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House of Representatives

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

Senate

TUESDAY, DECEMBER 22, 2009

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

PRAYER

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

Let us pray.

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

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

We pray in Your Holy Name. Amen.

NOTICE

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

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

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

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

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By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman.*

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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PLEDGE OF ALLEGIANCE

The Honorable EDWARD E. KAUFMAN led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 22, 2009.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will resume consideration of the health care legislation. The time until 7:18 this morning is equally divided and controlled between the two leaders or their designees. The Senate will then proceed to a series of three rollcall votes—they will be stacked—in relation to the Reid motion to table the Reid amendment No. 3278, the Reid-Baucus-Dodd-Harkin amendment No. 3276, and a motion to invoke cloture on the Reid substitute No. 2786. If cloture is invoked, the majority leader will then be recognized, and then the time until 9:30 will be equally divided and controlled between the two leaders or their designees. Beginning at 9:30 a.m. and until 5:30 p.m. today, the time will be controlled in alternating 1-hour blocks of time, with the Republicans controlling the first hour. The Senate will recess from 12:30 until 2:30 p.m. today for the weekly conferences.

CHRISTMAS PEACE

Mr. REID. Mr. President, tensions have been high because of this legislation which has been on the floor for a considerable period of time. I hope everyone understands that this part of the session is winding down, and I hope everyone will go out of their way to be thoughtful and considerate to those on both sides of the aisle. This is not the time for any personal attacks or anything that is acrimonious. It is time to figure out a way to leave here in a peaceful nature. We have the Christmas holiday coming, and we know how important that is to families. I hope everyone will work toward getting us out of here and back to our families as quickly as we can.

I designate the time the Democrats have remaining to Senator DURBIN, the majority whip.

RESERVATION OF LEADER TIME

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

SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

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

The legislative clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

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

Reid amendment No. 3276 (to amendment No. 2786), of a perfecting nature.

Reid amendment No. 3277 (to amendment No. 3276), to change the enactment date.

Reid amendment No. 3278 (to the language proposed to be stricken by amendment No. 2786), to change the enactment date.

Reid amendment No. 3279 (to amendment No. 3278), to change the enactment date.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until expiration of cloture on amendment No. 3276 shall be equally divided and controlled between the two leaders or their designees.

The Senator from Texas is recognized.

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

The ACTING PRESIDENT pro tempore. Six minutes.

Mrs. HUTCHISON. I thank the Chair.

Mr. President, today we are taking another step toward passing a bill that has not seen the light of day for very long. It is a bill that is going to change health care policy in this country forever if it is finally coming to enactment. It will take effect in 2014. The reason we are talking about this bill and trying to let people know what is in it is because we hope there is still a chance this bill will not become law.

This bill was drafted behind closed doors without Republican input. The votes are 60 to 40. Sixty Democrats and 40 Republicans make up the Senate, and that is what is providing cloture on this bill.

This bill increases taxes by over $½ trillion over a 10-year period—that is over $500 billion—and $½ trillion in cuts to Medicare. This is a time when we should not be increasing taxes. Small businesses are burdened already. This adds to their burden. Families are trying to make ends meet. They are trying to pay their mortgage so they will not be thrown out of their homes. They are trying to pay their bills. They are trying to find jobs in the highest level of unemployment in our country since World War II, and we are going to heap taxes and burdens on them starting as early as next year—in 2 weeks. This is not a time to raise taxes. We don't need a tax burden increase, we don't need Medicare cuts, and we do need health care reform that would lower the cost of health care. This is going to do the opposite. We are going to increase taxes and lower the service for Medicare in our country.

I remember reading some of the history and the anecdotes about the vote on the constitutional amendment to allow women the right to vote. There was a Congressman from Tennessee who was wavering. He said what finally made up his mind—and he was the Congressman who made the difference—was that his mother wrote him a letter and said: Vote for ratification.

What is going to be said about this bill that changes health care policy for every American? What is going to be written about how the votes were brought together to have a bill that would tax our American people $½ trillion and take Medicare as the pay-for for this program is that there will be essential protection for seniors in Florida and New York to prevent them from suffering the cuts to Medicare Advantage but no other State. Insurance companies in only two States, Nebraska and Michigan, are exempt from the taxes that will take effect on insurance companies, raising the premiums for every insured person in this country. Changes to the language restricting physician ownership of medical facilities appear only to benefit a single medical center in Nebraska, and additional Federal payments to Louisiana, Massachusetts, Nebraska, and Vermont to expand Medicaid will cost taxpayers in every other State in America over $1 billion. This is part of the deal that was brokered to make sure 60 votes would pass this bill. The people of Nebraska will never pay a dime for Medicaid increases, whereas my State of Texas will carry a new burden of over $9 billion, and every other State in America will eventually take the burden of the Medicaid increases but not Nebraska, not ever. Even the Governor of Nebraska has said he does not think that is fair.

So I think we can do better. We can do better in this country than having the history of the overhaul of our health care system that is going to affect the quality of life and the tax burden on every American. I think we should have a better history.

So I am asking my colleagues to think about this vote. We could change one vote, one person who says: I don't

want the Senate to do something this way. I want the Senate to rise to the level that we know has been the tradition of this Senate for all of the years of our Republic, and that is that we would have an open, transparent process; that we would have bipartisan input; that a Republican amendment—one might have passed; that what we offer is what we promised the American people: lower costs in health care——

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

Mrs. HUTCHISON.—and a way for people to have more affordable access.

We still have a chance. That is why we are here today. And I hope we can turn away from this process and share the light of day with our colleagues and with America.

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

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

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

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

I would say to the Senator from Texas, she knows that 3 of her colleagues met over 61 times with their Democratic counterparts trying to come up with a bipartisan approach, and they couldn't. We also know that in the Health, Education, Labor, and Pensions Committee, the Republicans came and engaged in more than 50 days of deliberations in that committee and offered and had accepted more than 150 Republican amendments to this bill. We were not excluding Republicans from the process; they excluded themselves. When it came time for a final vote in the Health, Education, Labor, and Pensions Committee, not a single Republican Senator would vote for it. Senator COBURN of Oklahoma offered and had accepted 38 amendments to this bill and wouldn't vote for it. Other Senators were the same. They had their chance, and they didn't use their chance. In fact, the record shows now that after almost a year of deliberations, we have one Republican Congressman from New Orleans, LA, who voted for the House health care reform proposal, and one Republican Senator, Ms. SNOWE of Maine, who voted for the Finance Committee proposal. To say the Republicans have been actively engaged in this process is a misstatement.

Here is why we have to go forward, even if we have to meet at 7 in the morning or even if we have to meet this Christmas week. When this bill is passed, we know from the CBO several things will occur. First, 30 million Americans who currently don't have health insurance will have the peace of mind of knowing they have health insurance. Secondly, we know 94 percent of the American people will finally be insured—the highest percentage in the history of the United States. We know the rates for health insurance premiums will start to come down, as they must, so businesses and individuals can afford it. We know that, finally, consumers across America will be able to stand and fight back when health insurance companies turn them down in their moments of need.

We say in this new amendment we are going to say to health insurance companies: You cannot deny coverage to anybody under 18, any child, for a preexisting condition. That is going to bring peace of mind to millions of American families who understand that without this they couldn't get the health insurance they absolutely need for their children.

Let me address quickly this notion that this is somehow a mystery amendment. This amendment has now been before the American public for at least 70 hours on the Internet. The bill itself has been before the American public now for more than 3 weeks on the Internet. You can find it not only on the Democratic Senate Web site, you can find it on the Republican Web site. They put our bill on their Web site because they don't have a comprehensive health care reform bill. They put ours up for people to read. There has been ample opportunity for people to read, dissect, and to be critical of it and raise questions about it. Before our final vote, America will have had its chance to read and understand the import of this effort and this effort is substantial.

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

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

I yield the floor.

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

The ACTING PRESIDENT pro tempore. Forty seconds remain.

Mr. REID. I yield back that time.

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

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

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

The question is on agreeing to the amendment.

The clerk will call the roll.

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

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

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

[Rollcall Vote No. 386 Leg.]

YEAS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—39

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Isakson	Thune
Collins	Johanns	Vitter
Corker	Kyl	Voinovich
Cornyn	LeMieux	Wicker

NOT VOTING—1

Inhofe

The motion was agreed to.

The PRESIDING OFFICER. The majority leader.

AMENDMENT NO. 3277 WITHDRAWN

Mr. REID. Mr. President, it is my understanding that the second-degree

amendment has been withdrawn; is that right?

The PRESIDING OFFICER. Under previous order, amendment No. 3277 is withdrawn.

AMENDMENT NO. 3276

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

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

The question is on agreeing to amendment No. 3276.

The clerk will call the roll.

The assistant legislative clerk called the role.

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

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

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

[Rollcall Vote No. 387 Leg.]

YEAS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—39

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Isakson	Thune
Collins	Johanns	Vitter
Corker	Kyl	Voinovich
Cornyn	LeMieux	Wicker

NOT VOTING—1

Inhofe

The amendment (No. 3276) was agreed to.

CLOTURE MOTION

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

The assistant legislative clerk read as follows:

CLOTURE MOTION

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

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

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

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

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

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

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

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

[Rollcall Vote No. 388 Leg.]

YEAS—60

Akaka	Franken	Mikulski
Baucus	Gillibrand	Murray
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Kirk	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—39

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Isakson	Thune
Collins	Johanns	Vitter
Corker	Kyl	Voinovich
Cornyn	LeMieux	Wicker

NOT VOTING—1

Inhofe

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

The majority leader is recognized.

AMENDMENT NO. 2878

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. CARDIN, proposes an amendment No. 2878.

Mr. REID. I ask unanimous consent the reading of the amendment be waived.

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

(The amendment is printed in the RECORD of Thursday, December 3, 2009 under ''Text of Amendments.'')

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3292 TO AMENDMENT NO. 2878

Mr. REID. I now ask the clerk to report amendment No. 3292.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 3292 to amendment No. 2878.

The amendment is as follows:

(Purpose: To change the effective date)

At the end of the amendment, insert the following:

This section shall become effective 5 days after enactment.

Mr. REID. Mr. President, it is my understanding—Senator MCCONNELL and I have agreed—I should not say I understand—we have agreed that the time until 9:30 will be equally divided and controlled between the two leaders, and at 9:30 we will go, as we have worked in recent days, into having blocks of time until our caucuses, until 12:30.

The PRESIDING OFFICER. The majority leader is correct. Under the previous order, until 9:30 the time is equally divided and controlled between the leaders or their designees, and under the previous order the time until 5:30 today will be divided into 1-hour alternating blocks of time, the majority controlling the first block.

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

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

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

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

For those of the Christian faith we have the most important holiday, and that is Christmas.

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

The PRESIDING OFFICER. The minority leader.

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

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. What is the regular order?

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

The Senator from Montana.

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

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

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

We went the extra mile. I reached out to my good friend, the ranking Republican member of the Finance Committee. I reached out to the ranking Republican member of the HELP Committee.

We sought to craft a bill that would appeal to the broad middle. We sought to craft a bill that could win the support of Republicans and Democrats alike.

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

No, we did not reach a formal agreement. The leadership on the other side of the aisle went to great lengths to stop us from doing so.

But even though we did not reach a formal agreement, we came very close to doing so. The principles that we discussed are very much the principles upon which the Finance Committee built its bill. The principles that we discussed are very much the principles reflected in the bill before us today. Our work began much earlier than I have indicated. We met all the preceding year, held about ten hearings in the Finance Committee working toward health care reform. We also finished a white paper in November 2008. I say with trepidation that basically that is the foundation from which almost all ideas in health care reform emanated. To be fair, the ideas in that paper had been floating around, principles from the Massachusetts health care reform, for example. Most policy experts and health care economists who had been working on reform published their ideas. We sought the best, compiled them, and put together that white paper published in November of last year.

From the debate that the Senate has conducted this past month, you would not know it. During this debate, some on the other side of the aisle have mischaracterized the bill before us. Some on the other side of the aisle have set about a systematic campaign to demonize this bill.

Through bare assertion alone, with the thinnest connection to fact, they have sought to vilify our work. If one listened to their assertions alone, one would not recognize the bill before us.

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

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

The fact is that the nonpartisan Congressional Budget Office says that this bill would reduce the government's fiscal role in health care. Just 3 days ago, CBO wrote, and I quote:

> CBO expects that the proposal would generate a reduction in the federal budgetary commitment to health care during the decade following the 10-year budget window.

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

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

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

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

Some on the other side of the aisle assert that this bill does not do enough to ensure the uninsured.

The fact is that the nonpartisan Congressional Budget Office says that this bill would extend access to health care to 31 million Americans who otherwise would have to go without. The fact is that CBO says, and I quote:

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

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

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

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

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

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

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

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

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

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

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

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, are we now in a period where we go back and forth without limit?

The PRESIDING OFFICER. We are.

Mrs. HUTCHISON. Mr. President, I ask to be notified after 5 minutes, after

which Senator VITTER is going to speak.

The PRESIDING OFFICER. The Chair will so notify.

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

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

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

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

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

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

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

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

Well, I would agree with people out there that seems like a disconnect because, apparently, using the commerce clause, the majority is saying the Federal Government has the right to manage insurance, and that a requirement of an individual mandate is part of the Federal capability to manage insurance in this country, and you cannot impede that right by the Federal Government because you cannot impede interstate commerce.

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

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

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

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

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

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

So, Mr. President——

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

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

I think there are issues now that will be raised going forward in the future, and there is still time for one Senator in the 60 to change the vote. Therefore, I hope one will hear from his or her constituents enough that that person will say: It is time to slow this bill down. I am going to change my vote so people can see all the effects that we have not talked about yet, and let's do this right.

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

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

The PRESIDING OFFICER. The Senator from Louisiana.

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

The PRESIDING OFFICER. There is 24 minutes remaining on the minority side.

Mr. VITTER. Thank you, Mr. President.

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

Of course, we have all heard this Senate health care reform bill referred to

as the ''Louisiana purchase'' because of the special $300 million provision in it related to our Medicaid match rate.

Quite frankly, I do not much like that nickname for two reasons. First of all, the fact that we in Louisiana have to pay a higher Medicaid match rate under present law because of the hurricanes is a real inequity, which I support fixing. It is a shame the merits of that fix, which are very real, have been completely lost in this debate because of the way this Louisiana fix has been used and abused, quite frankly, in trying to pass this megabill.

But, secondly, I do not like the phrase because it suggests that Louisiana in general would fare very well under the bill overall, and nothing could be further from the truth. This bill overall sells Louisiana short. It sells Louisiana out. In fact, rather than the ''Louisiana purchase,'' I think the bill could be very accurately called the ''Louisiana sellout.''

What are those costs and those serious problems for Louisiana I am talking about?

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

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

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

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

I am very concerned about a lot of other groups in Louisiana, not just the State government and State budget. I am particularly concerned about Louisiana seniors. Of course, Louisiana seniors, like seniors everywhere, depend on Medicare. They have paid into it their whole lives. This bill—it is a simple fact; it is confirmed by the Congressional Budget Office, nonpartisan—this bill cuts Medicare $466 billion. Medicare now is already facing insolvency by 2017. So instead of fixing that in a real way, the bill steals almost $½ trillion from Medicare and uses it not within Medicare but to help pay for a brand-new entitlement.

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

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

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

How about Louisiana taxpayers? I am also very concerned about Louisiana taxpayers. Again, according to the nonpartisan Congressional Budget Office, the bill contains $518 billion of tax increases nationwide—over $½ trillion of tax increases. As for that oft repeated promise that no one who earns under $200,000 will be affected, well, again, think again. The Joint Committee on Taxation—nonpartisan—has said 42.1 million Americans earning below $200,000 will get a tax increase over the next several years—42.1 million. That means hundreds of thousands of Louisiana taxpayers will be hit, will get a tax increase—I am talking about folks who earn well below $200,000—will also pay more in the form of higher insurance premiums because, again, the nonpartisan Congressional Budget Office has said this bill increases overall health care costs. It does not decrease those costs.

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

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

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

So what do we have? We have a 2,733-page bill, mega health care reform, with all these very serious problems for Louisiana and important Louisiana groups and important Louisiana citizens, including seniors, small business, taxpayers, and the State budget, which is already facing serious cuts and challenges.

If we want to put Louisiana first considering all these costs, we have to say no to this bill. If we want to put America first considering all these unsustainable costs, we have to say no to this bill. But we can and we should say yes to the right kind of health care reform. This isn't a debate about yes or no, health care reform or not; this is a debate about what the right kind of health care reform is.

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

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

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

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

And fifth: Let's allow small business to pool across State lines to form larger pools of insurance across State lines

and gain from that extra buying power. Why shouldn't a restaurant in Baton Rouge that may only have seven or eight people to cover in health insurance, why shouldn't they be able to pool through the National Restaurant Association, create a pool of millions nationwide and enjoy the same buying power Apple Computers or Toyota has and get the same benefit in the insurance marketplace through that increased buying power and increased competition?

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

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

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

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

Let me talk about some of the things he said which are incorrect. One, he basically says Medicare is going to be hurt by these huge cuts to Medicare. The fact is, we are helping the Medicare trust fund with this legislation. The fact is, the Chief Actuary at HHS has said this legislation before us will increase the solvency of the Medicare trust fund another 9 years. That is a fact.

Second, he is trying to say there are a lot of big tax increases here. He is trying to direct the public away from what the fact is. The fact is, the Joint Committee on Taxation says there are $436 billion of tax cuts in this legislation, reductions in taxes; $436 billion in tax cuts in the form of tax credits for people who purchase insurance in the exchange. It is a tax cut of $436 billion of tax cuts in the exchange. I might say $40 billion of that is small business tax cuts. They are not increases, they are tax cuts for small business and the tax cuts for individuals is $436 billion.

Frankly, I wish I had a lot of the data before me. I don't have it right now to refute other points he made. He talked about premiums going up. The Congressional Budget Office basically says 93 percent of Americans will find their premiums will come down because of this legislation, and for a certain class of individuals—those in the individual market and the small group market will get very significant reductions in premiums on account of this bill.

It irritates me, frankly, when Senators come to the floor and make all these misstatements and they are not based at all on fact.

In fact, what we need to do around here is get more and more institutions to objectively analyze policy so we know what the facts are. It is pretty hard to argue the facts. The CBO does a pretty good job. The Joint Committee on Taxation does a pretty good job. But if somehow this country could turn to an organization or organizations to find the facts—just the facts—I think it would help a little bit because it is hard to argue the facts. If you have good facts, you generally can create good policy.

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

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

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

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

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

Seeing nobody who wishes to speak, I wish to address the question of the constitutionality of the individual mandate. Let me read into the RECORD an analysis by Mark Hall, prepared by the O'Neill Institute. Basically, he says the following:

Health insurance mandates have been a component of many recent health care reform proposals. Because a Federal requirement that individuals transfer money to a private party is unprecedented, a number of legal issues must be examined. This paper analyzes whether Congress can legislate a health insurance mandate and the potential legal challenges that might arise given such a mandate. The analysis of legal challenges to health insurance mandates applies to federal individual mandates, but can also apply to a federal mandate requiring employers to purchase health insurance for their employees. There are no constitutional barriers for Congress to legislate a health insurance mandate as long as the mandate is properly designed and executed as discussed below. This paper also considers the likelihood of any change in the current judicial approach to these legal questions.

Potential solutions. Congress's Authority to Regulate Commerce: The federal government has the authority to legislate a health insurance mandate under the Commerce Clause of the United States Constitution. A federal mandate to purchase health insurance is well within the breadth of Congress's power to regulate interstate commerce. Congress can avoid legal challenges related to the 10th Amendment and states' rights by preempting state insurance laws and implementing the mandate on a Federal level. If Congress wants states to implement a federal mandate, it has the following two options:

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

Congress's Authority to Tax and Spend for the General Welfare: Congress also has the authority to legislate a health insurance mandate under its Constitutional authority to tax and spend.

There are no plausible Tenth Amendment and states' rights issues arising from Congress's taxing and spending power. However, Congress's taxation power cannot be

used in a way that burdens a fundamental right recognized in the Constitution's Bill of Rights and judicial interpretations by the U.S. Supreme Court. Since there is no fundamental right to be uninsured, no fundamental right challenge exists.

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

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

It goes on, and it is probably too lengthy to read. Professor Hall wrote this. He is a professor at Wake Forest University.

I will read the conclusion:

The Constitution permits Congress to legislate a health insurance mandate. Congress can use its Commerce Clause powers or its taxing and spending powers to create such a mandate. Congress can impose a tax on those who do not purchase insurance, or provide tax benefits to those that do purchase insurance. . . . If Congress would like the States to implement an insurance mandate, it can avoid conflicts with the anti-commandeering principle by either preempting state insurance laws or by conditioning federal funds on State compliance. A federal employer mandate for state and local government workers may be subject to a challenge; however, such a challenge is unlikely to be successful. Individual rights challenges under the First Amendment's Free Exercise Clause or RFRA are unlikely to succeed, although a federal insurance mandate should include a statement that RFRA does not apply or provide for a religious exemption. Fifth Amendment Due Process and Takings Clause challenges are also unlikely to be successful. A legal analysis presented is likely to endure, as the Supreme Court's current position and approach to interpreting relevant constitutional issues appear to be stable.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. BURRIS. Mr. President, as this debate draws to a close and my colleagues and I prepare to vote on a health care reform bill, I recognize that long hours and tense negotiations have left some nerves and tempers frayed. That is why I come to the floor.

Although our work keeps us away from our family and friends for much of this holiday season, I see no reason why we cannot share good cheer with one another right here in Washington.

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

It goes something like this:

'Twas the night before Christmas and all through the Senate
The Right held up our health bill, no matter what was in it.
The people had voted—they mandated reform—
But Republicans blew off the gathering storm.
''We'll clog up the Senate!'' they cried with a grin,
''And in midterm elections, we'll get voted in!''
They knew regular folks need help right this second—
But fundraisers, lobbyists and politics beckoned.
So, try as they might, Democrats could not win
Because their majority was simply too thin.
Then, across every State there arose such a clatter
The whole Senate rushed out to see what was the matter!
All sprang up from their desks and ran from the floor
Straight through the cloakroom, and right out the door.
And what in the world could be quite this raucous?
But a mandate for change! From the Democratic caucus!
The President, the Speaker, and of course Leader Reid
Had answered the call in our hour of need.
More rapid than eagles the provisions they came,
And they whistled, and shouted, and called them by name:
''Better coverage! Cost savings! A strong public plan!
Accountable options? We said 'yes we can!'
''No exclusions or changes for pre-existing conditions! Let's pass a bill that restores competition!''
The Democrats all came together to fight for the American people, that Christmas Eve night.
And then, in a twinkle, I heard under the dome—the rollcall was closed! It was time to go home.
Despite the obstructionist tactics of some, the filibuster had broken—the people had won!
A good bill was ready for President Obama, ready to sign, and end health care drama.
And Democrats explained, as they drove out of sight: ''Better coverage for all, even our friends on the right!''

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

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

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

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

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

Some of my colleagues may not be aware of the Finance Committee's debate on the constitutionality of this health care reform bill. During the committee markup of its version of the bill, Senator HATCH raised some thought-provoking constitutional questions. He offered an amendment, which I supported, to provide a process for the courts to promptly consider any constitutional challenge to the Finance Committee bill. He chose the same language that was put into the bipartisan Campaign Reform Act. Unfortunately, the amendment was deemed nongermane.

I am seriously concerned that the Democrats' health care reform bill violates the Constitution of these United States. As part of comprehensive health care reform, the Democrats would require every single American citizen to purchase health insurance. Americans who fail to buy health insurance that meets the minimum requirements would be subject to a financial penalty. This provision can be found in section 1501 of the Democrats' health care reform bill. It is called the ''requirement to maintain minimal essential coverage.''

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

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

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

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

I question the appropriateness of this bill and specifically the constitutionality of this individual mandate. Is it really constitutional for this body to tell all Americans they must buy health insurance coverage? If so, what is next? What personal liberty or property will Congress seek to take away from Americans next? Will we consider legislation in the future requiring every American to buy a car, to buy a house, or to do something else the Federal Government wants?

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

If we have the power simply to order Americans to buy certain products, why did we need a cash for clunkers program, or the upcoming program providing rebates for purchasing energy efficient appliances? We can simply require Americans to buy certain cars, dishwashers, or refrigerators.

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

As the CBO explained during the 1990s:

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

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

Some individuals have raised the example of car insurance in the context of this debate. But requiring someone to have car insurance for the privilege of being able to drive is much different from requiring someone to have health insurance. As Senator HATCH pointed out, people who do not drive do not have to buy car insurance. Senator HATCH is right. If you live in New York City, you probably rely on subways or some other form of mass transit. You probably do not own a car, so you have no reason to buy car insurance and you are not forced to do so. Yet this health care reform bill requires Americans to buy health insurance whether or not they ever visit a doctor, get a prescription, or have an operation.

Under this bill, if you do not buy health insurance coverage, you will be subject to a penalty. Let's call this penalty what it really is—a tax. Even worse, this penalty operates more like a taking than an ordinary tax. If an American chooses not to buy minimal essential health coverage, he or she will face rapidly increasing taxes—up to $750 or 2 percent of taxable income, whichever is greater, by the year 2016. There is no penalty for Americans who qualify for hardship or religious exemptions. There is also no penalty for illegal immigrants or prisoners.

