they serve this great country. So to honor them and all the brave men who have served and are currently serving, let's come together on the floor of this Chamber.

Let's put our differences aside. Let's pass the VOW to Hire Heroes Act and help put America's veterans back to work.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business.

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

AIR QUALITY

Mr. LAUTENBERG. Mr. President, with all of the important issues we constantly face in life, none compares to our concern for the health of our children. But the health of our children depends not only on us but what others might be doing—such as poisoning our air with secondhand smoke or deliberately fouling the air our kids breathe.

Few would stand by while a smoker puffs away where your child is inhaling. That is why we worked so hard to prohibit airplanes—to keep someone else's smoke out of our children's lungs. Yet when emissions from a powerplant in one State threaten people in a neighboring State, too often nothing is done about it. Make no mistake, pollution doesn't recognize State boundaries. Communities across our country are being forced to bear the consequence of another community's polluters, and this is happening in my State of New Jersey, where people are suffering because dirty air is blowing into our communities from out-of-State smokestacks.

Look at this horrible picture. Anything more threatening would be hard to imagine. The toxins coming out of smokestacks like these don't disappear. They typically wind up polluting playgrounds and school yards in New Jersey, and other eastern States. In fact, a single powerplant in eastern Pennsylvania is responsible for more sulfur pollution than all of our State powerplants combined.

This year the Environmental Protection Agency took a major step toward protecting children from out-of-State emissions when it adopted the cross-States pollution rule. This commonsense safeguard requires polluters to reduce the levels of dangerous soot and smog that they release into the air. The rule sends a clear message to powerplants in upwind States that they can no longer dump their dirty air on States that lie downwind.

Unfortunately, one of our Republican colleagues has proposed a resolution to block the EPA's efforts. This misguided measure would put polluters' profits above the health of our families and children, and the consequences would be devastating.

Air pollution can cause asthma attacks, heart attacks, strokes, and cancer. Long-term exposure can also damage the same spirit on productive systems. Nationally, almost 1 in 10 children now suffer from asthma. That is according to the Centers for Disease Control and Prevention. In some parts of New Jersey, one out of every five children suffers from asthma. We should be working to make skies cleaner for these children—not dirtier.

Some on the other side say we cannot afford to worry about the health of our children and our communities right now. They claim the new rule will kill jobs. This is not about killing jobs, it is about saving lives, and we should not allow ourselves to be misled. According to EPA, the new rule will prevent 34,000 premature deaths and 15,000 heart attacks from asthma and related problems.

The new standard would also prevent as many as 400,000 asthma attacks, improving life for children such as my own grandson who suffers from asthma. My daughter makes sure she finds an emergency clinic before my grandson plays ball or indulges in a sport because if he starts to wheeze, he has problems.

My sister, who was on the board of education in a city in New York State, was at a board of education meeting when she began to wheeze. In her car she kept a small device, a little respirator, and she ran for the parking lot. She didn't make it. She collapsed in the parking lot and died 3 days later.

For those who insist we cannot have both clean air and a strong economy, I say we cannot have a strong economy without clean air. Simply put, if you cannot breathe, you cannot work.

The fact is, many powerplants, factories, and other companies are ready to work with the EPA to reduce their impact on the environment. Take the example of Public Service Electric and Gas, which is New Jersey's largest utility. PSEG has already invested resources to reduce soot, smog, and mercury pollution by more than 90 percent. In the process the company has created over 1,600 construction jobs. That is why PSEG supports the EPA rule.

Ralph Izzo, the president of the company, said:

Our experience shows that it is possible to clean the air, create jobs, and power the economy at the same time.

The bottom line is, this rule will protect the health of our economy, our children, and our communities. That is why my colleagues and I are working to reject this dangerous amendment and protect every American's right to breathe clean air.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Mr. President, earlier today in the Environment and Public Works Committee—the Presiding Officer was at that meeting—something unusual happened. We had a bipartisan bill that will extend the Highway Surface Transportation Act for 2 years, passed by a unanimous vote, all the Democrats and Republicans joining together in order to move forward a bill that will help create jobs. I hope we will allow the same spirit on the legislation that is now before us. It helps create jobs for our community and, with the Tester amendment, we have a win-win situation.

This, first and foremost, is about creating jobs. The Tester amendment allows us to create more jobs that will help American families, help our economy, and even help our budget deficit, because when more Americans are working, more are paying taxes, and less government services are needed.

All agree we need to help our returning veterans, those who have served so well in Iraq and Afghanistan, defending the principles of our country and defending our basic freedom. On Friday, we will celebrate Veterans Day, and I know all of us will be speaking about how much we appreciate the service of our veterans. We need to show our appreciation not only by words but also by deeds. Yes, we fight to make sure our veterans have the health services they need, and we want to make sure all of our military have the support they need. We want to make sure our military families are properly taken care of. But one thing we can do with this legislation is help veterans get jobs when they return home.

The unemployment rate among our returning veterans is higher than the unemployment rates in our general community. We need to help our veterans find employment. That is one way we can show our appreciation for the men and women who have served our Nation.

The bill before us, with the Tester amendment, will give incentives to employers to hire returning warriors from Iraq and Afghanistan. It will expand the education and training services so they have the skills necessary for civilian employment. It will help us deal
with a chronic problem we have of returning veterans, under the age of 24, where the unemployment rate is 21 percent. This bill, with the Tester amendment, will allow us to do something to help our returning veterans and help our economy.

But the underlying bill also goes further. It helps small businesses. Small businesses are the growth engine of America. That is where job creation takes place. That is where innovation takes place. We currently have a requirement that has not yet come into effect that would require small businesses that have contracts with the government over $10,000 to withhold 3 percent of those funds in order to make sure taxes are paid. We need to repeal that provision, and this bill will repeal that provision. We should go after those who are delinquent in taxes, and we have a provision to make sure we do that, but for small business to tie up that type of capital affects their ability to compete. It also will make it more competitive for small businesses. The 3-percent withholding would affect actually the cost of production. All that means a stronger economy and more jobs.

This bill is a win-win bill. It helps our veterans. With the Tester amendment, it helps small businesses by repealing a provision that is extremely burdensome. It is fully paid for so for it does not add anything at all to the deficit, and it will help us grow our economy. By passing this bill, not only will we help our veterans, we will help our small businesses and we will help our economy.

I urge our colleagues to show the same spirit of cooperation we did on the surface transportation bill today in our committee. Let’s use that same spirit of cooperation to get this bill moving, with the Tester amendment. Let us pass it and send it back to the House and, hopefully, we can get it to the President shortly for signature and help our veterans and help our economy.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

THE GLOBAL ECONOMY

Mr. BENNET. Mr. President, I am going to replace the Presiding Officer in the chair in a few moments, but before that, I wished to come to the floor and talk about our economy and some work this Congress needs to be engaged in if we are going to get things moving on the right track again.

Today, the stock market plunged 400 points because of concerns that are going on in Europe. Especially with Italy. It is the debt crisis that has been on the front page of every newspaper around the globe for weeks and in some cases months.

I am reminded of the discussion we had over the summer about the lifting of the debt ceiling. Article after article after article said that if the Congress didn’t figure out how to work this thing out in a bipartisan way and make a meaningful difference in the trajectory of our deficit and our debt that, for the first time, our credit rating would be downgraded. For the first time in the history of the United States of America, the full faith and credit of the United States would be called into question.

That was on the front page of every newspaper for weeks. In the end, we stumbled across that finish line, and in the end our debt was downgraded. I would argue we are about to face the same thing again and have the chance again to do the right thing—to act in a bipartisan way, to create a thoughtful approach to our debt and our deficit that allows us to continue to invest in our economy.

Families in Colorado, much as the families in Rhode Island, are struggling in an economy that is the worst since the Great Depression. We are coming out of it now, but there are significant issues in that economy. I have shown this chart before. There are four simple lines. The blue one is the productivity index, which shows our economy has actually gotten substantially more productive since the early 1990s, substantially more productive during this recession for a variety of reasons. One reason is that our companies have had to learn to compete with the rest of the world in a way they have not before, so they became more efficient. The benefits technology has brought has driven up this curve. Unfortunately for our workers but understandably for our businesses, they have had to figure out how to get through this recession with fewer people so they can get through to the other side. The second curve is our domestic product, the size of our domestic economy, and it is not where it was before the recession, but it is headed back there.

The other two lines are the unemployment level, which this chart says is 14 million people, but I think the number is closer to 25 million, when we consider who has stopped looking for work and when we consider who is underemployed. Then this line is a tragedy for our families, which is falling median family income.

This chart—it is a little hard to read—is a pretty good depiction of what is happening. This red line represents the bottom 90 percent of income earners in this country. Think about that. We are talking about the bottom 90 percent. That is everyone, except for 10 percent. It shows the share of the income in the United States that they are earning. It starts out quite high today, but where the bottom 90 percent are earning roughly 47 percent of the income. The last time that was true, by the way, was 1928, the year before the Great Depression and the market crash. The top 1 percent earns 10 percent of the economy—that, not 1 percent—that. The last time that was true was 1928. All through the productive times in the 20th century, the 1950s and the 1960s and the 1970s, that didn’t that kind of imbalance in our economy.

This group earned roughly—90 percent earned roughly 70 percent of the economy and everybody else earned a fair share of the economy, and the economy was strong and we were able to build for the future.

Those are structural issues in the economy we can help with, we can work together to fix, but what we have to do right now is avert predictable crises that are within our control so we don’t make matters worse.

Sometimes when I travel, people don’t know why we need to worry about what is going on in Europe. This afternoon I wanted to bring a chart that shows the sobering picture of European economies and the United States. We are the blue line here. This is Greece up here. Everybody is in tough shape. Everybody has made promises they can’t keep. Everybody is headed up in a unsustainable. But what is also true is that we are all interrelated. If something bad happens in Europe, something very bad is going to happen here, just as when the capital markets fell apart at the beginning of the last recession.

This chart shows how dependent our economy is on exports to Europe. Between one-fifth and one-sixth of the total value of our exports goes to Europe. If the European banks fail, if the governments can’t pay back their debt and the economy comes to a screeching halt in Europe, they are not going to buy our exports. Those are American jobs we need to worry about. Those are American jobs we need to defend and protect and we need to understand this relationship.

Look at the exposure of our U.S. banks to Europe. This red part is the euro area. It is 29 percent of the total international exposure of our banks, with 23 percent to the U.K. More than half of the foreign exposure of our banks is European debt.

We were unable to come to a rational conclusion on the debt ceiling. So the Congress punted this decision to a supercommittee. I ask the supercommittee and ask them to please help us make the decision. My own hope is that the supercommittee takes a page out of the bipartisan proposals that were reached—the one that was led by Bowles and Simpson, the one by Rivlin and Domenici. I think the details are less important, frankly, than the size, but that takes $4 trillion out over the next 10 years, a balance of cuts to revenue of roughly 3 to 1, that sends a message to the world that the United States is serious about dealing with its fiscal problems. That’s what I hope.
colleagues that the choices we have in front of us will be even tougher than they would have otherwise been.

Sometimes I get the feeling that people around here actually don’t think the American people are watching this scarecrow of a budget negotiation. They, like our political masters, are watching the political games, but they are. They know exactly what is going on here, and they understand the seriousness of these issues because they are living through that economy I spoke of earlier. That is what they are worrying about. They are making less today than they were 10 years ago. They are making the same amount they were making 20 years ago. They can’t afford to send their kid to college. They can’t afford their health care, and they would like us to help straighten that out, but at a minimum they would like us to prevent matters from getting worse. They would like to see us work together.

Some people think Congress has always been unpopular, that it is just as an institution an unpopular place. Not so. Look at this. Here is Congress’s approval rating today: 9 percent. That is a pretty catastrophic fall-off in the last few years, and I would argue it is an awful lot to do with our inability to address problems the way people in their local communities are doing. There is not a mayor in Colorado who would threaten the credit rating of their community for politics—not one. Not an electrical mayor, not a democratic mayor, not a tea party mayor. Not one would imagine doing it for a second because people in our communities would know that all that would do would be to drive up our interest rates, make us spend more money on interest and less on infrastructure, more on interest and less on education, more on interest and less on the health and welfare of our citizens.

We know that at the local level, but somehow we want to color outside the lines. We are at 9 percent, which is almost at the margin of error for zero. We did some research to find out what else is at 9 percent. We could not find virtually anything in public polls taken all across this country. My goodness, the Internal Revenue Service has a 40-percent approval rating compared to the 9 percent. BP had a 16-percent approval rating at the height of the oil spill, and we are at 9 percent. There is not one who is at 9 percent. More people support the United States of America tonight that went to fewer choices for consumers, higher prices, and development without negative effects. The Federal Communications Commission has moved forward with net neutrality regulations. Still, the Democratic appointees of the FCC have persisted, without regard to the courts, to settle the political debate owed by the Obama administration to special interest groups in favor of regulating the Internet. The FCC and this administration must be brought into line and abide by the separation of powers. The FCC must only execute the responsibilities given to it by Congress, not overreach its regulatory authority.

Freedom of the Internet belongs in the marketplace, not in the hands of Federal regulators. The FCC has moved forward to fix a problem that does not exist. This is a solution in search of a problem. Industry-imposed standards and transparency have the capability to increase competition, while more unnecessary government regulations will almost certainly have the opposite effect.

Under a light regulatory structure, the Internet has become vital to commerce and our Nation’s economy over the past 15 years. The Internet has helped digitally shrink the distance that speedily would inhibit the free flow of ideas, information, and business transactions from one part of the world to another. The Internet’s adaptability and decentralized characteristics are central to that survival.

This Federal regulatory action represents unnecessary government overreach and has the potential to seriously damage an increasingly important sector of our economy. I do not believe our Federal government can successfully regulate network access and development without negative effects on the consumer or the industry.

Allowing this unnecessary regulation to move forward has the potential to stifle broadband deployment and competition, which could ultimately lead to fewer choices for consumers, higher prices, and discourage innovation.
I believe the net neutrality regulations, if allowed to move forward, will have negative effects on this industry and our economy, and I would encourage my colleagues, tomorrow, to support this resolution of disapproval.

The economy does not need this. Our job creators do not need this. And the millions of Americans who are benefiting from the information revolution that has been brought about by the Internet do not need this either.

This provision as it currently exists severely hampers the ability of small businesses to obtain needed capital from investors, and as a result, many businesses are limited to only the universe of investors with which they clearly have these preexisting relationships.

This legislation would remove that solicitation prohibition and allow businesses to attract capital from accredited investors nationwide.

With unemployment at 9 percent, we need to pass legislation that will enable our job creators to expand and to create jobs.

As I said, this bill passed with overwhelming bipartisan support in the House of Representatives. I would hope we can do the same in the Senate and address this very fundamental need among our businesses, our small businesses, to get access to much needed capital to expand their businesses.

Mr. President, I also want to mention in the preamble that earlier today I introduced a piece of legislation called the Access to Capital for Job Creators Act. This bill will make it easier for small businesses to access capital in order to expand and create jobs.

If you think about the things the job creators around the country want and need in order for them to get that capital off the sidelines, to get out of cash and to get invested again and get that money back into our economy and back into new jobs, they are going to see a government that lives within its means. They want to see a government that does not spend money it does not have.

We have to be serious about cutting spending here at the Federal level and getting back to more of a historic norm when it comes to the cost of our government as a percentage of our entire economy. Historically, for the past 40 years, that has run in the 20- to 21-percent range. That is what we spend on the country's debt as a percentage of our entire GDP. Now it is up in the 24- to 25-percent range. That means the Federal Government, as a percentage of our entire economy, is growing relative to our private economy. We want to see the private economy grow and expand and the Federal economy get smaller.

Our job creators also want to see our Tax Code reformed in a way that is simple, clear, and fair, and that provides the right types of incentives for them to create jobs and does not drive investment overseas and create jobs there as opposed to creating those jobs right here at home.

If we can pass legislation that lowers rates on individuals and businesses and broadens the tax base in this country, I think you will see an explosion of economic growth, which is ultimately the best solution we could possibly have to all the fiscal, economic challenges our country faces.

Our job creators want smart, commonsense regulations, not more and more regulation for regulation's sake, which I think is what we see a lot of today. However, last week that House has passed the House of Representatives that is designed to sort of roll back the overregulation, the regulatory overreach we have seen from this administration. Many of those bills have come over to the Senate, where they have died, unfortunately.

But we need to be looking at these things in a way that will again lower the impediments, lower the barriers, lower the cost of expanding in this country. That is why I think smart, commonsense regulation is the way to go, and to get away from the regulatory overreach we are seeing all too much of today.

We need affordable energy policies, opening access to the vast resources we have in this country. We need to open markets around the world and look at ways we can make our small businesses create more opportunities for them to export their products to other places around the world.

But the legislation I have introduced today addresses yet another issue which I think small businesses have talked about; that is, access to capital. We need to better address the need for capital in order to create jobs and expand our economy.

Last week, the House of Representatives passed this very bill. It was introduced by Representative KEVIN MCCARTHY, and it is in the House of Representatives. It has passed that chamber and sent it this direction. This bill would allow small businesses to better attract capital from accredited investors nationwide under rule 506 of Regulation D of the Securities Act of 1933 by removing the general solicitation provision.

That sounds like a lot of Washington speak, and it is. But the very simple translation of that is this will make it easier for small businesses to access the much needed capital that they need to expand and grow their businesses.

This provision is a roadblock in its current form for small businesses that are looking to obtain needed capital because it requires investors to have a preexisting relationship with an issuer or intermediary before the potential investor can be notified that unregistered securities are available for sale.

THY. On a near unanimous vote in the House, that bill passed with over 40 years, that has run in the 20- to 21-percent range. That is what we spend on the country's debt as a percentage of our entire GDP. Now it is up in the 24- to 25-percent range. That means the Federal Government, as a
I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I am here this evening to express my unwaiving support for the men and women who have volunteered the ask of duty in our military services, our Guard and Reserve, and for their family members who have given the support for them to serve in our armed forces to protect the lives of our nation.

In honor of Veterans Day, coming up the day after tomorrow, and Military Family Month, which we observe all month long this November, we need to reflect on the enormous contributions military families have made on behalf of all of us.

Since September 11, the spouses, children, and parents of our service men and women have been faced with huge demands. They have endured repeated deployments that means many of their birthdays and anniversaries apart from each other. We should do everything we can in our communities to help military families cope with the difficulties and stresses of these multiple deployments.