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

Senator HATCH made the following statement:

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

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

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

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

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

According to the Constitution, the Federal Government only has limited powers. Although the Supreme Court has upheld some far-reaching regulations of economic activity—most notably in Wickard v. Filburn and Gonzales v. Raich—neither case supports enacting the independent health insurance mandate based on the commerce clause. In these cases, the court held that Congress was allowed to regulate intrastate economic activity as a means to regulate interstate commerce in fungible goods. The mandate to purchase health insurance, however, is not proposed as a means to regulate interstate commerce, nor does it regulate or prohibit activity in either the health insurance or the health care industry.

The mandate to purchase health insurance does not purport to regulate or prohibit activity of any kind, whether economic or noneconomic. Instead, the individual mandate provision regulates no action. It purports to regulate inactivity by converting the inactivity of not buying insurance into commercial activity. In effect, advocates of the individual mandate contend that under congressional power to ''regulate commerce . . . among the several states'' Congress may reach the doing of nothing at all.

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

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

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

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

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

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

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

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

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

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

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

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

(See exhibit 1.)

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

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

Continuing the quote:

Making healthy young adults pay billions of dollars in premiums into the national health-care market is the only way to fund universal coverage without raising substantial new taxes.

In effect, this mandate would be one more giant, cross-generational subsidy—imposed on generations who are already stuck with the bill for the federal government's prior spending sprees.

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

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

The power to tax involves the power to destroy.

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

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

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

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

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

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

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

The otherwise uninsured would be required to buy coverage, not because they were even tangentially engaged in the ''production, distribution or consumption of commodities,'' but for no other reason than people without health insurance exist. The federal government does not have the power to regulate Americans simply because they are there. Significantly, in two cases, United States v. Lopez (1995) and United States v. Morrison (2000), the Supreme Court specifically rejected the proposition that the commerce clause allowed Congress to regulate noneconomic activities merely because, through a chain of causal effects, they might have an economic impact. These decisions reflect judicial recognition that the commerce clause is not infinitely elastic and that, by enumerating its powers, the framers denied Congress the type of general police power that is freely exercised by the states.

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

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

Of course, these constitutional impediments can be avoided if Congress is willing to raise corporate and/or income taxes enough to fund fully a new national health system. Absent this politically dangerous—and therefore unlikely—scenario, advocates of universal health coverage must accept Congress' power, like that of the other branches, has limits. These limits apply regardless of how important the issue may be, and neither Congress nor the president can take constitutional short cuts. The genius of our system is that, no matter how convinced our elected officials may be that certain measures are in the public interest, their goals can be accomplished only in accord with the powers and processes the Constitution mandates, processes that inevitably make them accountable to the American people.

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

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

I ask unanimous consent to have printed in the RECORD, following my remarks, the articles I have before me.

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

(See exhibit No. 2.)

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

A long line of Supreme Court cases establishes that Congress may regulate three categories of activity pursuant to the commerce power. These categories were first summarized in Perez v. United States, and most recently reaffirmed in Gonzalez v. Raich. First, Congress may regulate the channels of interstate or foreign commerce such as the regulation of steamship, railroad, highway or aircraft transportation or prevent them from being misused, as, for example, the shipment of stolen goods or of persons who have been kidnapped. Second, the commerce power extends to protecting ''the instrumentalities of interstate commerce,'' as, for example, the destruction of an aircraft, or persons or things in commerce, as, for example, thefts from interstate shipments. Third, Congress may regulate economic activities that ''substantially affect interstate commerce.''

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

That is within the bill.

Continuing to quote:

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

To assess the constitutionality of a claim of power under the Commerce Clause, the primary question becomes, ''what class of activity is Congress seeking to regulate?'' Only when this question is answered can the Court assess whether that class of activity substantially affects interstate commerce. Significantly, the mandate imposed by the pending bills does not regulate or prohibit the economic activity of providing or administering health insurance. Nor does it regulate or prohibit the economic activity of providing health care, whether by doctors, hospitals, pharmaceutical companies, or other entities engaged in the business of providing a medical good or service. Indeed, the health care mandate does not purport to regulate or prohibit activity of any kind, whether economic or noneconomic. To the contrary, it purports to ''regulate'' inactivity.

In other words, not buying health insurance. Continuing once again:

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

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

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

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

Again, I am quoting:

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

That is the precedent in this bill is established—

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

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

EXHIBIT 1

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

MANDATORY INSURANCE IS UNCONSTITUTIONAL

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

Federal legislation requiring that every American have health insurance is part of all the major health-care reform plans now being considered in Washington. Such a mandate, however, would expand the federal government's authority over individual Americans to an unprecedented degree. It is also profoundly unconstitutional.

An individual mandate has been a hardy perennial of health-care reform proposals since HillaryCare in the early 1990s. President Barack Obama defended its merits before Congress last week, claiming that uninsured people still use medical services and impose the costs on everyone else. But the reality is far different. Certainly some uninsured use emergency rooms in lieu of primary care physicians, but the majority are young people who forgo insurance precisely because they do not expect to need much medical care. When they do, these uninsured pay full freight, often at premium rates, thereby actually subsidizing insured Americans.

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

Politically, of course, the mandate is essential to winning insurance industry support for the legislation and acceptance of heavy federal regulations. Millions of new customers will be driven into insurance-company arms. Moreover, without the mandate, the entire thrust of the new regulatory scheme—requiring insurance companies to cover pre-existing conditions and to accept standardized premiums—would produce dysfunctional consequences. It would make little sense for anyone, young or old, to buy insurance before he actually got sick. Such a socialization of costs also happens to be an essential step toward the single payer, national health system, still stridently supported by large parts of the president's base.

The elephant in the room is the Constitution. As every civics class once taught, the federal government is a government of limited, enumerated powers, with the states retaining broad regulatory authority. As James Madison explained in the Federalist Papers: ''[I]n the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects.'' Congress, in other words, cannot regulate simply because it sees a problem to be fixed. Federal law must be grounded in one of the specific grants of authority found in the Constitution.

These are mostly found in Article I, Section 8, which among other things gives Congress the power to tax, borrow and spend money, raise and support armies, declare war, establish post offices and regulate commerce. It is the authority to regulate foreign and interstate commerce that—in one way or another—supports most of the elaborate federal regulatory system. If the federal government has any right to reform, revise or remake the American health-care system, it must be found in this all-important provision. This is especially true of any mandate that every American obtain health-care insurance or face a penalty.

The Supreme Court construes the commerce power broadly. In the most recent Commerce Clause case, Gonzales v. Raich (2005), the court ruled that Congress can even regulate the cultivation of marijuana for personal use so long as there is a rational basis to believe that such ''activities, taken in the aggregate, substantially affect interstate commerce.''

But there are important limits. In United States v. Lopez (1995), for example, the Court invalidated the Gun Free School Zones Act because that law made it a crime simply to possess a gun near a school. It did not ''regulate any economic activity and did not contain any requirement that the possession of a gun have any connection to past interstate activity or a predictable impact on future commercial activity.'' Of course, a health-care mandate would not regulate any ''activity,'' such as employment or growing pot in the bathroom, at all. Simply being an American would trigger it.

Health-care backers understand this and—like Lewis Carroll's Red Queen insisting that some hills are valleys—have framed the mandate as a ''tax'' rather than a regulation. Under Sen. Max Baucus's (D., Mont.) most recent plan, people who do not maintain health insurance for themselves and their families would be forced to pay an ''excise tax'' of up to $1,500 per year—roughly comparable to the cost of insurance coverage under the new plan.

But Congress cannot so simply avoid the constitutional limits on its power. Taxation can favor one industry or course of action over another, but a ''tax'' that falls exclusively on anyone who is uninsured is a penalty beyond Congress's authority. If the rule were otherwise, Congress could evade all constitutional limits by ''taxing'' anyone who doesn't follow an order of any kind—whether to obtain health-care insurance, or to join a health club, or exercise regularly, or even eat your vegetables.

This type of congressional trickery is bad for our democracy and has implications far beyond the health-care debate. The Constitution's Framers divided power between the federal government and states—just as they did among the three federal branches of government—for a reason. They viewed these structural limitations on governmental power as the most reliable means of protecting individual liberty—more important even than the Bill of Rights.

Yet if that imperative is insufficient to prompt reconsideration of the mandate (and the approach to reform it supports), then the inevitable judicial challenges should. Since the 1930s, the Supreme Court has been reluctant to invalidate ''regulatory'' taxes. However, a tax that is so clearly a penalty for failing to comply with requirements otherwise beyond Congress's constitutional power will present the question whether there are any limits on Congress's power to regulate individual Americans. The Supreme Court has never accepted such a proposition, and it is unlikely to accept it now, even in an area as important as health care.

EXHIBIT 2

[From the Washington Post, Aug. 22, 2009]

ILLEGAL HEALTH REFORM

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

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

In short, no. The Constitution assigns only limited, enumerated powers to Congress and none, including the power to regulate interstate commerce or to impose taxes, would support a federal mandate requiring anyone who is otherwise without health insurance to buy it.

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

The court reaffirmed this rationale in 2005 in Gonzales v. Raich, when it validated Congress's authority to regulate the home cultivation of marijuana for personal use. In doing so, however, the justices emphasized that—as in the wheat case—''the activities

regulated by the [Controlled Substances Act] are quintessentially economic.'' That simply would not be true with regard to an individual health insurance mandate.

The otherwise uninsured would be required to buy coverage, not because they were even tangentially engaged in the ''production, distribution or consumption of commodities,'' but for no other reason than that people without health insurance exist. The federal government does not have the power to regulate Americans simply because they are there. Significantly, in two key cases, United States v. Lopez (1995) and United States v. Morrison (2000), the Supreme Court specifically rejected the proposition that the commerce clause allowed Congress to regulate noneconomic activities merely because, through a chain of causal effects, they might have an economic impact. These decisions reflect judicial recognition that the commerce clause is not infinitely elastic and that, by enumerating its powers, the framers denied Congress the type of general police power that is freely exercised by the states.

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

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

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

Of course, these constitutional impediments can be avoided if Congress is willing to raise corporate and/or income taxes enough to fund fully a new national health system. Absent this politically dangerous—and therefore unlikely—scenario, advocates of universal health coverage must accept that Congress's power, like that of the other branches, has limits. These limits apply regardless of how important the issue may be, and neither Congress nor the president can take constitutional short cuts. The genius of our system is that, no matter how convinced our elected officials may be that certain measures are in the public interest, their goals can be accomplished only in accord with the powers and processes the Constitution mandates, processes that inevitably make them accountable to the American people.

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

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

As the Congressional Budget Office explained: ''A mandate requiring all individuals to purchase health insurance would be an unprecedented form of federal action. The government has never required people to buy any good or service as a condition of lawful residence in the United States.'' Yet, all of the House and Senate health-care bills being debated require Americans to either obtain or purchase expensive health insurance, estimated to cost up to $15,000 per year for a typical family, or pay substantial tax penalties for not doing so.

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

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

THE COMMERCE CLAUSE

Advocates of the individual mandate have claimed that the Supreme Court's Commerce Clause jurisprudence leaves ''no doubt'' that the insurance requirement is a constitutional exercise of that power. They are wrong.

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

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

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

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

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

Even during wartime, when war production is vital to national survival, Congress has never claimed such a power, nor could it. No farmer was ever forced to grow food for the troops; no worker was forced to build tanks. And what Congress cannot do during wartime, with national survival at stake, it cannot do in peacetime simply to avoid the political cost of raising taxes to pay for desired government programs.

OTHER CONSTITUTIONAL PROBLEMS

Senators and Representatives should also know that:

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

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

Since there literally is no legal precedent for this decidedly unprecedented assertion of federal power, it is highly unlikely that the Supreme Court would break new constitutional ground to save an unpopular personal mandate.

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

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I rise to support the constitutional point of order raised against the legislation before us by the distinguished Senator from Nevada. I applaud the senior Senator from Nevada for taking this step so that all Senators can take a position on whether this legislation is constitutional, or whether this legislation is consistent with the Constitution each of us is sworn to protect and defend.

The Senator from Nevada serves with me on the Senate Finance Committee,

and he will remember that I started raising constitutional questions and objections against this legislation more than 3 months ago during the committee markup, and so has he.

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

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

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

(See exhibit 1.)

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

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

The Constitution and the limits it imposes do not mean whatever we want them to mean.

This legislation brings America into completely uncharted political and legal waters and I will not be at all surprised if there is litigation challenging it on constitutional and other grounds. In the Finance Committee, I offered an amendment to add a procedure for the courts to handle constitutional challenges in an expedited fashion. The Finance Committee chairman ruled that amendment out of order so that it could not even be considered. That was his decision, but that means that any future challenges will be handled the old fashioned way, even if that means an extended, rather than an expedited, process.

I ask unanimous consent that a memo prepared by the Conservative Action Project be printed in the RECORD following my remarks. Its signatories include former U.S. Attorney General Edwin Meese; former Congressman David McIntosh; Karen Kerrigan, President of the Small Business and Entrepreneurship Council; and Brian McManus of the Council for Affordable Health Insurance.

The PRESIDING OFFICER. Without objection it is so ordered.

(See Exhibit 2.)

Mr. HATCH. Let me briefly repeat the constitution objections I have been raising for the past few months and which the Senator from Nevada carefully raised this morning. First, the only enumerated power that conceivably can support the mandate for individuals to purchase health insurance is the power to regulate interstate commerce. Since the 1930s, the Supreme Court has expanded this to include regulation of activities that substantially affect interstate commerce. But the key word is activities. Congress has never crossed the line between regulating what people choose to do and ordering them to do it. The difference between regulating and requiring is liberty. I agree with the 75 percent of Americans who believe that the insurance mandate is unconstitutional because Congress's power to regulate interstate commerce does not include telling Americans what they must buy.

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

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

Fourth, the legislation orders states to establish health benefit exchanges which will require states to pass legislation and regulations. If they do not, or even if the Secretary of Health and Human Services believes they will not by a certain date, the Secretary will literally step into each state and establish and operate this exchange for them. This is a direct violation of the division between federal and state government power. The Supreme Court could not have been clearer on this point, ruling over and over that Congress may regulate individuals but may not regulate states. Congress has no authority to order states, in their capacity as states to pass legislation. We have encouraged states to pass legislation, we have bribed them, we have even extorted them by threatening to withhold federal funds. But this legislation simply commandeers states and makes them little more than subdivisions of the federal government. In 1997, the Supreme Court held ''state legislatures are not subject to Federal direction'' and reaffirmed ''categorically'' its earlier holding that ''the federal government may not compel the states to enact or administer a federal regulatory program.'' That should be clear enough for Senators to understand here in this body.

I was amazed to learn that when President Franklin D. Roosevelt chose Frances Perkins as his Secretary of Labor, they discussed social policy legislation including health insurance. As Secretary Perkins later described it, they agreed that such legislation would pose ''very severe constitutional problems,'' including fundamentally altering federal-state relationships. That is why the Social Security Act relies on the payroll tax. Even the Roosevelt administration, which oversaw the most dramatic expansion of Federal power in our Nation's history, would not go as far as the legislation before us today would go.

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

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

I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, Dec. 21, 2009]

CHANGE NOBODY BELIEVES IN

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

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

Even in World War I there was a Christmas truce.

The rushed, secretive way that a bill this destructive and unpopular is being forced on

the country shows that ''reform'' has devolved into the raw exercise of political power for the single purpose of permanently expanding the American entitlement state. An increasing roll of leaders in health care and business are looking on aghast at a bill that is so large and convoluted that no one can truly understand it, as Finance Chairman Max Baucus admitted on the floor last week. The only goal is to ram it into law while the political window is still open, and clean up the mess later.

Health costs. From the outset, the White House's core claim was that reform would reduce health costs for individuals and businesses, and they're sticking to that story. ''Anyone who says otherwise simply hasn't read the bills,'' Mr. Obama said over the weekend. This is so utterly disingenuous that we doubt the President really believes it.

The best and most rigorous cost analysis was recently released by the insurer WellPoint, which mined its actuarial data in various regional markets to model the Senate bill. WellPoint found that a healthy 25-year-old in Milwaukee buying coverage on the individual market will see his costs rise by 178%. A small business based in Richmond with eight employees in average health will see a 23% increase. Insurance costs for a 40-year-old family, with two kids living in Indianapolis will pay 106% more. And on and on.

These increases are solely the result of ObamaCare—above and far beyond the status quo—because its strict restrictions on underwriting and risk-pooling would distort insurance markets. All but a handful of states have rejected regulations like ''community rating'' because they encourage younger and healthier buyers to wait until they need expensive care, increasing costs for everyone. Benefits and pricing will now be determined by politics.

As for the White House's line about cutting costs by eliminating supposed ''waste,'' even Victor Fuchs, an eminent economist generally supportive of ObamaCare, warned last week that these political theories are overly simplistic. ''The oft-heard promise 'we will find out what works and what does not' scarcely does justice to the complexity of medical practice,'' the Stanford professor wrote.

Steep declines in choice and quality. This is all of a piece with the hubris of an Administration that thinks it can substitute government planning for market forces in determining where the $33 trillion the U.S. will spend on medicine over the next decade should go.

This centralized system means above all fewer choices; what works for the political class must work for everyone. With formerly private insurers converted into public utilities, for instance, they'll inevitably be banned from selling products like health savings accounts that encourage more cost-conscious decisions.

Unnoticed by the press corps, the Congressional Budget Office argued recently that the Senate bill would so ''substantially reduce flexibility in terms of the types, prices, and number of private sellers of health insurance'' that companies like WellPoint might need to ''be considered part of the federal budget.''

With so large a chunk of the economy and medical practice itself in Washington's hands, quality will decline. Ultimately, ''our capacity to innovate and develop new therapies would suffer most of all,'' as Harvard Medical School Dean Jeffrey Flier recently wrote in our pages. Take the $2 billion annual tax—rising to $3 billion in 2018—that will be leveled against medical device makers, among the most innovative U.S. industries. Democrats believe that more advanced health technologies like MRI machines and drug-coated stents are driving costs too high, though patients and their physicians might disagree.

''The Senate isn't hearing those of us who are closest to the patient and work in the system every day,'' Brent Eastman, the chairman of the American College of Surgeons, said in a statement for his organization and 18 other speciality societies opposing ObamaCare. For no other reason than ideological animus, doctor-owned hospitals will face harsh new limits on their growth and who they're allowed to treat. Physician Hospitals of America says that ObamaCare will ''destroy over 200 of America's best and safest hospitals.''

Blowing up the federal fisc. Even though Medicare's unfunded liabilities are already about 2.6 times larger than the entire U.S. economy in 2008, Democrats are crowing that ObamaCare will cost ''only'' $871 billion over the next decade while fantastically reducing the deficit by $132 billion, according to CBO.

Yet some 98% of the total cost comes after 2014—remind us why there must absolutely be a vote this week—and most of the taxes start in 2010. That includes the payroll tax increase for individuals earning more than $200,000 that rose to 0.9 from 0.5 percentage points in Mr. Reid's final machinations. Job creation, here we come.

Other deceptions include a new entitlement for long-term care that starts collecting premiums tomorrow but doesn't start paying benefits until late in the decade. But the worst is not accounting for a formula that automatically slashes Medicare payments to doctors by 21.5% next year and deeper after that. Everyone knows the payment cuts won't happen but they remain in the bill to make the cost look lower. The American Medical Association's priority was eliminating this ''sustainable growth rate'' but all they got in return for their year of ObamaCare cheerleading was a two-month patch snuck into the defense bill that passed over the weekend.

The truth is that no one really knows how much ObamaCare will cost because its assumptions on paper are so unrealistic. To hide the cost increases created by other parts of the bill and transfer them onto the federal balance sheet, the Senate sets up government-run ''exchanges'' that will subsidize insurance for those earning up to 400% of the poverty level, or $96,000 for a family of four in 2016. Supposedly they would only be offered to those whose employers don't provide insurance or work for small businesses.

As Eugene Steuerle of the left-leaning Urban Institute points out, this system would treat two workers with the same total compensation—whatever the mix of cash wages and benefits—very differently. Under the Senate bill, someone who earned $42,000 would get $5,749 from the current tax exclusion for employer-sponsored coverage but $12,750 in the exchange. A worker making $60,000 would get $8,310 in the exchanges but only $3,758 in the current system.

For this reason Mr. Steuerle concludes that the Senate bill is not just a new health system but also ''a new welfare and tax system'' that will warp the labor market. Given the incentives of these two-tier subsidies, employers with large numbers of lower-wage workers like Wal-Mart may well convert them into ''contractors'' or do more outsourcing. As more and more people flood into ''free'' health care, taxpayer costs will explode.

Political intimidation. The experts who have pointed out such complications have been ignored or dismissed as ''ideologues'' by the White House. Those parts of the health-care industry that couldn't be bribed outright, like Big Pharma, were coerced into acceding to this agenda. The White House was able to, er, persuade the likes of the AMA and the hospital lobbies because the Federal government will control 55% of total U.S. health spending under ObamaCare, according to the Administration's own Medicare actuaries.

Others got hush money, namely Nebraska's Ben Nelson. Even liberal Governors have been howling for months about ObamaCare's unfunded spending mandates: Other budget priorities like education will be crowded out when about 21% of the U.S. population is on Medicaid, the joint state-federal program intended for the poor. Nebraska Governor Dave Heineman calculates that ObamaCare will result in $2.5 billion in new costs for his state that ''will be passed on to citizens through direct or indirect taxes and fees,'' as he put it in a letter to his state's junior Senator.

So in addition to abortion restrictions, Mr. Nelson won the concession that Congress will pay for 100% of Nebraska Medicaid expansions into perpetuity. His capitulation ought to cost him his political career, but more to the point, what about the other states that don't have a Senator who's the 60th vote for ObamaCare?

''After a nearly century-long struggle we are on the cusp of making health-care reform a reality in the United States of America,'' Mr. Obama said on Saturday. He's forced to claim the mandate of ''history'' because he can't claim the mandate of voters. Some 51% of the public is now opposed, according to National Journal's composite of all health polling. The more people know about ObamaCare, the more unpopular it becomes.

The tragedy is that Mr. Obama inherited a consensus that the health-care status quo needs serious reform, and a popular President might have crafted a durable compromise that blended the best ideas from both parties. A more honest and more thoughtful approach might have even done some good. But as Mr. Obama suggested, the Democratic old guard sees this plan as the culmination of 20th-century liberalism.

So instead we have this vast expansion of federal control. Never in our memory has so unpopular a bill been on the verge of passing Congress, never has social and economic legislation of this magnitude been forced through on a purely partisan vote, and never has a party exhibited more sheer political willfulness that is reckless even for Washington or had more warning about the consequences of its actions.

These 60 Democrats are creating a future of epic increases in spending, taxes and command-and-control regulation, in which bureaucracy trumps innovation and transfer payments are more important than private investment and individual decisions. In short, the Obama Democrats have chosen change nobody believes in—outside of themselves—and when it passes America will be paying for it for decades to come.

EXHIBIT 2

CONSERVATIVE ACTION PROJECT

The Conservative Action Project, chaired by former Attorney General Edwin Meese, is designed to facilitate conservative leaders working together on behalf of common goals. Participation is extended to leaders of groups representing all major elements of the conservative movement—economic, social and national security.

Edwin Meese, former Attorney General; Steven G. Calabresi, Professor, Northwestern Law School; Mathew D. Staver, Founder & Chairman, Liberty Counsel; Curt Levey, Executive Director, Committee for Justice; Marion Edwyn Harrison, Past President, Free Congress Foundation; Kenneth Klukowski, Senior Legal Analyst, American

Civil Rights Union; Wendy Wright, President, Concerned Women for America; J. Kenneth Blackwell, Visiting Professor, Liberty School of Law; Grover Norquist, President, Americans for Tax Reform; William Wilson, President, Americans for Limited Government; Matt Kibbe, President, Freedom Works; Jim Martin, President, 60 Plus Association; David McIntosh, former Member of Congress, Indiana; Colin A. Hanna, President, Let Freedom Ring; Tony Perkins, President, Family Research Council; Brent Bozell, President, Media Research Center; Brian McManus, Council for Affordable Health Insurance; Karen Kerrigan, President, Small Business & Entrepreneurship Council; T. Kenneth Cribb, former Counselor to the U.S. Attorney General; Richard Viguerie, Chairman, ConservativeHQ.com; Alfred Regnery, Publisher, American Spectator.

MEMO FOR THE MOVEMENT

The Individual Mandate in ''Obamacare'' is Unconstitutional

Re: The mandate under the Obama-Pelosi-Reid healthcare legislation requiring American citizens to purchase health insurance violates the U.S. Constitution.

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

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

The individual mandate is unconstitutional unless there is a specific constitutional provision that authorizes it. The federal government is a government of limited jurisdiction. It has only enumerated powers. Therefore unless a specific provision of the Constitution empowers a particular law, then that law is unconstitutional. There is no such authorization for the mandate.

The individual mandate is not authorized by the Commerce Clause. Most of those advocating the Democrats' bill say that Congress can pass this legislation pursuant to its power to regulate interstate commerce. That argument is incorrect, because there is no interstate commerce when private citizens do not purchase health insurance.

The Commerce Clause only covers matters where citizens engage in economic activity. The last time the Supreme Court struck down a law for violating the Commerce Clause, in United States v. Morrison (2000), the Court did so on the grounds that the activity in question was not an economic activity.