I am proud of First Lady Michelle Obama and Dr. Jill Biden for their commitment to our troops’ families and for their work on initiatives to address the unique challenges military families face in this environment. I especially appreciate the First Lady’s recent visit to Rhode Island. It provided a warm and welcome boost to military family members in my State, which has the highest per capita National Guard deployment rate of all the States, as well as a significant active-duty presence at Naval Station Newport.

With so many men and women leaving home to serve on multiple deployments, the strain on the family can be particularly difficult. Last month I had the privilege of meeting two extraordinary Rhode Island students, Kathleen Callahan, who goes by Katie, and Kaitlyn Hawley, who presented a powerful and compelling message to school superintendents and educators from across Rhode Island who came together to learn about how they can better respond to the needs of military families.

These two impressive young ladies shared their personal stories and described the challenges their families faced while their parents were deployed. The event was part of a collaborative initiative to help military-connected children thrive in school through deployments. I was proud to share in this joint effort with the Rhode Island National Guard, with Governor Chaffe, with our Commissioner of Education, the Commanding Officer of Naval Station Newport, our Military Child Education Coalition, and my senior Senator, Jack Reed.

Kaitlyn is a highly motivated student and she explained how she threw herself into her schoolwork during her father’s deployment. However, she cautioned that for other students, the opposite can also occur. Some students may have a lot of difficulty focusing on their schoolwork when a parent is deployed half a world away. As Kaitlyn so well put it, there is no one-size-fits-all approach to coping with the stress of deployment.

I am proud of Katie and Kaitlyn for their commitment, their resilience, and their powerful articulation of a message that I hope everyone hears. We owe our military families an enduring debt of gratitude for everything they have done.

I commend First Lady Michelle Obama and Dr. Jill Biden for their incredible message to school children across Rhode Island who came together to learn about how they can better respond to the needs of military families.

As Veterans Day approaches, let’s celebrate our military families and recognize their extraordinary contributions to our country. I am proud of Katie and Kaitlyn for their commitment, their resilience, and their powerful articulation of a message that I hope everyone hears. We owe our military families an enduring debt of gratitude for everything they have done.

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In concluding, I wish to also express my strong support for the bipartisan legislation the Senate is considering to boost employment opportunities for veterans. Unemployment has been disproportionately high among veterans and we must act now. The last thing our returning service men and women need is to have to face an unemployment line. I urge my colleagues to swiftly pass this much needed legislation, which I am very proud to cosponsor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. Klobuchar. Mr. President, I rise today to speak in support of the VOW to Hire Heroes Act 2011, which has been offered as an amendment by my friend from Montana, Senator Jon Tester. This Friday is Veterans Day. On this day every year, Americans join together to honor the men and women in uniform who have served and sacrificed for our country. Think of the young men and women who made the ultimate sacrifice of their lives—of the sacrifice of military service. We should do everything we can to make sure we support our veterans.

Consider two shocking facts. The unemployment rate for Minnesota veterans who have served since 9/11 is nearly 23 percent, the third highest in the Nation. Yet our unemployment rate is one of the lower ones in the Nation. Our unemployment rate is two points better than the national average. Yet it is almost double the unemployment rate of our veterans of the Iraq and Afghanistan wars and more than three times our State’s overall unemployment rate. 
Second fact. An estimated 700 Minnesota veterans are homeless on any given night. During the course of the year, an estimated 4,000 Minnesota veterans will experience an episode of homelessness or a crisis that could lead to homelessness. This is not right. That is why I am calling on my colleagues today to vote to support the VOW to Hire Heroes Act. This important bill goes a long way in providing our returning veterans the leg up they need in transitioning into the workforce.

I will list just a few important provisions of this bill. It encourages companies to hire unemployed veterans by offering them tax credits to do so. The bill provides employers a tax credit of up to $5,600 for hiring veterans who have been looking for a job for more than 6 months, as well as a $2,400 credit for veterans who are unemployed for more than 4 weeks. The bill also provides employers a tax credit of up to $9,600 for hiring veterans who are disabled and have been looking for a job for more than 6 months.

Second, the VOW Act increases training for returning veterans so that by the time they leave a military camp they have the skills and the tools they need to get out there and market themselves to find a job. The bill does this by making it a requirement for returning troops to participate in the Transition Assistance Program, a job-training program coordinated by the Departments of Defense, Labor, and Veterans Affairs, that teaches veterans how to get those jobs, write those resumes, apply their military skills to civilian jobs.

Third, the VOW Act expands education benefits for older veterans, people who are not eligible for the post-9/11 GI bill.

The bill provides 100,000 unemployed veterans with service-connected disabilities who have been looking for a job for more than 6 months.

Fourth, the VOW Act ensures that disabled veterans receive up to 1 year of additional vocational rehabilitation and employment benefits.

Last, the VOW Act allows service members to begin the Federal employment process prior to separation, to help them transition seamlessly into jobs with the Department of Homeland Security, or the many other Federal agencies that could use their skills and dedication.

The fact is our returning veterans have state-of-the-art skills that are valuable to employers in all kinds of fields. Helping our veterans turn the skills they learned in the military into good-paying jobs not only honors our promise to support those who have sacrificed for our Nation, it also helps strengthen our Nation.

One of my top priorities in the Senate has been to cut through the redtape and streamline credentialing for service members who have achieved certain skill sets through their military training. I am offering an amendment to the VOW Act that will streamline credentialing for returning military paramedics. I learned about this one time when I was driving around our State and I met a number of those who served in Iraq and Afghanistan. They served as paramedics on the front lines, and they learned incredible skills and how to save lives. Those skills weren’t all transferable into becoming paramedics trained to serve the United States. At the same time, we have an incredible shortage of paramedics in our rural areas.

So I am going to introduce this as an amendment that would fix this problem by encouraging States to give paramedics credit for the military medical training they have received. Not only does it help veterans, but it relieves the shortage of emergency medical personnel in rural areas.

With commonsense solutions like these and those contained in the VOW Act, I believe we can help returning veterans transition into the workforce, not only fulfilling our commitment to them but also helping to lift our economy. Having and valuing the skills of the veterans is important to our economy. Having and valuing the skills of the veterans is important to our economy.

In sharing the blessings that I received, let me know in my heart when my days are through.

America, America, I gave my best to you.

That is what those elementary school kids sang after the whole school had been torn apart—with veterans at their side: “America, America, I gave my best to you.”

I think that is what we have to remember as we approach this vote on this VOW Act. This vote, to me, is so simple—that we simply give a tax credit so more employers will hire those who have sacrificed for our country, those who gave their best for our country. That is what this vote is about.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

CROSS-STATE AIR POLLUTION RULE

Mr. WHITEHOUSE. Mr. President, it was fairly recently that this summer I came to the Senate floor to commend the Environmental Protection Agency for finalizing what we called the cross-State air pollution rule, which limits the out-of-State pollution that one State can dump into the wind currents that drop on other States.

Rhode Island, this is particularly important. Nearly a decade after the EPA began working to address this problem of interstate air pollution, we finally had a path forward that is sensible and protective of public health. That was that path.

Today, Senator PAUL of Kentucky proposes to halt this progress, to undo that rule through a Congressional Review Act resolution. That resolution would, one, void the cross-State air pollution rule and, two, bar EPA permanently from ever writing a “substantially similar” rule. This means that EPA could never use the Clean Air Act to create a cost-effective pollution trading program to address upwind pollution.

Mr. President, this hits home in my State of Rhode Island. Rhode Island has the sixth highest rate of asthma in the country. More than 11 percent of the people in my State suffer from this chronic disease, and many of them are children.

In 2009 there were 1,750 hospital discharges in Rhode Island for asthma cases. Those hospital stays cost about $8 million in direct medical costs, not to mention the costs of the medication and missed days of work and school.

On a clear summer day in Rhode Island, driving along the sparkling Narragansett Bay, commuting into work, you will often hear the warning on drive-time radio:

Today is a bad air day in Rhode Island. In fact, seniors, people with breathing difficulties should stay indoors today.

On those days, people in those categories are forced to stay at home, missing work, school, and other important activities. Others even in good health were urged to cut back on activities on these bad air days. These are real costs—costs paid in lives and reduced quality of life, in medical bills,
public services strained responding to health risks, and in missed days of work and school—all from pollution in our air.

We don’t know everything about the causes and cures of asthma, but we do know that pollution triggers asthma attacks. We know air pollution is a preventable problem.

Rhode Island has worked hard and made great strides to reduce air pollution. We passed laws to prohibit cars and buses from idling their engines and use retrofitted half of its bus fleet with diesel pollution control equipment.

But Rhode Island cannot solve its air pollution problem on its own. In fact, Doug McVay, who is acting as chief of Rhode Island’s Office of Air Resources, told me all of Rhode Island’s major sources of air pollution—not just powerplants but any source that holds a major title 5 permit—emit less than 3,000 tons a year of nitrogen oxide, also called NOx, and sulfur dioxide, also called SO2.

Let me repeat that. All major sources in Rhode Island taken together emit annually less than 3,000 tons of these two pollutants. Polluters that will be subject to the cross-State air pollution rule in other States have single units that emit more than that. Some of the larger coal-fired boilers may emit 10,000 to 12,000 tons of these pollutants every year, nearly four times the pollution emitted by all Rhode Island major sources combined.

In Rhode Island, we are willing to pull our weight in achieving air pollution reductions. Indeed, we have done more than pull our own weight; we are pulling the weight of all States to be pulling their weight, too, to make the air safe to breathe in America from coast to coast.

This year at my request the GAO completed a report about tall smokestacks at coal powerplants. The report found that in 1970, the year the Clean Air Act was enacted, there were two what they call tall smokestacks—smokestacks over 500 feet in the United States—two. By 1985 there were more than 180 tall stacks. As of 2010, 294 tall smokestacks were operating at 172 coal powerplants, representing 64 percent of the coal-generating capacity in our country. The industry literally smokestacked its way into compliance with the Clean Air Act.

What do I mean by that? In the early days of the Clean Air Act, some States allowed sources of pollution to build tall smokestacks instead of installing pollution controls. The concept back then was that pollution sent high enough into the atmosphere would be sent far away from the source and would not contribute to air pollution problems—at least in that State. Well, it turns out this air pollution causes problems downwind in other States.

As the GAO report put it, tall stacks generally disburse pollutants over greater distances than shorter stacks and provide more time for pollutants to react in the atmosphere to form ozone and particulate matter.

For this antiquated practice, Rhode Island pays the price. Smokestacking, instead of scrubbing soot is behind a lot of the ozone in Rhode Island that gives rise to those bad air days. The GAO found that more than half of the boilers attached to tall stacks at coal powerplants do not have a scrubber to control sulfur dioxide emissions—more than half, no scrubber, just a tall smokestack to pump it out to the downwind States. Nearly two-thirds of boilers connected to tall stacks do not have postcombustion controls for nitrogen oxide.

So how does it get to Rhode Island? As GAO concluded, in the Mid-Atlantic U.S. the wind generally blows from west to east. Ozone can travel hundreds of miles with the help of high-speed winds known as low-level jets. This phenomenon particularly occurs at night due to the ground cooling quicker than the upper atmosphere, which can allow the low-level jet to form and transport ozone and particulate matter to Rhode Island.

This wind map shows that condition. These are all the midwestern powerplants, and this is the wind that carries them down here to, among other States, Rhode Island.

Five States on this map—Ohio, Pennsylvania, West Virginia, Illinois, and North Carolina—have been identified by EPA as contributing significantly to Rhode Island pollution.

This electricity that comes from uncontrolled powerplants tied to these tall smokestacks might seem cheaper to consumers than a well-controlled powerplant, a powerplant that is scrubbed instead of smokestacking its pollution, but that is really not so. There are costs. The costs just got shifted. The lungs of children and seniors in Rhode Island and other downwind States pay for that cheap electricity, and, truth be told, the lungs of children and seniors in many of the upwind States are paying as well. The States upwind of Rhode Island are downwind of someone else. Ohio and Pennsylvania are upwind of Rhode Island, but the downwind of other States. That is why EPA’s regulatory impact analysis determined that to instate and upwind pollution reductions from this rule will save approximately 3,200 lives in Ohio and 2,911 lives in Pennsylvania every year by 2014 and prevent hundreds of heart attacks, emergency room visits, and hospitalizations in those States. This rule opposed by Senator PAUL will even save an estimated 1,705 lives in his home State of Kentucky every year by 2014.

It is not just lives saved. EPA estimates that by 2014, the benefits from this rule will range between $110 billion and $280 billion. At the same time, EPA estimates the rule will cost utilities $4.1 billion to comply in 2012 and another $3.8 billion through 2014—a grand total of $4.9 billion against $110 billion to $280 billion in quantifiable benefits.

At the lower end of the range, this rule generates a 22-to-1 ratio of benefits over costs. For every $1 in cost to the polluters who are creating this pollution, to clean it up, there is $22 in benefit to the residents of Rhode Island. That is a pretty good investment, and that is at the low end.

At the high end, if it is $280 billion, we are talking about a 56-to-1 ratio of benefits over costs. We have people from polluting States who, to save a buck for their polluters who are running it up smokestacks instead of scrubbing their pollution, to save the buck in putting the scrubber and quit smokestacking their pollution and pass it on to Rhode Island and other upwind States, are willing to blow $56 in benefits to Americans across the country, even in their States. It doesn’t make any sense.

The cross-State air rule is good for public health. It is fair. There is no other way Rhode Island can affect these States. We have done everything we can to clean our air. We could stop everything, and we would still be a nonattainment clean air quality State because of what gets bombed in on us from other States. If we don’t have EPA defending us, we have no defense at all from States that choose to export their pollution rather than clean it up. And it is very cost effective, better than 51 by the highest estimates. So that is why I will be voting against Senator PAUL’s resolution to void this rule. I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I rise this evening to join my colleague from Rhode Island and those who have come to the floor throughout the day today, to join them in strong opposition to the efforts by Senator PAUL to nullify the Environmental Protection Agency’s cross-State air pollution rule.

As we have heard on the floor, his resolution would strip the EPA of its authority to protect certain kinds of air pollution emitted by powerplants. That rule was put in place specifically to protect downwind States, such as New Hampshire and those of us in the Northeast and on the east coast, from air pollution that originates from outside our borders. I am particularly concerned by the attempts to stop these protections because in New Hampshire we have been fighting for them for over a decade, and they are long overdue.

Clean air is a bipartisan matter for us in New Hampshire. As my friend and colleague Senator AYOTTE noted on the floor last night:
In New Hampshire, we have a long, bipartisan tradition of working to advance commonsense, balanced environmental protections.

I couldn’t agree with her more. She and I know that even if we eliminated all local sources of air pollution from within New Hampshire’s borders, we would still have counties in the State with unacceptably high levels of pollution. That is because of the overwhelming pollution that comes into New Hampshire and the Northeast on air currents from the Midwest.

In the Northeast, we are considered the tailpipe for the rest of the country. That is why, in 1997, when I was Governor, New Hampshire joined with seven other Northeast States to demand that the EPA begin cracking down on this transported air pollution. When New Hampshire joined that effort in 1997, this is what I said about it:

When you climb Mount Washington in New Hampshire and see smog that is blown in from the Midwest, it’s clearly time for a national crackdown on air pollution. It’s time to address the major sources of a pollution that is fouling our air and affecting the health of our people. We’ve done our part in New Hampshire to cut down on emissions, and it’s time for the EPA to get tough on major polluters upwind.

I have here a picture of the White Mountains, which is where Mount Washington is. That is the highest point in New Hampshire and, actually, in the whole Northeast. What this picture shows very clearly is the impact of this air pollution that is coming in from upwind.

We can see these are the White Mountains. On a clear day, you can see a beautiful blue sky, green trees, beautiful landscape. On a hazy day, this is the impact of that smog. It looks as if somebody took a gray paintbrush and painted over the White Mountains in New Hampshire.

It is really unbelievable to me that we are here, 14 years after this action was brought in 1997, still debating and trying to address the major sources of transported air pollution. The time for debate is over. The air quality improvements from this rule will benefit over 289,000 children who are at risk for asthma in New Hampshire. New Hampshire has one of the highest rates of childhood asthma in the country. In my State alone, air pollution is estimated to cost businesses more than 17,000 lost days of work annually due to health problems. Yet we are still hearing the same old arguments that forcing polluters to clean up will hurt the economy, will hurt our businesses. In fact, we have lots of research that shows that is not true.

Talking points about job-killing regulations ignore the fact that a recent economic analysis by the Political Economy Research Institute found that the cross-State air pollution rule and the proposed mercury rule will create 290,000 jobs per year over the next 5 years in important sectors of our economy such as construction, craft labor, and industrial manufacturing. Companies such as ThermoFischer Scientific, which has a plant in Newington, NH, is a leading manufacturer of environmental monitoring equipment and a great example that good policy creates jobs right here in the United States.

By reducing air pollution, these protections are estimated to provide about $940 million in benefits to the New Hampshire economy alone. Nationwide, the health and environmental benefits are estimated at $120 billion to $280 billion each year. That is because when we reduce State pollution, it is our New Hampshire companies that are forced to make up the difference. Without these rules, we have an unfair system where the burden of keeping our air clean falls disproportionately on downwind States such as New Hampshire.

Higher air pollution costs our businesses through the loss of worker productivity and greater medical expenses, and it also affects our critical tourism industry in New Hampshire which depends on the clean air of the White Mountains and the health of our state’s beautiful lakes and forests and streams. In New Hampshire, this tourism industry and the outdoor recreation economy, much like in Colorado where the Presiding Officer is from, supports 33,000 jobs, generates $260 million in sales taxes, and accounts for 8 percent of our State’s gross domestic product. Transported air pollution has a direct impact on this industry, as we can see so clearly in this photograph, and on the quality of life of New Hampshire’s 1.3 million citizens. It is time for the EPA to move forward with their cross-State air pollution rules.

I urge all of my colleagues in the Senate to reject this resolution by Senator Paul and to protect the health and welfare of all of the citizens in this country. We do not need to roll back what we have achieved.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BEGICH). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNET. Mr. President, I ask that the order for the quorum call be rescinded.

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

Mr. BENNET. Mr. President, I want to take just a few minutes to talk about Veterans Day and important work already going on in Colorado to support our returning servicemembers and their families.