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

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

The individual mandate is not authorized under the General Welfare Clause. The Supreme Court made clear in United States v. Butler (1936) and Helvering v. Davis (1937) that the General Welfare Clause only applies to congressional spending. It applies to money going out from the government; it does not confer or concern any government power to take in money, such as would happen with the individual mandate. Therefore the mandate is outside the scope of the General Welfare Clause.

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

The Article I Taxing and Spending Clause permits duties, imposts, excises and capitation taxes—duties, imposts and excises are taxes on purchases. A capitation tax is a tax that every person must pay, and the Constitution's apportionment rule requires that every person in each state must pay exactly the same amount. The Obamacare mandate is imposed on people who are making no purchase, and is a tax that some people in a state would pay, but others do not.

The Sixteenth Amendment allows an income tax. An income tax is imposed only on earnings, but people would have to pay this tax even if they had no income.

Therefore it cannot be any of these constitutionally-permitted taxes.

The individual mandate is unconstitutional regardless of whether there are criminal penalties involved. There is no distinction between criminal and civil penalties for determining the constitutionality of legislation, and the penalty imposed in Wickard v. Filburn (1942) was not a criminal penalty. Therefore even if the criminal sanctions were removed from the legislation, the imposition of any penalty or consequence for not purchasing insurance renders the mandate unconstitutional.

The individual mandate cannot be properly compared to requiring auto insurance. President Obama said in a Nov. 9 interview on ABC television that requiring people to buy health insurance and penalizing those that do not buy is acceptable because people are required to buy car insurance. That statement is untrue.

Only state governments can require people to get car insurance. While the federal government is limited to the powers enumerated in the Constitution, the states have a general police power. The police power enables state governments to pass laws for public safety and public health. The federal government has no general police power, and therefore could not require car insurance.

States do not require people to purchase car insurance. Driving a car is a privilege, not a right. States require people to get insurance only as a condition for those people who voluntarily choose to drive on the public roads. If a person chooses to use public transportation, or use a bicycle instead of a car, or operate a car only on their own property, they are not required to have car insurance, and cannot be penalized for lacking insurance.

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

http://www.washingtonpost.com/wpdyn/content/article/2009/08/21/AR2009082103033.html

http://www.politico.com/news/stories/1009/28463.html

http://www.politico.com/news/stories/1009/28620.html

http://www.politico.com/news/stories/1009/28787.html

http://www.foxnews.com/opinion/2009/10/30/ken-klukowski-open-letter-pelosi-gibbs-constitution-individual-mandate/

http://www.washingtontimes.com/news/2009/nov/02/beware-the-health-insurance-police/

http://www.heritage.org/Research/LegalIssues/1m0049.cfm

http://blogs.abcnews.com/politicalpunch/2009/11/interview-with-the-president-jail-time-for-those-without-health-care-insurance.html

http://hatch.senate.gov/public/index.cfm?FuseAction=PressReleases.Detail&PressRelease__id=097a758af3–1b78–be3e-e03a-c0eea6d515c.5

The PRESIDING OFFICER. The Senator from Nevada is recognized.

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

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

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

The PRESIDING OFFICER. The Senator from Montana is recognized.

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

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

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

The Senator from Nevada is recognized.

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

The PRESIDING OFFICER. Pursuant to the unanimous consent, the point of order shall be set aside until a time tomorrow to be determined by the majority leader and the minority leader.

Is there a sufficient second? There appears to be a sufficient second. The yeas and nays are ordered on the point of order.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I would like to share some thoughts on a central issue to this health care reform legislation. It is something that has gotten away from us. I do not believe we fully comprehended it. It is a critical issue.

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

It was promised by the President that this legislation would not add one dime to the national debt. He said yesterday that this legislation would strengthen Medicare. This is his quote:

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

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

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

I guess what I am framing now is what I believe to be a matter of the greatest importance. The argument is that somehow, by cutting benefits in Medicare by almost $½ trillion, we are somehow strengthening Medicare. That would be true if the money that was taken out of Medicare Programs and benefits and providers who are providing the benefits—if that money were maintained in Medicare.

They go to the CMS, the institution that keeps up with Medicare costs, the Center for Medicare and Medicaid Services, the Chief Actuary there, Mr. Richard Foster, and they ask him: Won't these reductions in Medicare expenses extend the life of Medicare? And he said yes. OK. He said yes. He writes this:

We estimate that the aggregate net savings to the Part A trust fund under the PPACA—

That is the health care reform bill—

would postpone the exhaustion of the trust fund assets by 9 years—that is from 2017 under current law to 2026 under the proposed legislation.

Great. That is not a bad result. But then he goes on. I think he was simply asked: If you reduce spending in Medicare by effecting these cuts and reductions in Medicare, will it extend the life? And he said it would. However, I think he felt he might have been used, and so he didn't leave it right there. I think he believed there was something else afoot in this deal. He goes on to say this:

In practice, the improved Part A financing—

That is what he is talking about, these cuts—

. . . the improved Part A financing cannot be simultaneously used to finance other Federal outlays (such as the coverage expansions under the PPACA)—

The health care bill—

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

Maybe I am wrong about this. I am happy to have a lot of people look at it. Wait a minute, we have the President of the United States yesterday saying that Medicare will be stronger and its solvency extended for nearly a decade. We have Senator DURBIN and I think Senator BAUCUS and others saying the same thing. We are talking about $400 billion.

So I would think this Congress can get a straight answer somewhere. Don't you? Well, I have been asking staff, and they say it is double counting.

I said: What do you mean it is double counting?

Well, Senator GREGG, the ranking Republican on the Budget Committee—former chairman of the Budget Committee—said it is double accounting. He offered an amendment, a simple amendment that said any money that is saved in Medicare stays in Medicare. Did that pass? No. They voted that down. That should be a signal, I submit. That should be a red flag.

So now I am looking at this really, really hard because the way I see the financial accounting of the bill, perhaps the largest bogus part of it is to say that the money that is being saved from Medicare is going to create this new program and, at the same time, saying the savings in Medicare are going to be used to extend the life of Medicare. You cannot do both.

That is what Mr. FOSTER said in his letter of December 10:

In practice, the improved Part A financing—

He is talking about the improved Part A financing of Medicare by these cuts—

the improved Part A financing cannot be simultaneously used to finance other Federal outlays (such as the coverage expansions under the PPACA) and to extend the trust fund. . . .

All right. You got it? Let's go back and leave out the parentheses:

. . . the improved Part A financing cannot be simultaneously used to finance other Federal outlays . . . and to extend the trust fund, despite the appearance of this result from the respective accounting conventions.

So they got CBO to score it as if the money is going into the new health care reform, and they got CMS to score it as if it is saving Medicare.

Now, I was a Federal prosecutor for a long time. I know the responsibilities placed on presidents of corporations. If the president of a corporation were to issue a prospectus and ask people to invest money in his company and support his program, his agenda, and he said: I have $400 billion or $400,000 I am going to spend in it, and he knew the money was being spent on something else and he did not really have that money, that is a criminal offense, and people would go to jail for it.

I am worried about it; I really am. This is unbelievable. So we are going to get to the bottom of this. If I am wrong, I would like to see where the money is coming from. So my question to my colleagues is—and apparently this has been asked by staff for weeks and they have never gotten a straight answer—where do you get this $871 billion? How much of that are you counting coming from savings in Medicare; and where, precisely, are you getting it from Medicare? If you are going to spend it on the new program, how are you going to say it is going to strengthen Medicare as to its insolvency problem?

You cannot count the money twice, and I believe that is what Mr. FOSTER was suggesting; that you cannot simultaneously count the money ''despite the appearance of this result from the respective accounting conventions.'' What he is saying is, CBO is following proper accounting conventions for their scoring and CMS is doing it their way and it gives the appearance that you have some money that can be spent twice. But he said you cannot simultaneously use the same money. Now, isn't that true? But in this body, I do not know.

What is another fundamental matter of budgetary importance that goes with it? The President has repeatedly said that not one dime will be added to the national debt, and it should not be. We cannot continue to do that. So when this legislation started, the idea was we needed to reform a lot of problems in our health care situation.

One of the problems everybody recognized was that the doctors are not getting paid in a proper fashion for the work they do. Under the Balanced Budget Act of 1997, we effected rules on how much doctors should be paid, and if those rules went into effect today, doctors would have a 21-percent pay cut on all Medicare work. Already Medicare physicians are leaving the practice because they get paid much

less from the Federal Medicare Program than they do from private health insurance. So they would rather do private work than Medicare. But they do Medicare—most doctors do—but if you took them another 21 percent down, they would not.

Every year, they come here and ask the Congress to waive this cut, and Congress—as part of the duplicity of this body that has gone on under both parties, but each year it gets worse and worse—we fix it, and we do not execute the cut. But we only do it for 1 year. So when we have a budget, it assumes a 10-year budget. As President Obama submitted it to us, it assumes in the first year you pay the physicians and you do not cut their pay. Then for 9 years you assume they get a 21-percent reduction. It is a gimmick because you cannot cut the physicians 21 percent; and we know that. If we budgeted for the full amount, we are going to have to pay physicians, and we are going to pay physicians, then there would be a big hole because we do not have the money and we either have to cut something else, raise taxes, or raise the debt. What we have been doing is paying for it with more debt.

Well, each year, the doctors get all upset because they are staring at a 21-percent pay cut. All their representatives in the AMA and everybody come up every year and tell us: Don't cut our pay, and we do not—1 year at a time.

This is a misrepresentation. It hides the financial precariousness of our position. It is not good. It should never continue. It needs to be permanently fixed, and that was supposed to be part of health care reform from the beginning. The President said that is what he was going to do. The leadership on the other side said that is what they were going to do.

But what happened—when they met in their secret rooms, and they all wheeled and dealed and tried to add up these numbers and see how they could manipulate numbers and scores and accounting to make it add up so they could say it would not add one penny to the debt—they could not get around the $250 billion it takes to pay the doctors. They could not do it.

They say, under this bill, there is a $130 billion surplus over the first 10 years. But it does not fix the doctor payments for Medicare in health care work, Medicaid. It does not fix it. So when you fix it, it costs $250 billion. There is no dispute about that. We have analyzed that. The accounting numbers are clear: $250 billion.

So what the Democrats tried to do—it was a clever—Senator ENSIGN referred to it the other day as a shell game. They moved the doctor fix out of the health care reform—just took it out—and so, therefore, you do not have the $250 billion hole and you just put it over here. They thought they would be clever, they would just pass it, and we would add it all to the debt. They tried to do so, so they could tell the doctors they tried to vote to have a permanent fix of their payments. ''Doctors, we are going to take care of it. We'll just pass it, and every penny of this will add to the debt.''

Well, 13 Democrats would not swallow that, and I think every Republican opposed it, and it went down. So now I think we have a 2-month fix. Two months is where we are working from today, so we would not have a slashing of payments to physicians by failure to fix it.

So they just took it out, and I assume we are going to have some other gimmick to hide that $250 billion. So if you put the $250 billion cost into health care reform, you end up with a $120 billion deficit right off the bat. Then, when you get into this double accounting of $450 billion, you have really got a mess. They are estimating $871 billion in income for the first 10 years of this plan. As I analyze it, you have a $250 billion hole from not paying the doctors, and then you have a $400-plus billion double accounting—the savings from Medicare.

So it is just not good. I am telling you, we only have one President. He has a lot of things on his mind, and it is very frustrating. But I will say one more thing he said at that press conference. He said, and he has repeatedly stated: It is going to reduce health care premiums for your insurance. Right? This was yesterday, after this bill passed. He says he is tired of people carping about the cost of the bill. Remember him saying that—tired of these carpers? I guess he is talking about me because I have been carping about the cost of it for some time because the numbers do not add up.

All right. They claim the legislation will reduce insurance costs. This is the score of the CBO about small businesses. What about insurance premiums? If you are small businesses, the average premiums today for a family is $13,300. If the Reid bill passes, by 2016 the premiums will be $19,200. Is that cutting premiums? Well, yes, it is because under the Reid bill it would increase, on average, 5.38 percent. But if we did not pass any bill at all, it would increase it 5.46 percent. So it saved money; it reduced your premium. It will be $19,200 instead of $19,300. That is for small businesses.

What about for large businesses? Does it cut insurance premiums there? For large business plans, under the Reid bill, the increase, if we pass this legislation, would be 5.41 percent per year in your premiums. If you do not pass the bill at all, it would be 5.56 percent. Is that a savings? Very little. Instead of $21,100, under the Reid bill you would pay $20,300.

Then, finally, the individual market—this is the people who already are the ones who are getting hurt because they are not in group plans; they don't have employers paying a third, a half, or whatever, for insurance; they don't get the same tax breaks. They are getting killed. Barbers, individual people who can't get into group plans, it is horrible for them. What happens to the individual market? Under the Reid bill, their premiums would go up 7.77 percent per year. They would go up more than the others. What about if we didn't do anything? How much would their bills go up then, their insurance bills? Only 5.51 percent. Theirs go up more than 2 percent.

So I am just saying this legislation may have a great vision, it may have a great idea about trying to make the system work better, but it doesn't. These are huge costs. It is not financially sound. It is not going to reduce our premiums. It is going to increase the percentage of wealth in America going to health care instead of reducing it as I thought we were supposed to do from the beginning.

I see my colleague, Senator KYL, here. I would just leave it at that. I thank my colleagues. But if I am correct about these numbers, we shouldn't vote for the bill. People should change their vote. If I am in error, I would like to be informed of how I am in error.

I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Arizona.

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

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

Michael Cannon, a health policy expert at the Cato Institute, warns that the bill's linchpin, the requirement that all individuals buy a government-approved insurance plan, would be ''the most sweeping and dangerous measure in any of the bills before Congress.''

Of course, if Congress mandates that every American purchase health insurance, then Congress gets to define exactly what that health insurance entails. Welcome to the future, where bureaucrats and politicians know what is best for families, small businesses, and seniors. For example, under this legislation the government would set new Federal rating rules. Rating rules dictate how insurers may calculate premiums, which experts estimate would

increase premiums by a whopping 72 percent in my home State of Arizona. They would determine the coverage benefits for all plans regardless of consumer preferences or health care needs. The government would limit insurers to offering only four plans. You have to offer two; you can't offer any more than four. They would prohibit individuals over the age of 30 from enrolling in a catastrophic health care plan. And to highlight the magnitude of government interference and micromanagement, the bill even dictates the number of pages—by the way, it is no more than 4—and the font size—no smaller than 12 point—of the summary of benefits. These are just a few examples of the heavyhanded government controls. Indeed, the word ''shall'' appears 3,607 times in the Reid bill. I haven't had a chance yet to count how many more times it appears in the almost 400-page amendment that has been now filed.

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

Medicare already delays more medical claims than private insurers do, but this bill would redistribute Medicare payments to physicians based on how much they spend treating seniors. It would rely on recommendations from the U.S. Preventive Services Task Force—the entity, by the way, that recently recommended against mammograms for women under the age of 50—to set preventive health care benefits, and it would authorize the Federal Government to use comparative effectiveness research when making coverage determinations. It is this last issue—comparative effectiveness research—that I wish to discuss in more detail.

The Reid bill would create a new entity called the Patient-Centered Outcomes Research Institute to conduct comparative effectiveness research. This research, which is already done in the private sector, compares the effectiveness of two or more health care services or treatments, and, of course, it is used to provide doctors with information as to what works best in most cases. The goal is to provide patients and doctors with better information regarding the risks and benefits of a drug, let's say, for example, versus surgery in a particular kind of case. The question before us is not as to the merits of the research but, rather, whether the research should be used by the government to determine the treatments and services covered by insurance.

In a recent interview, President Obama said:

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

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

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

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

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

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

These are the dangers of a government-run health care system. The government, not the patients and doctors, makes the health care decisions. The government decides if your health care is an effective use of government resources, and the government inevitably interferes in your ability to access care. That is rationing, and it is wrong. This is not what Americans want or expected from health care reform. Yet it is precisely the path Congress is taking. Perhaps that is why 61 percent of Americans disapprove of this bill.

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

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

And so on.

As the Washington Examiner notes:

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

I know my colleagues will point to language that says: Well, the Secretary can't make these decisions on rationing care solely on the basis of comparative effectiveness research. Whoopee. I am not sure if that is a word we can use on the Senate floor, but big deal. You can't make it solely on that basis, but you can use comparative effectiveness research to ration care. That is wrong, and that is what this bill permits. And despite numerous times to get a simple amendment I offered to say no comparative effectiveness research can be used by a Federal agency to deny care or treatment—simple—the other side says: No, we already have it covered. It is good enough. Our language is fine. You don't need that simple statement that would prevent this research from being used in that fashion. I think it is pretty clear that the attempt here is to be able to do it.

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

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

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

Regina Herzlinger, a professor at Harvard Business School, warns: CER could easily morph into an instrument of health care rationing by the Federal Government without the appropriate safeguards.

That is why earlier this year I joined Senator MCCONNELL and Senator ROBERTS and Senator CRAPO in introducing the PATIENTS Act, and it creates this firewall to prevent the use of research for rationing. We filed it as an amendment, but, of course, we are not going to be able to vote on it now that cloture has been invoked. This is the third time this year we have tried to institute this pro-patient firewall, but obviously we are not going to be able to vote on it, as I said.

From the very beginning of the health care reform debate, I have believed that any bill should be rooted in a simple yet fundamental principle: that very American should be able to choose the doctor, hospital, and health plan of his or her choice. No Washington bureaucrat should interfere with that right or substitute the government's judgment for that of a physician. There is nothing more important to Americans, other than maybe their freedom, than the health of their family—and that does, by the way, include an element of freedom, obviously, the freedom to do what you think is best for your family. We would all do anything we could to help a loved one. We don't want Washington impeding our ability to do so.

Maybe that is why this new Washington Post-ABC poll ''finds the public generally fearful that a revamped system would bring higher costs while worsening the quality of their care.'' Even, they say, those without insurance are evenly divided on the question of whether their care would be better if the system were overhauled.

The American people get it. The bill itself is the government option, but in government, they do not trust.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, I come to the floor today in support of the Patient Protection and Affordability Act, and I wish to give some of the reasons why I am supporting this important piece of legislation.

Before my colleague leaves the floor, I would like to respond to his last comment. One of the reasons the American people are having difficulty believing the government can do anything right is that he and his colleagues have spent the last several decades convincing them that the government is the problem and that the government can't do anything right.

Even in the face of strong evidence that suggests otherwise, they continue that worn-out, tired mantra. People in my State and around the Nation are getting tired of it because they know that government must stand sometimes to protect them from abusive practices in the private marketplace, abusive practices of insurance companies, to try to level the playing field and set the rules. Of course, those on the other side don't believe in a level playing field and rules. They believe citizens in our country should be at the whim and mercy of the private market. That has been their philosophy for decades. That is not the philosophy of the Democratic Party. We believe in a public-private partnership. We believe in a level playing field. We believe in giving people the opportunity to earn their way, with fair rules in place. That party has never believed that, and that is at great issue in the underlying debate. They can continue to fabricate myths and lies about this bill, but those of us who support it will proudly continue to tell the truth about it.

I have served in public office for 30 years as a State legislator, State treasurer, and now as a United States Senator. But it doesn't take 30 years to know the health care system our citizens live under and live with today is expensive, wasteful, and painfully inefficient.

From my visits with doctors and nurses, to seniors on Medicare, to recent college graduates struggling to afford coverage, to dozens and dozens of small business owners who are frightened to death that they are not going to be able to continue in their business because of the rising cost of health care, it has become clear to me that the time for reform is now.

In Louisiana, the average family spends more than $12,000 each year for health insurance. That is almost 100 percent of the earnings of a person who is working 40 hours a week at the minimum wage. Think about that. Only in one developed country in the world would we have a system that says if you go to work 40 or 50 hours a week, you have the privilege of taking all that money and having to purchase health care in the system that my colleagues on the other side want to advocate for. That is wrong. We must drive down the cost to the government, to businesses, and to families. This bill will begin to do that.

Since 2000, the amount that working families are charged for health insurance has increased by 91 percent. That doesn't seem to concern my colleagues on the other side of the aisle. If this Congress stood by and did nothing, those costs would nearly double in the next 6 years, with economists predicting that families in my State will pay a whopping $23,000 for insurance in 2016—an 85-percent increase. To say that a different way, that means that if we do nothing, the average family in Louisiana will be paying 60 percent of their income for health care—if they can find it and if they can get around a preexisting condition—leaving only 40 percent of their wages to cover food, education, children, housing, transportation, and everything else families need their funds for.

These skyrocketing costs are burdening families not just in Louisiana but in every State. We don't have a choice but to change. We cannot continue to rely just on the private market without reform, without guidelines, and without incentives to change. Our people will be priced out of the market. Maybe that is what my colleagues on the other side of the aisle want. That is not what I want.

Small businesses are struggling to remain competitive and to turn a profit. In the face of highly unstable and unpredictable health care costs this is getting harder and harder. As chair of the Small Business Committee, I have held 23 hearings and roundtables just this year, and several of them have been focused on how the current health care system and volatile health care costs are hurting our Nation's small businesses.

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

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

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

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

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

Only in Washington would 87 years be considered rushing!

This has been a debate that has gone on with particular intensity for the last 2 years, as our Presidential candidates took to the airwaves in debate after debate—Republican and Democratic—outlining their ideas for reform. This hasn't sprung up in the last

2 weeks. This hasn't sprung up in the last 2 months.

Millions of Americans went to the polls, understanding, in large measure, what we needed to do to change the system. Despite the rhetoric from the other side, that is the reality, and the record will reflect that. Instead of coming to the table and working with Democrats to write a bipartisan bill, Republicans chose to put partisan party politics first. I listened to my friend, MAX BAUCUS, this morning. I, myself, who thought I had followed carefully the work of the Senate Finance Committee, was actually moved to hear the number of meetings—dozens and dozens, maybe hundreds and hundreds of meetings—he attempted to have in a bipartisan way months ago, years ago, with Republicans. Then, at some point, they decided they thought that politics was more important than policy. I think they made the wrong choice.

They fabricated death panels, distorted Medicare cuts, and undermined and disrespected the role of government in protecting its citizens. They have engaged in a relentless misinformation campaign, aimed solely at using fear to sway public opinion against this bill.

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

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

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

That same poll showed that providing subsidies for families that make up to $88,000 a year is favored by 67 percent of Americans. Additional regulations on insurance companies, such as banning denial of coverage for those with preexisting conditions are favored by 60 percent of the American people.

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

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

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

I will read the language used in the poll because people say you can say anything in polls, which is true. If pollsters are not reputable, they can twist and distort. I will read the language used by the poll to describe the plan:

> The plan would require every American citizen to have health insurance and require large employers to provide coverage to their employees. It would require insurance companies to cover those with pre-existing conditions and prevent them from dropping coverage for people who get sick, while providing incentives for affordable preventive care. Individuals and small businesses that do not have coverage would be able to select a private insurance plan from a range of options sold on a National Insurance Exchange. Lower and middle income people would receive subsidies to help them afford this insurance, while those individuals who like the coverage they already have will be able to keep their current plan.

This is a very accurate description of this bill before us—the Patient Protection and Affordable Care Act. It is not a government takeover. There is no public option. There is a national plan available now to every American, just like the Members of Congress and the Federal employees have. There will be exchanges—similar to shopping centers—and Americans will be go to the exchanges and choose from a number of insurance options. The prices will be more transparent. Administrative costs will be lowered. You will not need a Ph.D. to be able to read these policies—they will be written in plain English.

Again, this is not a government takeover, as the other side claims. That is why 57 percent of people in Louisiana, when given the right information, without the rhetoric, without the railing, without the distortions, say: Absolutely, I am for a public-private partnership.

The American people elected President Obama to bring about change. A big part of the change President Obama and Democrats promised during the campaign was improving health care for all Americans. Thanks to the President's leadership and the leadership of Senator REID and many others, we are taking several meaningful steps toward fulfilling that promise.

With the exception of two colleagues, Republicans have failed to negotiate in good faith. I want to say how much I respect our two colleagues from Maine, Senator SNOWE and Senator COLLINS. I have been in dozens of meetings with both of them and know that they struggled mightily to find a way to work with us and to support this bill. I have not spoken with them in the last few days, so I will not discuss their reasons for withholding their support. I am sure they will express those on the floor. But I can say that they are the exception to the rule. I know Senator GRASSLEY, Senator GRAHAM, Senator BENNETT, and a few others engaged early on. I want to acknowledge them and I appreciate their good will. But, unfortunately, the leadership of the Republican Party chose politics over policy. I am disappointed that not a single Republican could support an end to the filibuster. I suppose it is easy to stay unified when the only word in your vocabulary is NO. Although Democrats did not initially agree on exactly how to get there, we were united in saying yes to the common goal of delivering meaningful health care reform to America's families and small businesses. It has been difficult. Some of us come from very conservative States. Some of us come from liberal States. We have diverse populations in our States that have different needs and different views. It has not been pretty, but it has been a practical and hopefully a positive exercise that will bring comfort, support, and strength to the American people and to our economy.

I do hold out hope that when we take our vote on final passage, Republicans will recognize this historic opportunity and vote in favor of this bill that will reduce costs and increase access to health care for millions of Americans.

Last month, I stood here on the floor of the Senate to announce my intention to vote in favor of bringing Senator REID's melded bill to the floor. At the time, I was very clear that my vote was not an indication that I supported that particular version of the bill. My vote was to bring that bill to the floor so that we could do the legislative work the American people sent us here to do.

After weeks of floor debate and amendments and round-the-clock negotiations, that work has been completed. We produced a health care bill that is significantly improved from the one that came to the floor. I would like to share a few thoughts about why, in my view, it is improved.