This Friday, Veterans Day holds special significance. America’s part in the war in Iraq is coming to a close this year. We have been drawing down combat troops in Afghanistan. In Colorado, that is going to mean about 400 Fort Carson soldiers will come home from Iraq in December alone.

Many of the bravest 1 percent of Americans who should 100 percent of the responsibility of keeping our country safe will be coming home all across the country. As these servicemembers return to their families and many transition to civilian life, we need to make sure we are ready to make good on the promises we have made.

I asked leaders from the Colorado veterans community to make recommendations for how to make Colorado the best State for veterans and military families to live and work. After months of thoughtful conversation, they produced a comprehensive report called ‘‘Better Serving Those Who Have Served’’ that offers solutions on how to address the challenges facing America’s veterans. A key part of this report is a new proposal to create a National Veterans Foundation, modeled after work being done in Colorado Springs that enabled public and private agencies to better collaborate to support veterans and military families.

This week, I will introduce a bill to bring that Colorado-based innovation to the rest of the country. The bill was inspired by a White House meeting in 2011 to create a congressionally chartered National Veterans Foundation to support communities attempting to work on a blueprint model like Colorado Springs. The foundation would help fill gaps in services to veterans by helping communities align and leverage their resources.

I have also joined Senator Tester and the Presiding Officer and cosponsored the VOW to Hire Heroes Act. The VOW to Hire Heroes Act does much to help veterans find good-paying jobs, including providing significant tax incentives to businesses that hire veterans.

The Senate will likely be voting on this important legislation tomorrow, and I urge colleagues to support its passage.

Before I sit down, I wanted to mention that 2 weeks, maybe 3 weeks ago, I had the pleasure of visiting Fort Carson, and I went to see an elementary school on the post. As a former school superintendent, I have spent a lot of time over the years in schools and tend to want to be there when the children are there so that you can actually get a sense of whether there is any learning going on. This meeting was different because it was a meeting after school, after the children had gone home. Ninety percent of them live on the post. Their entire lives have been defined by these two wars in Iraq and Afghanistan. Their entire lives have been defined by the deployment of one parent—sometimes two parents—who have served two or three or four tours of duty on behalf of this country in Iraq and Afghanistan.

Thousands of our troops are going to be coming home over the next year. I think we need to be asking ourselves whether we really are ready to honor the commitments and promises we have made.
As others have said tonight, when we are coming out of what is the worst economic calamity we have faced since the Great Depression, we need to make sure we are doing absolutely everything we can for these veterans who also for the people who are the moms and dads, the children at elementary schools just like the one I visited, all across the country.

The children in this school, according to the teachers with whom I met, have faced extraordinary challenges at home as a result of all this. It is another example of the work we should be doing together here in a bipartisan way as we ask people to serve their country in these foreign wars.

I continue to hope at some point there is going to be a breakthrough here and we are going to get past the partisan cartoon we have confronted for the entire time I have been in the Senate and get back to the work of the American people and get back to the work that will support the children in that elementary school at Fort Carson.

I want to say on this floor and for this record how grateful I am to their teachers for teaching but also for giving their Senator an insight into the lives of the young people they are serving.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNET. Mr. President, I ask unanimous consent that the order for the question be rescinded.

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

MORNING BUSINESS

Mr. BENNET. 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.

TRIBUTE TO CHRIS WYMAN

Mr. KERRY. Mr. President, today I would like to celebrate the remarkable commitment demonstrated over nearly 18 years in Senate service by one of my most loyal and longest serving aides, Chris Wyman, who retired October 1.

Chris Wyman eschews the limelight of politics and the media. But I know him as a close friend and a humble, self-effacing, earnest public servant, who “walked point” for me in Massachusetts on every issue and every case affecting our military personnel, veterans, and their families.

For Chris, the work was always personal. He understands the demands on the military and their families better than most, having enlisted and served on Active Duty in the Navy before he came to work for me shortly after I began my second term representing Massachusetts.

The work that Chris began on my staff starting in 1993 was difficult, particularly for someone who found such common cause with anyone who had worn the uniform of the Army, Navy, Air Force, Marine Corps, or Coast Guard. It was his dedication to help those who had served their country and ensure that they were always treated with dignity and respect by the government that had sent them into harm’s way.

In all those years, Chris was my eyes and ears on the ground in Massachusetts 7 days a week—the person who listened to veterans and their families about the many challenges affecting their lives. His compassion and his presence helped me to take concerns heard in conversations and transform them into solutions to human problems on a more national scale.

Among the efforts I worked on in the Senate, you can see the imprint of Chris’s visits to veterans across Massachusetts, including the Helping Heroes Keep Their Homes Act. This provides protection for servicemembers and military families against foreclosure and increased interest rates; a measure that made service life insurance available to reservists called to Active-Duty and National Guard; the Corey Shea Act, which allows eligible parents of a fallen servicemember to be buried with their child in any of the 131 cemeteries run by the VA’s National Cemetery Administration, if that child has no living spouse or children; a $20 million supplemental appropriation in 2007 for VA centers; seven Vet Centers in Massachusetts benefited from the measure; and millions of dollars more in Federal grants from the Department of Veterans Affairs for homeless vets shelters located throughout Massachusetts.

For Chris, each of those legislative efforts began with a human face: veterans who were living on the streets in a country that at times had forgotten their sacrifices when they came home, grieving mothers and fathers who had lost children on the battlefield, veterans struggling during an economic collapse that threatened them and their families with foreclosures, and particularly families who had lost sons and daughters to PTSD and the hidden wounds of war and who had dedicated themselves, with Chris’s help, to transforming their mourning into mission to help others.

It is no understatement that Chris had one of the toughest and most demanding job in my Boston office, certainly the most intense. He met so many at their most vulnerable and others still who were overcome by the deepest and most indescribable grief—and even anger. But it was Chris Wyman who remembered always that if Americans were sent somewhere in the world dodging bullets and bombs to protect our freedom, then there should be no limit to the government’s commitment to do its part back home to support them and their families.

For Chris, each day was measured not in minutes, or hours, or phone calls—as many as 50 calls a day. Some were routine—soldiers or veterans needing absentee ballots, forms, or help applying for benefits. For Chris, those cases were the easiest the ones in which a highly placed phone call or a well-timed letter could be the lubricant to make the State and Federal bureaucracy run more smoothly. But some of those calls were far from routine. Take just one that resulted in a special moment just about this time last year in Newton, MA, when Chris’s intervention helped right a wrong inadvertently committed years before by the Federal Government. Thanks to Chris’s hard work, I was able to present a bipartisan Gold Star family with its official Purple Heart.

I also remember another special day Chris helped make possible—the day I pinned a Purple Heart on 22-year-old Sean Bannon of Winthrop, who was wounded in both legs in Iraq and spent 6 weeks recovering at Walter Reed. We held the ceremony at Fenway Park on July 14.

I also remember another special day Chris helped make possible—the day I gave out the first pitch, with No. 38, Curt Schilling, standing in as Sean’s catcher. He wasn’t on the field let alone on the mound that day, but Chris Wyman was the MVP of our team that day the unsung hero of a proper welcome home for a real military hero, Sean Bannon. That was a joyful day for the Bannon family and for all of us, but for Chris it was just one of the many calls he had to make the day Chris received calls from wives, husbands, and children worried about loved ones on Active Duty somewhere in the world or from veterans enduring life-threatening health conditions. They, too, needed real action, not just a promise to get back to them later. And whenever he got one of those calls, Chris would spring into action and stay at it until he got the answers and results that these brave Americans and their families deserved.

Among these solemn duties were some that Chris rarely spoke about but which are seared into him forever.
Again and again, he made personal visits to the homes of Gold Star families. He would simply show up to visit, to comfort, and to help out after families received the phone call that every military parent dreads the most. Chris formed close bonds with the families, friendships that will last a lifetime. While many quote Abraham Lincoln’s words, Chris lived them—through his actions, not his words, he held sacred Lincoln’s pledge at Gettysburg that our country will care for “him who has borne the battle, and his widow and his orphan.” And so Chris did—at wakes, at funerals, in military hospitals and veterans homes, in all these difficult circumstances and the difficult days and months and years that followed, Chris Wyman kept the faith.

Chris did this for all veterans—in their spirit and many times in their memory. But he also joined a special fraternity the tight knit “Band of Brothers” who served with me during Swiftboat duty in Vietnam. He came to them in the 1990s and never lost touch with any of them, extending to them, as he has to many Massachussetts veterans, total dedication and commitment through hospital visits, weddings, and funerals. It was no surprise, then, that several years ago they made him an honorary member of their “brotherhood,” presenting him with a blue crew member shirt, exactly the same as the ones they wore so proudly whenever they were together.

It seems fitting that Chris is retiring so close to Veterans Day—a day to honor America’s veterans for their patriotism, their love of country, and their willingness to serve and to sacrifice because for these past nearly 18 years, for Chris Wyman, every day was Veterans Day. He is a shining example of someone who has served.

Mr. President, both Chris and I are proud to be Navy men, and in the Navy, we have a special term—“Bravo Zulu” which means “Well Done.” So, as one old sailor says, with a thank you for many years of loyalty and friendship, to Chris Wyman I say “Bravo Zulu” for a job well done.

PATIENT PROTECTION AND AFFORDABLE CARE ACT

Mr. COBURN. Mr. President, I believe Congress should reexamine the federally mandated medical loss ratios in the Patient Protection and Affordable Care Act. Today I will outline four reasons I believe consumers will face increased costs, decreased choice, and reduced competition.

The Patient Protection and Affordable Care Act, PPACA, included a provision that requires all health plans to adhere to a medical loss ratio, MLR, established in law. The MLR refers to the percentage of premium revenues for health insurance plans spent on medical claims. The Act requires each health insurance plan to maintain an MLR, equal to the amount of premium revenue it receives divided by the amount it spends on medical care. The MLRs are calculated using the actuarial method, the standard method for measuring MLRs used by both the government and the insurance industry. The MLR calculation is based on the ratio of claims paid to earned premiums and adjusted by an actuarial factor for risk adjustment. The MLR can range from 0% to 100%.

Beginning no later than January 1, 2011, PPACA requires a health insurance provider to maintain an MLR of 80% for plans sold in the small group market and 85% for plans sold in the individual market. The MLR is 80% for all plans including small employer, large employer, and individual plans.

The MLR was established in law, rather than in regulation. The MLR refers to the percentage of premium revenues for health insurance plans spent on medical claims. The Act requires each health insurance plan to maintain an MLR, equal to the amount of premium revenue it receives divided by the amount it spends on medical care. The MLR is then adjusted by an actuarial factor for risk adjustment.

The study explained the impact in “member years,” which requires some explanation. Most health insurance policies typically have a 12-month duration, but individuals can enroll or disenroll on a monthly basis. As a result, much of the actuarial and actuarial calculations that a health insurance plan makes are in member month or year terms. A member year is 12 member months and could be one individual or multiple persons. For example, if one individual is enrolled for 12 months, that is one member year, or if two people are enrolled for just 6 months each, that is one member year. The study found that “if insurers below the MLR threshold exit the market, major coverage disruption could occur for those in poor health,” and they “estimated the range to be between 104,624 and 158,736 member-years.” This empirical analysis highlights the huge disruption to American consumers that face. As health insurers consolidate, stop offering some insurance products, or exit the market place altogether, Americans who like the high-quality private health plan they have will lose it. This exit would undermine the President’s and Secretary’s promise to Americans that if they like the health care plan they have, they could keep it.

There is a second concern: Instead of consumers receiving “better value,” consumers face increased costs. Despite often-repeated arguments that federally mandated MLRs will result in “better value” for consumers, there is little substance to back up this claim. The assumption behind this claim is that spending more of a health care dollar directly on care is inherently better. But this may not necessarily be the case. University of California, Berkley, professor Jamie Robinson has studied the issue of MLRs closely, and he noted in Health Affairs that the connection between the MLR and good value is not as clear as some would claim. “The medical loss ratio never was and never will be an indicator of clinical quality. In fact, Professor Robinson explained that “neither premiums nor expenditures by themselves indicate quality of care. More direct measures of quality are available, including patient satisfaction, provider surveys, physician use, and severity-adjusted clinical outcomes. Although each of these is limited in scope, they at least shed light on quality of care. The medical loss ratio does not.”

While the MLR cannot guarantee better value for consumers, it can lead to higher premium costs. As the Congressional Research Services explained,
the MLR provision in PPACA requires health insurance plans “to pay rebates to their members if a certain percentage of their premiums are not spent on medical costs. This provision may provide an incentive for health insurance companies to either change the composition of their line of business or exit the market altogether. The Congressional Research Service explained this more in detail in a memo to Congress. CRS said the MLR “requirements of PPACA will place downward pressure on administrative expenses, including the use of insurance producers. Thus, there will be an incentive for insurance companies to cut back on the use of producers or reduce their commissions in order to rein in their administrative expenses. Some observers including associations of producers, have suggested that the regulatory and market changes resulting from PPACA could put producers out of business.”

The only allowance in PPACA for waivers from the MLR provision is a tacit admission the one-size-fits-all MLR approach mandated under PPACA is neither in the best interest of consumer choice nor competition among health plans in many insurance markets. The act allows MLR provisions to be calculated separately for small and large group insurance markets. 

Mr. President, finally, the new mlr mandates further the government takeover of health care. Much ink has been spilled about the claim that PPACA represents a government takeover of health care. In my view, there is no disputing this claim. Even before the passage of PPACA, the nonpartisan Congressional Research Service issued a report showing that 60 percent of health care in the United States is controlled by State, local, and Federal governments. Now, after passage of the controversial health care law, the Federal Government will effectively regulate health insurance plans in many insurance markets and dictate what types of health care Americans can buy—ever penalizing employers and consumers who do not offer or purchase coverage. The law also massively increased the Federal government’s role in the health insurance market; the Federal Government will make such insurance an essentially governmental program, so that all citizens, no matter how wealthy, must purchase health insurance. In a December 2009 analysis, CBO warned that if the MLRs in PPACA were adopted, “taken together with the significant increase in the Federal government’s role in the health insurance market under the PPACA, such a substantial loss in flexibility would lead CBO to conclude that the affected segments of the health insurance market should be considered part of the Federal government.” In other words, this was just about as close as the Democrats could get without even CBO admitting it was a complete government takeover of the health insurance markets.

Mr. LEAHY. Mr. President, I would like to take a moment to pay tribute to Steve Arms, a technology inventor, innovator, and successful entrepreneur from Vermont.

Steve founded and developed a high tech firm, MicroStrain, which create sophisticated micro sensors that were originally designed for arthroscopic implantation on human knee ligaments. Their sensors have since evolved and are now used by NASA, on car engines, for advanced manufacturing, on civil structures, and by the U.S. military.

When Philadelphia’s Liberty Bell needed to be moved in 2003, the National Park Service used MicroStrain’s sensors to detect whether the 250-year-old bell’s famous crack was worsening, even by a hundredth of a hair’s width. Fortunately, and thanks to Micro-Strain’s sensors, the Liberty Bell was moved without damage. A product of Vermont’s public education system and flagship state university, Steve grew a one-man business
based out of his Burlington apartment into a more than $12 million a year company. Based in Williston, VT, and now employing 55 people, MicroStrain's constant innovation and product improvement has earned the company numerous top awards in the industry.

I am proud to see Vermonters working on cutting-edge technology that will benefit both Vermont's and the country's economy. I thank Steve and all of the employees at MicroStrain for their hard work.

I am pleased that a copy of the recent Burlington Free Press article entitled Vt. Tech innovator: Be in the moment, be printed in the RECORD.

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

[From the Burlington Free Press, Nov. 2, 2011]

Vt. Tech Innovator: Be in the Moment
(By Molly Walch)

WILLISTON—Back in high school, Steve Arms thought he might want to be a journalist. But after reading non-stop and often sneaked books and a flashlight under the covers when he was supposed to be asleep, he changed direction shortly before graduating from Burlington High School in 1977. During his junior and senior years, a math teacher and a physics teacher ignited a fuse that provided Arms to become an engineer, inventor and successful tech entrepreneur who runs a Vermont company with 55 employees and gross sales of $12.8 million in 2010.

"I have a dream job. I can't believe I get paid to do this," Arms said during an interview at MicroStrain, the sensor company he founded and leads in Williston.

The company designs and sells tiny, highly sophisticated sensors used in U.S. military drones, NASA rocket tests, tracking devices and a range of industrial and medical products. Arms founded the company when he was a Ph.D. candidate at the University of Vermont in biomedical engineering and biomechanics. His first product was a mini-sensor used in arthroscopic knee surgeries to help track. "Kids are amazingly creative and they help young people use science and math to design—and that's what science education is all about, making it real, he added. Simple props—chalk and a two-by-four, a bicycle wheel—can be great; but computers and other STEM topics. Computers are useful tools but they do not guarantee engagement in class, for example. "Be in the moment. . . Make the most of your time when you are there.''

Schools could help inspire a love of science by making it real, he added. Simple props—chalk and a two-by-four, a bicycle wheel—can be great; but computers and other STEM topics. Computers are useful tools but they do not guarantee engagement in class, for example. "Be in the moment. . . Make the most of your time when you are there.''

"I'm not giving up either.''

said. The talk left him with the sense of: things he did learn was to follow his interests and passions, and his parents. He worked, but not obsessively. One thing he gave his three children, including a son at Reed College and twin daughters at Champlain Valley Union High School. Arms was never a grind who obsessed over getting As in everything and he left some homework undone. He worked, but not obsessively. One thing he did learn was to follow his interests and passions, which he detailed the series of failures he experienced before his big medical breakthrough.

"For me, that was just all I needed," Arms said. The talk left him with the sense of: "I'm not giving up either.

### ADDITIONAL STATEMENTS

**FLATHEAD VALLEY COMMUNITY COLLEGE SCHOLARS PROGRAM**

- **Mr. BAUCUS.** Mr. President, today I wish to recognize the work of a group of students enrolled in the Scholars Program at Flathead Valley Community College in Kalispell, MT.

As a member of the Joint Select Committee on Deficit Reduction charged with coming up with a plan to tackle the deficit, I asked my bosses—members of the Joint Select Committee, to send me their ideas on how to reduce the deficit.