Through tough negotiations, Senate Democrats have developed a consensus that blends the best of public and private approaches to reduce costs, expand coverage, and increase choice and competition for Americans and have done so without a government-run public option.

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

In addition, there has been a lot of talk about the cost of this bill to the government and to taxpayers. There have been a number of false claims about how this bill will add to the deficit and be a burden to our children and grandchildren. The fact is, this bill is completely paid for and it will reduce the deficit by $132 billion over the next 10 years and as much as $1.3 trillion in the following 10 years.

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

This bill is a big step toward fiscal responsibility and a stronger economy. It aims to achieve these goals by streamlining the health insurance market, ensuring efficiency, and limiting insurance company administrative costs, and to some degree, their profits.

It also imposes an excise tax on insurance companies with high-cost plans. This will encourage employers to be more value-conscious purchasers of health insurance. Employers are expected to choose cheaper plans, and as less capital is spent on health care, wages will go up for hard-working families. Economists predict that this could give American workers a $223 billion pay raise, amounting to $660 per household.

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

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

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

There are many parts of the current bill that I am proud to have fought for. The bill creates health insurance exchanges that will provide individuals, families, and small businesses with a wide variety of affordable choices and ensure that they will always have coverage, whether they change jobs, lose a job, move or get sick. These state-based exchanges will enable consumers to comparison shop online for health insurance which will drive down costs by increasing choice and competition.

The exchange will help the uninsured obtain needed coverage and will also help the more than 200,000 Louisiana residents who currently do not have insurance through their employer to get quality coverage at an affordable price. Many of these Louisianians in the exchange will qualify for a tax credit to help them purchase the insurance of their choice.

For example, in Calcasieu Parish, the median household income is $39,713. In the exchange created by this bill, the average family in Calcasieu would receive an affordability credit that limits what they spend on their premium to around 5.6% of their income or $2,225. Considering, right now the average Louisiana family is spending up to 28% of their income on health care, this is a huge improvement.

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

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

I worked closely with Senator STABENOW to improve affordability and choices for small businesses and amended the bill to make the bridge credit available immediately to help small businesses afford health insurance for their employees, and improve the tax credits for small businesses. This means that small businesses who want to offer quality health insurance to their employees will get tax breaks right away, rather than waiting until 2011. I also worked with Senator LINCOLN to expand the number of small businesses that will be eligible for tax credits so that more small businesses get help in offering health insurance coverage for their employees—allowing more small business workers to benefit. In all, these changes bring an additional $13 billion in tax relief—on top of the $27 billion already in the bill—to small businesses.

If you own a small business of 25 or less employees here is how reform will help you: Businesses with 25 or less employees whose average annual wages are less than $50,000 will get immediate help through a three-year bridge credit. The creation of exchanges and a 2 year exchange tax credit will lift the burden of excessive paperwork administrative costs. The exchanges will create more stable, secure choices for your employees

In Louisiana, more than 50,000 small businesses could be helped by this small business tax credit proposal!

This will help small business owners such as Mary Noel Black and her husband, who own a UPS franchise store in Baton Rouge. They offer their four employees group coverage and are willing to pay half the cost, but the premium rates have gone up so much that neither the workers nor the business can afford to pay the $3,600 a year per employee for insurance. To help Mary pay for the health insurance of each employee, beginning in 2011, Mary could get a $1,260 bridge credit per employee under this bill for 3 years. Then, in 2014, if she purchases coverage through the exchange, her business is eligible for an exchange credit of $1,800 per employee for an even more generous tax credit for another 2 years. This savings could mean the difference between offering insurance or dropping coverage because instead of costing her business $14,400 a year now for her four employees—a cost that is just unaffordable—the tax credit could initially bring her cost down to $9,360 and later to $7,200.

Through our work on the Senate floor during this public debate, we have made this good bill better for small business. Not only have we extended and expanded the small business tax credits, the legislation includes several amendments I authored to ensure small businesses continue to have a seat at the table once this bill is implemented.

The bill requires that small businesses receive information regarding reinsurance for early retirees, small business tax credits, and other issues specifically for small businesses regarding affordable health care options.

It lists Small Business Administration resource partners as eligible recipients of exchange public awareness

grants and will include all Small Business Administration partners in the program, including Women's Business Centers, SCORE, Minority Business Centers, Veteran Business Centers, and others.

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

It also clearly states that agencies cannot waive the Federal acquisition regulation, which requires them to report small business contracting numbers and meet small business contracting goals of 23 percent.

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

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

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

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

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

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

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

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

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

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

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

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

But my question was, where do the young people who age out of the foster care system sign up, because they do not have parents? I was proud to work on a provision that Leader REID included in this bill to ensure that every young person who ages out of the foster care system will be able to stay on Medicaid until the age of 26 starting in 2014. Almost 30,000 young people age out of the foster care system every year, having never been adopted or reunified with their birth parents. The fact that they aged out is our failure as government. We have failed them once and we just can't fail them twice. We must support their transition to adulthood, and guaranteeing access to quality health care will help with that transition.

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

This health care reform bill holds insurance companies' feet to the fire to ensure they are accountable to their customers. By 2014, insurers will not be able to deny coverage due to preexisting conditions. That means they will not be allowed to drop you from coverage if you get sick or are in an accident.

Because of the good work of my colleagues Senator ROCKEFELLER and Senator BEN NELSON, this bill requires insurance companies to disclose the pricing of their benefits to ensure that premiums are spent on health benefits not profits and gives consumers rebates, putting the insurance companies' excessive profits back into your pockets. It contains new requirements ensuring that insurers and health care providers report on their performance, empowering patients to make the best possible decisions. Under this bill, a health insurer's participation in the exchanges will depend on its performance. Insurers that jack up their premiums before the exchanges begin will be excluded—a powerful incentive to keep premiums affordable.

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

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

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

the ground in Louisiana, not the cold calculations of inflexible federal formulas.

An important note is that this Medicaid funding fix was supported by every Member of our Congressional Delegation, and specifically and repeatedly requested by our Republican Governor Bobby Jindal. Some politicians in my state may run and hide when the heat gets turned up, but that's not the way I was raised. I never have and never will run from what I think is right. I was sent here to fight for my state and that is exactly what I'm doing.

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

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

The bill is not perfect. It is not the exact health care bill that I would have written. I think the same could be said for each of my colleagues. It was a long, difficult process and during the course of completing this landmark bill there were a lot of twists and turns. But, as former President Clinton was fond of saying, we should never let the perfect become the enemy of the good.

And through hard work and good faith and tough negotiations and keeping our eye on the ball, Senate Democrats have actually crafted, in my view, an extraordinary piece of legislation that will go a long way to providing comfort and security to the American people who elected us to do so.

It will provide comfort and security for the local grocery store owner in Jennings, the 22-year-old in Lake Charles who has just left the foster care system, the single mother of three in Monroe, the 9-year-old boy in Natchitoches who was just diagnosed with diabetes, and the 70-year-old Medicare beneficiary in Houma who worked for three decades in the offshore oil industry.

The Patient Protection and Affordable Care Act will make a difference in these lives and millions more across America, and I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I ask unanimous consent that the remaining Democratic time be divided equally between myself, Senator STABENOW, and Senator BINGAMAN.

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

Mrs. SHAHEEN. Mr. President, I wish to begin by congratulating Senator LANDRIEU and thanking her for all the hard work she has done on this bill—first of all for small business. I think we have significantly, with her leadership, improved this legislation for small business so that many of the small businesses in this country—many in my home State of New Hampshire—will now be able to get help as they try to cover their employees for health care. I also wish to congratulate her for all her good work to help children in the foster system. It is significant they will be able to get health insurance once they age out of the foster system and, of course, to help those, as she has pointed out, who have children who are in their early twenties and who are still trying to get settled in a profession.

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

I am very pleased to be here today to support this legislation and also to try to dispel some of the myths we have heard from our colleagues on the other side of the aisle about what is actually in this legislation. Despite what many of our colleagues may want us to believe, passing this bill is the fiscally responsible thing to do. Our current health care system is a threat to the security of our families, our small businesses, and the entire economy of this Nation. The costs of health care in America make up almost 18 percent of our economy—our gross domestic product. That is more than any other industrialized country. Health care costs are rising three times faster than wages. The leading cause of about two-thirds of the bankruptcies in America is medical bills. Our current health care system is simply not sustainable.

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

Small businesses in my home State of New Hampshire and across this country are going to benefit from this legislation. We heard Senator LANDRIEU talk about many of the provisions she worked on—and many of which I cosponsored—to help improve the legislation for small business. The fact is, the steep annual increases in the cost of health insurance have been forcing more and more businesses to make the very difficult decision to either drop coverage for their workers or to increase their employees' contribution to the point that too many workers have had to decline coverage.

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

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

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

> The cost of health insurance is the biggest problem that our small business faces.

He has 24 employees. He went on to say:

> The present system is expensive, inefficient and broken. I can't tell you how the 20 to 35 percent annual rate increases depress us all and there is no end in sight. Over the past five years, most of our employees have had to drop coverage because they simply can't afford to pay their share of the premium. I really believe that the time has come to put the existing system out of its misery.

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

the government pays to insurance companies for Medicare Advantage plans. These are all commonsense actions that will save the government and health care consumers money over time.

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

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

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

Mrs. SHAHEEN.—but we eliminate the abuses of the insurance companies.

I will be back to talk about some of these other areas.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

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

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

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

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

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

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

In my State, that means over 109,000 small businesses that could be helped by the small business tax cuts that will make premiums more affordable. So I am very pleased to be part of a group of Members who came together and worked very hard to focus on the fastest growing part of the economy, which are our small businesses.

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

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

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

When we look at this legislation, according to the Small Business Majority, without health insurance reform that is in this legislation the annual costs of health benefits will more than double in less than a decade. They will more than double. We know, because we have seen the statistics, that when we talk about doubling health care costs for businesses in the next 10 years, it is estimated to equal another 3.5 million jobs.

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

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

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

I yield the floor.

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

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

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

It is clear now we have a bill before us that will do neither one of those things but which I think will accomplish very major health care reform for the country. I want to just concentrate

for a few minutes on some of the other policies that are contained in this legislation that have received much less attention but which clearly are very constructive proposals that will dramatically improve the health care delivery system in the country.

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

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

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

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

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

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

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

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

Among enrollees in the individual market who would not receive new subsidies, average premiums would increase by less than 10 to 13 percent—this, again, according to the Congressional Budget Office. The legislation would have smaller effects on premiums for employment-based coverage. Its greatest impact would be on smaller employers qualifying for new health insurance tax credits. For these businesses and their employees, the Congressional Budget Office predicts that premiums would decrease by somewhere between 8 and 11 percent, compared with the costs that they would have to pay under current law.

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

In addition, about two-thirds of the people in my State of New Mexico would potentially be able to qualify for subsidies or for Medicaid. In fact, a quarter of our population in New Mexico is at an income level that would allow them to qualify for near full subsidies if they bought insurance through an insurance exchange or for Medicaid itself.

An overall decrease in premium costs also is consistent with the experience that the State of Massachusetts had after they enacted similar reform to what is now being considered in the Senate. There has been a substantial reduction in the cost of nongroup insurance in that State. In fact, the average individual premium in Massachusetts fell from $8,537 at the end of 2006 to $5,142 in mid-2009. That is a 40-percent reduction in premium for that coverage. This was at a time when the rest of the Nation was seeing a 14-percent increase.

Finally, much of the debate on health care reform has focused on insurance coverage. It is important to recognize that as we expand coverage to include more Americans, the demand for health care services is going to increase as well. A strong health care workforce is, therefore, essential for successful health reform. Within this country, approximately 25 percent of the counties are designated as health professional shortage areas. That is a measure that indicates that there are insufficient medical staff to properly serve that geographic area.

This problem is even more apparent in rural States such as mine, such as New Mexico. For example, 32 out of the 33 counties in our State—we have just 33 counties—32 of those counties have this shortage designation—health professional shortage area designation. As a result, New Mexico ranks dead last compared to all other States with regard to both access to health care and the ability to utilize preventive medicine.

This Patient Protection and Affordable Care Act also contains key provisions to improve access and delivery of health services throughout the Nation. These provisions include increasing the supply of physicians and nurses and other health care providers, enhancing workforce education and training, providing support for the existing workforce—health care workforce, increasing the support for community health centers.

I applaud Senator REID and Senator BAUCUS and Senator DODD and Senator HARKIN and many other colleagues in the Senate who worked so hard on this bill. The legislation represents major health care reform. It is time for the Senate to enact this critical and long overdue legislation. There will be chances and opportunities to improve on this legislation in the future. I hope to participate in some of those.

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

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

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Madam President, I know our leader is coming to speak,

but prior to him coming, I will take a portion of my time that has been allotted to me by my side.

I sat here with great interest listening to the Senator from New Mexico. He referenced the State of Massachusetts. I entered into the RECORD yesterday the 21 percent of the people under the plan who could not get care in Massachusetts because they could not afford the copay and the deductible. This is basically a copy or model off of that.

He also discussed the fact that this shows a $132 billion savings over the next 10 years. That is provided you do not think you are going to allow any increase in doctor payments and you are not going to reverse the 21-percent cut.

Madam President, my leader is here, and I will be happy to yield to him at this time.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Madam President, I thank my friend from Oklahoma. I will be very brief.

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

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

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

Few people could have imagined that this is how this debate would end—with a couple of cheap deals hidden in the folds of this 2,700-page bill and rushed early-morning votes. But that is where we are. Americans are asking themselves: How did this happen? How did a great national debate that was supposed to lead to a major bipartisan reform lead to a bag full of cheap legislative tricks inside a $2.3 trillion, 2,733-page bill that actually makes health care costs go up?

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

Madam President, I thank my friend from Oklahoma, and I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Madam President, I would just follow with one comment to my leader as far as his comments.

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

So my hope is that sometime during this process, we will take up the violation of this very law by the leader of this Chamber in terms of ignoring it and flaunting it. What he said, when we passed it, was it was a needed change, and now we see it ignored as they bring this bill to the floor.

Mr. MCCONNELL. I thank my friend from Oklahoma.

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

Mr. COBURN. I thank the leader.

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

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

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

Dr. COBURN,

I hope you don't mind a personal story, but as I listen to the health care debate, I can't help but think constantly of my middle daughter. I am convinced that Chloe would have lost her chance for a normal life, had these policies—

In this new health care bill—

been in effect two years ago. No government agency could possibly have understood Chloe's unique needs or her extremely rare condition.

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

That is a growth around the ventricular system, the fluid system of the brain—

but her first two neurologists weren't sure there was a connection between the [changes in her movement and the movement disorder and the symptoms and the nodules]. They certainly had nothing useful to offer in terms of treatment. But I made the rash promise to my daughter that someone, somewhere, knew what to do, and that we would not stop looking until we found that person. Unlike mothers in a government run system, I was free to research the options and apply where I wanted. Our search took less than three months.

Chloe's pediatric movement disorder specialist at Mayo Clinic called her condition ''unique'' and unclassifiable. He had to debate her case with his neurology team, but in the end they were willing to try an unprecedented series of brain surgeries. Chloe was desperate to live a normal life again, so my husband and I agreed, though perhaps you can imagine what an excruciating decision that was. Today, Chloe twitches a little, but anyone who didn't know her history would think she is just fidgeting. She is an honors linguistics student at OU, and she even takes dance lessons. She recently started driving again. She said once, ''Mom, without the surgery, I would be strapped into a wheelchair now.

I know that Chloe would never have had the unique care she needed, if we had been required to petition a government agency for permission. A less dedicated person than her subspecialist would have tried to classify her condition and restrict her to known treatments. In fact, other subspecialists wanted to make those same restrictions. Chloe's doctor learned how to treat her by spending a great deal of time with her, by talking to her and to us for hours at a time, and by observing her in multiple contexts. I fear for the next mother whose child has an unclassifiable condition, and whose treatment is planned by a faraway committee with a diagnostic manual open on the table. Chloe won't be in that manual.

The thing that keeps people from getting health care in America today is the cost of health care. We have had all sorts of attempts of, how do we do that? We have had the Massachusetts model, and, as entered into the RECORD yesterday, they have insurance reform. Almost everybody in Massachusetts is covered. Yet last year 21 percent of those people who were covered could not get care because they could not afford the deductibles and copays. So expanding insurance and expanding the model does not solve it.

So you can either approach controlling costs or you can ration care. What has happened in this bill, as it comes through, is we have chosen to ration care. My colleagues are going to dispute that, but I want to offer significant evidence to offset that and discuss what is in the bill and to also discuss what is not in the bill.

What is not in the bill is a prohibition against rationing, which all of my colleagues on both the Finance Committee and the HELP Committee voted against, which means you are for rationing if you vote against, a prohibition. The leader denied an amendment on the floor of the Senate to eliminate rationing, so we do not get to see where everybody stands. But we understand the intent. So there is no question that the way we are going to control costs is to limit your access by rationing health care.

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

So we get two choices.

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

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

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

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

Mr. COBURN. I would be happy to.

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

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

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

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

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

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

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

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

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

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

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

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

There is an agency in Great Britain called the National Institutes for Health and Clinical Excellence. It is pronounced NIHCE. Here are some of the decisions of NIHCE in the most recent years. They have a problem in England with cost, too, and they have a single-payer, government-run system. They have the government running it, but they still can't control their costs, so what have they done?

They have repeatedly denied breast cancer patients breakthrough drugs. They have forced patients with multiple sclerosis to wait 2½ years to receive new innovative treatments that people in this country are getting as soon as they are available. They have denied early stage Alzheimer's patients medication, requiring their condition to worsen before they give them the medicine. What do we know about the medicine? It works best when you have the slightest symptoms of Alzheimer's, not when you get worse. But that is the bureaucratic thinking: We will save money rather than practice good medicine.

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

They denied access to the only drugs available to treat aggressive brain tumors. They denied effective drugs to bowel cancer patients, colon cancer.

Macular degeneration is something that affects a large number of people in this country. That is where the macula—the area that actually allows you to see and concentrate your vision—as we age, we have what is called cystoid macular degeneration or dry degeneration. That is a disease of the eye where it causes vision loss. NIHCE required patients suffering from macular degeneration to go blind in one eye before they could have the medicine that almost every American who has macular degeneration in this country has. She had to go blind first in one eye before you could ever get the medicine. That is a bureaucrat making this decision or a bureaucratic committee because it was cost-effective to allow you to live with one eye. Elderly patients went to court to fight for drugs to keep them from going blind. Twenty-two thousand Britains became totally blind through that ruling by the NIHCE. In one case, an 88-year-old World War II veteran and former Air Force pilot sold his house to pay for the drug after the government said they weren't going to pay for it. The Royal National Institute of Blind People said that as a result of NIHCE's decision, countless people have either been stripped of their sight or stripped of their life savings to pay for private treatment.

For Alzheimer's, they ruled that three drugs, common to many people who are listening today—Aricept, Reminyl, and Exelon—were not cost-effective for patients with early Alzheimer's disease. Well, those are the only ones they work effectively on. One hundred thousand Alzheimer's patients a year were denied treatment that could have slowed the progress of their disease. The British Alzheimer's Society said this decision was disgraceful and victimized the most vulnerable in our society.

Brain cancer. Gliadel and Temodal were not cost-effective for treating brain tumors and severely restricted their access to them. A 47-year-old woman sold her house to buy the drug the government refused to provide. They have been held as the biggest breakthroughs in treating brain tumors in the last 30 years. Finally, in April of the year before last, they finally relented and allowed brain cancer patients to have the drugs that were available on the market.

Erbitux, very effective in resistant colon cancers. In 2006, denied. Seventeen thousand Britons a year get the sort of advanced colon cancer that Erbitux is designed for. Yet they can't have it.

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. JOHANNS. Madam President, I appreciate the courtesy extended by the Senator from Oklahoma.

I ask unanimous consent that the pending substitute amendment be modified to delete the following special carve-outs: eliminating or reducing the Medicaid unfunded mandate on Nebraska, Vermont, Massachusetts; exempting certain health insurance companies in Nebraska and Michigan from taxes and fees; providing automatic Medicare coverage for anyone in Libby, MT; earmarking $100 million for a health care facility, reportedly, in Connecticut; giving special treatment to Hawaii's disproportionate share of hospitals; boosting reimbursement rates for certain hospitals in Michigan and Connecticut; and mandating special treatment for hospitals in frontier States such as Montana, South Dakota, North Dakota, and Wyoming.

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. Objection is heard.

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

The PRESIDING OFFICER. The Senator from Iowa.

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

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

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

So I think that statement begs more questions. Who do you believe? The

White House, on the one hand, or on the other hand, the nonpartisan independent experts upon whom we on Capitol Hill rely for judgment—the people who are not political, the Joint Committee on Taxation?

This committee tells us that in 2019, a little more than 13 million individual families and single parents would receive the government subsidy for helping people under 400 percent of poverty buy health insurance. The Joint Committee also tells us that the number of tax filers in 2019 will be 176 million people. If people are wondering why we talk about 2019, it is the budget window from now until the end of the 10-year period of time that we call a ''budget window.'' That means out of—comparing this 13 million to the 176 million taxpayers, 13 million people receiving the subsidy and 176 million tax filers—that means out of that 176 million individuals, families, and single parents, only 13 million of them would receive a government subsidy for health insurance. That is only 7 percent of the tax filers. It is pretty important to understand that only 7 percent of Americans will benefit from the subsidy for health insurance.

We have a pie chart so people can see exactly what I am talking about. This says 176 million taxpayers, with 13 million receiving the subsidy. This means 163 million families, individuals, and single parents—or 93 percent of all taxpayers—will receive no government benefit under the Reid bill. What does that mean? It means there is a small beneficiary class under the Reid bill—7 percent. Thirteen million people will receive benefits under the Reid bill. A very large nonbeneficiary class—93 percent—will not benefit.

This nonbeneficiary class is affected in other ways. Yes, while one group of Americans in this class would be unaffected, another group of Americans will see their taxes go up. This group would not have a tax benefit to offset the new tax liability. That means these Americans will be worse off under the Reid bill.

It is legitimate to ask, for these 93 percent of the people, what happened to their net tax cut? What they will see instead is a net tax increase. Based on the Joint Committee's data, in 2019 42 million individuals, families, and single parents with incomes under $200,000 will see their taxes go up. This is even after taking into account the subsidy for health insurance. Again, this is on a net basis.

If we were to identify those Americans who are not eligible to receive the tax credit and those whose taxes go up before they see some type of tax reduction from the subsidy, this number will climb to 73 million Americans. The first bar on the chart illustrates what we have already established but looks at Americans earning less than $200,000. Right here, 13 million families and single parents and individuals would receive the subsidy.

The middle bar on the chart shows the net tax increase number of 42 million Americans under $200,000-a-year income. Finally, when we identify those Americans who get no benefit under this bill, and those Americans who see a tax increase, we find that there are 73 million individuals, families, and single parents under the $200,000 category. That is this group.

I want to close by referring to a final chart that illustrates the winners and losers under the Reid bill. What we see is that there is a group of Americans who clearly benefit under the bill from the government subsidy for health insurance. This group, however, is relatively small—8 percent of Americans, if you look at those earning less than $200,000.

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

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

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

I want to flatout state I know they are going to be passed through. My authority for this is the Congressional Budget Office and the Joint Committee on Taxation telling us that fact. The CBO and the Joint Committee on Taxation told us that these fees will actually increase health insurance premiums. Premiums will go up because the companies are paying increased taxes under this bill. For insurance premiums to go up, under a title of a bill that encompasses health care reform, that is going in the wrong direction. Also, for argument's sake, let's assume my Democratic colleagues are correct and this so-called hidden tax that results from uncompensated care equals $1,000. The pending health care reform bill still leaves a large number of Americans uninsured. Specifically, the Reid bill leaves 23 million out of 54 million without health insurance at the end of this budget window, 2019. So, at best, the Democrats' reform cuts the hidden tax in half—in this case, to about $500 a family.

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

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

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

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

The Medicare and Medicaid cost shift will be increased significantly under the pending health care reform bill. According to the CBO estimate, Medicaid will be increased by more than 40 percent, from 35 million to 50 million people. Additionally, the bill includes almost $½ trillion in Medicare cuts that will result in lower payments to providers.

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

Addressing this reform alone could save more than covering all of the uninsured in America.

So, you see, my friends on the other side say their bill will eliminate the so-called hidden tax. My friends seem to come up short on that one. Also, they add new hidden taxes that will burden middle-class Americans.

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

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

The PRESIDING OFFICER. The Senator from Montana.

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

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

EXPIRING TAX PROVISIONS

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

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

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

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

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, December 22, 2009.

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

DEAR MAJORITY LEADER REID AND REPUBLICAN LEADER MCCONNELL: We write to inform you that early in the next year, we intend to address the extension of various tax provisions expiring on or before December 31, 2009. We intend to extend the provisions without a gap in coverage, just as the House did on December 9th of this year. The legislation will extend several important tax benefits to individuals and businesses. The legislation will also extend a number of energy tax provisions, including the biodiesel tax credit, and natural disaster relief.

These provisions are important to our economy—not only because they help create jobs, but also because they are used to address pressing national concerns. We understand that the expiration of these provisions creates uncertainty and complexity in the tax law.

Taxpayers need notice of the availability of these provisions to fully and effectively utilize the intended benefits. We hope to address this issue as soon as possible to cause the fewest disruptions and administrative problems for taxpayers and also generate the greatest economic and social benefit.