Montana was built upon hard work, sacrifice, and values born on the frontier that remind us: we are all in this together. It is the same spirit that the Joint Select Committee must tap into in order to succeed.

So far, I have received over 1,200 letters, e-mails from Montanans with thoughts on deficit reduction and ideas that implicate all aspects of the Federal budget. Montanans sent their suggestions on programs to trim or eliminate, where we could find additional sources of revenue, and where Congress should tread carefully, to not lose sight of those investments critical to the future of Montana and the entire United States.

The challenge facing the Joint Select Committee also poses an important opportunity for us to learn as a nation about the roots of history.

That is why I invited Montana's colleges and universities to involve students in the discussions. Flathead Valley Community College took on this challenge with vigor.

FVCC decided to incorporate this project into its Scholars Program, an honors program for the college's top students. The students spent almost a month on the project.

As we have done in the Joint Select Committee, students started by reviewing reports issued by the Congressional Budget Office and the various bipartisan deficit-reduction plans. The students then met over a 2-week period to discuss their own ideas and debate the merits of each proposal. They all agreed that the group would come up with one plan to put forth to my office and to Congress.

Now, before I talk about what the students have produced, it is important to note a word about the proposal. They have proposed what they call the Scholars Program at Flathead Valley Community College and the community it serves, Kalispell, MT, is located in the upper northwestern corner of the State of Montana. Glacier National Park sits to the east, and the tip of Flathead Lake is to the south.

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Now, before I talk about what the students have produced, it is important to note a word about the proposal. They have proposed what they call the Scholars Program at Flathead Valley Community College and the community it serves, Kalispell, MT, is located in the upper northwestern corner of the State of Montana. Glacier National Park sits to the east, and the tip of Flathead Lake is to the south.

There are few places in the world privileged to such natural beauty. But this area has not been immune to the tough economic climate. Far from it. The Flathead area, once dominated by the wood products industry, has witnessed the closure of some of its largest employers.

While Montana's overall unemployment rate has remained below the national average, Flathead County is well above it, with now at almost 10 percent. Surrounding Lincoln, Sanders, and Lake Counties currently sit at 13, 13.3, and 10 percent unemployment rates, respectively.

Flathead Valley Community College has come to be viewed as the model for 2-year education, both in Montana and nationally.

And like many 2-year colleges across the country, FVCC has experienced a significant increase in enrollment as a result of the economic downturn. Both the young and old are returning to school to enhance their skills.

Over the past 2 years, FVCC's enrollment increased by 43 percent. Last year, FVCC added 239 sections of classes and hired 99 new adjunct faculty members to meet increased demand.

This past spring, FVCC graduated the largest class in its history, with 388 students receiving 438 degrees. One-fourth of those students were eligible for assistance through trade adjustment assistance or the Workforce Investment Act.

I raise this because it is important to note that these students participating
in this project are living this economic recession. I asked them to discuss and come up with deficit-reduction ideas. But they have done so with a keen eye on how these ideas could affect their community and the long-term impact on good-paying jobs. We in Congress must do the same. Full and open discussions, debates, and, undoubtedly, some disagreements, the students came together and submitted a full summary of their proposal to reduce the deficit. The ideas are wide-ranging and span virtually all aspects of Federal budgeting.

For example, the students recognized that health care costs in this country pose a threat to the fiscal stability of the Nation. The students identified a series of ideas that could help in reducing health care costs, including incentivizing healthier lifestyles. The group also agreed that Congress should consider ideas for revenue. They highlighted areas such as corporate tax loopholes to find new sources of revenue. The students said Congress should look into reducing fraud and abuse in current programs.

While the students devoted most of their time to finding ways to reduce the deficit, they also highlighted the importance of investment. The group agreed in investment in education and scientific research is an important role for the Federal Government to play. As their report states, “many of the fiscal problems facing the country could be ameliorated by improving citizens’ chances for a quality education.” I could not agree more.

My hat goes off to the students and faculty for joining this important conversation for our families and for our country. It is clear from this report that they took this challenge seriously and understand the balance needed to address the deficit.

I would like to recognize the great work of those involved, including President Jane Karas, Ph.D., Scholars Program Director Ivan Lorenzo; Outreach Coordinator for Career Pathways Jeremy Fritz; and Executive Director for Institutional Research Brad Eldredge, Ph.D. And, most importantly, I would like to commend the students who took on this project: Ursula DeStefano, Tracy Lost-Bear, Lisa Steelye, and Heather Freayle.

It is my goal to make sure these students and their peers nationwide will be able to find good-paying jobs when they graduate. I am doing everything I can to address both our jobs deficit and our fiscal deficit so that we can leave our Nation in better shape than we found it for these students and their children.

I thank Flathead Valley Community College, the instructors, and students for their thoughtful ideas. I hope the experience inspired them to stay involved. They took this project seriously and worked hard to find agreement. We in Congress must do the same. The future for these students and this country is at stake.

REMEMBERING GILBERT “GIL” CATES

Mrs. FEINSTEIN. Mr. President, today, I honor the extraordinary life of Gilbert “Gil” Cates, a director, producer, mentor, and friend to not only California and New York, but the entire Nation.

Born Gilbert Lewis Katz on June 6, 1934, in New York City to Russian Jewish immigrants Nathan and Nina Katz, Gil soared to the top of the entertainment field with a focus in both film and theater.

Following his education at DeWitt Clinton High School in the Bronx, Gil enrolled at Syracuse University, where he majored in theater.

In 1961, Gil made his producing and directing debut on the television game show “Camouflage.” He accomplished countless artistic achievements during his long career as a producer and director, and in 1990 he produced the 82nd Annual Academy Awards, which he judged the benchmark on the industry he cherished so much.

Over the next 18 years, Gil served either as the producer or executive producer of 14 Academy Award shows. With backgrounds by Bill Crys-
tal, Whoopi Goldberg, Steve Martin, and Chris Rock, Gil is credited with restoring the telecast as the entertainment industry’s most important and widely watched event.

Gil also earned a reputation as an inclusive and creative leader. As a film producer, his credits include “Oh, God! Book II,” “After the Fall,” and “I Never Sang for My Father.” He directed segments of “The Twilight Zone,” “Holsten’s Choice,” “The Prom-
ise,” and “Summer Wishes, Winter Dreams.” As both producer and direc-
tor, his body of work includes “Collected Stories,” “Confessions: Two Faces of Evil,” “Absolute Strangers,” “Around the World,” and “World’s Fair Spectacular.”

Gil made his Broadway debut as the stage manager for “Shhinbone Alley” in 1957. He made his producing debut on Broadway in 1967 with “You Know I Can’t Hear You When the Water’s Run-
ing,” and five years later made his di-
rectorial debut in 1972 with “Voices,” an original play with music. In total, he was involved with nine Broadway shows. The most recent, “Time Stands Still,” closed by January 30, 2011.

Beyond his film, television, and theater work, Gil served the entertain-
ment industry in many leadership ca-
pacities. He was a two-term president of the Directors Guild of America, DGA, from 1983 to 1987. From 1990 to 1998, he served as founding dean of the UCLA School of Theater, Film and Tele-
vision, and then as a mentor and pro-
fessor. He was also the founding and producing director of the renowned Geffen Playhouse in Westwood, CA.

During his career he served in various roles on the Board of Gov-
ernors of the Academy of Motion Pic-
ture Arts and Sciences.

Gil received many honors from the entertainment industry throughout his extensive career, including an Emmy Award for producing the “63rd Annual Academy Awards” in 1991. Gil was also Emmy-nominated for directing two television movies, “Consenting Adult” in 1984 and “Do You Know the Muffin Man?” in 1989.

As a result of his service to the Federal Government, the DGA received the Directors Guild of America Award, the DGA’s Robert B. Al- drich Award for Service, and an Hon-
orary Life Membership. He also re-
ceived the Jimmy Dolittle Award for Outstanding Contribution to Los Ange-
les Theater, the Ovation Award for best play “Collected Stories,” and finally, a star on Hollywood’s Walk of Fame.

The showman who was known for his undeniable charisma and witty ways, as well as his contributions to the entertainment industry, was above all an extraordinary person who was in a class all his own.

I would like to commend the students who took on this project: Ursula DeStefano, Tracy Lost-Bear, Lisa Steelye, and Heather Freayle.

RECOGNIZING ISAMAX SNACKS

Ms. SNOWE. Mr. President, earlier this year members of the Maine Legis-
lature proposed a bill to name the whoopie pie the official State dessert of Maine, later settling on naming it the “State treat of Maine.” The whoopie pie, a baked good normally consisting of two chocolate cakes with creamy frosting in between, has been a New England tradition for nearly a century. Anyone who has tasted a whoopie pie knows exactly how special and delectable one really is. With Maine’s official “treat” in mind, today I recognize and commend Isamax Snacks, a small business in Maine that has perfected the art of homemade whoopie pies.

Amy Bouchard always loved baking, and in 1984, she started a small busi-
ness making whoopie pies, out of her home kitchen in the small town of Gar-
deriner. Amy’s whoopie pies were famous among her friends as “wicked,” and therefore she thought it was only prop-
er to name them “Wicked Whoopies.” As any Mainer knows, “wicked” is a synonym for “great,” and is commonly used to refer to any extraordinary item, which Amy’s desserts most cer-
tainly are.

Originally, Isamax was started as a way to supplement her husband’s in-
come to assist in raising their two young children, Isabella and Maxx, from which the name of her company is derived. But as more people discovered her Wicked Whoopies, Amy’s business
grew rapidly and the small kitchen could no longer keep up with the demand. In 1996, Amy moved to a commercial bakery and purchased two distribution trucks. These investments tripled her business size and distribution territory. Amy now also has two stores in Farmingdale and Freeport, where she sells her mouth-watering treats.

Today, Amy’s small company sells 24 different varieties of whoopie pies, including many seasonal favorites like pumpkin and peppermint, and produces nearly one million Wicked Whoopies each year! Amy also recently added the decadent and innovative “Whoop-de-Doo” to her line up; a smaller version of a classic Wicked Whoopie dipped in chocolate. Her business has received countless reviews and awards for its products, and has been featured on several nationally televised shows, such as “The Oprah Winfrey Show” in 2003, “Good Morning America” in 2005, and Food Network’s “Unwrapped” in 2007. Wicked Whoopies have also been promoted in the New York Times, the Associated Press, and are even available for purchase on the Home Shopping Network’s Web site for the 2011 holiday season. Additionally, the city of Gardiner Board of Trade awarded Isamak Snacks with its President’s Award in 2004 and Interface Tech News awarded Wicked Whoopies “Maine’s Best of the Web” in the e-commerce category in 2006.

Over the last 15 years, Isamak Snacks has established itself as one of the country’s premier and most heralded whoopie pie and dessert companies. This national notoriety is richly deserved as Amy Bouchard’s small dream to help her family blossomed into a vibrant small business. I am proud to congratulate Amy and everyone at Isamak Snacks on their outstanding work, and wish them continued success.

SIX-MONTH PERIODIC REPORT RELATIVE TO THE NATIONAL EMERGENCY THAT WAS DECLARED IN EXECUTIVE ORDER 12938 WITH RESPECT TO THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION—PM 33

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the Federal Register a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the Federal Register for publication the enclosed notice, stating that the national emergency with respect to the proliferation of weapons of mass destruction that was declared in Executive Order 12938, as amended, is to continue in effect for 1 year beyond November 14, 2011.

BARACK OBAMA.

THE WHITE HOUSE, November 9, 2011.
EC–3891. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Addition of Certain Persons on the Entity List; Addition of Persons Acting Contrary to the National Security or Foreign Policy Interests of the United States” ( Rinom 694–A) received during adjournment of the Senate in the Office of the President of the Senate on October 26, 2011; to the Committee on Commerce, Science, and Transportation.

EC–3892. A communication from the Secretary of Transportation, transmitting, the Department of Transportation’s 2011 annual report as required by the Superfund Amendments and Reauthorization Act (SARA) of 1986; to the Committee on Commerce, Science, and Transportation.

EC–3893. A communication from the Secretary of Transportation, transmitting, pursuant to law, an annual report relative to the accomplishments made under the Airport Improvement Program for fiscal year 2009; to the Committee on Commerce, Science, and Transportation.

EC–3894. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report entitled “Telecommunications Broadcasting Services; Panama City, Florida” (MB Docket No. 11–140) received in the Office of the President of the Senate on November 7, 2011; to the Committee on Commerce, Science, and Transportation.

EC–3895. A communication from the Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “In the Matter of Angeleno Charter Ministries, Inc.; New Beginning Ministries; Petitioners Identified in Appendix A: Interpretation of Economically Burdensome Standard; Amendment of Section 73.3525, Commission’s Rules; Video Programming Accessibility, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking” (FCC 11–159) received in the Office of the President of the Senate on November 7, 2011; to the Committee on Commerce, Science, and Transportation.

EC–3896. A communication from the Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Telecommunications Broadcasting Services; Panama City, Florida” (MB Docket No. 11–140) received in the Office of the President of the Senate on November 7, 2011; to the Committee on Commerce, Science, and Transportation.

EC–3897. A communication from the Director, Office of Science and Technology Policy, Executive Office of the President, transmitting, pursuant to law, a report of relative to the conclusion of the U.S. Government Accountability Office (GAO) that the Office of Science and Technology Policy violated the Anti-Deficiency Act by engaging in inappropriate activities; purportedly prohibited by section 1346(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011; to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 453. A bill to improve the safety of motorcoaches, and for other purposes (Rept. No. 112–38).

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of nominations were submitted:

By Mr. LIEBERMAN for the Committee on Homeland Security and Governmental Affairs:

* John Francis McCabe, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

* Peter Arno Krauthamer, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

* Danya Ariel Dayson, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

* Nancy Maria Ware, of the District of Columbia, to be a Judge on the Superior Court of the District of Columbia for the term of fifteen years.

* Michael A. Hughes, of the District of Columbia, to be a United States Marshal for the Superior Court of the District of Columbia for the term of four years.

*Nomination was reported with recommendation that it be confirmed subject to the nominee’s commitment to respond to a reasonable request for information before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. THUNE:

S. 1831. A bill to direct the Securities and Exchange Commission to eliminate the prohibition against general solicitation as a requirement for a certain exemption under Regulation D, and to clarify the rules governing offerings to accredited investors; and to amend the Public Company Accounting Oversight Board Improvement Act of 2002 to clarify that the Act applies to those issuers that have not registered with the Commission; and for other purposes.

By Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, Mr. JOHNSON of Iowa, Mr. BINGHAM, Mr. REED, Mr. BLUNT, Mr. WHITEHOUSE, Mr. CORKER, and Mr. PRYOR):

S. 1832. A bill to restore States’ sovereign rights to enforce state and local sales and use tax laws, and for other purposes; to the Committee on Finance.

By Mr. MANCHIN (for himself, Mr. COATS, Mr. NELSON of Nebraska, and Mr. CORKER):

S. 1833. A bill to provide additional time for compliance with, and coordinating of, the compliance schedules for certain rules of the Environmental Protection Agency; to the Committee on Environment and Public Works.

By Mr. CORKER:

S. 1834. A bill to restore and repair the United States mortgage markets by making them transparent, bringing in private capital, winding down Government-spons- ored enterprises, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. HAGAN (for herself, Mr. CORKER, Mr. SCHUMER, and Mr. CRAPO):

S. 1835. A bill to establish standards for covered bond programs and a covered bond regulatory oversight program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MENENDEZ (for himself and Mr. NELSON of Florida):

S. 1836. A bill to amend the Oil Pollution Act of 1990 to clarify that the Act applies to certain incidents that occur in water beyond the exclusive economic zone of the United States; to the Committee on Environment and Public Works.

By Mr. LEE (for himself, Mr. CRAPO, Mr. DE MINT, Mr. PAUL, Mr. RISCH, and Mr. BLUNT):

S. 1837. A bill to amend the Internal Revenue Code of 1986 to modify and permanently extend the incentives to reinvest foreign earnings in the United States; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. BOOZMAN, and Mr. PRYOR):

S. 1838. A bill to require the Secretary of Veterans Affairs to carry out a pilot program on service dog training therapy, and for other purposes; to the Committee on Veterans’ Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SCHUMER:

S. Res. 318. A resolution to authorize the printing of a revised edition of the Senate Rules and Manual; considered and agreed to.

By Mr. GRAHAM (for himself, Mr. CASEY, and Mr. MCCAIN):

S. Res. 319. A resolution honoring the life and legacy of Joe Frazier; considered and agreed to.

ADDITIONAL COSPONSORS

S. 273. At the request of Mr. LAUTENBERG, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 273, a bill to amend chapter 1 of title 23, United States Code, to condition the receipt of certain highway funding by States on the enactment and enforcement by States of certain laws to prevent repeat intoxicating driving.

S. 362. At the request of Mr. WHITEHOUSE, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. 362, a bill to amend the Public Health Service Act to provide for a Pancreatic Cancer Initiative, and for other purposes.

S. 431. At the request of Mr. PRYOR, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Kansas (Mr. MORAN) and the Senator from Indiana (Mr. COATS) were added as cosponsors of S. 431, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the date of the Declaration of Independence.

S. 739. At the request of Ms. MURKOWSKI, the name of the Senator from Louisiana
(Ms. LANDRIEU) was added as a cosponsor of S. 730, a bill to provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes.

At the request of Mr. SCHUMER, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 779, a bill to authorize the acquisition and protection of nationally significant battlefields and associated sites for the Revolutionary War and the War of 1812 under the American Battlefield Protection Program.

At the request of Mr. HATCH, the name of the Senator from Ohio (Mr. PORTMAN) was added as a cosponsor of S. 896, a bill to amend the Public Land Corps Act of 1993 to expand the authorization of the Secretaries of Agriculture, Commerce, and the Interior to provide small business opportunities for young Americans; help restore the nation’s natural, cultural, historic, archaeological, recreational and scenic resources; train a new generation of public land managers and enthusiasts; and promote the value of public service.

At the request of Mr. AKAKA, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from Georgia (Mr. CHAMBldbiss) were added as cosponsors of S. 998, a bill to amend title IV of the Employee Retirement Income Security Act of 1974 to require the Pension Benefit Guaranty Corporation, in the case of airline pilots who are required to retire at age 60, to compute the actuarial value of monthly benefits in the form of a life annuity commencing at age 60.