Sincerely,

MAX BAUCUS,
Chairman, Senate Committee on Finance.
CHUCK GRASSLEY,
Ranking Member, Senate Committee on Finance

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

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

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

The PRESIDING OFFICER. The Senator from Iowa.

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

I agree with Chairman BAUCUS that we should retroactively extend the expiring tax provisions as soon as possible after Congress reconvenes in 2010.

As chairman of the Finance Committee in 2005, I worked with then-Ranking Member BAUCUS, and we authored the biodiesel tax credit.

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

I point out that support in Congress for extending the biodiesel tax credit, I think, has been and still is robust, bipartisan, and bicameral, and that it has not been extended prior to January 1, 2010, due solely to issues unrelated to the merits of the biodiesel tax credit.

I want everybody to know that I agree with Chairman BAUCUS that the expiration of these tax provisions creates uncertainty and complexity in the tax law. I also agree that the taxpayers need notice that these tax provisions will be in place so they can plan their personal and business affairs to fully and efficiently use the intended tax incentives.

In addition, extending the tax provisions as early as possible in 2010, as we intend to do, will minimize the administrative problems created for the Internal Revenue Service.

I look forward to working with Chairman BAUCUS to retroactively extend these provisions as soon as possible when the Senate reconvenes in 2010.

Mr. BAUCUS. Madam President, I thank the Senator for his statement. I look forward to working with him and other Senators so we can pass this legislation as soon as possible next year.

Again, I commend my colleague and friend. It is true that much more often than not we are working on the same side of an issue. Even on the few occasions when we are on the opposite side, I do say we do it agreeably. I wish more of the Senate would act the same way.

Mr. HARKIN. Madam President, I thank the Senators. The delay in the passage of the Tax Extenders Act of 2009 will cause problems for a wide variety of groups, as the distinguished Senators from Montana and Iowa have outlined. I believe the negative impact of our failure to act this year will be felt first, and felt most strongly, by manufacturers of biodiesel. Without the immediate passage of legislation to extend the biodiesel tax credit, a large number of biodiesel manufacturing plants are likely to close down because they do not have the resources to operate without the financial benefit of the credit.

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

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

However, this is still a very small and struggling industry. It is absolutely dependent on continuation of

the biodiesel tax credit. Without this credit, most of the biodiesel plants in this country will simply be forced to shut down, thus idling important domestic fuels production capacity as well as putting as many as 20,000 employees out of work. We can't let that happen. And, if for any reason the credit was not made retroactive, bankruptcy would in a good number of instances be a quick result.

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

Ms. STABENOW. Madam President, as we work toward economic recovery, it is imperative that we act quickly to extend critical tax provisions scheduled to expire this year that promote research and development, spur community development, support the deployment of alternative vehicles and fuels, and provide certainty for businesses and families.

Knowing these tax provisions are in place allows Americans to plan for the upcoming year. The longer we wait to pass this legislation, the more uncertainty we place on businesses during a time when they are starting to recover. Many of these tax provisions encourage investment, the development of new technologies, and business growth, which allow our companies to be competitive in a global marketplace.

Delaying the extension of the research credit could put more than 100,000 jobs and billions of dollars in economic activity and Treasury revenue expected in 2010 in jeopardy, according to estimates from TechAmerica. If the credit is renewed, the association estimates that 120,000 jobs would be generated and/or sustained, there would be an additional $16 billion in additional research and development and other economic activity and $13 billion in Federal tax revenue over the course of 2010. However, for every day that the credit is left expired, there is the potential to lose 331 jobs, $45 million in economic activity, and $37 million in tax revenue.

Another important tax provision set to expire this year allows businesses to write off the expenses of cleaning up brownfields, industrial land that would otherwise continue to be a blight on our communities and harm our environment. In my home State of Michigan, these credits will be needed more than ever to address the brownfields that have been left behind as a result of the restructuring of the automotive industry. Revitalization of these brownfields will be critically important to communities throughout the State and the Midwest.

It is also imperative that we restore the estate tax retroactively to January 1, 2010. I am extremely disappointed that an extension was blocked and that the estate tax will be allowed to expire in 2010. Contrary to Republicans' claims, more heirs of farm and business estates will be hit with a tax increase than if we extended the estate tax at current levels. If the 2009 rules are retroactively applied, then only approximately 6,000 estates would pay the estate tax each year; however, if the estate tax expires, then it is estimated that 61,000 estates could be hit with the capital gains tax. It is critical that we extend the estate tax under the 2009 parameters to protect small businesses and family-owned farms, continue the incentive that the estate tax provides for charitable giving, and provide certainty for the heirs of farm and business estates.

During one of the most challenging economic times our country has faced, dragging our feet on these tax extensions could have a substantial impact on our Nation's businesses and families at a time when we should be doing all we can to help them succeed. I look forward to working with Chairman BAUCUS and Ranking Member GRASSLEY to retroactively extend expiring tax credits expeditiously when we return next year.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. GRASSLEY. Madam President, there was a report released recently by the Chief Actuary, Rick Foster. I hope this report will once and for all put an end to any serious consideration of the CLASS Act. The CLASS Act is going to be in the bill, if this bill passes Congress. But it should not be in it, and we should have had a long discussion on this provision because it is simply fiscally unsustainable.

The information the Chief Actuary's letter provides is ample evidence of why the CLASS part of this bill cannot work. Quoting from page 13 of the Chief Actuary's letter:

> We estimate that an initial average premium level of about $240 per month would be required to adequately fund CLASS program costs for this level of enrollment, antiselection, and premium inadequacy for students and low income participants.

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

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

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

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

The Chief Actuary concluded on page 14 of his report with this one sentence:

> There is a very serious risk that the problem of adverse selection would make the CLASS program unsustainable.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BAUCUS. Madam President, this chart shows very graphically—this is data put together by the Joint Committee on Tax, combining all the various provisions in the bill. Basically, it shows that in 2015—that is the bar on the far left—there will be a $26.8 billion net tax cut for individuals—net tax cut. Two years later in 2017—that is the middle vertical bar—there is a net tax cut of $40 billion for all Americans—a net tax cut. Not for all Americans. Some will not get it, but most Americans by far will. Then, of course, 2 years later in 2019, there is a net tax cut of $40.8 billion.

I wanted to make it clear that there is a net tax cut in this bill, according to Joint Tax. This is the distribution over 3 different years—2015, 2017, and 2019. That is information prepared by the Joint Committee on Tax. I want Americans to know there are tax cuts in this bill, and they are very significant.

Madam President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:30 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:30 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB).

SERVICE MEMBERS HOME OWNERSHIP TAX ACT—Continued

The PRESIDING OFFICER. The Senator from Montana is recognized.

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

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

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

Rhode Islanders have seen their health care costs double in just the last decade. In 2000, the average employer-sponsored family health insurance policy cost about $6,700. In 2008, the same plan cost nearly $12,700. Without reform, by 2016, that family will pay over $24,000 in premiums, consuming 45 percent of their projected median income. Such a course is unsustainable by the families of Rhode Island.

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

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

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

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

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

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

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

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

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

Health insurance reform hasn't always been this partisan. Indeed, many Republicans have said they support a great deal of what is in this bill but, for whatever reason, they refuse to support it. Indeed, by my count, this bill increases competition, which Republicans said they wanted. Indeed, by my count, this bill lowers cost, which Republicans said they wanted. Indeed, by my count, this bill does not contain a public option. I regret that, but that is the position I think most of the Republicans—not all—supported. And, indeed, this bill provides Americans with tax credits to purchase insurance, which Republicans said they wanted.

So the bill we will pass seeks to tear down the inefficiencies in the current system, curb the cost, and reduce the waste and abuse Rhode Islanders and Americans experience every day.

It is our responsibility to enact meaningful health reform. Just saying no may be a powerful political weapon, but this country is built on hope and a better future, not fear.

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

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

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

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

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

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

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

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

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

Rhode Islanders without a job will be able to purchase insurance on a newly established and government-regulated health insurance market. Many will receive Federal support for the purchase of coverage.

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

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

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

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

will provide them with insurance at reasonable costs.

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

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

As I suggested before, the average premium for a Rhode Island family is $12,700. If we don't do something, experts predict this premium will double in just 6 or 7 years. Rhode Islanders will be looking at health insurance bills—just the bills of annual premiums—of over $25,000. Again, that is not sustainable. It will literally bankrupt the families of Rhode Island, and they will make a very difficult choice: paying this much money—which for many, if not most, is extraordinarily difficult—or not having insurance or doing other things, such as limiting the access their children have for college or not saving for their retirement. We can change that today by moving forward with this legislation.

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

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

So this approach will actually lower the cost, as the CBO has reported. Additionally, the bill will provide permanent tax credits for Rhode Islanders to purchase insurance.

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

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

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

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

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

What we are going to see is not a decrease in employer insurance but an increase. I think this is something that will match the best aspects of our economy—individual business men and women making judgments about what plan is best for them and providing that benefit in a cost-effective way to their employees. It will occur because of a few simple changes:

First, as I mentioned, small business owners will actually receive a tax credit to purchase insurance for employees, should they choose, beginning next year, 2011. I will repeat, small businesses will get a tax credit, a tax break which they are not getting now, to help provide insurance for their workers.

Second, individuals will have the option of finding affordable insurance on their own with increased competition to drive down costs, as more people shop effectively for health care insurance.

Third, there will be lower administrative overhead and greater simplification of insurance as a result of this legislation.

Under the proposal we are considering, premiums for small businesses will stop the never-ending trend of increase after increase and will begin to come down. Making health insurance more affordable for small business owners will help them by defraying their startup costs and ensuring individuals can seek employment regardless of the benefit options.

It will foster innovation and put companies in a situation where they have an edge over foreign competitors and can win in the global marketplace. American companies today are competing against nations around the globe that either have a national system, which does not directly affect their balance sheet in terms of health insurance costs, or they have no health insurance at all, and as a result, that is not on the balance sheet of these companies. Every one of our businesses is, in some way or another, competing against other countries that heavily subsidize their insurance, that provide an advantage, a competitive advantage. We want to in some small way diminish—in fact, in a large way at least begin to diminish that advantage.

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

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

Each one of the hospitals in my state is contributing in our efforts to insure more Americans and doing so with the knowledge that they can potentially benefit from the fact that people will not be showing up in their emergency rooms without insurance but will bring their insurance card, and the support their card ensures, to the emergency room.

In addition, the safety net providers throughout the country, our community health centers, will find great support in this legislation.

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

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

This bill will also provide seniors with an improved Medicare Program. Nearly one-fifth of my State is on Medicare; over 180,000 Rhode Islanders rely on Medicare. Seniors have paid into Medicare during their lifetime. They deserve a program that will provide comprehensive coverage at the lowest cost without risk of coverage being terminated. However, that is not the Medicare coverage Rhode Islanders always receive today. Here is what Medicare does today. Medicare frequently allows the same test for the same complaint to be performed multiple times. This costs money, but it doesn't necessarily improve patient care. Medicare leaves over 31,000 Rhode Islanders without prescription drug coverage for parts of the year. This costs them money. And Medicare today is on the path toward insolvency in just 8 short years, which will affect every senior in Rhode Island.

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

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

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

We will eliminate excessive overpayments to private insurance companies. In my State, Medicare Advantage plans are paid over 20 percent more per beneficiary than traditional Medicare fee-for-service. This overpayment is particularly astounding given the fact that the Government Accountability Office found that 19 percent of Medicare Advantage beneficiaries pay more than traditional Medicare for home health care and 16 percent pay more for inpatient services. Seniors should be angry and upset at insurance companies, that they continue to profit from the Medicare system while simultaneously taking more money from seniors' pocketbooks as they charge extra for these services. This was not the intent of the program. In fact, the intent of the program—the argument the insurance companies made is: Give us the flexibility to manage Medicare patients, and we will lower costs. Very shortly after that, it became clear that they were not managing the costs that well.

Of course, the bill is going to target waste, fraud, and abuse. For every $1 we spend in this effort—and you have to invest in this fraud detection—we expect to recover $17.

Our efforts will improve health care of seniors and will stabilize Medicare.

Also, we should note that we will be doing significant amounts with respect to children. I particularly applaud Senator BOB CASEY's amendment to ensure that Rhode Islanders on Rite Care will not have to fear losing their safety net coverage.

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

We voted on countless measures outside the normal process of budgeting to fund the wars in Iraq. We voted tax cut after tax cut for the wealthy, which has left my State not prosperous and wealthy but 13 percent of my State unemployed and 15 percent of my neighbors are uninsured.

We are moving forward to reduce the deficit with this bill, to provide valuable coverage, to ensure the promise of health care in the United States is fulfilled, not denied.

I yield the floor.

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

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

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

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

(The remarks of Mr. KIRK are printed in today's RECORD under ''Morning Business.'')

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

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

Mr. REID. Mr. President, I ask unanimous consent that all postcloture time be considered expired on H.R. 3590 at 8 a.m., Thursday, December 24, if cloture is invoked, and that immediately the bill, as amended, be read a third time, and the Senate vote on passage; that after passage of H.R. 3590, as amended, the Senate then proceed to the immediate consideration of Calendar No. 245, H.R. 4314, an act to permit continued financing of government operations; that no amendments be in order; that the bill be read a third time, and the Senate then proceed to vote on passage; that passage require an affirmative 60-vote threshold; and if that threshold is achieved, then the motion to reconsider be considered made and laid upon the table; further, that on Wednesday, January 20, 2010, at a time to be determined by the majority leader, following consultation with the Republican leader, the Finance Committee be discharged of H.J. Res. 45, increasing the statutory limit on the public debt and the Senate then proceed to the measure; that immediately after the joint resolution is reported, the majority leader or his designee be recognized to offer a substitute amendment and that the following be the only first-degree amendments in order to the joint resolution: Thune, TARP; Murkowski, endangerment EPA regs; Coburn, rescissions package; Sessions, spending caps; McConnell, relevant to any on the list; Reid, one relevant to any on the list; Reid, pay-go; Baucus, three relevant to any on the list; Conrad-Gregg, fiscal task force; that each of the listed amendments be subject to an affirmative 60-vote threshold and that if any achieve that threshold, then they be agreed to and the motion to reconsider be laid upon the table; that if they do not achieve the 60-vote threshold, then they be withdrawn; that upon disposition of all amendments, the substitute amendment, as amended, if amended, be agreed to, the joint resolution, as amended, be read a third time and the Senate then proceed to vote on passage; further, that passage also be subject to an affirmative 60-vote threshold; further, as in executive session, I ask unanimous consent that on Wednesday, January 20, 2010, after a period of morning business, the Senate proceed to executive session to consider Calendar No. 421, the nomination

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

The PRESIDING OFFICER. Is there objection?

The Republican leader is recognized.

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

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

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, reserving the right to object, I wish to inquire whether, under that consent request that is being propounded, secondary amendments would be in order to any of the first-degree amendments on that list.

Mr. REID. No.

Mr. BAUCUS. I do not object.

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

The Republican leader is recognized.

THANKING SENATE PAGES MARTIN CHARBONEAU AND MIKHAILA FOGEL

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

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

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

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

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

I believe, when the history of this bill is written, it will be recognized what a remarkable job of leadership Senator REID has provided, bringing together a disparate caucus around extraordinarily complex issues to accomplish something that will be seen in the future as a leap forward for America in reforming the health care system in this country.

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

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

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

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

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

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

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

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

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

It does not stop there. Premiums, as I have indicated, are skyrocketing, and national health care costs are skyrocketing right along with them. Without action, total health care spending will equal 38 percent of the gross domestic product of the country by 2050. Thirty-eight percent of the gross domestic product for health care? That would be one in every two and half dollars in this economy. Already, we are consuming one in every six in this economy on health care, and that is an unsustainable course. These costs are driving our long-term fiscal imbalances, threatening our future economic prosperity.

Without action, Federal spending on Medicare and Medicaid will reach 12.7 percent of GDP by 2050. This chart I have in the Chamber makes it very clear. In 1980, the two programs were consuming 2 percent of gross domestic product, but on the current trend line, by 2050, these two—Medicare and Medicaid—will consume more than 12 percent of our GDP—one in every eight dollars in our economy.

The growth in health care costs threatens to bankrupt Medicare. Medicare went cash negative last year. Without action, Medicare will be bankrupt in 2017. The trustees have just told us that will happen. That is 2 years earlier than forecast just last year. Again, Medicare went cash negative already. That means more money is going out than is coming in, in the Medicare accounts, and it will be insolvent—broke—in 8 years. This legislation extends its life by 9 years.

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

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

But even with the fact that we are spending more, we are actually performing worse on virtually every metric on health care outcomes. We are ranked 19th in preventable deaths, 22nd in infant mortality, 24th in life expectancy; and we still leave 46 million people without insurance.

Continuing the status quo is not an option. America can do better, and this bill proves it. The bill before us is fiscally responsible. The nonpartisan Congressional Budget Office—the official scorekeeper, relied on by both sides of the aisle—tells us the bill reduces the deficit by $130 billion over the first 10 years.

Now, those aren't my numbers, those aren't the numbers of the chairman of the Finance Committee, those aren't the Democratic leader's numbers. Those are the numbers of the nonpartisan Congressional Budget Office. They say this bill will reduce the deficit by $130 billion over the first 10 years.

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

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

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

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

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

This bill puts a stop to these abuses. It prohibits insurers from denying coverage for preexisting conditions on new policies. It prohibits insurers from rescinding coverage when people become sick after they have paid premiums for years on new plans. It bans insurers from lifetime caps and annual limits on health care benefits, and it prevents insurers from charging more based on health status.

It also expands choice and competition. The bill before us builds on our current market-based system and makes it better. It is not government-run health care. Instead, it embraces choice and competition. It sets up a new health exchange where consumers can shop for the best value. It creates consumer-run, co-op health plans not government-run plans but plans run by the members. It allows for insurance sales across State lines to further increase competition.

The managers' amendment also creates a new national plan. The Office of Personnel Management, the same agency that currently oversees health plans for all Federal employees, including Members of Congress, would select private health insurance carriers to offer plans that would be available nationwide. These plans would provide new competition for State-based health plans, particularly in areas where just one or two insurers currently dominate the market. At least one multistate plan would have to be a not-for-profit insurer, such as one of the newly created co-ops. I am particularly excited by this development.

When we look around the world at the countries with the best outcomes and the lowest cost, one feature stands out: these countries rely on primarily not-for-profit insurance. Germany, France, Switzerland, Belgium, Japan, all have adopted this model. They don't have government-run health care, but they do have universal coverage. They do have extremely high-quality health care outcomes and much lower costs than we do. So I believe the not-for-profit national plans and the co-op option may, in the long run, play a key role in transforming our system into a more efficient, higher quality system.

This legislation also expands coverage. According to the Congressional Budget Office, it covers 94 percent of the American people. It creates State-based exchanges for individuals and small businesses. It provides $476 billion in tax credits to help working Americans and small businesses buy coverage. You don't hear that much from the other side about this $467 billion of tax assistance for people to afford better health care coverage. It also reforms the delivery system to focus on quality and not quantity. The bill before us slows cost growth while improving quality. The sad fact is that 30 percent of current health care spending does nothing to improve health care outcomes. We are wasting about $750 billion a year on unnecessary and counterproductive procedures. Again, that is not a congressional estimate; that comes from a Dartmouth nationwide survey that concluded 30 percent of health care expenditure in this country is wasted. This bill reforms the delivery system in a fundamental way. It contains every delivery system reform health care experts believe is needed to provide better care while slowing cost growth.

This proposal also extends the solvency of Medicare. Medicare's actuary says the Senate bill extends the life of Medicare by 9 years. Some on the other side say that because Medicare is heading toward insolvency, we can't have Medicare savings. What? What are they talking about?

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

What is even more bizarre about their argument is that now there is an offset for the savings from Medicare providers. The offset is they are going to get 30 million new customers, 30 million Americans who haven't had insurance who will now have it so their uncompensated care costs will go down, making it more affordable for providers to provide these savings.

Most of these savings have been negotiated with providers. Why have they been willing to agree to savings—hospitals, nursing homes, and home health care? It is because they know they are going to get substantially expanded business—30 million customers with insurance who previously did not.

This is important legislation. These Medicare reforms don't hurt seniors. Some on the other side have said you can't reduce the growth in Medicare costs without taking benefits away from seniors. That is just scare tactics. The Medicare savings provisions lower cost growth without harming beneficiaries.

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

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

In addition, this legislation includes the frontier States provision that Senator DORGAN and I offered as an amendment. Our provision puts a floor under payments to North Dakota providers and in other States like ours that are rural States that have not received fair levels of reimbursement. It will mean an additional $66 million a year in Medicare payments to my State.

Overall, this bill is a win for North Dakota, a win for the Nation. It reduces the deficit, it controls costs, it saves Medicare—or at least extends its life for at least 9 years—it embraces choice for American consumers and competition and expands coverage. It reforms the insurance industry, and it rewards quality and efficiency.

This legislation is an excellent start. I urge my colleagues to allow it to continue because we all know this isn't the last step. Next we go to the conference committee where we will have

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

Again, let me conclude as I began by thanking the leadership who has made this bill a possibility: Senator REID, who has done a remarkable job of bringing people together; Senator BAUCUS, who has spent more than a year and a half in as dedicated an effort as I have ever seen by a committee chairman in this body to bring major legislation to conclusion; Senator DODD, who filled in for Senator Kennedy on a pinch hit basis but worked so hard to produce a result in that committee; and Senator HARKIN, the new chairman of the committee, for all of his assistance in getting the job done.

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

I thank the Chair and yield the floor.

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

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

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

The Senator from Washington is recognized.

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

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

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

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

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

Our broken health insurance system is failing Katerina, and she is not alone. Millions of people have lost jobs in this current recession.

Millions of families have been tossed out of their employers' plans—families who had health care, who felt secure, all of a sudden understand how broken the system really is and how few options they actually have today for affordable care. That is why we need health insurance reform for Katerina and millions of Americans in similar situations and the hundreds of millions of Americans who may switch jobs or move or start small businesses or who just want more options for high-quality affordable health care.

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

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

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

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

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

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

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

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

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

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

Many of them are here now: the clerks, Parliamentarians, cloakroom

staff, doorkeepers, Capitol Police officers, and the maintenance workers. They work very long hours, nights, mornings, and weekends—with no regard to a government closure, dangerous snowstorms, or the need to complete their holiday shopping. If we are here, they are here. They deserve our thanks.

I want to express my gratitude to every one of them and to my own staff as well. It hasn't been an easy time. You should all know we are deeply appreciative of your service.

I, for one, am strongly supportive of bringing this debate to a close so that each one of you can be home with your families enjoying some well-deserved time off for the holidays.

I yield the floor.

FURTHER CHANGES TO S. CON. RES. 13 PURSUANT

Mr. CONRAD. Mr. President, section 301(a) of S. Con. Res. 13, the 2010 budget resolution, permits the chairman of the Senate Budget Committee to adjust the allocations of a committee or committees, aggregates, and other appropriate levels and limits in the resolution, and make adjustments to the pay-as-you-go scorecard, for legislation that is deficit-neutral over 11 years, reduces excess cost growth in health care spending, is fiscally responsible over the long term, and fulfills at least one of eight other conditions listed in the reserve fund.

I have already made two adjustments pursuant to section 301(a). The first adjustment was on November 21, for S.A. 2786, the Patient Protection and Affordable Care Act, an amendment in the nature of a substitute to H.R. 3590. The second adjustment was on December 1, for S.A. 2791, an amendment to S.A. 2786 to clarify provisions relating to first dollar coverage for preventive services for women.

The Senate today adopted S.A. 3276, an amendment to S.A. 2786 to improve the bill. I find that in conjunction with S.A. 2786, as modified, that this amendment also satisfies the conditions of the deficit-neutral reserve fund to transform and modernize American's health care system. Therefore, pursuant to section 301(a), I am further revising the aggregates in the 2010 budget resolution, as well as the allocation to the Senate Finance Committee. Along with those adjustments, I have also adjusted the aggregates and committee allocation to reflect changes to the original score of S.A. 2786 as a result of a provision included in H.R. 3326, the Department of Defense Appropriations Act, 2010. That provision uses savings also counted in the score of S.A. 2786. In total, as a result of Congress clearing H.R. 3326 on December 19, the amount of savings in S.A. 2786 is $1 billion lower over the 2010–2014 period.

I ask unanimous consent to have printed in the RECORD the following revisions to S. Con. Res. 13.