At the request of Mr. CARDIN, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 1039, a bill to impose sanctions on persons responsible for the detention, abuse, or death of Sergei Magnitsky, for the conspiracy to defraud the Russian Federation of taxes on corporate profits through fraudulent transactions and lawsuits against Hermitage, and for other gross violations of human rights in the Russian Federation, and for other purposes.

At the request of Mr. MENENDEZ, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1048, a bill to expand sanctions imposed with respect to the Islamic Republic of Iran, North Korea, and Syria, and for other purposes.

At the request of Mr. GRASSLEY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1161, a bill to amend the Food Security Act of 1985 to restore integrity to and strengthen payment limitation rules for commodity payments and benefits.

At the request of Mr. CARPER, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. 1251, a bill to amend title XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs.

At the request of Mr. BINGMAN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 1265, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

At the request of Mr. INHOFE, the names of the Senator from Utah (Mr. HATCH), the Senator from Utah (Mr. LEE) and the Senator from Kentucky (Mr. PAUL) were added as cosponsors of S. 1335, a bill to amend title 49, United States Code, to provide rights for pilots, and for other purposes.

At the request of Mrs. HAGAN, his name was added as a cosponsor of S. 1527, supra.

At the request of Mr. WYDEN, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 1718, a bill to amend title XVIII of the Social Security Act with respect to the application of Medicare secondary payer rules for certain claims.

At the request of Mr. TESTER, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1733, a bill to establish the Commission on the Review of the Overseas Military Facility Structure of the United States.

At the request of Mr. HAGAN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1766, a bill to extend HUBZone designations by 3 years, and for other purposes.

At the request of Mr. COONS, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 1808, a bill to amend the Immigration and Nationality Act to toll, during active-duty service abroad in the Armed Forces, the periods of time to file a petition and appear for an interview to remove the conditional basis for permanent resident status, and for other purposes.

At the request of Mr. WHITEHOUSE, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1859, a bill to amend the Truth in Lending Act to empower the States to set the maximum annual percentage rates applicable to consumer credit transactions, and for other purposes.

At the request of Mr. UDALL of New Mexico, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1898, a resolution expressing support for the designation of November 16, 2011, as National Information and Referral Services Day.

At the request of Mrs. HAGAN, his name was added as a cosponsor of amendment No. 927 proposed to H.R. 674, to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs, and for other purposes.

At the request of Mrs. MURRAY, the names of the Senator from Virginia (Mr. WARNER) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 927 proposed to H.R. 674, supra.

At the request of Mr. TESTER, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from Connecticut (Mr. BLUMENTHAL) were added as cosponsors of amendment No. 927 proposed to H.R. 674, supra.

At the request of Mr. MCCAIN, the names of the Senator from Arizona (Mr. KYL) and the Senator from Oklahoma (Mr. CONRAN) were added as cosponsors of amendment No. 928 proposed to H.R. 674, to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs, and for other purposes.
By Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, Mr. JOHNSON of South Dakota, Mr. BOOZMAN, Mr. REED, Mr. BLUNT, Mr. WHITEHOUSE, Mr. CORKER, and Mr. PYROZ)

S. 1832

A bill to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes; to the Committee on Finance.

Mr. ENZI. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1832

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marketplace Fairness Act of 2011".

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that States should have the ability to enforce their existing sales and use tax laws and that similar sales transactions equally, without regard to the manner in which the sale is transacted, and the right to collect - or not to collect - taxes that are already owed under State law.

SEC. 3. AUTHORIZATION TO REQUIRE COLLECTION OF SALES AND USE TAXES.

(a) Streamlined Sales and Use Tax Agreement.—Each Member State under the Streamlined Sales and Use Tax Agreement is authorized to require all sellers not qualifying for a small seller exception to collect and remit sales and use taxes with respect to remote sales sourced to that State Member pursuant to the provisions of the Streamlined Sales and Use Tax Agreement. Such authority shall commence beginning no earlier than the first day of the calendar quarter that is at least 90 days after the date of enactment of this Act.

(b) Alternative.—

(1) In General.—A State that is not a Member State under the Streamlined Sales and Use Tax Agreement shall be authorized to require all sellers not qualifying for a small seller exception to collect and remit sales and use taxes with respect to remote sales sourced to that State pursuant to the provisions of the Streamlined Sales and Use Tax Agreement. Such authority shall commence beginning no earlier than the first day of the calendar quarter that is at least 6 months after the date on which the State enacts legislation to implement each of the following minimum simplification requirements.

(i) A Provide—

(1) a single State-level agency to administer all sales and use tax laws, including the collection and administration of all State and applicable locality sales and use taxes for all remote sales sourced to that State by remote sellers.

(ii) a single audit for all State and local taxing jurisdictions within that State, and

(iii) a single sales and use tax return to be used by remote sellers and single and consolidated providers to collect sales and use taxes pursuant to the applicable destination rate, which is the sum of the applicable State rate and any applicable rate for the local jurisdiction into which the sale is made.

(ii) Provide—

A. Provide software and services to remote sellers and single and consolidated providers that identifies the applicable destination rate, including the State and local sales and use tax rate (if any), to be applied on sales sourced to the State, and

B. Certificates of Procedures for both single providers and consolidated providers to make software and services available to remote sellers, and hold such providers harmless for any errors or omissions as a result of relying on information provided by the State.

C. Hold remote sellers using a single or consolidated provider harmless for any errors or omissions by that provider.

D. Relieve remote sellers from liability to the State or locality for collection of the incorrect amount of sales or use tax, including any penalties or interest, if collection of the improper amount is the result of relying on information provided by the State.

E. Provide—

(i) the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions sourced to that State, but only if the State has the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions sourced to the address of the seller from that State with respect to which a seller does not have adequate physical presence to establish nexus under Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

(ii) the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions sourced to that State, but only if the State has the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions sourced to a State with respect to which a seller does not have adequate physical presence to establish nexus under Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

(f) Small Seller Exception.—A State shall be authorized to require a remote seller, or a single or consolidated provider acting on behalf of a remote seller, to collect sales or use tax under this Act if the remote seller has gross annual receipts in total remote sales in the United States in the preceding calendar year exceeding $500,000. For purposes of determining whether the threshold in this subsection is met, the sales of all persons who are partners or employees of the remote seller or single or consolidated provider shall be aggregated.

SEC. 4. TERMINATION OF AUTHORITY.

A. The authority granted by this Act shall terminate on the date that the highest court of competent jurisdiction makes a final determination that the State no longer meets the requirements of this Act, and the determination of such court is no longer subject to appeal.

B. The authority granted by this Act shall be construed as permitting or prohibiting a State from—

(1) licensing or regulating any person,

(2) requiring any person to qualify to transact intra-state business,

(3) subjecting any person to State taxes not related to the sale of goods or services, or

(4) exercising authority over matters of interstate commerce.

(3) In General.—Nothing in this Act shall be construed as encouraging a State to impose sales and use taxes on any goods or services not subject to taxation prior to the date of the enactment of this Act.

(4) Intrastate Sales.—The provisions of this Act shall only apply to remote sales and shall not apply to intrastate sales or intrastate provisions of the Streamlined Sales and Use Tax Agreement.

SEC. 5. LIMITATIONS.

A. This Act shall be construed as permitting or prohibiting a State from—

(1) requiring any person to qualify to transact intra-state business,

(2) subjecting any person to State taxes not related to the sale of goods or services, or

(3) exercising authority over matters of interstate commerce.

(4) Streamlined Sales and Use Tax Agreement.—Nothing in this Act shall be construed as encouraging a State to impose sales and use taxes on any goods or services not subject to taxation prior to the date of the enactment of this Act.

(5) Repeal.—Nothing in this Act shall be construed as prohibiting any person certified by a State who has the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions sourced to any aggregate sales made by remote sellers or on an aggregated basis, as to that aggregate sales made, as to any State who has the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions sourced to a State with respect to which a seller does not have adequate physical presence to establish nexus under Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

B. Limitations on Authority.—The provisions of this Act shall be construed as permitting or prohibiting a State from—

(1) requiring any person to qualify to transact intra-state business,

(2) subjecting any person to State taxes not related to the sale of goods or services, or

(3) exercising authority over matters of interstate commerce.

(4) Limitations on Authority.—The provisions of this Act shall be construed as permitting or prohibiting a State from—

(1) licensing or regulating any person,

(2) requiring any person to qualify to transact intra-state business,

(3) subjecting any person to State taxes not related to the sale of goods or services, or

(4) exercising authority over matters of interstate commerce.

(5) Intrastate Sales.—The provisions of this Act shall only apply to remote sales and shall not apply to intrastate sales or intrastate provisions of the Streamlined Sales and Use Tax Agreement.

SEC. 6. DEFINITIONS AND SPECIAL RULES.

In this Act:

(1) Consolidated Provider.—The term "consolidated provider" means any person certified by a State who has the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions sourced to an aggregate of remote sales made by remote sellers on an aggregated basis.

(2) Local.—The term "local" and "locality" refer to any political subdivision of any State.

(3) Member State.—The term "Member State"—

(A) means a Member State as that term is defined under the Streamlined Sales and Use Tax Agreement as in effect on the date of the enactment of this Act, and

(B) does not include any associate member under the Streamlined Sales and Use Tax Agreement.

(4) Person.—The term "person" means an individual, trust, estate, fiduciary, partner, corporation, limited liability company, or other legal entity, and a State or local government.

(5) Remote Sale.—The term "remote sale" means a sale of goods or services attributed to a State with respect to which a seller does not have adequate physical presence to establish nexus under Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

(6) Remote Seller.—The term "remote seller" means a person that makes remote sales.

(7) Single Provider.—The term "single provider" means any person certified by a State who has the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions sourced to an aggregate of remote sales made by remote sellers on an aggregated basis.

(8) Source.—For purposes of a State granted authority under section 3(a), the location to which a remote sale is sourced refers to the location where the item sold is received by the purchaser, based on the location indicated by instructions for delivery that the purchaser furnishes to the seller. When no delivery location is specified, the remote sale is sourced to the customer's address that is either known to the seller or, if not known, obtained by the seller during the consummation of the transaction, including the address of the customer's payment instrument.

(9) State.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico,
SEC. 2. DEFINITIONS.

SEC. 3. REGULATORY OVERSIGHT OF COVERED BOND PROGRAMS ESTABLISHED.

SEC. 4. COVER POOL.

SEC. 5. COVERED BOND PROGRAM.

SEC. 6. ELIGIBLE ASSET.

SEC. 7. SEVERABILITY.

SEC. 8. ELIGIBLE ASSET CLASS.

SEC. 9. ELIGIBLE ISSUER.

SEC. 10. OVERSIGHT PROGRAM.

SEC. 11. SECRETARY.

SEC. 12. SUBSTITUTE ASSET.

Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(10) STREAMLINED SALES AND USE TAX AGREEMENT.—The term ‘‘Streamlined Sales and Use Tax Agreement’’ means the multistate agreement with that title adopted on November 10, 2011, in effect on the date of the enactment of this Act and as further amended from time to time.

SEC. 7. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of such to any person or circumstance shall not be affected there-}

By Mrs. HAGAN (for herself, Mr. CORKER, Mr. SCHUMER, and Mr. CRAPAO):

S. 1835. A bill to establish standards for covered bond programs and a covered bond regulatory oversight program; and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

SEC. 1. SHORT TITLE.

This Act may be cited as the ‘‘United States Covered Bond Act’’.

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ANCILLARY ASSET.—The term ‘‘ancillary asset’’ means—

(A) any interest rate or currency swap associated with 1 or more eligible assets, substitute assets, or other assets in a cover pool;

(B) any credit enhancement or liquidity arrangement associated with 1 or more eligible assets, substitute assets, or other assets in a cover pool;

(C) any guarantee, letter-of-credit right, or other arrangement that supports any payment or performance of 1 or more eligible assets, substitute assets, or other assets in a cover pool; and

(D) any proceeds of, or other property incidental to, 1 or more eligible assets, substitute assets, or other assets in a cover pool.

(2) CORPORATION.—The term ‘‘Corporation’’ means a Federal Deposit Insurance Corporation.

(3) COVER POOL.—The term ‘‘cover pool’’ means a dynamic pool of assets that is comprised of—

(A) in the case of any eligible issuer described in subparagraph (A), (B), (C), or (D) of paragraph (9)—

(i) 1 or more eligible assets from a single eligible asset class; and

(ii) 1 or more substitute assets or ancillary assets; and

(B) in the case of any eligible issuer described in paragraph (9)(F)—

(i) the covered bonds issued by each sponsoring eligible issuer; and

(ii) 1 or more substitute assets or ancillary assets.

(4) COVERED BOND.—The term ‘‘covered bond’’ means any recourse debt obligation of an eligible issuer that—

(A) has an original term to maturity of not less than 1 year;

(B) is secured by a perfected security interest in or other perfected lien on a cover pool that is owned directly or indirectly by the issuer of the obligation;

(C) is issued by a covered bond program that has been approved by the applicable covered bond regulator; and

(D) is identified in a register of covered bonds that is maintained by the Secretary; and

(E) is not a deposit (as defined in section 3(i) of the Federal Deposit Insurance Act (12 U.S.C. 1813(i)));

(F) has a term to maturity at least equal to the term to maturity of the obligation it covers;

(G) is subject to the jurisdiction of an appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the appropriate Federal banking agency; and

(H) is not a deposit (as defined in section 3(i) of the Federal Deposit Insurance Act (12 U.S.C. 1813(i))), the appropriate Federal banking agency.

(5) COVERED BOND PROGRAM.—The term ‘‘covered bond program’’ means any program of an eligible issuer under which, on the security of a single, multiple, or a combination of 1 or more series of covered bonds may be issued.

(6) COVERED BOND REGULATOR.—The term ‘‘covered bond regulator’’ means—

(A) for any eligible issuer that is subject to the jurisdiction of an appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the appropriate Federal banking agency;

(B) for any eligible issuer that is described in paragraph (9)(F), that is subject to the jurisdiction of an appropriate Federal banking agency, and that is sponsored by more than 1 eligible issuer, the covered bond regulator for the sponsor;

(C) for any eligible issuer that is described in paragraph (9)(F), that is not subject to the jurisdiction of an appropriate Federal banking agency, and that covered bonds constitute the largest share of the cover pool of the issuer and

(D) for any other eligible issuer that is not subject to the jurisdiction of an appropriate Federal banking agency, the Board of Governors of the Federal Reserve System.

(7) ELIGIBLE ASSET.—The term ‘‘eligible asset’’ means—

(A) in the case of the residential mortgage asset class—

(i) any first-lien mortgage loan that is secured by 1- to 4-family residential property;

(ii) any mortgage loan that is insured under the National Housing Act (12 U.S.C. 1701 et seq.); and

(iii) any loan that is guaranteed, insured, or made under chapter 37 of title 38, United States Code;

(B) in the case of the commercial mortgage asset class, any commercial mortgage loan (including any multifamily mortgage loan); and

(C) in the case of the public sector asset class—

(i) any security issued by a State, municipality, or other governmental authority;

(ii) any loan made to a State, municipality, or other governmental authority; and

(iii) any loan, security, or other obligation that is insured or guaranteed, in full or substantially in full, by the full faith and credit of any State, municipality, or other governmental authority (whether or not such loan, security, or other obligation is also part of another eligible asset class);

(D) in the case of the auto asset class, any auto loan or lease;

(E) in the case of the student loan asset class, any student loan (whether guaranteed or nonguaranteed);

(F) in the case of the credit or charge card asset class, any extension of credit to a person under an open-end credit plan;

(G) in the case of the small business asset class, any loan that is made or guaranteed under a program of the Small Business Administration; and

(H) in the case of any other eligible asset class, any asset designated by the Secretary, by rule and in consultation with the covered bond regulators, as an eligible asset for purposes of such class.

(8) ELIGIBLE ASSET CLASS.—The term ‘‘eligible asset class’’ means—

(A) a residential mortgage asset class;

(B) a commercial mortgage asset class;

(C) a public sector asset class;

(D) an auto asset class;

(E) a student loan asset class;

(F) a credit or charge card asset class; and

(G) a small business asset class; and

(H) any other eligible asset class designated by the Secretary, by rule and in consultation with the covered bond regulators.

(9) ELIGIBLE ISSUER.—The term ‘‘eligible issuer’’ means—

(A) any insured depository institution and any subsidiary of such institution;

(B) any bank holding company, any savings and loan holding company, and any subsidiary of any such companies;

(C) any broker or dealer that is registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and is a member of the Securities Investor Protection Corporation, and any subsidiary of such broker or dealer;

(D) any insurer that is supervised by a State insurance regulator, and any subsidiary of such insurer;

(E) any nonbank financial company (as defined in section 10(a)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5311(a)(4))) that is supervised by the Board of Governors of the Federal Reserve System under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323), including any intermediate holding company supervised as a nonbank financial company, and any subsidiary of such a nonbank financial company; and

(F) any issuer that is sponsored by 1 or more eligible issuers for the sole purpose of issuing covered bonds on a pooled basis.

(10) OVERSIGHT PROGRAM.—The term ‘‘oversight program’’ means the covered bond regulatory oversight program established under section 3(a).

(11) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of the Treasury.

(12) SUBSTITUTE ASSET.—The term ‘‘substitute asset’’ means—

(A) cash;

(B) any direct obligation of the United States Government, and any security or other obligation whose full principal and interest are insured or guaranteed by the full faith and credit of the United States Government;

(C) any direct obligation of a United States Government corporation or Government-sponsored enterprise of the highest credit quality, and any other security or other obligation of the highest credit quality whose full principal and interest are insured or guaranteed by such corporation or enterprise, except that the outstanding principal amount of these obligations in any cover pool may not exceed an amount equal to 20 percent of the outstanding principal amount of all assets in the cover pool without the approval of the applicable covered bond regulator;

(D) any other substitute asset designated by the Secretary, by rule and in consultation with the covered bond regulators; and

(E) any deposit account or securities account into which only funds described in subparagraph (A), (B), (C), or (D) may be deposited or credited.

SEC. 3. REGULATORY OVERSIGHT OF COVERED BOND PROGRAMS ESTABLISHED.

(2) CORPORATION.—The term ‘‘Corporation’’ means the Federal Deposit Insurance Corporation.

(3) COVER POOL.—The term ‘‘cover pool’’ means a dynamic pool of assets that is comprised of—

(A) in the case of any eligible issuer described in subparagraph (A), (B), (C), or (D) of paragraph (9)—

(i) 1 or more eligible assets from a single eligible asset class; and

(ii) 1 or more substitute assets or ancillary assets; and

(B) in the case of any eligible issuer described in paragraph (9)(F)—

(i) the covered bonds issued by each sponsoring eligible issuer; and

(ii) 1 or more substitute assets or ancillary assets.

(4) COVERED BOND.—The term ‘‘covered bond’’ means any recourse debt obligation of an eligible issuer that—

(A) has an original term to maturity of not less than 1 year;
the Secretary shall, by rule and in consulta-
tion with the covered bond regulators, estab-
lish a covered bond regulatory oversight pro-
gram that provides for—
(A) covered bond programs to be evaluated
according to reasonable and objective stand-
ards in order to be approved under paragraph
(2), including any additional eligibility stan-
dards for eligible assets and any other criteria
determined appropriate by the Sec-
retary to further the purposes of this Act;
(B) covered bond programs to be main-
tained that is consistent with this
Act and safe and sound asset-liability
management and other financial practices; and
(C) any estate created under section 4 to be
administered in a manner that is consistent
with maximizing the value and the proceeds
of the related cover pool in a resolution
under this Act.
(2) APPROVAL OF EACH COVERED BOND PRO-
GRAM.—
(A) IN GENERAL.—A covered bond shall be
subject to this Act only if the covered bond
is issued by an eligible issuer under a cov-
ed bond program that is approved by the applicable
covered bond regulator.
(B) APPROVAL PROCESS.—Each covered
bond regulator shall apply the standards es-
tablished by the Secretary under the over-
sight program to evaluate a covered bond
program that has been submitted by an eligi-
bles issuer for approval. Each covered bond
regulator also shall take into account rel-
vant information reasonably requested by
the Secretary in order to update the registry
under paragraph (3)(A).
(C) EXISTING COVERED BOND PROGRAMS.—A
covered bond regulator may approve a cov-
ed bond program that is in existence on
the date of the enactment of this Act. Upon
such approval, each covered bond under the
covered bond program shall be subject to
this Act, regardless of when the covered bond
was issued.
(D) MULTIPLE COVERED BOND PROGRAMS
PERMITTED.—An eligible issuer may have more than 1 covered bond
program.
(E) CEASE AND DESIST AUTHORITY.—The ap-
plicable covered bond regulator may direct
an eligible issuer to cease issuing covered
bonds under an approved covered bond
program if the covered bond program is
not maintained in a manner that is consistent with the
standards established by the
Secretary under the oversight program,
if, after notice that is reasonable under the
circumstances, the issuer does not remedy all deficiencies identified by the applicable
covered bond regulator.
(F) CAP ON THE AMOUNT OF OUTSTANDING
COVERED BONDS.—
(i) IN GENERAL.—With respect to each eligi-
bles issuer that submits a covered bond pro-
gram for approval, the applicable covered
bond regulator shall set, consistent with safety and soundness considerations and the
financial condition of the eligible issuer, the
maximum amount, as a percentage of the el-
igible issuer’s total assets, of outstanding
covered bonds that the eligible issuer may
issue.
(ii) REVIEW OF CAP.—The applicable cov-
ered bond regulator may, not more fre-
quently than quarterly, review the percent-
age set under clause (i) and, if safety and
soundness considerations or the financial
condition of the eligible issuer has changed,
increase or decrease such percentage. Any
increase or decrease pursuant to this clause shall
have no effect on existing covered bonds
issued by the eligible issuer.
(iii) REGISTRATION.—With respect to the over-
sight program, the Secretary shall maintain a reg-
istry that is published on a Web site avail-
able to the public and that, for each covered
bond program approved by a covered bond
regulator, contains—
(A) the name of the covered bond program,
the name of the eligible issuer, and all other
information reasonably necessary to ade-
quately identify the covered bond program
and the eligible issuer; and
(B) all information that the Secretary con-
siders necessary to adequately identify all
outstanding covered bonds issued under the
covered bond program (including the reports
described in paragraphs (3) and (4) of sub-
section (b)).
(iv) FEES.—Each covered bond regulator
may levy, on the issuers of covered bonds
under the primary supervision of such cov-
dered bond regulator, reasonably apportioned
fees that such covered bond regulator con-
siders necessary, in the aggregate, to defray
the costs of such covered bond regulator car-
rying out the requirements of this section.
Such fees shall not be construed to be Govern-
ment funds or appropriated monies and shall
not be subject to apportionment for purposes
of chapter 15 of title 31, United States Code,
or any other provision of law.
(b) MINIMUM OVER-COLLATERALIZATION RE-
QUIREMENTS.—
(1) REQUIREMENTS ESTABLISHED.—The Sec-
retary, by rule and in consultation with the
covered bond regulators, shall establish min-
imum over-collateralization requirements
for covered bonds backed by each of the eli-
gible asset classes. The minimum over-
collateralization requirements shall be de-
signed to ensure that sufficient eligible as-
sets and substitute assets are maintained in
the cover pool to satisfy all principal and in-
terest payments on the covered bonds when
due through maturity and shall be based on
the credit, collection, and interest rate risks
(excluding the liquidity risks) associated with
the eligible asset class.
(2) ASSET COVERAGE TEST.—The eligible as-
sets in any cover pool shall be required, in the aggregate, to meet at all times the applicable minimum over-collateralization requirements.
(3) MONTHLY REPORTING.—On a monthly
basis, each issuer of covered bonds shall sub-
mit a report on whether the cover pool that
securities the covered bonds meets the applica-
ble minimum over-collateralization require-
ments to—
(A) the Secretary;
(B) the applicable covered bond regulator;
(C) the applicable independent asset mon-
itor; and
(E) the applicable independent asset mon-
itor
(4) INDEPENDENT ASSET MONITOR.—
(A) APPOINTMENT.—Each issuer of covered
bonds shall appoint the indenture trustee for
the covered bonds, or another unaffiliated
entity, as an independent asset monitor for
the applicable cover pool.
(B) DUTIES.—An independent asset monitor
appointed under subparagraph (A) shall, on
an annual or other more frequent periodic
basis determined by the Secretary under the
oversight program—
(i) verify whether the cover pool meets the applicable minimum over-collateralization requirements; and
(ii) report to the Secretary, the applicable
covered bond regulator, the applicable inden-
ture trustee, and the applicable covered
bondholders on whether the cover pool meets
the applicable minimum over-collateralization requirements.
(C) REMOVAL AND REPLACEMENT.—The inde-
pendent asset monitor appointed under sub-
paragraph (A) may be removed and re-
placed—
(i) by a covered bond regulator in any case
in which such action is in the best interest of
the covered bond investors; and
(ii) by covered bond holders who own a ma-
jority of the outstanding principal amount
of the covered bonds secured by the applicable
cover pool.
(5) NO LOSS OF STATUS.—Covered bonds
shall remain subject to this Act regardless of
whether the applicable cover pool ceases to
meet the applicable minimum over-collateralization requirements.
(6) FAILURE TO MEET REQUIREMENTS.—
(A) IN GENERAL.—If a cover pool fails to
meet the applicable minimum over-collateralization requirements, and if the failure is not cured within the time specified
in the related transaction documents, the failure is not cured within the time specified
in the related transaction documents, or if the
failure is not so cured.
(b) NOTICE REQUIRED.—An issuer of covered
bonds shall promptly give the Secretary and
the applicable covered bond regulator writ-
ten notice if the cover pool securing the cov-
ered bonds fails to meet the applicable min-
imum over-collateralization requirements, if the failure is incurred within the time specified
in the related transaction documents, or if the
failure is not so cured.
(c) REQUIREMENTS FOR ELIGIBLE ASSETS.—
(1) REQUIREMENTS.
(A) LOANS.—A loan shall not qualify as an
eligible asset for so long as the loan is delin-
quent for more than 60 consecutive days.
(B) SECURITIES.—A security shall not quali-
fy as an eligible asset for so long as the
security does not meet any credit-quality re-
quirement under this Act.
(C) ORIGINATION.—An asset shall not qual-
ify as an eligible asset if the asset was not
originated in compliance with any rule or
supervisory guidance of a Federal agency ap-
licable to the asset at the time of origin-
ation.
(D) NO DOUBLE PLEDGE.—An asset shall not
qualify as an eligible asset for so long as the
asset is subject to a perfected security interest or other prior perfected lien
that has been granted in an unrelated trans-
action. Nothing in this Act shall affect such
prior perfected security interest or other
prior perfected lien, and the rights of such
lien holders.
(2) FAILURE TO MEET REQUIREMENTS.—Sub-
ject to paragraph (1), if an asset in a cover pool
does not satisfy any applicable require-
ment described in paragraph (1) or any other applicable standard or criterion described in
section 4(b)(2), the over-collateralization of
the related transaction documents, the asset shall not qualify as an eligible asset for purposes of the
asset coverage test described in sub-
section (b)(2). A disqualified asset shall re-
main in the cover pool unless and until re-
moved by the issuer in compliance with the
provisions of this Act, the oversight pro-
gram, and the related transaction docu-
ments. No disqualified asset may be removed from the cover pool after an estate has been
created for the related covered bond program
in connection with the management of the cover
pool under section 4(d)(1)(E).
(d) OTHER REQUIREMENTS.—
(1) BOOKS AND RECORDS OF ISSUER.—Each
issuer of covered bonds shall clearly mark its
books and records to identify the assets that

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comprise the covered pool securing the covered bonds.

(2) Schedule of Eligible Assets and Substitute Assets.—Each issuer of covered bonds shall designate the applicable independent trustee and the applicable independent asset monitor, on at least a monthly basis, a schedule that identifies all eligible assets and substitute assets in the covered pool securing the covered bonds.

(3) Single Eligible Asset Class.—No covered pool described in section 23A(3)(A) may include eligible assets from more than 1 eligible asset class. No covered pool described in section 23A(3)(B) may include covered bonds backed by more than 1 eligible asset class.

SEC. 4. Resolution upon Default or Insolvency.

(a) Uncured Default Defined.—For purposes of this section, the term "uncured default" means a default on a covered bond that has not been cured within the time, if any, specified in the related transaction documents.

(b) Default on Covered Bonds Prior to Conservatorship, Receivership, Liquidation, or Bankruptcy.—

(1) Creation of Separate Estate.—If an unsecured default occurs on a covered bond before the issuer of the covered bond enters conservatorship, receivership, liquidation, or bankruptcy, an estate shall be immediately and automatically created by operation of law and shall exist and be administered separately from all other assets of the issuer. A separate estate shall be created for each affected covered bond program.

(2) Assets and Liabilities of Estate.—Any asset or liability described in subsection (1) shall be comprised of the covered pool (including over-collateralization in the covered pool) that secures the covered bond. The covered pool shall be immediately and automatically released and held by the estate free and clear of any right, title, interest, or claim of the issuer or any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer. A separate estate shall be created for each affected covered bond program.

(c) Default on Covered Bonds upon Conservatorship, Receivership, Liquidation, or Bankruptcy.—

(1) Corporation Conservatorship or Receivership.—

(A) In General.—If the Corporation is appointed as conservator or receiver for an issuer pursuant to section 5 of the Federal Deposit Insurance Act, the Corporation shall be immediately and automatically entitled to control of the issuer, including all tangible or electronic books, records, files, and other documents or materials relating to the assets and liabilities of the issuer, if—

(i) the transfer of the applicable covered bond program to any other eligible issuer within the 1-year period as provided in paragraph (A), the transferee shall take ownership of the applicable covered bond program and related obligations of the issuer that are secured by a perfected security interest in or other perfected lien on the cover pool, and shall become fully liable on all covered bonds and related obligations of the issuer that are secured by a perfected security interest in or other perfected lien on the cover pool.

(ii) the transfer of the applicable covered bond program to an eligible issuer within the 1-year period as provided in paragraph (A), the transferee shall take ownership of the applicable covered bond program and related obligations of the issuer that are secured by a perfected security interest in or other perfected lien on the cover pool.

(iii) at the election of the trustee or a servicer or administrator for the cover pool, for the period beginning on the date of appointment of the trustee or the servicer or administrator and ending on the date the estate is returned for a fair-market-value fee, as determined by the trustee in consultation with the applicable covered bond regulator, that shall be paid to the estate as an administrative expense.

(B) Obligations Absolute.—Neither the Corporation as conservator or receiver, nor any conservator or receiver, nor any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer, if—

(i) fails to fully and timely satisfy all monetary and nonmonetary obligations of the issuer under the covered bonds and the related transaction documents or to fully and timely cure all defaults or other deficiencies with respect to the covered bonds and any conservatorship, receivership, liquidating agency, or estate in bankruptcy for the issuer or any other assets of the issuer, if—

(ii) in the case of the appointment of the Corporation as conservator or receiver as described in paragraph (1), the Corporation as conservator or receiver—

(i) do not complete the transfer of the applicable covered bond program to another eligible issuer within the 1-year period as provided in paragraph (1); or

(ii) delivers to the Secretary, the applicable covered bond regulator, the applicable insolvency agent, and the applicable covered bondholders a written notice electing to cease further performance under the applicable covered bond program; or

(iii) fails to fully and timely satisfy all monetary and nonmonetary obligations of the issuer under the covered bonds and the related transaction documents or to fully and timely cure all defaults or other deficiencies with respect to the covered bonds, and the related transaction documents or to fully and timely cure all defaults or other deficiencies with respect to the covered bond program pursuant to subparagraph (C) to the estate.

(C) Default on Covered Bonds Upon Conservatorship, Receivership, Liquidation, or Bankruptcy.—

(i) the transfer of the applicable covered bond program to another eligible issuer as provided in subparagraph (A); or

(ii) the delivery to the Secretary, the applicable covered bond regulator, the applicable insolvency agent, and the applicable covered bondholders of a written notice from the Corporation as conservator or receiver to cease further performance under the applicable covered bond program.

(D) Assumption by Transferee.—If the Corporation as conservator or receiver transfers a covered bond program to an eligible issuer within the 1-year period as provided in subparagraph (A), the transferee shall take ownership of the applicable covered bond program and related obligations of the issuer that are secured by a perfected security interest in or other perfected lien on the cover pool.

(ii) the transfer of the applicable covered bond program to any other eligible issuer within the 1-year period as provided in paragraph (A), the transferee shall take ownership of the applicable covered bond program and related obligations of the issuer that are secured by a perfected security interest in or other perfected lien on the cover pool.

(iii) at the election of the trustee or a servicer or administrator for the cover pool, for the period beginning on the date of appointment of the trustee or the servicer or administrator and ending on the date the estate is returned for a fair-market-value fee, as determined by the trustee in consultation with the applicable covered bond regulator, that shall be paid to the estate as an administrative expense.

(B) Obligations Absolute.—Neither the Corporation as conservator or receiver, nor any conservator or receiver, nor any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer, if—

(i) fails to fully and timely satisfy all monetary and nonmonetary obligations of the issuer under the covered bonds and the related transaction documents or to fully and timely cure all defaults or other deficiencies with respect to the covered bonds, and the related transaction documents or to fully and timely cure all defaults or other deficiencies with respect to the covered bond program pursuant to subparagraph (C) to the estate.

(C) Default on Covered Bonds Upon Conservatorship, Receivership, Liquidation, or Bankruptcy.—

(i) the transfer of the applicable covered bond program to another eligible issuer as provided in subparagraph (A); or

(ii) the delivery to the Secretary, the applicable covered bond regulator, the applicable insolvency agent, and the applicable covered bondholders of a written notice from the Corporation as conservator or receiver to cease further performance under the applicable covered bond program.

(D) Assumption by Transferee.—If the Corporation as conservator or receiver transfers a covered bond program to an eligible issuer within the 1-year period as provided in subparagraph (A), the transferee shall take ownership of the applicable covered bond program and related obligations of the issuer that are secured by a perfected security interest in or other perfected lien on the cover pool.

(ii) the transfer of the applicable covered bond program to any other eligible issuer within the 1-year period as provided in paragraph (A), the transferee shall take ownership of the applicable covered bond program and related obligations of the issuer that are secured by a perfected security interest in or other perfected lien on the cover pool.

(iii) at the election of the trustee or a servicer or administrator for the cover pool, for the period beginning on the date of appointment of the trustee or the servicer or administrator and ending on the date the estate is returned for a fair-market-value fee, as determined by the trustee in consultation with the applicable covered bond regulator, that shall be paid to the estate as an administrative expense.

(B) Obligations Absolute.—Neither the Corporation as conservator or receiver, nor any conservator or receiver, nor any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other assets of the issuer, if—

(i) fails to fully and timely satisfy all monetary and nonmonetary obligations of the issuer under the covered bonds and the related transaction documents or to fully and timely cure all defaults or other deficiencies with respect to the covered bonds, and the related transaction documents or to fully and timely cure all defaults or other deficiencies with respect to the covered bond program pursuant to subparagraph (C) to the estate.
obtain or perfect a security interest in or other lien on the cover pool to secure such a claim.

(4) CONTINGENT CLAIM.—Any contingent claim against an issuer for a deficiency with respect to a covered bond or related obligation for which an estate has become liable under paragraph (3) shall be allowed as a provable claim in the conservatorship, receivership, liquidating agency, or bankruptcy case for the issuer. The contingent claim shall be estimated by the conservator, receiver, liquidating agent, or bankruptcy court for purposes of allowing the claim as a provable claim if awaiting the fixing of the contingent claim would unduly delay the resolution of the conservatorship, receivership, liquidating agency, or bankruptcy case.

(5) RESIDUAL INTEREST.—
(A) ISSUANCE OF RESIDUAL INTEREST.—Upon the creation of an estate under paragraph (2), and regardless of whether any contingent claim described in paragraph (4) becomes fixed or is estimated, a residual interest in the estate shall be immediately and automatically issued by operation of law to the conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer.

(B) RESIDUAL INTEREST.—The residual interest under subparagraph (A) shall—
(i) be an exempted security as described in section 5;
(ii) represent the right to any surplus from the cover pool after the covered bonds and all other liabilities of the estate have been fully and irrevocably paid; and
(iii) be evidenced by a certificate executed by the trustee of the estate.