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

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

[In billions of dollars]

Section 101	
(1)(A) Federal Revenues:	
FY 2009	1,532.579
FY 2010	1,614.258
FY 2011	1,936.811
FY 2012	2,140.785
FY 2013	2,321.087
FY 2014	2,563.018
(1)(B) Change in Federal Revenues:	
FY 2009	0.008
FY 2010	−51.728
FY 2011	−151.820
FY 2012	−219.608
FY 2013	−194.250
FY 2014	−70.640
(2) New Budget Authority:	
FY 2009	3,675.736
FY 2010	2,905.487
FY 2011	2,845.236
FY 2012	2,835.568
FY 2013	2,988.308
FY 2014	3,206.647
(3) Budget Outlays:	
FY 2009	3,358.952
FY 2010	3,017.021
FY 2011	2,965.551
FY 2012	2,867.235
FY 2013	2,993.112
FY 2014	3,184.357

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

[In millions of dollars]

Current Allocation to Senate Finance Committee:	
FY 2009 Budget Authority	1,178,757
FY 2009 Outlays	1,166,970
FY 2010 Budget Authority	1,249,836
FY 2010 Outlays	1,249,342
FY 2010–2014 Budget Authority	6,824,817
FY 2010–2014 Outlays	6,818,925
Adjustments:	
FY 2009 Budget Authority	0
FY 2009 Outlays	0
FY 2010 Budget Authority	−5,220
FY 2010 Outlays	−6,670
FY 2010–2014 Budget Authority	20,950
FY 2010–2014 Outlays	3,720
Revised Allocation to Senate Finance Committee:	
FY 2009 Budget Authority	1,178,757
FY 2009 Outlays	1,166,970
FY 2010 Budget Authority	1,244,616
FY 2010 Outlays	1,242,672
FY 2010–2014 Budget Authority	6,845,767
FY 2010–2014 Outlays	6,822,645

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

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

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

Any serious questions about congressional power to take comprehensive action to build and secure the social safety net have been settled over the past century. According to article I, section 8, ''The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.'' This clause has been the basis for actions by Congress to provide for Americans' social and economic security by passing Social Security, Medicare and Medicaid. Those landmark laws provide the well-established foundation on which Congress builds today by seeking to provide all Americans with access to quality, affordable health care.

The Supreme Court settled the debate on the constitutionality of Social Security more than 70 years ago in three 1937 decisions. In one of those decisions, Helvering v. Davis, Justice Cardozo wrote that the discretion to determine whether a matter impacts the general welfare ''is not confided in the courts'' but falls ''within the wide range of discretion permitted to the Congress.'' Turning then to the ''nation-wide calamity that began in 1929'' of unemployment spreading from State to State throughout the Nation, leaving older Americans without jobs and security, Justice Cardozo wrote of the Social Security Act: ''The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that

such a lot awaits them when journey's end is near.''

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

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

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

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

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

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

I believe that Congress can and should decide whether the problems of the lack of availability and affordability of health care, and the rising health care costs that burden the American people, is a problem, ''plainly national in area and dimensions,'' as Justice Cardozo wrote of the widespread crisis of unemployment and insecurity during the Great Depression. I believe that it is right for this Congress to determine that it is in the general welfare of the Nation to ensure that all Americans have access to affordable quality health care. But whether other Senators agree or disagree with me, none should argue that we should take steps that turn back to clock to the Great Depression when conservative activist judges prevented Congress from exercising its powers to make that determination. As Chief Justice Marshall wrote in his landmark decision in McCulloch v. Maryland: ''Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.''

In seeking to discredit health care reform, the other side relies on a resurrection of long-discredited legal doctrines used by courts a century ago to tie Congress's hands by substituting their own views of property to strike down laws such as those guaranteeing a minimum wage and outlawing child labor. They have to rely on such cases of unbridled conservative judicial activism as Lochner v. New York, Shechter Poultry Corporation v. United States, Reagan v. Farmers Loan and Trust and the infamous Dred Scott case. Those dark days are long gone and better left behind. The Constitution, Supreme Court precedent, our history and congressional action all stand on the side of Congress's authority to enact health care legislation including health insurance reform.

Under article I, section 8, Congress has the power ''to regulate Commerce with foreign Nations, and among the several States.'' Since at least the time of the Great Depression and the New Deal, Congress has been understood and acknowledged by the Supreme Court to have power pursuant to the commerce clause to regulate matters with a substantial effect on interstate commerce. The Supreme Court has long since upheld laws like the Fair Labor Standards Act against commerce clause challenges, ruling that Congress had the authority to outlaw child labor. The days when women and children could not be protected, when the public could not be protected from sick chickens infecting them, when farmers could not be protected and when any regulation that did not guarantee profits to corporations are long past. The reach of Congress's commerce clause authority has been long established and well settled.

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

The regulation of health insurance clearly meets the test from Raich, whether the activities ''taken in the aggregate, substantially affect interstate commerce.'' Addressing these problems is at the core of Congress's powers under the commerce clause. In

fact, the Supreme Court expressly addressed this issue 65 years ago, ruling in 1944 that insurance was interstate commerce and subject to Federal regulation. Congress responded to this decision in 1945 with the McCarran-Ferguson Act, which gave insurance companies an exemption from antitrust laws unless Federal regulation was made explicit under Federal law. It is the immunity from Federal antitrust law enacted in McCarran-Ferguson that I have been working to overcome with my Health Insurance Industry Antitrust Enforcement Act of 2009 and the amendment I have sought to offer to the current health insurance reform legislation. Why would this exemption have been necessary if insurance was not interstate commerce? I strongly believe that the exemption in McCarran-Ferguson is wrongheaded but would anyone seriously contend that it is unconstitutional? Of course not. That is why I am working so hard to pass legislation to repeal it.

The legislation and amendment I have sponsored will prohibit the most egregious anticompetitive conduct—price fixing, bid rigging and market allocations—conduct that harms consumers, raises health care costs, and for which there is no justification. Subjecting health and medical malpractice insurance providers to the Federal antitrust laws will enable customers to feel confident that the price they are being quoted is the product of a fair marketplace. The lack of affordable health insurance plagues families throughout our country, and my amendment would take a step toward ensuring competition among health insurers and medical malpractice insurers. The need for Congress to repeal the out of date Federal antitrust law exemption only further demonstrates the tremendous impact of health care on our economy and congressional power to act.

The third clause of article I, section 8, to which I have referred, is the necessary and proper clause, as a basis for congressional action. This clause gives Congress the power ''to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the United States.'' The Supreme Court settled the meaning of the necessary and proper clause 190 years ago in Justice Marshall landmark decision in McCullough v. Maryland, during the dispute over the National Bank. Justice Marshall wrote that ''the clause is placed among the powers of Congress, not among the limitations on those powers.'' The necessary and proper clause goes hand in hand with the commerce clause to ensure congressional authority to regulate activity with a significant economic impact.

We face a health care crisis, with millions of Americans uninsured and with uncertainty and high costs for Americans who are insured. We need to ensure that Americans not risk bankruptcy and disaster with every illness. Americans who work hard their whole life should not be robbed of their family's security because health care is too expensive. During the New Deal we charted a path for America where growing old did not mean being poor, or being without health care. Americans should not lose their life savings because they have the misfortune of losing a job or getting sick. That is not America.

The success of the last century was the establishment of a social safety net for which all Americans can be grateful and proud. Through Social Security, Medicare and Medicaid, Congress established some of the cornerstones of American security. They are within the constitutional authority of the Congress just as health insurance reform is. No conservative activist court should overstep the judiciary's role by seeking to turn back the clock and deny a century of progress. The authority of Congress is well settled and well established by the Constitution, judicial precedent, and our history of legislation promoting the general welfare and protecting the economic security and health of Americans.

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

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

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

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

[From the Los Angeles Times, Oct. 6, 2009]

THE CONSTITUTIONALITY OF HEALTHCARE

(By Erwin Chemerinsky)

Are the healthcare bills pending in the House and Senate unconstitutional?

That's what some of the bills' critics have alleged. Their argument focuses on the fact that most of the major proposals would require all Americans to obtain healthcare coverage or pay a tax if they don't. Those too poor to afford insurance would have their health coverage provided by the state.

Although the desirability of this approach can be debated, it unquestionably would be constitutional.

Those who claim otherwise make two arguments. First, they say the requirement is beyond the scope of Congress' powers. And second, they say that people have a right to be uninsured and that requiring them to buy health insurance violates individual liberty. Neither argument has the slightest merit from a constitutional perspective.

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

Congress has every right to create either a broad new tax to pay for a national healthcare program or to impose a tax only on those who have no health insurance.

The reality is that virtually everyone will, at some point, need medical care. And, if a person has certain kinds of communicable diseases, the government will insist that he or she be treated whether they are insured or not. A tax on the uninsured is a way of paying for the costs of their likely future medical care.

Another basis for the power of Congress to impose a health insurance mandate is that the legislature is charged with regulating commerce among the states. The Supreme Court has held that this means Congress has the ability to regulate activities that have a substantial effect on interstate commerce. A few years ago, for example, the court held that Congress could prohibit individuals from cultivating and possessing small amounts of marijuana for personal medicinal use because marijuana is bought and sold in interstate commerce.

The relationship between healthcare coverage and the national economy is even clearer. In 2007, healthcare expenditures amounted to $2.2 trillion, or $7,421 a person, and accounted for 16.2% of the gross domestic product.

The claim that individuals have a constitutional ''right'' to not have health insurance is no stronger than the objection that this would exceed Congress' powers. It is hard to even articulate the constitutional right that would be violated by requiring individuals to have health insurance or pay a tax.

Since the 19th century, the Supreme Court has consistently held that a tax cannot be challenged as an impermissible taking of private property for public use without just compensation. All taxes, of course, are a taking of private property for public use, and a tax to pay for health coverage—whether imposed on all Americans or just the uninsured—is certainly something Congress could impose.

The claim that an insurance mandate would violate the due process clause is also

specious. Most states have a requirement for mandatory car insurance, and every challenge to such mandates has been rejected. More important, since 1937, the Supreme Court has constantly held that government regulations of property and the economy will be upheld as long as they are reasonable. Virtually every economic regulation and tax has been found to meet this requirement. A mandate for health coverage would meet this standard, which is so deferential to the government.

Finally, those who object to having health coverage on freedom-of-religion grounds also have no case. The Supreme Court has expressly rejected objections to paying Social Security and other taxes on religious grounds. More generally, the Supreme Court has ruled that individuals do not have a right to an exemption from a general law on the ground that it burdens their religion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I believe we must do more.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Since 1998, there have been more than 400 mergers of health insurance companies, as larger carriers have purchased, absorbed, and enveloped smaller competitors.

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

Today, according to a study by the American Medical Association, more than 94 percent of American health insurance markets are highly concentrated, as characterized by U.S. Department of Justice guidelines. This means these companies could raise premiums or reduce benefits with little fear that consumers will end their contracts and move to a more competitive carrier.

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

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

Between 2000 and 2007, profits at 10 of the largest publicly traded health insurance companies soared 428 percent from—$2.4 billion in 2000 to $12.9 billion in 2007. This is Health Care for America Now, Premiums Soaring in Consolidated Health Insurance Market, May 2009, citing U.S. Securities and Exchange Commission filings.

The CEOs at these companies took in record earnings. In 2007, these 10 CEOs

made a combined $118.6 million. The CEO of CIGNA took home $25.8 million; The CEO of Aetna took home $23 million; The CEO of UnitedHealth took home $13.2 million; and the CEO of WellPoint took home $9.1 million.

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

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

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

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

That is why a rate review amendment is so important.

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

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

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

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

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

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

DECEMBER 17, 2009.

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

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

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

The proposed amendment:

Creates a rate review authority that could deny or modify unjustified rate increases or order rebates to consumers,

Defines potentially unjustified rate increases as increases which exceed market averages,

Gives priority to rate increases that impact large numbers of consumers,

Creates market conduct studies of health insurance rate increases,

Exclude from State Exchanges insurers that have a pattern of excessive premium increase, low medical loss ratios or other market conduct,

Allows a State to conduct the rate reviews.

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

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

For these reasons, we support the proposed amendment.

Sincerely,

ANGIE WEI,
Legislative Director, California Labor Federation.

MARTY MARTINEZ,
Policy Director, California Pan-Ethnic Health Network.

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

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

GARY PASSMORE,
Director, Congress of California Seniors.

ANTHONY WRIGHT,
Executive Director, Health Access California.

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

REV. LINDI RAMSDEN,
Executive Director, Unitarian Universalist Legislative Ministry Action Network—California.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

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

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

Mr. WICKER. Mr. President, I thank my friend from Washington for commending and complimenting the staff. That is a bipartisan sentiment for this Christmas season. I am sure every Senator on the floor feels the same way and expresses that appreciation to the hard-working staff.

I want to start off by saying there is still an opportunity for this bill to be amended to change some of the very harmful ways that this will affect our people back home and, particularly, our State governments.

I was on the Senate floor several days ago pointing out the objections that most of the State Governors have with regard to the Medicaid mandates. I want to read from a letter dated December 10, from my Governor, Haley Barbour of Mississippi, who reminds Senators that:

This bill continues to place a huge unfunded mandate on States, while harming our small businesses and seniors through budget gimmicks and increased taxes.

And he says this:

If the current bill, which would expand Medicaid up to 133 percent of the Federal poverty level, were enacted into law, the number of Mississippians on Medicaid would increase to 1,037,606, or 1 in 3 citizens, in Mississippi. Over 10 years, this bill would cost Mississippi taxpayers $1.3 billion.

I was on the Senate floor a few days ago also with this map, which shows in red the number of States that are facing this unfunded mandate because of the increased Federal mandate for Medicare coverage coming from this bill, should it be enacted into law. I was pointing out that only the two States—Vermont and Massachusetts—because of a formula that has been worked out, would be exempt. Every other State will have to come up with the extra money either through cutting education programs, cutting mental health programs or other vital services or by raising taxes. They will have to come up with the extra money under this legislation so that half of the people covered by this new act will be covered by Medicaid.

I want to make an amendment to that chart today and add one other State. I think it has become quite a well-known fact that we need to put one other State up there in yellow, and that is the State of Nebraska.

We know pursuant to an agreement that was made before Senator NELSON announced his support as the 60th vote for cloture on this very important legislation, a deal was cut—the minority leader said a cheap deal, and I agree—that the State of Nebraska would be exempt in perpetuity from its requirement to pay the State match. The Federal Government, according to this legislation that we will be asked to vote on in the next 2 days, will pick up all of the extra expenditures for the State of Nebraska.

The poverty level in Nebraska is not quite as bad. I don't know how the powers that be felt they should or could justify this expenditure, but I will tell you the people in the State of Mississippi are going to have to come up

with another $1.3 billion over the next 10 years to pay for what we are going to be required to do by Congress—in its wisdom.

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

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

Mr. MCCAIN. If the Senator will yield, on that map, I wonder should there not be a sticker for the State of Florida? According to a published report by one of my favorite columnists, Dana Milbank, of the Washington Post:

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

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

Again, according to Dana Milbank:

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

Should there be a sticker there?

Continuing, Dana Milbank says:

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

Maybe there should be a sticker for that. I don't know if you have North Dakota in there. Dana Milbank says:

> Meanwhile, Senators Byron Dorgan and Kent Conrad, both North Dakota Democrats, would enjoy a provision that would bring higher Medicaid payments to hospitals and doctors in ''frontier counties'' of states such as—let's see here—North Dakota!

Should there be one for Hawaii? Mr. Milbank goes on to say:

> Hawaii, with two Democratic senators, would get richer payments to hospitals that treat many uninsured people.

Should there be a sticker there for Michigan? Mr. Milbank says:

> Michigan, home of two other Democrats, would earn higher Medicare payments for some reduced fees for Blue Cross/Blue Shield. Vermont's Senator Bernie Sanders held out for larger Medicaid payments for his state. (neighboring Massachusetts would get one, too).

I guess there are a number of States that maybe should have stickers on them so that the American people can see where these special deals were cut out, and the majority of the population of this country can see where they were not. They are going to pay while those States pay less because of not just their location but because they happen to have been behind closed doors and cut special deals.

Mr. BAUCUS. I wonder if the Senator would yield briefly.

Mr. MCCAIN. Sure. I ask that Senator BAUCUS be recognized.

Mr. BAUCUS. I am pointing out, as the Senators know, for example, under this legislation, the Federal Government pays all the costs of eligible enrollees through 2016. In this legislation, we are talking about the so-called expansion population. That is those between 100 percent of poverty on Medicaid and 133 percent of poverty, and under the underlying statute——

Mr. MCCAIN. Does that mean all these States are being treated the same?

Mr. BAUCUS. In 2016, all States are treated the same.

Mr. MCCAIN. This happens to be 2009. What happens between now and 2016?

Mr. BAUCUS. Beginning next year, when this goes into effect, 2010 through 2016, all States will get 100 percent payments for that expansion coverage.

Mr. WICKER. What would happen, then, after 2016 under current legislation?

Mr. BAUCUS. Afterward, under current legislation—one sentence of background. Today, as the Senator well knows, different States receive different Federal contributions to Medicaid. It varies according to States. The average is about 57 percent Federal. The average for all States on average is 57 percent of the cost of Medicaid is paid for——

Mr. MCCAIN. If that is the case——

Mr. BAUCUS. Let me finish.

Mr. MCCAIN. If that is the case, we will be glad to have the same provision inserted for the State of Arizona that was inserted for the State of Florida. You don't have a problem with that, do you?

Mr. BAUCUS. Let me answer the question.

Mr. MCCAIN. Do you have a problem with that?

Mr. BAUCUS. I can answer only one question at a time. The first question is from the Senator from Mississippi. Then, after 2017, all States get 90 percent—we are talking about expansion of population.

Mr. WICKER. The Senator yielded to me the other day, and I appreciate that. We have a number of Republicans who want to speak during our hour.

The fact is, after 2016, every State in red has to tax their own citizens and pay their State share, except Vermont, Massachusetts, and Nebraska. And I still challenge any colleague in this Senate to come before this body and say that is fair. I do not believe they will say that is fair.

Mr. MCCAIN. My question to the Senator from Montana is this: Would the Senator from Montana be willing to have the same provision that Senator NELSON, according to these reports, inserted, a grandfather clause that would allow Floridians to reserve their price in the Medicare Advantage Program? Would he accept a unanimous consent request right now that same provision apply to every State in America?

I ask unanimous consent that the same provision that was put in for the State of Florida by Senator NELSON would apply to every State in America.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Reserving the right to object, I think it would be highly imprudent for me not to object, so I will object to that request. I also point out that on average, Uncle Sam pays 90 percent of the Medicaid payments for this expansion of population after the year 2016.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCAIN. I think the fact that an objection was heard resolves the case. Those are comforting words on the part of the Senator from Montana, whom I appreciate, but the fact is, there are special deals for special people. It is well known. It is very well known.

May I mention to my colleagues—sort of a personal privilege here—the Senator from Louisiana came to the floor this morning and said:

> Recently, just yesterday, Senator John McCain, our colleague from Arizona, has claimed that the American people are opposed to reform and he speaks about the will of the majority. I would like to remind, respectfully, my colleague from Arizona that the will of the majority spoke last year when they elected President Obama to be President and they decided not to elect him, and the President is carrying out the will of the majority of the people to try to provide them hope and opportunity.

I say in response to that, I really did not need to be reminded. I had not forgotten. Sometimes I would very much like to. But I appreciate the reminder.

The fact is that the Senator from Louisiana and other Senators should know that poll after poll, public opinion, partially because of what the Senator from Mississippi is pointing out—the latest being ''U.S. Voters Oppose Health Care Plan by Wide Margin.'' A Quinnipiac poll finds 3 to 1 that the plan should not pay for abortion. And it says American voters mostly disapprove of the plan 53–36 and disapprove 56–38 percent President Obama's handling of the health care issue.

If I can remind my friend and colleague from Louisiana, I did carry her State.

Mr. BAUCUS. The Senator carried my State too.

Mr. MCCAIN. And the State of the Senator from Montana.

Mr. JOHANNS. If I may jump in here, probably like every Senator here, I read the newspapers back home every morning as I start my day. There was an editorial in the Lincoln Journal Star on December 21 that speaks to this issue of special deals. I thought it

was excellent. The Lincoln Journal Star has covered me for a long time. Sometimes I agree with them, sometimes I do not. Sometimes they agree with me, sometimes they do not. But I have always respected the work they do.

Here is what they said in their editorial:

Since when has Nebraska become synonymous for cynical ''what's in it for me''-type politics?

The term ''Cornhusker kickback'' is already a favorite of television's talking heads.

They go on to say:

That's how the rest of the country sees [this] deal.

The editorial continues:

Under its provisions, the federal government would pay all additional Medicaid costs for Nebraska ''in perpetuity.'' The Congressional Budget Office has estimated the deal may be worth $100 million over 10 years.

They go on to say I think in very powerful language:

The deal is the embodiment of what is wrong in Washington.

Instead of thoughtful, careful work on real problems, Washington lawmakers cobble together special deals, dubious financial accounting and experimentation on a grandiose scale.

They devote a paragraph to the many special deals cut, and the Senator's chart illustrates one.

Mr. MCCAIN. If the Senator will——

Mr. JOHANNS. If I may finish, I say to Senator MCCAIN, and then you can ask me.

They say this:

It's time to push the reset button on health care reform.

The effort has gone awry.

Mr. MCCAIN. But also, doesn't this bring up a larger issue—I ask all my colleagues to comment on this—whether our job here is to do whatever we can to just simply help our State, even if it is at the expense of other States, as the Senator from Mississippi pointed out, or is our title U.S. Senator, Arizona, Nebraska, Mississippi, et cetera? My title is not Arizona Senator, U.S.; it is U.S. Senator, Arizona. So of course I am here to represent the people of my State. But is a U.S. Senator's job to go out and do something which would then be at the expense of the citizens of another State simply by virtue of their clout and influence? Is that what we were sent here by our constituents to do?

Is it true what the majority leader said yesterday:

''I don't know if there is a Senator that doesn't have something in this bill that was important to them,'' Senate Majority Leader HARRY REID reasoned when asked at a news conference Monday about the cash-for-cloture accusation. ''And if they don't have something important in it to them, then it doesn't speak well of them.''

Does it speak well of us when we do something like the Senator from Mississippi pointed out, that favors Libby, MT, and not the rest of the country, that helps the seniors in Medicare Advantage in Florida and not in Arizona? Is that what we were sent here to do? That has never been my view of what our obligations to our citizens are, but also to the citizens of this country.

I ask my colleagues to comment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Mr. President, here is what this has come to. In the next 48 hours, this 2,400-some page bill is going to pass the Senate. But how did we get there? Was it done the way things are usually done in this body? Not at all. One party has been able to gather 60 votes for this. Not one person from the other party is going to vote for it. How did they get those 60 votes? Did they get it by arguing this out? They did not do that. They have bluntly, boldly, and on the front of virtually every newspaper in this country bought the votes to pass this bill, to get to the 60. They bought the last handful of votes, and they did not even buy it with their money, they bought it with the American people's money. Now, that is wrong.

The explanation I heard from the majority leader the other day is: Well, that is the way this is done. That may be the way this is done in banana republics, that may be the way this is done in Third World countries, but this is America. The American people are outraged over this. The other party ought to be outraged.

I heard one Member quoted as saying: Well, I was too stupid to get any money for my State in there. I heard the majority leader say: You are not doing your job if you don't have something in there for you. Where is the outrage from the other side, not only about the process but how they are getting snookered by some other members of their party? Where is the outrage?

I watched the debate on the other side and have seen Members come down and say: The American people want this. Are they living in a cave? Sure, there are a handful of American people who want this. Let me tell you who does not. The U.S. Conference of Bishops does not want it. The National Right to Life people do not want this. Not one Republican wants this. The Democrats do not want it.

Listen to what Howard Dean, the former leader of the Democratic Party, said:

At this point, the bill does more harm than good.

Ask any Democratic Governor in America. This bill transfers $25 billion in costs in unfunded mandates to the Governors and to their taxpayers. They have to come up with $25 billion. They don't want it.

I have stood here and listened to the other side say: This is wonderful for small business. Small business is going to come out so well on this. Then why does the National Federation of Independent Business—small businesses—say:

The Senate bill fails small businesses.

The National Association of Wholesale Distributors. The Small Business Entrepreneurship Council says:

Small business group say Reid health bill more of the same—more taxes, mandates, big spending, and nothing to help lower insurance costs.

Associated Builders and Contractors is against it. The National Association of Manufacturers is against it, the Independent Electrical Contractors, the International Franchise Association. Even the labor unions have said: Don't tax our health care benefits. We agree with them. We are on the side of the labor unions. We should not be taxing health care benefits.

But set all that stuff aside. These are all people who have an ax to grind. The American people do not want this bill. These people who are coming out here saying the American people want this bill, I don't know whether they are not reading the newspapers, whether they are not reading their own e-mails at their office. The Quinnipiac poll that was out this morning, Tuesday through Sunday, says: 36 percent of the American public support the health care spending bill; 53 percent oppose. That is an 18-percent difference. Gallup says 61 percent of the American people don't want this bill.

Stop coming out here saying the American people want this bill. The American people do not want it. You want it, but the American people do not want it. Leaders in your own party do not want it. The labor unions do not want it. Nobody wants this thing, and most of all small business does not want this bill.

I have listened to anecdote after anecdote from the other side. There are some very touching stories, and everybody over here is empathetic with them. But you don't legislate using anecdotes because you are only hearing one side of the story, you are not hearing all the facts dealing with the anecdotes, and to then pat this 2,400-page bill and say this will solve that, that is not the way you legislate, and it is certainly not the way you argue a point.

I heard the other side come out here and pat the bill and say: When we pass this bill, 94 percent of American people will have insurance, will be covered by health insurance. In court, they say you have to tell the truth, the whole truth, and nothing but the truth, and that is exactly why. You cannot pat this bill and say now 94 percent of the American people are going to be covered.

Somebody listening to that will say: Gosh, what a wonderful bill. What is it going to cost? It costs $2.5 trillion to cover 94 percent of the American people. But they don't say the bill only adds another 7 percent. The fact is, they don't tell you that 87 percent of Americans are already covered by some kind of health insurance. So don't say this is a grand and glorious victory because we are now going to cover 94 percent when 87 percent are already covered.