(C) ISSUANCE OF RESIDUAL INTEREST.—Upon the creation of any estate under paragraph (2), the issuer and its trustee shall—
(i) appoint the trustee for the estate;
(ii) give the Secretary, the applicable covered bondholders, and the owner of the residual interest written notice of the creation of the estate;
(iii) give the Secretary, the applicable indenture trustee, the applicable covered bondholders, and the owner of the residual interest written notice of the creation of the estate; and
(iv) give the Secretary, the applicable indenture trustee, the applicable covered bondholders, and the owner of the residual interest written notice of the creation of the estate.

(D) TERMS AND CONDITIONS OF APPOINTMENT.—All terms and conditions of any appointment under paragraph (1), including the terms and conditions relating to compensation, shall conform to the requirements of this Act and the oversight program and otherwise be determined by the applicable covered bond regulator.

(E) QUALIFIED COVERED BOND REGULATOR.—The applicable covered bond regulator may require the trustee or any servicer or administrator for an estate to post in favor of the United States, for the benefit of the estate, a bond that is conditioned on the faithful performance of the duties of the trustee or the servicer or administrator. Such covered bond regulator shall determine the amount of any bond required under this subparagraph and the sufficiency of the surety on the bond. A proceeding on a bond required under this paragraph may not be commenced after two years after the date on which the trustee or the servicer or administrator was discharged.

(F) POWERS AND DUTIES OF TRUSTEE.—The trustee for an estate is the representative of the estate and, subject to the provisions of this Act, has capacity to sue and be sued. The trustee—
(i) administer the estate in compliance with this Act, the oversight program, and the related transaction documents; (ii) be evidenced by a certificate executed by the trustee of the estate that is received by the trustee; (iii) make a final report and file a final account of the administration of the estate, and, if so required, the applicable covered bond regulator; and
(iv) after the estate has been fully administered, close the estate.

(G) ISSUANCE OF RESIDUAL INTEREST.—Upon the creation of any estate under paragraph (2), the issuer and its trustee shall—
(i) issue or perfect a security interest in or on behalf of the estate or in any capacity, nor any constituency; and
(ii) give the Secretary, the applicable indenture trustee, the applicable covered bondholders, and the owner of the residual interest written notice of the creation of the estate.

(H) OBLIGATIONS ABSOLUTE.—Neither the issuer, whether acting as debtor in possession or in any other capacity, nor any conservator, receiver, liquidating agent, or trustee in bankruptcy for the issuer or any other person designated by the covered bond regulator, shall transfer to or in direction of the trustee for the estate all property of the estate that is in the possession or under the control of the issuer or its conservator, receiver, liquidating agent, or trustee in bankruptcy, including all tangible or electronic books, records, files, and other documents or materials relating to the assets and liabilities of the estate; and
(ii) at the election of the trustee or a servicer or administrator for the estate, continue the applicable covered bond regulator for 250 days after the termination of the administration in return for a fair-market-value fee, as determined by the trustee in consultation with the applicable covered bond regulator, that shall be paid to the estate as an administrative expense.

(I) ADMINISTRATION AND RESOLUTION OF ESTATE.—
(A) IN GENERAL.—Upon the creation of any estate under paragraph (2), or subordinated basis;

(A) TRUSTEE, SERVICER, AND ADMINISTRATOR.—If the covered bond regulator determines that it is in the best interests of an estate, the covered bond regulator may remove or replace the trustee or any servicer or administrator for the estate. The removal or replacement of any servicer or administrator does not abate any pending action or proceeding involving the estate, and any successor servicer or administrator shall be substituted as a party in the action or proceeding.

(B) PROFESSIONALS.—The trustee or any servicer or administrator for an estate may employ 1 or more attorneys, accountants, appraisers, auctioneers, or other professional persons to represent or assist the trustee or the servicer or administrator in carrying out its duties. The employment of any professional person and all terms and conditions of the employment, including all approved fees and expenses of the trustee, any servicer or administrator, or any professional person employed by the trustee or any servicer or administrator shall be payable from the estate as administrative expenses.

(C) ACTIONS AGAINST ESTATE.—No court may issue an attachment or execution against any property of an estate. Except at the request of the applicable covered bond regulator or as otherwise provided in this subpart, no court may take any action to restrain or affect the resolution of an estate under this Act. No person (including the applicable indenture trustee and any applicable covered bondholder) may commence or continue any judicial, administrative, or other action against the estate, the trustee, or any servicer or administrator that is not expressly permitted by this Act, the oversight program, and the related transaction documents or for a judicial or administrative action to compel the release of funds that—
(i) are available to the estate;
(ii) are permitted to be distributed under this Act and the oversight program; and
(iii) are permitted and required to be distributed under the related transaction documents and any contracts executed by or on behalf of the estate.

(D) SOVEREIGN IMMUNITY.—Except in connection with a guarantee provided under paragraph (4) or any contract executed by the applicable covered bond regulator under this section 4, the Secretary and the covered bond regulator shall be entitled to sovereign immunity in carrying out the provisions of this Act.

(E) BORROWINGS AND CREDIT.—
the proceeds of the cover pool held by the estate and is expected to maximize the value and credit is in the best interests of the estate, if, in the business judgment of the servicer or administrator, the borrowing or credit is in the best interests of the estate and is expected to maximize the value and the proceeds of the cover pool held by the estate; or
(ii) on terms affording the lender only claims or liens that have priority over or are pari passu with the claims or interests of the applicable indenture trustee or the applicable covered bondholders or other claims against or interests in the estate, if—
(I) the servicer or administrator certifies to the applicable covered bond regulator that, in the business judgment of the servicer or administrator, the borrowing or credit is in the best interests of the estate and is expected to maximize the value and the proceeds of the cover pool held by the estate; and
(II) the applicable covered bond regulator authorizes the borrowing or credit.
(C) LIMITED LIABILITY.—A servicer or administrator shall not be liable for any error in business judgment when borrowing funds or otherwise extend credit under this paragraph (2) unless the servicer or administrator acted in bad faith or in willful disregard of its duties.
(D) STUDY ON BORROWINGS AND CREDIT.—The Comptroller General of the United States shall conduct a study on whether the Federal Reserve Board should be prohibited from lending funds or otherwise extend credit to an estate under this paragraph (2) and, if so, what conditions and limits should be established to ensure that the United States Government could absorb credit losses on the cover pool held by the estate. The Comptroller General shall submit a report to the Banking and Financial Services and Urban Affairs Committee of the House of Representatives on the results of the study not later than 6 months after the date of enactment of this Act.
(3) DISTRIBUTIONS BY ESTATE.—All payments or other distributions by an estate shall be made at the times, in the amounts, and in the manner set forth in the covered bonds, the related transaction documents, and any contracts executed by or on behalf of the estate in connection with this Act and the oversight program. To the extent that the relative priority of the liabilities of the estate are not specified in or otherwise ascertainable under this Act, a distribution shall be made on each distribution date under the covered bonds, the related transaction documents, or any contracts executed by or on behalf of the estate—
(A) first, to pay accrued and unpaid super-priority claims under paragraph (2)(B)(i); and
(B) second, to pay accrued and unpaid administrative expense claims under paragraph (1)(A), paragraph (2)(B)(ii), section 4(b)(5)(A), or section 4(c)(6)(A); and
(C) third, to pay—
(i) accrued and unpaid claims under the covered bonds and the related transaction documents according to their terms; and
(ii) to pay accrued and unpaid pass-through claims under paragraph (2)(B)(i); and
(D) fourth, to pay accrued and unpaid subordinated claims under paragraph (2)(B)(i).
(4) DISTRIBUTION INTEREST.—After all other claims against and interests in an estate have been fully and irrevocably paid or defeased, the trustee shall or shall cause a servicer or administrator to distribute the remainder of the estate to or at the direction of the owner of the residual interest. No intermix distribution on the residual interest may be made before that time, unless the applicable covered bond regulator—
(A) approves the distribution after determining that all claims against and interests in the estate will be fully, timely, and irrevocably paid according to their terms; and
(B) provides an indemnity, for the benefit of the estate, assuring that all other claims against and interests in the estate will be fully, timely, and irrevocably paid according to their terms.
(5) CLOSING OF ESTATE.—After an estate has been fully administered, the trustee shall close the estate and, except as otherwise directed by the servicer or administrator, shall destroy all records of the estate.
(6) NO LOSS TO TAXPAYERS.—Taxpayers shall bear no losses from the resolution of an estate under this Act to the extent that the Secretary and the Corporation jointly determine that the Deposit Insurance Fund incurred actual losses that are higher because the covered bond program of an insured depository institution was subject to resolution under this Act rather than as part of the receivership of the institution under title I of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Corporation may exercise the powers available under section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) to recover an amount equal to those losses with consulting with the Secretary.
SEC. 5. SECURITIES LAW PROVISIONS.
(a) Securities Laws Treatment of Covered Bonds
(1) TREATMENT OF CERTAIN BANKS AND OTHER ENTITIES.—
(A) SECURITIES LAWS COVERAGE.—A covered bond described in subparagraph (C) is and shall be treated as a security issued by an entity under section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)), and shall be exempt from all provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or a structured finance product, as that term is defined in section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78o-9).
(B) SECURITIES EXCHANGE ACT OF 1934 EXEMPTION.—No covered bond described in subparagraph (C) shall be treated as an asset-backed security, as that term is defined in section 3 or 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or a structured finance product, as that term is defined in section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78o-9).
(C) APPLICABILITY.—A covered bond described in this subparagraph is a covered bond that is—
(i) issued by an entity described in section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)); or
(ii) issued by an eligible issuer described in section 3(a)(5)(A) and sponsored solely by 1 or more such entities for the sole purpose of issuing covered bonds.
(D) REGULATIONS.—Each covered bond regulator for 1 or more entities described in section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)) shall adopt, as part of the securities regulations of the covered bond regulator, a separate scheme of registration, disclosure, and reporting obligations and exemptions for offers or sales of nonconvertible covered bonds described in subparagraph (C), which regulations shall—
(i) provide for uniform and consistent standards for such covered bond issuers, with respect to any such covered bonds, to the extent possible; and
(ii) be consistent with existing regulations governing offers or sales of nonconvertible debt.
(2) TREATMENT OF CERTAIN ASSOCIATIONS AND COOPERATIVES.
(A) SECURITIES LAWS COVERAGE.—A covered bond described in subparagraph (C) is and shall be treated as a security issued by an entity under section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)), and shall be exempt from all provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or a structured finance product, as that term is defined in section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78o-9).
(B) SECURITIES EXCHANGE ACT OF 1934 EXEMPTION.—No covered bond described in subparagraph (C) shall be treated as an asset-backed security, as that term is defined in section 3 or 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or a structured finance product, as that term is defined in section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78o-9).
(C) APPLICABILITY.—A covered bond described in this subparagraph is a covered bond that is—
(i) issued by an entity described in section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)); or
(ii) issued by an eligible issuer described in section 3(a)(5)(A) and sponsored solely by 1 or more such entities for the sole purpose of issuing covered bonds.
(D) REGULATIONS.—Each covered bond regulator for 1 or more entities described in section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)) shall adopt, as part of the securities regulations of the covered bond regulator, a separate scheme of registration, disclosure, and reporting obligations and exemptions for offers or sales of nonconvertible covered bonds described in subparagraph (C), which regulations shall—
(i) provide for uniform and consistent standards for such covered bond issuers, with respect to any such covered bonds, to the extent possible; and
(ii) be consistent with existing regulations governing offers or sales of nonconvertible debt.
S. 1838 — TO AUTHORIZE THE PRINTING OF A REVISED EDITION OF THE SENATE RULES AND MANUAL

Mr. SCHUMER submitted the following resolution; which was considered and agreed to:

Resolved. That—

(a) the Committee on Rules and Administration shall prepare a revised edition of the Senate Rules and Manual for the use of the 112th Congress;
(b) the manual shall be printed as a Senate document; and
(c) in addition to the usual number of copies, 1,500 copies of the manual shall be bound, of which—

(A) 500 paperbound copies shall be for the use of the Senate; and
(B) 1,000 copies shall be bound (550 paperbound; 250 nontabbed black skiver; 200 tabbed black skiver) and delivered as may be directed by the Committee on Rules and Administration.

SENATE RESOLUTION 319 — HONORING THE LIFE AND LEGACY OF JOE FRAZIER

Mr. GRAHAM (for himself, Mr. CASEY, and Mr. MCCAIN) submitted the following resolution; which was considered and agreed to:

Whereas boxing legend "Smokin'" Joe Frazier was born on January 12, 1944, to a farmer in Beaufort, South Carolina;
Whereas, in Beaufort, South Carolina, Joe Frazier discovered the passion for boxing that would ultimately lead him to greatness; Whereas Joe Frazier left his childhood home in Beaufort to work in a meat packing company based in Philadelphia, Pennsylvania; Whereas Joe Frazier trained in a Philadelphia Police Athletic League gymnasium to prepare for his first amateur fights; Whereas, in 1965, Joe Frazier was known for having a powerful left hook, which led Frazier to defeat world-class figures; Whereas Joe Frazier defeated Jimmy Ellis, the World Boxing Association heavyweight champion, in 1970 and held the heavyweight title until 1973; Whereas, on March 8, 1971 in Madison Square Garden, Joe Frazier became the first boxer to defeat Muhammad Ali, throwing a devastating left hook in the 15th round that ultimately led to a victory by decision; Whereas, in 1971, Joe Frazier became the first African-American man since the Civil War to address the South Carolina State Legislature in Columbia, South Carolina; Whereas, in 1975, arch-rivals Joe Frazier and Muhammad Ali met in the "War of the Worlds" for the third and final fight between the two men, and a battered, bruised, and nearly blind Frazier lost by technical knockout when his trainer pulled him from the fight in the 14th round; Whereas, after retiring from boxing, Joe Frazier mentored youth boxers in Philadelphia and encouraged the boxers to lead productive lives and avoid violence; Whereas Joe Frazier personified the fighting spirit of the city of Philadelphia; Whereas Joe Frazier was inducted into the International Boxing Hall of Fame in 1996; Whereas Joe Frazier finished his boxing career with 32 wins, of which 27 were knockouts, 4 losses, and 1 draw; and Whereas "Smokin'" Joe Frazier epitomized 1 of the greatest eras in boxing, rising from humble origins on a South Carolina farm to become the heavyweight boxing world champion, and inspiring a generation of Americans: Now, therefore, be it

RESOLVED—

(1) mourns the loss of Joe Frazier; (2) honours the life and accomplishments of Joe Frazier, an American champion and a world-renowned boxing legend; and (3) offers the deepest condolences of the Senate to the family of Joe Frazier.

AMENDMENTS SUBMITTED AND PROPOSED

SA 929. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 927 proposed by Mr. REID (for Mr. Tester) (for himself, Mrs. Murray, Mr. Baucus, Ms. Stabenow, Mr. Brown of Ohio, Mr. Reid, Mr. Akaka, Ms. Cantwell, Mr. Leahy, Mr. Casey, Mr. Coons, Mr. Menendez, Mr. Kerry, Mr. Lautenberg, Mr. Merkley, Mr. Sanders, Mrs. Shaheen, Mr. Bennet, Mr. Webb, Ms. Begich, Ms. Landrieu, Mr. Schumer, and Mr. Brown, of Massachusetts)) to the bill H.R. 674, to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by governmental entities, to modify the calculation of adjusted gross income for purposes of determining eligibility for certain healthcare-related programs, and for other purposes; which was ordered to lie on the table; and

TEXT OF AMENDMENTS

SA 929. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 927 proposed by Mr. REID (for Mr. Tester (for himself, Mrs. Murray, Mr. Baucus, Ms. Stabenow, Mr. Brown of Ohio, Mr. Reid, Mr. Akaka, Ms. Cantwell, Mr. Leahy, Mr. Casey, Mr. Coons, Mr. Menendez, Mr. Kerry, Mr. Lautenberg, Mr. Merkley, Mr. Sanders, Mrs. Shaheen, Mr. Bennet, Mr. Webb, Ms. Begich, Ms. Landrieu, Mr. Schumer, and Mr. Brown, of Massachusetts)) to the bill H.R. 674, to amend the Internal Revenue Code of 1986 by adding at the end the following new text:

"(37) the veterans franchise fee credit determined under section 45S(a)."

(2) Clerical Amendment.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 45S. Veterans franchise fee credit."

(4) Effective Date.—The amendments made by this section shall apply to taxable years ending after December 31, 2010.
Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on November 9, 2011, at 2:30 p.m., to hold a Near Eastern and South Central Asian Affairs sub-committee hearing entitled, “U.S. Policy in Syria.”

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

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Privacy, Technology, and the Law, be authorized to meet during the session of the Senate on November 9, 2011, at 2:30 p.m. in room SD-226 of the Dirksen Senate Office Building, to conduct a hearing entitled, “Your Health and Your Privacy: Protecting Your Health Information in a Digital World.”

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

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that David Goldman, a detailee from the Federal Communications Commission to the Commerce Committee, be given floor privileges during the debate on Senate Joint Resolution 6.

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

Mrs. MURRAY. Mr. President, I ask unanimous consent that an intern from Senator Menendez’s office, Jeff Whitmore, be granted floor privileges for the remainder of the day.

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

Mr. BENNET. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 2447 and the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

Resolved, That—

(1) the Committee on Rules and Administration shall prepare a revised edition of the Senate Rules and Manual for the use of the 112th Congress;

(2) the manual shall be printed as a Senate document; and

(3) in addition to the usual number of copies, 1,500 copies of the manual shall be bound, of which—

(A) 500 paperbound copies shall be for the use of the Senate; and

(B) 1,000 copies shall be bound (550 paperbound; 250 nontabbed black skiver; 200 tabbed black skiver) and delivered as may be directed by the Committee on Rules and Administration.

HONORING THE LIFE AND LEGACY OF JOE FRAZIER

Mr. BENNET. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 319, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 319) honoring the life and legacy of Joe Frazier.

Mr. BENNET. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 319, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 319) honoring the life and legacy of Joe Frazier.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BENNET. Mr. President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 319) was agreed to, as follows:

S. Res. 319

Resolved, That—

(1) the Committee on Rules and Administration shall prepare a revised edition of the Senate Rules and Manual for the use of the 112th Congress;

(2) the manual shall be printed as a Senate document; and

(3) in addition to the usual number of copies, 1,500 copies of the manual shall be bound, of which—

(A) 500 paperbound copies shall be for the use of the Senate; and

(B) 1,000 copies shall be bound (550 paperbound; 250 nontabbed black skiver; 200 tabbed black skiver) and delivered as may be directed by the Committee on Rules and Administration.

GRANTING THE CONGRESSIONAL GOLD MEDAL

Mr. BENNET. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 2447 and the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2447) to grant the congressional gold medal to the Montford Point Marines.

There being no objection, the Senate proceeded to consider the bill.

Mr. BENNET. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The bill (H.R. 2447) was ordered to a third reading, was read the third time, and passed.

AUTHORIZING PRINTING OF A REVISED SENATE RULES AND MANUAL

Mr. BENNET. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 318, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 318) to authorize a printing of a revised edition of the Senate Rules and Manual.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BENNET. Mr. President, I further ask that the resolution be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 318) was agreed to, as follows:

S. Res. 318

Resolved, That—

(1) the Committee on Rules and Administration shall prepare a revised edition of the Senate Rules and Manual for the use of the 112th Congress;

(2) the manual shall be printed as a Senate document; and

(3) in addition to the usual number of copies, 1,500 copies of the manual shall be bound, of which—

(A) 500 paperbound copies shall be for the use of the Senate; and

(B) 1,000 copies shall be bound (550 paperbound; 250 nontabbed black skiver; 200 tabbed black skiver) and delivered as may be directed by the Committee on Rules and Administration.

ORDERS FOR THURSDAY, NOVEMBER 10, 2011

Mr. BENNET. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, November 10, 2011; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for the leader of the minority party; that following any leader remarks, the Senate be in a period of morning business until 10 a.m., with

Whereas Joe Frazier was born on January 12, 1944, to a farmer in Beaufort, South Carolina;

Whereas, in Beaufort, South Carolina, Joe Frazier discovered the passion for boxing that would ultimately lead him to greatness; Joe Frazier was a South Carolina boy who loved his home and began to work in a meat packing company based in Philadelphia, Pennsylvania;

Whereas Joe Frazier trained in a Philadelphia Police Athletic League gymnasium to prepare for his first amateur fights;

Whereas, in 1964, Joe Frazier became the only United States athlete to win an Olympic gold medal for boxing during the Summer Olympic Games in Japan, despite breaking a thumb and fighting with a broken hand;

Whereas, upon becoming a professional boxer in 1965, Joe Frazier was known for having a powerful left hook, which led Frazier to defeat his first 11 opponents;

Whereas Joe Frazier defeated Jimmy Ellis, the World Boxing Association heavyweight champion, in 1970 and held the heavyweight title until 1973;

Whereas, on March 8, 1971 in Madison Square Garden, Joe Frazier became the first boxer to defeat Muhammad Ali, throwing a devastating left hook around that ultimately led to a victory by decision;

Whereas, in 1971, Joe Frazier became the first African-American man since the Civil War to address the South Carolina State Legislature in Columbia, South Carolina;

Whereas, in 1975, arch-rivals Joe Frazier and Muhammad Ali met in the ‘Thrilla in Manila’ for the third fight between the two men, and a battered, bruised, and nearly blind Frazier lost by technical knockout when his trainer pulled him from the fight in the 14th round;

Whereas, after retiring from boxing, Joe Frazier mentored youth boxers in Philadelphia and encouraged the boxers to lead productive lives and avoid violence;

Whereas Joe Frazier personified the fighting spirit of the city of Philadelphia;

Whereas Joe Frazier was inducted into the International Boxing Hall of Fame in 1990;

Whereas Joe Frazier finished his boxing career with 32 wins, of which 27 were knockouts, 4 losses, and 1 draw;

Whereas “Smokin’” Joe Frazier epitomized 1 of the greatest eras in boxing, rising from humble origins on a South Carolina farm to become the heavyweight boxing champion, and inspiring a generation of Americans: Now, therefore, be it

Resolved, That the Senate—

(1) mourns the loss of Joe Frazier;

(2) honors the life and accomplishments of Joe Frazier, an American champion and a world renowned boxing legend; and

(3) offers the deepest condolences of the Senate to the family of Joe Frazier.
Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees; and that following morning business, the Senate proceed to the consideration of the motion to proceed to S.J. Res. 27, under the previous order.

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

PROGRAM

Mr. BENNET. Mr. President, there will be two rollcall votes around noon tomorrow on motions to proceed to the joint resolutions of disapproval regarding net neutrality and cross-border air pollution.

There will be an additional four rollcall votes around 2:30 p.m. in relation to H.R. 647, the 3 Percent Withholding Repeal and Jobs Act, with the veterans jobs amendment, and the motion to proceed to H.R. 2354, the Energy and Water appropriations bill. Senators should be aware we may get consent to begin the second series of votes earlier.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. BENNET. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 7:07 p.m., adjourned until Thursday, November 10, at 9:30 a.m.
SENATE COMMITTEE MEETINGS
Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, November 10, 2011 may be found in the Daily Digest of today’s RECORD.

MEETINGS SCHEDULED

NOVEMBER 15
10 a.m. Banking, Housing, and Urban Affairs
To hold an oversight hearing to examine the Federal Housing Finance Agency. SD–538

11 a.m. Budget
To hold hearings to examine the economic effects of fiscal policy choices. SD–688

Energy and Natural Resources
To hold hearings to examine the Department of Energy’s Quadrennial Technology Review (QTR), and S. 1907, to amend the Department of Energy Organization Act to require a Quadrennial Energy Review, and S. 1007, to amend the Federal Nonnuclear Energy Research and Development Act of 1974 to provide for the prioritization, coordination, and streamlining of energy research, development, and demonstration programs to meet current and future energy needs. SD–366

10:30 a.m. Commission on Security and Cooperation in Europe
To hold hearings to examine Belarus, focusing on the ongoing crackdown and forces for change, including the extent and impact of the crackdown on the lives of its victims and on the larger society, and what more can be done by the United States and European partners to promote democratic change in Belarus. 210, Cannon Building

2:15 p.m. Foreign Relations
Business meeting to consider S. Res. 227, calling for the protection of the Mekong River Basin and increased United States support for delaying the construction of mainstream dams along the Mekong River, S. Res. 316, expressing the sense of the Senate regarding Tunisia’s peaceful Jasmine Revolution, S. Res. 317, expressing the sense of the Senate regarding the liberation of Libya from the dictatorship led by Muammar Qaddafi, and the nominations of Michael Anthony McFaul, of California, to be Ambassador to the Russian Federation, Roberta S. Jacobson, of Maryland, to be Assistant Secretary for Western Hemisphere Affairs, Mari Carmen Aponte, of the District of Columbia, to be Ambassador to the Republic of El Salvador, Adam E. Namm, of New York, to be Ambassador to the Republic of Ecuador, and Elizabeth M. Cousens, of Washington, to be Representative of the United States of America on the Economic and Social Council of the United Nations, with the rank of Ambassador, and to be an Alternate Representative of the United States of America to the Sessions of the General Assembly of the United Nations, during her tenure of service as Representative of the United States of America on the Economic and Social Council of the United Nations, all of the Department of State, and routine lists in the Foreign Service. S–116, Capitol

2:30 p.m. Commerce, Science, and Transportation
To hold hearings to examine the nominations of Rebecca M. Blank, of Maryland, to be Deputy Secretary of Commerce, and Jon D. Leibowitz, of Maryland, and Maureen K. Ohlhausen, of Virginia, both to be a Federal Trade Commissioner. SR–253

Judiciary
Crime and Terrorism Subcommittee
To hold hearings to examine the “Fix Gun Checks Act”, focusing on better state and Federal compliance, and smarter enforcement. SD–226

Health, Education, Labor, and Pensions
To hold hearings to examine medical devices, focusing on protecting patients and promoting innovation. SD–430

Intelligence
To hold closed hearings to examine certain intelligence matters. SH–219

3 p.m. Banking, Housing, and Urban Affairs
To hold hearings to examine financial institutions and consumer protection. SD–342

NOVEMBER 16
9 a.m. Homeland Security and Governmental Affairs
To hold hearings to examine contractors. SD–342

9:30 a.m. Banking, Housing, and Urban Affairs
Securities, Insurance and Investment Subcommittee
To hold hearings to examine a progress report on management and structural reforms at the Securities and Exchange Commission (SEC). SD–538

10:30 a.m. Commerce, Science, and Transportation
Oceans, Atmosphere, Fisheries, and Coast Guard Subcommittee
To hold hearings to examine the need for continued innovation in forecasting and prediction. SR–253

2 p.m. Joint Economic Committee
To hold hearings to examine manufacturing in the United States of America, focusing on paving the road to job creation. SH–216

Budget
To hold hearings to examine improving regulatory performance, focusing on lessons from the United Kingdom. SD–608

Judiciary
To hold hearings to examine certain nominations. SD–226

NOVEMBER 17
9:30 a.m. Energy and Natural Resources
To hold hearings to examine the Secretary of the Interior’s Order No. 3315 to consolidate and establish the Office of Surface Mining Reclamation and Enforcement within the Bureau of Land Management. SD–366

2:15 p.m. Indian Affairs
To hold an oversight hearing to examine the future of internet gaming, focusing on what’s at stake for tribes. SD–628

2:30 p.m. Intelligence
To hold closed hearings to examine certain intelligence matters. SH–219

3 p.m. Veterans’ Affairs
To hold hearings to examine Veterans’ Affairs mental health care, focusing on addressing wait times and access to care. SR–418

DECEMBER 6
2:30 p.m. Judiciary
Antitrust, Competition Policy and Consumer Rights Subcommittee
To hold hearings to examine the Express Scripts/Medco merger. SD–226

● This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor. Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.
Senate

Chamber Action

Routine Proceedings, pages S7229–S7305

Measures Introduced: Eight bills and two resolutions were introduced, as follows: S. 1831–1838, and S. Res. 318–319.

Measures Reported:
S. 453, to improve the safety of motorcoaches, with an amendment in the nature of a substitute. (S. Rept. No. 112–93)

Measures Passed:

Congressional Gold Medal: Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of H.R. 2447, to grant the congressional gold medal to the Montford Point Marines, and the bill was then passed.

Authorize Printing: Senate agreed to S. Res. 318, to authorize the printing of a revised edition of the Senate Rules and Manual.

Honoring the Life of Joe Frazier: Senate agreed to S. Res. 319, honoring the life and legacy of Joe Frazier.

Measures Considered:

Internet and Broadband Industry Practices Regulating: Senate began consideration of the motion to proceed to consideration of S.J. Res. 6, disapproving the rule submitted by the Federal Communications Commission with respect to regulating the Internet and broadband industry practices.

3% Withholding Repeal and Job Creation Act: Senate continued consideration of H.R. 674, to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain health care-related programs, taking action on the following amendments proposed thereto:

Pending:
Reid (for Tester) Amendment No. 927, to amend the Internal Revenue Code of 1986 to permit a 100 percent levy for payments to Federal vendors relating to property, to require a study on how to reduce the amount of Federal taxes owed but not paid by Federal contractors, and to make certain improvements in the laws relating to the employment and training of veterans.

McClain Amendment No. 928 (to Amendment No. 927), to provide American jobs through economic growth.

Cross-Border Air Pollution—Agreement: A unanimous-consent agreement was reached providing that at 10 a.m., on Thursday, November 10, 2011, Senate begin consideration of the motion to proceed to consideration of S.J. Res. 27, disapproving a rule submitted by the Environmental Protection Agency relating to the mitigation by States of cross-border air pollution under the Clean Air Act, under the order of Tuesday, November 8, 2011.

Message from the President: Senate received the following message from the President of the United States:

Transmitting, pursuant to law, a six-month periodic report relative to the national emergency that was declared in Executive Order 12938 with respect to the proliferation of weapons of mass destruction; which was referred to the Committee on Banking, Housing, and Urban Affairs. (PM–33)

Executive Communications:

Executive Reports of Committees:

Additional Cosponsors:

Statements on Introduced Bills/Resolutions:

Additional Statements:

Amendments Submitted:

Notices of Hearings/Meetings:

Authorities for Committees to Meet:

Privileges of the Floor:

Adjournment: Senate convened at 9:30 a.m. and adjourned at 7:07 p.m., until 9:30 a.m. on Thursday, November 10, 2011. (For Senate’s program, see the remarks of the Acting Majority Leader in today’s Record on page S7305.)
Committee Meetings

(Committees not listed did not meet)

NATION’S TRANSPORTATION SYSTEM
Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine securing our nation’s transportation system, focusing on oversight of Transportation Security Administration’s current efforts, after receiving testimony from John Pistole, Administrator, Transportation Security Administration, Department of Homeland Security.

BUSINESS MEETING
Committee on Environment and Public Works: Committee ordered favorably reported S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, with amendments.

UNITED STATES POLICY IN SYRIA
Committee on Foreign Relations: Subcommittee on Near Eastern and South and Central Asian Affairs concluded a hearing to examine United States policy in Syria, after receiving testimony from Jeffrey D. Feltman, Assistant Secretary of State for Near Eastern Affairs; and Luke A. Bronin, Deputy Assistant Secretary of the Treasury for Terrorist Financing and Financial Crimes.

BUSINESS MEETING
Committee on Homeland Security and Governmental Affairs: Committee ordered favorably reported the following business items:

S. 1789, to improve, sustain, and transform the United States Postal Service, with an amendment in the nature of a substitute;

S. Res. 296, commemorating the 50th anniversary of the Combined Federal Campaign; and

The nominations of Nancy Maria Ware, to be Director of the Court Services and Offender Supervision Agency for the District of Columbia, Michael A. Hughes, to be United States Marshal for the Superior Court of the District of Columbia, Department of Justice, and Danya Ariel Dayson, Peter Arno Krauthamer, and John Francis McCabe, all to be an Associate Judge of the Superior Court of the District of Columbia.

HEALTH AND PRIVACY
Committee on the Judiciary: Subcommittee on Privacy, Technology and the Law concluded a hearing to examine health and privacy, focusing on protecting health information in a digital world, after receiving testimony from Loretta E. Lynch, United States Attorney, Eastern District of New York, Department of Justice; Leon Rodriguez, Director, Office for Civil Rights, Department of Health and Human Services; Deven McGraw, Center for Democracy and Technology, Washington, D.C.; and Kari L.S. Myrold, Hennepin County Medical Center, Minneapolis, Minnesota.
House of Representatives

Chamber Action

The House was not in session today. The House is scheduled to meet at 2:30 p.m. on Thursday, November 10, 2011 in pro forma session.

Committee Meetings

No hearings were held.

Joint Meetings

No joint committee meetings were held.

COMMITTEE MEETINGS FOR THURSDAY, NOVEMBER 10, 2011

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Armed Services: To hold hearings to examine whether the Chief, National Guard Bureau should be a member of the Joint Chiefs of Staff, 10 a.m., SD–G50.

Committee on Banking, Housing, and Urban Affairs: To hold hearings to examine opportunities and challenges for economic development in Indian country, 10 a.m., SD–538.

Committee on Energy and Natural Resources: Business meeting to consider pending calendar business, 9:30 a.m., SD–366.

Committee on Finance: To hold hearings to examine unemployment insurance, focusing on the path back to work, 10 a.m., SD–215.

Committee on Health, Education, Labor, and Pensions: To hold hearings to examine the role of health care delivery system reform, focusing on improving quality and lowering costs, 1:30 p.m., SD–430.

Committee on Indian Affairs: To hold hearings to examine S. 1192, to supplement State jurisdiction in Alaska Native villages with Federal and tribal resources to improve the quality of life in rural Alaska while reducing domestic violence against Native women and children and to reduce alcohol and drug abuse and for other purposes, S. 872, to amend the Omnibus Indian Advancement Act to modify the date as of which certain tribal land of the Lytton Rancheria of California is considered to be held in trust and to provide for the conduct of certain activities on the land, and S. 1763, to decrease the incidence of violent crimes against Indian women, to strengthen the capacity of Indian tribes to exercise the sovereign authority of Indian tribes to respond to violent crimes committed against Indian women, and to ensure that perpetrators of violent crimes committed against Indian women are held accountable for that criminal behavior, 2:15 p.m., SD–628.

Committee on the Judiciary: Business meeting to consider S. 598, to repeal the Defense of Marriage Act and ensure respect for State regulation of marriage, S. 1793, to amend title 28, United States Code, to clarify the statutory authority for the longstanding practice of the Department of Justice of providing investigatory assistance on request of State and local authorities with respect to certain serious violent crimes, H.R. 2076, to amend title 28, United States Code, to clarify the statutory authority for the longstanding practice of the Department of Justice of providing investigatory assistance on request of State and local authorities with respect to certain serious violent crimes, S. 1794, to correct and simplify the drafting of section 1752 (relating to restricted buildings or grounds) of title 18, United States Code, H.R. 2189, to encourage States to report to the Attorney General certain information regarding the deaths of individuals in the custody of law enforcement agencies, and the nominations of Susie Morgan, to be United States District Judge for the Eastern District of Louisiana, and Michael E. Horowitz, of Maryland, to be Inspector General, Department of Justice, 10 a.m., SH–216.

Select Committee on Intelligence: To hold closed hearings to examine certain intelligence matters, 3:30 p.m., SH–219.

House

No hearings are scheduled.
Next Meeting of the Senate
9:30 a.m., Thursday, November 10

Senate Chamber

Program for Thursday: After the transaction of any morning business (not to extend beyond 10 a.m.), Senate will begin consideration of the motion to proceed to consideration of S.J. Res. 27, Cross-Border Air Pollution. At noon, Senate will continue consideration of the motion to proceed to consideration of S.J. Res. 6, Internet and Broadband Industry Practices Regulating, with 5 minutes of debate followed by a vote on the motion to proceed to consideration of S.J. Res. 6, and a vote on the motion to proceed to consideration of S.J. Res. 27. At 2:15 p.m., Senate will continue consideration of H.R. 674, 3% Withholding Repeal and Job Creation Act, with votes on or in relation to McCain Amendment No. 928, Reid (for Tester) Amendment No. 927, and passage of the bill at approximately 2:30 p.m. Upon disposition of H.R. 674, Senate will vote on the motion to invoke cloture on the motion to proceed to consideration of H.R. 2354, Energy and Water Development and Related Agencies Appropriations Act.

Next Meeting of the House of Representatives
2:30 p.m., Thursday, November 10

House Chamber

Program for Thursday: The House will meet in pro forma session.