This is gimmickry at its worst, to tax for 4 years without giving any major benefits. Giving some minor benefits but holding off the major benefits

until later is plain gimmickry. They say: Oh, look how wonderful this is. It is not going to add to the national deficits because we are going to collect taxes for 4 years, and only then are we going to start the benefits.

What do we have here? When all is said and done and you strip it away, you have $2.5 trillion and 2,400 pages that most people do not understand, higher taxes, and higher insurance premiums.

I can give you one fact that is the best reason to vote against this bill; that is, it cuts $½ trillion out of Medicare benefits. If you are a senior watching, $½ trillion of Medicare benefits is going to disappear. I heard the President say and I heard my friends on the other side say: Look, if you like your program, if you like your insurance plan, you are going to be able to keep it. Try to tell that to the people who are on Medicare Advantage. It is being stripped. It is being eliminated under this bill. Indeed, if you read the rules and regulations under this bill, the plan you have will not even exist when it is done.

You know, I have heard the other side say: Oh, you Republicans are just playing on fears of the American people. Let me tell you something. The American people are frightened. They are afraid. It isn't just this health care bill, they have sat here for the last year, and they have watched stimulus packages costing $1 trillion. They have watched multibillion-dollar bailouts. They have seen buyouts. They have seen trillion-dollar deficits running up. They have seen the national debt now running into the trillions. And, yes, they are afraid.

But it isn't us that is doing it to them, it is you that have done it to them. It is you that have committed the actions that have put the fear into the hearts of the American people. Don't do this. Stop this nonsense. You have the opportunity still to stop this. You can do it. The American people don't want this. Stop the insanity.

I yield the floor.

Mr. WICKER. I will say to my friend, I am afraid. I am afraid for my country. We are going to have a vote sometime between now and Christmas Eve on raising the debt limit. It will just be a short-term thing. I doubt if a single Republican will vote for that. Then we will have to come back again in February and do the same thing.

The debt that is piling up on our country is something to be frightened about. It is something we need to fight against and be resolute about. We are not shedding crocodile tears, but I am frightened by this debt, and we should be, if we want our economy to stay strong. The fact we are adding $2.5 trillion in an entitlement program, which apparently the majority has the votes for, is simply going to add to this enormous debt.

So it is no wonder, when you add the Medicare cuts, the taxes that most States are going to have to pay—unless they cut a special deal—on top of the tremendous national debt that we are facing, the American people are frightened. They have a right to be frightened and worried.

Mr. BARRASSO. I don't know how many of my colleagues have seen the editorial in today's Investors Business Daily.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which I am going to refer.

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

LOUISIANA PURCHASE AND OMAHA STAKES

Politics: Mary Landrieu's payoff was the new ''Louisiana Purchase.'' Ben Nelson got Uncle Sam to pick up Nebraska's future Medicaid tab. Maybe we should just put Senate votes up on eBay.

Nelson, the 60th vote in the middle-of-the-night Senate party line vote on health care reform, will go down in American political history as the inventor of the permanent earmark. His seemingly principled stand against including federal funding for abortion evaporated like the morning dew as he decided to take what was behind door No. 1.

The deal for Nelson includes special Medicaid funding for Nebraska, along with Vermont and Massachusetts, which has a special election to fill the seat of the late Sen. Ted Kennedy coming up in January. Under the Senate bill every state is equal, but some are more equal than others. The other states and their taxpayers—that means you—will pick up this tab.

This came just three days after Sen. Bernie Sanders, I–Vt., said on Neil Cavuto's Fox Business show that he was prepared to vote against the bill after the recent decision to strip the public option and the Medicare buy-in provision from the legislation to get the vote of Sen. Joe Lieberman, I–Conn.

Nelson won a permanent exemption from the state share of Medicaid expansion for Nebraska. Uncle Sam will take the hit for 100% of the Medicaid expansion for Nebraska—forever. The world's greatest deliberative body has now become the most corrupt.

The Congressional Budget Office (CBO) informed lawmakers Sunday night that this section of the manager's amendment to the Senate's health bill would cost $1.2 billion over 10 years.

Nebraska actually receives the least of the three, some $100 million over the first 10 years. Vermont will receive $600 million over 10 years, while Massachusetts will get $500 million.

Nelson, like most other senators, doesn't know what's really in this bill or what it costs, except for the scoring that involves comparing a decade of taxes with six or seven years of ''benefits.''

This includes gutting Medicare by half a trillion dollars. The abortion language he accepted may not survive conference or the Stupak amendment supporters in the House. The Medicaid bribe he accepted will.

Senate Majority Leader Harry Reid, the Boss Tweed of our time, defended how this sausage was made. ''You'll find a number of states that are treated differently than other states. That's what legislating is all about. It's about compromise,'' he said.

On the contrary, sir, it's about bribery—about what has been dubbed the ''Cornhusker kickback,'' and about politics done the ''Chicago Way.''

A $100 million item for construction of a university hospital was inserted in the Senate health care bill at the request of Sen. Christopher Dodd, D–Conn., who faces a difficult re-election campaign.

Presumably there's a wing where taxpayers can go to get their wallets removed.

The Democrats insist that their Medicare cuts will not lead to rationing. So why did, as HotAir.com reports, Sen. Bill Nelson, D–Fla., insist on language that exempted three heavily Democratic counties in his home state from the cuts? If those massive cuts to the program won't hurt people on Medicare Advantage, why did Nelson fight to get exemptions for Palm Beach, Dade and Broward counties?

After all this wheeling and dealing, we will still have a cost-raising tax-increasing, Frankenstein monster of a bill hurriedly stitched together behind closed doors that will lead to doctor shortages and rationed care.

Mr. BARRASSO. The article is headlined: ''Louisiana Purchase and Omaha Stakes.'' The editorial says:

Politics: Mary Landrieu was the new ''Louisiana Purchase.'' Ben Nelson got the federal government to pick up his state's future Medicaid tab.

And the article continues:

Maybe we should just put Senate votes up on eBay. . . . Nelson won a permanent exemption from the state share of Medicaid expansion for Nebraska—forever. The world's greatest deliberative body has now become the most corrupt.

So Uncle Sam is taking the hit for 100 percent of the Medicaid expansion for Nebraska forever. That is what this says. It goes on to say this is not what legislating is about; that this is not compromise, rather, it is about bribery.

Mr. President, this is horrible for us as a nation to have these things written about this institution, when we should be way above any of these sorts of claims.

I look at that map that my colleague from Mississippi has up, with just Nebraska on there as the special deal, and I do not believe that is the way legislation should be written. We should be looking at ways to improve health care for all Americans, improve the quality, make it more affordable, make it more available to people, and give them the access they need.

I brought four amendments the other day, after Senator REID brought his massive amendment to the floor, and each was rejected. They were things that would actually improve this bill and make it better for Americans.

So I stand here, looking at this, and reading headline after headline and editorial after editorial about just how very bad is the way this bill is being pushed forward. We certainly wouldn't want any young child to know how this is happening in their country, as we try to get them involved in this process and learn and study and feel that maybe they should become involved in this. This isn't what legislating in America is all about. We are better than this.

If you have to do these sorts of things to get a 60th vote, then the bill isn't good enough to pass. If the ideas aren't good enough to get the votes, then it shouldn't pass. In this country, we look for bipartisan solutions to the big issues of the day. That is what we did

in the Wyoming Legislature. Major issues passed with overwhelming numbers. That is what has happened in this country throughout the course of history. The big bills have come forth with large numbers of supporters, and that is how you get the country to follow you, not by trying to force through a vote, buying a vote here and buying a vote there to just squeak by with the minimum amount of support. That is not the way to change policy that is going to affect everyone in the United States personally and affect one-sixth of our economy. That is not the way to do it.

It has not been the way, it shouldn't be the way, and it should never be the way again. I am looking for some Democrat to stand up and say: This isn't the way, and I am going to not vote for this bill.

Mr. MCCAIN. A Senator from Colorado came to the floor and proudly stated that he had not asked for anything or gotten anything, and I will ask the Senator from Nebraska a question because his State seems to be at the center of a lot of attention. But, first of all, there is a little booklet that is put out by the Government Printing Office that talks about how our laws are made. We give it to our constituents and send it to schools all over America. I have never seen anything in that little booklet—it is a very interesting booklet—that says you get behind closed doors and you cut deals.

I know we are all a little cynical about politics and campaign promises, but the negotiating behind closed doors is especially so, particularly after your President says during the campaign, time after time: I am going to have all the negotiations around a big table. We will have doctors and nurses, hospital administrators, insurance companies, drug companies, they will get a seat at the table. They just would not be able to buy every chair. But what we will do, we will have negotiations televised on C–SPAN so that people can see who is making arguments on behalf of their constituents and who is making arguments on behalf of the drug companies.

Of all people he recognized, the drug companies—who got the best deal of all? PhRMA. Who has spent the most money lobbying? Who has spent the most money on advertising? PhRMA. Who is going to cost the American consumer $100 billion, that could have been saved by the consumer if we had been able to reimport prescription drugs?

But I would ask my friend from Nebraska because along with the ''Louisiana purchase'' and probably the Florida deal this Nebraska deal has probably gotten the most publicity and visibility. Maybe because it was the 60th vote. I don't know if it is the biggest or not, in terms of money, because we will be finding deals in this 2,700-page bill for months. For months, we will be finding provisions, even though our staffs have carefully read it. It is not 2,700 pages for nothing.

So I would ask the Senator from Nebraska: How does this go over in the heartland of America? How do the people in Nebraska, who see that they have gotten some kind of special deal, a special provision—certainly reported as so in the media—that would come at the expense of other taxpayers in America? I am curious about the reaction the Senator from Nebraska gets.

Mr. JOHANNS. It doesn't go over. It just simply doesn't. In every way possible, over the last 4 or 5 days, I have been asked: Do you support this special deal for Nebraska? I don't. I think it is wrong.

I could read through all the special deals because we have all got the list—it is Florida, Louisiana, and Montana, and on and on and on. But I came to the floor this morning and I asked unanimous consent that all the special deals be taken out, and I listed a long list of them. Of course, there was an objection to that request for unanimous consent. Why? Why would we want to try to pass legislation with all of this? It makes no sense to me.

But let me take a step back. We all remember a few months ago there was a big story that Nevada was going to get a special Medicaid deal. It was right about that time that we took a few days off. I went back home, and I did townhall meetings, as I have done for years and years and years. But we really invested time and effort, and we identified six principles of health care which are on my Web site for people to look at. I literally had a PowerPoint presentation. I did four townhall meetings—Carnie, Grand Island, Lexington, and Lincoln. I put up these principles.

One of the principles was no carve-out. No backroom deals. No special deals. I presented that to the people who were at those townhall meetings. I did tons of interviews. I explained why I felt the way I did. People were so irate at the possibility that Nevada was going to get this special deal.

Since then, I think that has fallen by the wayside, but all these other things have come along. That is why I read the Lincoln Journal Star editorial. This is an editorial page that sometimes likes what I am doing and sometimes it does not. Over the years, they have not hesitated to take me to task. They looked at this and they said:

> Since when has Nebraska become synonymous for cynical ''what's in it for me''-type politics?

They said it is time to hit the reset button. We are not getting this right at all. We simply aren't getting it right. They talked about the issues of cost containment, they talked about the Actuary's report, which I had spent a little time talking to them about, and other folks around the State. After looking at all of that, they just said: Look, this isn't going the way it needs to go for the American people.

Here is what I would say to all of my colleagues in the Senate. I love my State. I love the people there. They are such honest, decent people. In many parts of our State, people believe you seal a contract not by putting things in writing but by shaking hands and giving your word. They don't want this kind of attention. They don't want to be on the evening news every night with the talking heads talking about the ''cornhusker kickback'' or whatever the latest terminology is. They just want to be treated fairly.

They asked me to come here and represent them as fervently as I can, to try to do all I can to get fair treatment for them. But not a single person at any townhall I have ever had stood up and said: MIKE, I disagree with that principle. I want you to go back there and give me a special deal or get our State a special deal.

So I appreciate Senator MCCAIN asking me the question. I feel very strongly about this. I wish the other side would consider my request for a unanimous consent agreement that just says: Time out, everybody. Let's pull out the special deals, whether it is Nebraska or Montana or whatever. It doesn't matter to me. Let's pull those out and let's take a step back and let's work for what Senator RISCH talks about and the rest of us have talked about. We can get 80 votes on a health care reform bill. I guarantee you. But not on this bill.

Mr. WICKER. I would echo what the Senator from Nebraska has just said. I know my friend from Arizona has been one of the most outspoken critics of special deals and special earmarks. This is not some catchall appropriations bill to get us through the end of the year. This is one of the most major pieces of legislation on which any Member of this Senate currently serving will ever vote. This is one-sixth of the American economy, and the American people are learning about these special carve-outs where the citizens of one State will be treated differently not because of a formula, not because of the poverty level, but because of political power.

It would just seem to me that one Member of the majority party, in these next 2 days, might step forward and say: You are right, and I will not be a party to this.

Mr. MCCAIN. Let me make one additional comment. I have seen reform go through the Congress of the United States. The first one I saw was when we saved Social Security—a major reform of Social Security. There was no backroom dealing. It was a straightforward proposal as to how to fix Social Security. We fixed welfare, it was welfare reform—again, open, honest, bipartisan negotiations and bipartisan agreement. Welfare reform, Social Security reform, the efforts we made at tobacco reform, at campaign finance reform, at immigration reform and many others—the Patients' Bill of Rights. Every reform I have ever been involved in has had two major and sole components: No. 1, it is bipartisan; No. 2, there were no special favors or deals cut, provisions in thousands of pages of legislation.

Again, we know where the train is headed. We know what is going to happen a short time from now, but they will make history. You will make history. You will have rammed through ''reform'' on a strictly partisan basis, without the participation of the other party, over the objections of a majority of the American people, done in closed negotiations, with results that are announced to the American people without debate or discussion and to this side without debate or discussion.

The American people do not like it. They do not like for us to do business that way. I am sure this peaceful revolution that is going on out there already—because as the Senator from Idaho pointed out, because of the involvement of the car companies, the stimulus, the bonus, the generational theft we are committing, this, all on top of that, is going to give great fuel to the fire that is already burning out there, where they want real change, real change which they were promised in the last Presidential campaign and certainly did not get.

Mr. RISCH. I say to Senator MCCAIN, probably one of the great ironies of all this is going to be at 8 o'clock on December 24—when this bill passes with the 60 votes, all Democrats—immediately following that vote is going to be a vote, again all 60 Democrats and only Democrats, raising the national debt. What an irony, to put $2.5 trillion in spending of a new social entitlement program, adding it to the three already huge entitlement programs that are in the process of bankrupting America, adding this to it and then turning right around and increasing the debt ceiling. When they increase it, it is going to be—nobody knows exactly how much it is going to be, hundreds of billions. But that is only in the last 2 months. They are going to have to come back again in February and increase the national debt ceiling again. What irony.

Mr. MCCAIN. Of course, this legislation turns everything we know about budgeting on its head, although it has been done before and it has been done by Republicans, to our shame. Today, if you go out and buy an automobile, you can drive it for a year before you have to pay for it. Under this bill, it is the opposite. You pay the taxes, you have the reductions in benefits, and then 4 years later you start having whatever benefits would accrue from this legislation. So for 4 years small businesspeople, people all over America, will see their health care costs increased before there is a single, tangible result from it—remarkable.

Mr. WICKER. The Senator mentioned the Florida carve-out. Perhaps I should have it on my map. The reason I did not is it involves Medicare Advantage and not Medicaid. The map was about Medicaid, but he makes a good point about the Florida carve-out.

I had a discussion with some of the leadership on the Democratic side on the floor of the Senate the other day about Medicare Advantage. The strong assertion over on that side is, Medicare Advantage is not Medicare. As a matter of fact, some of the leadership in this very body said the booklet the Government puts out that says Medicare Advantage is part of Medicare should be changed. Those words should be stricken from the handout because it is not part of Medicare. The Web site the Federal Government has saying Medicare Advantage is part of Medicare, that should be changed because it is just an insurance company masquerading as Medicare.

Let me just take a second. This is Betty. Betty represents—she is from Louisiana. I don't know if she was one of the 60 percent of Louisianans who voted for Senator MCCAIN in Louisiana, but she enjoys Medicare Advantage. She was told during the election that if you like your coverage, under any plan that the Obama administration would approve, you get to keep that coverage. She gets hearing aids, vision coverage, dental care, and she likes her Medicare Advantage.

If Betty is 1 of the 150,000 seniors in the State of Louisiana who enjoy this benefit, she is at risk of losing it. But if she happens to be in the State of Florida, in any of these counties with the $100 million carve-out, she is fortunate enough to be able to keep her Medicare Advantage.

In other words, it may not be guaranteed, but she sure likes it. Obviously, one of the Senators from Florida believes his constituents like it—again, a carve-out so this nonguaranteed, non-Medicare benefit that is not very good, they can keep it in Florida. That is in the bill and no one can deny that special treatment is given to that one State under Medicare Advantage. Again, I challenge any American to come onto the floor of this Senate and tell me how that is fair.

Mr. BARRASSO. It is not. There have been a number of references to our friend and colleague, the late Senator Ted Kennedy. Let's take a look at the book his brother, John Kennedy, wrote, ''Profiles in Courage.'' As we have seen all this, it is time for one courageous Democrat to stand and say: This is about our country. This is about our country, not about a kickback. This is about health care, not about a hand in the cookie jar.

That is what we need. We need one courageous Democrat to stand and say: I don't want to be part of this editorial that talks about the Louisiana Purchase and Omaha Stakes. I don't want to be a part of this that says this, the world's greatest deliberative body, has now become corrupt. I don't want to be a part of this that says this is about bribery.

It needs one courageous Democrat, 1 out of 60, to stand and say: I am going to vote no; we need to back up; we need to think about this. We have 100 Members of the Senate who want to reform health care in this country, who want to get the costs under control, who want to improve quality, who want to improve access—100 Senators want to do that. That is the goal of each and every one of us here.

We need one courageous Senator to say it is time, time now, to take a step back, let us go home over Christmas, let us think about this, let us talk to our constituents at home, let us hear what they have to say about this looking out for No. 1—$100 million. Dana Milbank's column in the Washington Post today, that is what we need now in the Senate. We need the kind of courage John Kennedy wrote about in ''Profiles in Courage.''

Mr. RISCH. I say to Senator BARRASSO, you know there are already some courageous Democrats stepping up. I hope every Democrat on the other side calls their Governor and says: Governor, what do you think about this? Help me out here. I am in caucus, they bought enough votes to get to the 60. But I have to tell you I don't like the way they did it, No. 1; and, No. 2, what about the rest of us? We didn't get the $300 million. We didn't get the X number of million. Help me out, Governor. They say they are going to shift $25 billion to the States that you are going to have to come up with. What do you think? Do you think I ought to vote for this—or maybe if one of us steps forward and says I am going to vote no and I want to set the reset button and I want to put people back to the table and say let's do this right, we can do this right.

We are Americans. We know how to do this. We are the most innovative people in the world. All we have to do is get together and do it. But to jam this down the throats of the American people—and make no doubt about it, this is being jammed down the throats of the American people on the eve of Christmas, in the middle of the night, in the face of poll after poll that says don't do this to us.

That is what is happening. There are courageous Democrats out there. Not one of them is sitting here.

Mr. WICKER. Let me tell my friend from Idaho about some courageous Democrats. When the House version of this was being considered at the other end of this building, a number of Democrats stepped forward and said: I can't vote for this. It was very close. They have a huge majority, 40 votes over there. As a matter of fact, one Member of the House today basically said: I can't take any more. He switched parties. A Member from Alabama is now joining the Republican conference. But there are a number of loyal Democrats who have no intention of switching parties and they have stepped forward and said: I can't vote for it. Don't count me in on this.

BART STUPAK is a Representative, a courageous pro-life Representative from Michigan. He did vote for the bill. I do not impugn his motives. He did what he thought was right. But before he voted for it, he made sure legislation was included in the House version to make sure the Hyde language, which

has been the law of the land for almost two decades, was included.

Here is what Representative STUPAK said yesterday or the day before yesterday about this so-called pro-life compromise that was included in the version we will have to vote on in the Senate. He said it is ''not acceptable . . . a dramatic shift in Federal policy that would allow the Federal Government to subsidize insurance policies with abortion coverage.''

That is a release actually on December 19.

I appreciate the courage of someone from a Democratic State, from a district that has long been Democratic, who is a member—chairman of a committee and a member of the leadership over there—stepping forward and saying: I can't go this far. Unless this language is changed—and we are told by Members of the Senate there better not be much of a conference. What we vote on, on Christmas Eve, it better sort of stay like it is or it will not be passed by the Senate when it comes out of conference.

BART STUPAK is stepping forward and saying, if that is the case, then I am switching from a yes to a no. I appreciate that kind of courageous Democrat.

Mr. MCCAIN. Can I say, I appreciate the Senator from Mississippi bringing this important aspect to this issue and continuing to do so.

I would like to pick up on what Dr. BARRASSO mentioned about the Kennedy family. It is well known I had a very close relationship, developed over the years, with Senator Ted Kennedy and that we worked together on a variety of issues. So there is a great irony in the constant, over there on the other side of the aisle, references to Senator Kennedy, who always began legislation by getting bipartisan, by getting Members of the other side of the aisle committed and working together—whether it be on immigration reform, whether it be on health care reform, whether it be on one of the great achievements of President Bush 2, No Child Left Behind.

In other words, every dealing I ever had with Senator Kennedy was to reach out, establish a fundamental base for agreement, and then move forward with legislation in a bipartisan fashion, which I think was one of the major reasons why he had such an impressive legislative record.

How did the other side do it? Without a bit of serious negotiation, without bringing anyone on board before moving forward—no one—which ends up, now, with a 60-to-40 vote, which is a pure partisan vote and outcome when there has never been, in history, a single reform that was not bipartisan. That is why the American people are rejecting this. That is why the American people are seeing through it. To hear the constant refrain that the American people want this: Read any poll. It is just a matter of difference because the American people have figured this out. It is going to be one of the great historic mistakes—not historic—but historic mistakes made by the Congress of the United States.

Mr. MCCONNELL. If I may say to my friend from Arizona, he is absolutely right. I have had an opportunity to observe Senator Kennedy over the years. That is exactly the way he operated.

If I may, just to make a point with regard to the observation of the Senator from Mississippi about Congressman STUPAK, as I understand it, Congressman STUPAK was not asking for some special deal for Michigan in return for his vote. He was, rather, trying to establish a principle that would apply to all Americans. Is that not the case?

Mr. WICKER. That is exactly correct. I commend my former House colleague for taking that principled stand.

Mr. MCCONNELL. Could not be same thing be said for our colleague, Senator LIEBERMAN from Connecticut? I am sorry he ended up voting for this 2,700-page monstrosity, but you have to stay, as I understood his position—and Senator MCCAIN certainly knows him very well—his position was, if the government goes into the insurance business, I can't support this bill, not: I am open for business and what you can you do for Connecticut.

Mr. MCCAIN. There may be on the floor a unanimous consent request to remove the Nebraska Medicaid deal. I would hope, if there is any unanimous consent agreement at any time, that the whole bill will be fixed, which means every special provision would be removed, whether it be from Nebraska or any other State. We still have the Louisiana Purchase of $300 million. We still have the Florida Medicare grandfather clause, $25 to $30 billion. The list goes on and on. The Connecticut hospital—I guess it is the Connecticut hospital. It is always in legislation, so you have to do research to see who qualifies. I would hope we could have, again, agreement that all these special provisions that affect certain specific States would be removed as well. That would go over rather well with the American people.

I want to say to my colleagues, thank you for your passion. I know a lot of people don't watch our proceedings on the floor. It has played a role in educating the American people as to what we are facing. The media played a role, advocacy groups, grassroots organizations all over America. But I have had the great privilege of engaging in these colloquies with my colleagues. To me, it has been both helpful to my constituents, and, frankly, it has also been helpful to me to work with people who have been involved in these issues, former Governors and others. We have made some kind of contribution, which I think is what we are all sent here for.

Mr. WICKER. How much time remains?

The PRESIDING OFFICER (Mr. ROCKEFELLER). The Senator has 2 minutes.

Mr. WICKER. Unless my colleagues want to join in, I thank them for joining us and certainly thank Senator MCCAIN, one of the most distinguished public servants, someone who sacrificed for his country and who has been on this floor hour after hour.

The bill we will be asked to vote for on Christmas Eve by the administration's own Chief Actuary increases health care costs, threatens access to care for seniors, forces people off their current coverage, and actually increases the amount of the gross domestic product that will be spent on health care rather than decreasing it. These are not statements I have made; these are assessments made by the Chief Actuary for the Obama administration.

There is still time. Even if this bill passes, we will go home for Christmas, for the holidays. We will hear from our constituents. I hope we listen to that over 60 percent of Americans who say: We advise you not to vote for this legislation.

Mr. BARRASSO. It is time for a new chapter to be written in ''Profiles in Courage.'' One of the Members of this body can be that profile. All they have to do is stand up and say: No, I will not be part of what has been called corruption in the Senate. I will not be part of what has been called, in the editorials, bribery in the Senate. I will be that courageous person and vote no. It is time for a new chapter in ''Profiles in Courage.''

I yield the floor.

The PRESIDING OFFICER. It is the understanding of the Chair that the Senator from Mississippi had the floor.

Mr. WICKER. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I have several points to make. First, as a matter of personal privilege, on behalf of the people of Libby, MT, the Senator from Arizona made it sound as if the folks in Libby were getting some kind of a sweetheart deal. I wish the Senator would not leave so he can hear what is actually going on. I think the Senator from Arizona would agree with me that he would not want his constituents to suffer an environmental calamity. He would not want his constituents to not get some redress because of a declaration of public emergency due to contamination of asbestos. I assume the Senator from Arizona would very much stand up for his constituents.

Let me explain. Congress passed a law in 1980 called CERCLA. That legislation said that whenever there was a declaration of a public emergency because of contamination at a Superfund site, the government has an opportunity to declare a public emergency and help those people get medical care because of contamination of asbestos; in this case especially, something called tremolite, which causes even greater damage than ordinary asbestos. I would assume the Senator from Arizona would want his constituents to

get some help from contamination from asbestos.

Mr. MCCAIN. May I respond?

Mr. BAUCUS. Absolutely.

Mr. MCCAIN. All the Senator had to do was have it authorized, bring it up on the floor as an appropriation, and I am sure the Senator's arguments would have been far more cogent than jamming it into a bill which has to do with health care reform, the policy of health care reform.

This legislation and this cause of the Senator from Montana has been turned back several times on other grounds.

Mr. BAUCUS. This is health care. Reclaiming my right to the floor.

Mr. MCCAIN. I am responding.

Mr. BAUCUS. I reclaim my right to the floor because he doesn't want to deal in good faith with this issue.

My second point. It is disrespectful, it is unseemly for Senators in this body to invoke the names of Ted Kennedy and Jack Kennedy in opposition to this bill. It is disrespectful and unseemly. I, frankly, am very much surprised that Senators would go to that level and invoke the names of Ted Kennedy and Jack Kennedy in opposition to this legislation. Talk about profiles in courage. I hear Senators on the other side say: Where is the courage of one Senator to stand up and vote against health care reform? That is what I keep hearing. Where is the courage? Where is the courage of one Senator on the Democratic side to stand up and vote against health care reform?

Mr. President, I want to turn that around. ''Profiles in Courage''—Jack Kennedy and Ted Kennedy were Senators who worked to try to find resolutions to agreements. They wanted to compromise. They wanted to work together to get just results.

I ask, where is the Senator on that side of the aisle who has the courage to break from their leadership, break from the partisanship they are exercising on their side of the aisle to work together to pass health care reform? I ask, where is the courage? Where are the Senators who have the courage on that side of the aisle to stand up and work together on a bipartisan basis to get health care reform passed? Where?

We on this side reached out our hands for bipartisan agreement on health care reform, probably to a fault. I say ''to a fault'' because for months and months this Senator, anyway, extended the hand to work with other Senators on a bipartisan basis. I know the current occupant of the chair knows that. He watched this. He saw it happen in the Finance Committee.

Senator GRASSLEY and I worked very hard to get Senators on both sides of the aisle to work to pass health care reform, very hard. Then after a while we had to work toward another approach. The Group of 6—3 Republicans, 3 Democrats—worked for months on a bipartisan basis to get health care reform passed. Do you know what happened? I watched it happen. Those Senators in the room were acting in good faith. They were in good faith. They wanted to mutually work together to pass health care reform. They asked good questions. Senator ENZI from Wyoming, for example, asked very good questions. Senator SNOWE asked very good questions. Senator GRASSLEY asked very good questions. We worked to get health care reform.

But do you know what happened? I could feel it happening. One by one by one, they started to drift away. They wanted to pass health care reform. They wanted to act in a bipartisan basis. But they were pressured—pressured from their political party not to do it, not to do it, not to do it. Why were they pressured not to do it? Unfortunately, they gave in to the pressure because their leadership wanted to make a political statement. One of the Senators on the floor here said: Let's make health care Obama's Waterloo. They did not want to work with us, that side of the aisle. They did not want to work with us because they thought it was better to make a political statement: Attack the bill, attack the bill, attack the bill, attack the bill in order to make political points for the 2010 election. That is what they were trying to do.

I ask, where is the courage? Where is the courage? Where is the Republican Senator who will stand up and say: Boy, let's work together to pass health care reform. Where is the Senator who will stand up and say: We want to work together to pass health care reform.

This Senator tried mightily to get bipartisan support. Ask Senator GRASSLEY from Iowa, with whom I have been working for a long, long time. They were pulled away. Senator GRASSLEY—I don't want to speak for him, but I know he wanted to get health care reform passed on a bipartisan basis. I know that is the case. Frankly, he got pressured, pressured, and he just couldn't do it. I have the highest respect and regard for him, but he just couldn't do it.

Mr. WICKER. Will the Senator yield briefly?

Mr. BAUCUS. Absolutely.

Mr. WICKER. I think the Senator has really answered his own question. As a matter of fact, Senator GRASSLEY and Senator ENZI met for hours and hours, weeks upon weeks with my friend from Montana in good faith, hoping to come up with a program that could get that 80-vote support we usually get on matters of——

Mr. BAUCUS. That is how they started out, that is true.

Mr. WICKER. And then eventually, it dawned on them that my friends on the other side of the aisle wanted to Europeanize the health care system of the United States of America.

Mr. BAUCUS. Reclaiming my time.

The PRESIDING OFFICER. The Senator from Montana has the floor.

Mr. WICKER. I thank the Senator for yielding.

Mr. BAUCUS. That is not what happened. I was in the room constantly. I talked to those Senators many times. That is not what happened. I will tell you what did happen. Your leadership pressured them, pressured them, pressured them not to work together. There was no European-style effort in that room. That is a totally untruthful statement—a totally untruthful statement. None whatsoever. We are passing a bill here that is a uniquely American solution. It provides competition. It helps the doctor-patient relationship. That assertion of working toward a European solution is entirely untrue. It is entirely false.

The fact is, those Senators did not want to work with us. It is regrettable. It is highly regrettable. One of the biggest travesties here is there was not a good-faith effort on that side of the aisle to come up with a constructive, comprehensive alternative to the Democratic version of health care reform. If there had been a constructive, honest, alternative health care reform, we could have had a really good debate. What is the better approach to solving the health care problem? That did not ever happen. It did not ever happen at all. Rather, they didn't have anything. They didn't have a health care bill. None whatsoever.

The only one that came up a little bit was over in the House. Because of all the criticism about Republicans not having an alternative, finally the Republicans in the House came up with an alternative. It was very small. There wasn't much to it. To be honest, the CBO said it would hardly increase any coverage whatsoever. It was not really a comprehensive health care reform bill. And there has been none in the U.S. Senate on the Republican side, no alternative for a comprehensive health care reform bill.

I want the public to know we worked very hard to get a bipartisan bill. That side of the aisle started without working with us, but gradually they began to believe that politically they would have a better chance in the 2010 elections by just not working with us but just attack, attack, attack, attack, trying to score political points to defeat any honest effort to get health care reform.

I now yield such time as he would like to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Thank you, Mr. President.

Well, this has been quite an enlightening experience on the floor this past 30 or 40 minutes. It shows how emotionally charged this body has become over this issue and perhaps other issues as well. But the challenge is, we are all entitled to our own opinions. We are just not entitled to our own set of facts.

I would like to take a moment to explain the so-called Medicaid fix for the State of Nebraska. Now, it has been described as the ''Omaha Stakes fix.'' I take issue—and I only wish my colleague from Nebraska had stayed on

the floor to hear this. I take issue with one of the premier businesses in the State of Nebraska used in a manner of derision to outline something that is factually incorrect on the basis of how they are presenting it.

You can twist and you can turn and you can try to distort what happens, but it does not change the underlying facts. The underlying facts are, this was pursued initially as an opt-in or opt-out for all States. It was impossible to do that at the present time, and so as a matter of fix, there was, in fact, the extension of the Federal dollars from the year 2017 on, well into the future, as a marker to lay down so that every State could object to this manner of unfunded mandates.

As a Governor—and my colleague is a former Governor—we fought against Federal unfunded mandates. As a Senator back here, I have also fought against unfunded and underfunded Federal mandates. This was, in fact, exactly that. While we were not able to get in this legislation an actual opt-out or opt-in for a State-based decision, what we did get is at least a line, if you will, so that in the future other States are going to be able to come forward and say: Hey, either the Federal Government pays for that into the future or the State will have the opportunity to decide not to continue that so that we do not have an unfunded Federal mandate.

So I am surprised. I am shocked. Well, actually, I am not shocked. I am disappointed this would be used and misused in this fashion, not only derisively against a great company in Nebraska—the Nebraska Steaks—I am also surprised my colleague would participate in a colloquy that would use the name of that company in such a manner.

I am surprised this colloquy went on without understanding the facts of what this so-called carve-out—which is not a carve-out—truly consisted of. There is no carve-out. Each State between now and 2017—two-thirds-plus of a decade—will have an opportunity to come back in and get this bill changed.

Governors asked for relief. As Governors, we asked for relief against these continuing unfunded mandates. Time and time again, we fought against them. This was one more opportunity to fight. As a matter of fact, the Governor of Nebraska spotted this and wrote me a letter on December 16 and said, among other things:

> The State of Nebraska cannot afford an unfunded mandate and uncontrolled spending of this magnitude.

He goes on to say a number of other things about the bill. But he makes the point that this is an unfunded Federal mandate and wanted me to do something about it.

So I sent him back a letter on the same date, saying:

> Thank you. . . .
>
> Please be advised that I have proposed that the Senate bill be modified to include an ''opt-in'' mechanism to allow states to avoid the issues you have raised. Under my proposal, if Nebraska prefers not to opt in to a reformed health care system, it would have that right.

My colleague and others know this is the case. They know this is the case, but they choose to ignore it. They choose to ignore the facts.

On December 20, I again wrote to the Governor and shared with him my concern about this unfunded mandate, and I pointed out that:

> Within hours after the amendment was filed, [my colleague from Nebraska] objected to the inclusion of these funds. As a result, I am prepared to ask that this provision be removed from the amendment in conference if it is [the Governor's] desire.

I got a letter back on the day after, on December 21, talking about this as a special deal. It is not a special deal for Nebraska. It is, in fact, an opportunity to get rid of an unfunded Federal mandate for all the States. Let me repeat that: for all the States. There is nothing special about it, and it is fair.

What we have done is we have drawn a line in the sand and said: This is unacceptable, and it is unacceptable for all States as well. I cannot believe that this sort of a situation would continue. There is no misunderstanding here. I think it is just an opportunity to mislead, distort, and, unfortunately, confuse the American public all the more, and to use the State of Nebraska and the name of a good company for partisan political purposes on the other side of the aisle.

My colleagues know I am not a deeply partisan person and that I rarely come to the floor to speak, and that when I come to the floor, it is for something like this, to take exception with the misuse of information for partisan purposes. That is exactly what has been done with this situation.

I am prepared to fight for the State of Nebraska, and I hope my colleague is as well. Obviously, the Governor was prepared to fight for the State of Nebraska by bringing it to my attention. But I am not prepared to fight to get a special deal for the State of Nebraska. I did not, and I refuse to accept that kind of responsibility or that kind of a suggestion from anyone on that side of the aisle or anyone else.

Then, as it relates to abortion, I think my colleagues know that we introduced legislation that is comparable to the Stupak legislation in the House dealing with barring the use of Federal funds for elective abortions. We introduced it over here, and it was bipartisan. It was Nelson-Hatch-Casey, and it did not pass. So I began the process of trying to find other solutions that I thought equally walled off the use of Federal funds and made it clear that no Federal funds would be used.

Now, apparently I did not say ''mother may I'' in the process of writing that language because others took issue with it, even though they cannot constructively point out how it does not prohibit the use of Federal funds or wall off those funds or keep them totally segregated. They just did not like the language.

Well, if in the conference the Stupak-Nelson-Hatch-Casey language passes, I will be happy, and so will Congressman STUPAK, and so would, I would imagine, those who signed on to that legislation. It is unfortunate, though, to continue to distort and misrepresent what happens in the body of the Senate. It is difficult enough to have comity. It is difficult enough to have cooperation. It is difficult enough to have collegiality. When politics are put above policy and productivity, this is what we get.

Mr. President, I am very disappointed, somewhat disillusioned, by the use of this method and this approach that would undermine the good name of a company in Nebraska, as well as the name of the State of Nebraska, by associating it with something that has not been done, was not intended, and did not result.

Mr. President, with that, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, let me just express my thanks for those 17 minutes.

I would ask the Chair to please advise me when I have used 15 of those minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. CARPER. Mr. President, listening to the debate today reminds me of, among others, a famous quotation from Winston Churchill, who, I believe, said: ''The worst system devised by wit of man''—he was talking about democracy. He said it was the worst form of government devised by wit of man, and then he added ''except for all the rest.''

We like to sort of lecture the Iraqis and Afghanis on how to run a democracy, and we still struggle with it after more than 200 years. In the 8 or 9 years I have been here, I have never seen us struggle as much as we have on the issue of health care. Part of the reason is because it is just enormously complex, and it is just confusing.

As to the people who are following the debate, if you listen to folks on the political left, mostly in our party, what you hear is: No public option, no Medicare buy-in, we are not doing enough to make health care affordable. What you hear from the right, mostly on the other side of the aisle, is, this is government run, this is government funded, this is a government takeover.

So you have the two extremes out here trying to take shots at one another. Those of us in the middle are sort of collateral damage or road kill. But at the end of the day, a lot of times when you find neither the left nor the right are entirely pleased with the outcome, sometimes that suggests that the outcome is not all that bad.

I am not saying this is a perfect balance, but it is not a bad balance. For those, especially in our party, who feel as though we should have done more, I am sure in 1965, when Lyndon Johnson signed into law the Medicare legislation, there were probably some who did not vote for it—and I am told it was mostly Democrats who voted for it, not so much our Republican friends—but I am not sure how many Democrats who voted for Medicare at the time said: It does not do enough for our senior citizens. It does not provide for hospice care. It does not provide for home health care. It does not provide for disability benefits for those who are under the age of 65. There is no prescription drug program. There is nothing for outpatient surgery. None of those things were in the original Medicare legislation. Over time, they have been added, and I think the Medicare legislation, the Medicare law, has been improved to make it a better program.

Now we face a day when the Medicare Program is literally running out of money. One of the less-told secrets in the legislation that is before us is that the life of the Medicare trust fund—life that has been down to about 7 or 8 years—I understand, thanks to the reforms that are in this legislation, should be pretty much doubled. That is not good enough, but we are going to stretch by about 100 percent the useful remaining life of the Medicare Program.

Another fact that is sort of lost in all the debate, all the tumult, is what this does with respect to our budget deficits. I am told by—not us, not Democrats or Republicans—the neutral Congressional Budget Office, which is neither Democratic nor Republican—nonpartisan—that the legislation, if we adopt it in its current form, will reduce the deficit over the next 10 years by about $130 billion, and by as much as maybe $1 trillion, $1.3 trillion in the second 10 years beyond that.

In terms of what is going to happen as to the cost of premiums, we are told, again, by the nonpartisan Congressional Budget Office that rather than spiking premiums, we are actually going to see people get somewhat better coverage for, frankly, not more money in terms of their premiums.

In terms of those of us who just love the health insurance we have—we are delighted with the coverage and the amount we pay for it—I would just remind all of us of a couple things: One, we have spent more money by far than any nation on Earth for health care—about 1½ times more than the next closest country. We do not get better results. In many cases, we get worse results.

We have about 14,000 people who woke up with health care coverage who will wake up tomorrow morning and they will not have it; they will have lost it. Over 40 million people in our country have no health care coverage at all.

Finally, we have big companies such as GM and Chrysler that have gone bankrupt because they cannot compete with foreign competitors because of the price of our health care; and that is true with a lot of smaller companies as well.

The idea of doing nothing is, to my mind, not a very smart thing to do. We have to do a number of things to accomplish three goals: No. 1, rein in the growth of health care costs. This idea of two, three times the rate of inflation in the growth of health care costs is not sustainable. Frankly, if we do not rein in the growth of health care costs, neither will be sustainable the coverage we extend to people who do not have it today.

The third thing we try to work on in this legislation, to the extent we can—a lot of interesting things are going on in the private sector, very interesting things going on in the private sector, regarding how to instill personal responsibility in employees, and how to get better transparency and better costs through the health care delivery system. That is going to be a part of this as well. But we have to figure out a way to get better outcomes, and there are a lot of good examples for doing that.

I want to take the remaining time I have today to just mention some things that are in the legislation that I think make sense because they are based and founded on what works. And as an old Governor—and Senator NELSON has already spoken from Nebraska—we are used to focusing on what works and trying to replicate what works, steal ideas from other States and try to work them in our own State. I want to mention a couple things we have taken that work. We are trying to grow them and, in some cases, on a national level.

One of things Senator BAUCUS and his staff in the Finance Committee focused on, I think, is maybe the best idea in the health care legislation, something called an exchange.

When I was a naval flight officer, we used to go to the exchange on the base which was a place to buy stuff. It was like a little department store. The exchange in health care delivery, which will open in January 2014—I hope we can actually stand up the exchanges and open the exchanges sooner—but that is going to be a place for people to go and buy health care coverage. When people do that, they will become part of a purchasing pool in their State or maybe in a couple of States to sort of band together and form a regional purchasing pool.

Why is a purchasing pool important? Well, because we are part of one, and we know that with 8 million people in our purchasing pool—Federal employees, Federal retirees, all of our dependents—we get a lot of competition. A lot of private sector companies want to offer us products to choose from. We don't get cheap insurance, but we get pretty good prices. With 8 million people in a purchasing pool, we really drive down administrative costs to about 3 percent for every premium dollar. That is a lot lower than folks who try to go out and buy it on their own in the open market. They may pay 33 percent of their premium dollar for their administrative costs. They are not paying 3 percent. We are going to try to replicate that. We do it in the exchange.

There may be 50 exchanges throughout the country, some regional exchanges as well. So we do exchanges as well. When States create interstate compacts across State lines, such as Delaware with New Jersey or maybe Delaware and Maryland or Delaware and Pennsylvania, maybe all four of us, insurance sold in any of those four States can be sold across State lines and introduce new competition, additional competition for business and for the folks looking for coverage for those two or three or four States.

Another thing that works is the delivery system, delivery of health care in outfits such as the Cleveland Clinic and the Mayo Clinic, Geisinger in Pennsylvania, not far from where we are in Delaware, Intermountain Health out in Utah, and Kaiser Permanente in California.

I actually went with Rachuel Russell, a member of my staff, to the Cleveland Clinic about 3 months ago. What we found was the Cleveland Clinic and the Mayo Clinic and Geisinger and all these others pretty much all have the same template. They focus on primary care. They focus on prevention and wellness. They coordinate the care of folks who are receiving treatment. All of their patients have electronic health records.

Medical malpractice coverage is provided by the entity itself, the Mayo Clinic, Cleveland Clinic, and all the docs are on salary. They have gone after what we call not just defensive medicine but fee-for-service, and they have done a very good job reducing the problems that flow out of fee-for-service which lead to more utilization and unnecessary utilization of time, tests, technology. They get better outcomes and they spend less money.

What we are trying to do with this legislation is to take those health care delivery ideas from those nonprofits and instill them into the delivery of health care, particularly through Medicare but also in other ways too.

I like to shop for groceries. We have a bunch of good grocery stores in Delaware. One of the places I shop for groceries occasionally when I am in my State is a place called Safeway, in Dover. A guy named Steve Burd is the CEO of the company, and they have really helped inform our decision-making in this debate in ways that are pretty remarkable by virtue of the way they provide coverage to their employees. It is not just Safeway. It is not just Pitney Bowes. There are a number of companies that are figuring out how to get better results for less money, and we are borrowing some of their ideas.

One of the ways we are borrowing is to say, how does Safeway provide—literally flattening out for the last 4 or 5 years—health care coverage for their employees? They haven't reduced their benefits. One of the things they have done is to incentivize their employees, use financial incentives to get employees to—if they are overweight, to control their weight, get their weight down, and if they do that, their payments are reduced. If they are smokers, they get rewarded for stopping smoking. If they have high cholesterol or high blood pressure, they get rewarded by reduced premiums for reducing their cholesterol and blood pressure.

What we have done with our legislation—and I thank the chairman and my colleagues for their support, Democratic and Republican, for supporting an amendment by Senator ENSIGN and myself where employers would be able to provide a 30-percent discount to employees who do the right thing for their own health. By doing that, they will reduce health care costs for not just their employer but for others in the group in which they are covered.

There is another piece in the legislation that really borrows from an idea that is popping up in a couple of cities and maybe a State or two around the country, and that is, Why don't we better inform people? We are interested in personal responsibility, people taking charge of their own health and reducing their health care liability. Why don't we do a better job of ensuring that—when I go into a restaurant or anybody goes into a restaurant, we look at the menu board of a chain restaurant and we know right then and there what the calories are in what we are drinking or eating, for an entree, for a salad or dessert. I know it right there by looking at the menu board if it is a chain restaurant. If it is a menu, not a board, they have to have that information on the menu. They have to have on site additional information on 10 other items, including fats, trans fats, cholesterol, sodium, and on and on.

The idea is to make us better informed consumers. As we try to fight obesity in this country—about a third of our country is obese or overweight, and adults are worse than kids. Kids are catching up with their parents, unfortunately. That is one of the things that is in the legislation. We call it the Lean Act. The idea is to try to provide personal information so people can assume personal responsibility.

Speaking of what we should eat or not eat, I wish to mention doughnuts, and I will do it in the context of something called the doughnut hole. Folks who are Medicare eligible have probably heard this term before because under the Medicare prescription drug program, when people's out-of-pocket costs reach about—when their cost for medicines, their prescription medicines, reach about $2,500, the first $2,500, Medicare pays 75 percent of the cost and the individual pays 25 percent of the cost. But once a person's prescription costs reach $2,500 up to about $5,500, for most people Medicare doesn't pay anything and the individual pays it all. That $2,500 to $5,500 gap is called the doughnut hole. It has nothing to do with doughnuts, but that is the name we have given to it.

In the legislation that is before us—again, I give a lot of credit to our chairman and others who have negotiated this—we are going to fill the doughnut hole. We are going to basically cover people who are in that gap of the $2,500 to $5,500 so that people will be able to continue to take the medicine they need to take. They won't stop. They will have the availability to medicine.

They will also have access to something called primary care. I am at the tender age of 62, and I think my Presiding Officer, also from Delaware, is just about the same age as I. When people in this country end up being old enough for Medicare, they get a one-time-only Medicare physical. That is it—one time. If they live to be 105, they never get another one, at least not paid for by Medicare.

In terms of borrowing good ideas from the nonprofits, the Cleveland Clinics and the Mayo Clinics, we are going to say you get more than just one physical. You get it when you are 65 and 66 and 67 and 68, and if you live to be 105, God bless you, you will get it every year up until then; finding out what is right with people, what is wrong with people, and what they need to do more of or less of. That is a smart idea, and it is part of the reforms in the legislation.

In terms of going back to medicine, we want to make sure people have good access to primary care, annual physicals if they are on Medicare, so their doctor can find out what is wrong with them, if they need to exercise, stop smoking, control their weight, whatever that might be, but also to learn if there are some medicines they ought to be taking, and second, to make sure they can afford them. Third, our legislation actually improves their lives in terms of if medicines are prescribed, they will actually be taken and used the way they are prescribed.

There is a little piece in this legislation that Senator RON WYDEN deserves a lot of credit for called personalized medicine. The idea is that if there are certain people who, because of their genetic makeup, the way God made them, they have a particular condition and the medicine is not going to help them—if the same group of people have the same problem—or if a different group of people have a different genetic makeup and the medicine will help one group and not the other, we want to make sure we spend the money on the folks who will be helped and not waste money on the folks who will never be helped because of their genetic makeup—literally, the way the Good Lord made them. That is called personalized medicine, and it is in this legislation. I think in the future it will be a very important addition.

Lastly, I want to build on a proposal offered again by Senator BAUCUS with Senator ENZI, and the issue is defensive medicine.

The ACTING PRESIDENT pro tempore. The Senator has used 15 minutes.

Mr. CARPER. Thank you.

The issue is defensive medicine. The issue is medical malpractice. There have been a couple of amendments offered by friends across the aisle for us to try to deal with the incidence of medical malpractice lawsuits, the defensive medicine that sort of flows from there where doctors prescribe really too many tests and too many procedures and maybe too many of the wrong kinds of medicine just in an effort to reduce the likelihood they are going to be sued. What we have done here is to take an idea from the States.

The States have done some very interesting stuff with respect to trying to make sure we reduce the incidence of medical malpractice lawsuits, that we reduce the incidence of defensive medicine, and we actually improve health care outcomes. We are going to take those ideas, one called Sorry Works that they were using up in Michigan where people have an opportunity—doctors have an opportunity to apologize and offer a financial settlement to people and patients who have been harmed by that doctor; an idea called panels of certification like we have in Delaware where before I can sue my doctor I have to go before a panel to find out if my suit has any basis in fact. We are going to take ideas like safe harbor. If a doctor does all the things by the book, everything by the book, should that doctor receive some kind of expectation that maybe they are safe from lawsuits or reduced exposures to lawsuits? We think there should be some of that. There is the idea of health courts, where there are folks on the court, like the bankruptcy courts, folks who are the experts, and before a suit can actually go into a court, that health court would actually sit in determination of whether a doctor or a hospital or a nurse has really messed up. Those are all ideas that are being talked about, experimented with.

We are going to make sure they are robustly tested. States are going to apply for grants to test those ideas and maybe others to accomplish three things: one, reducing medical malpractice lawsuits; two, reducing the incidence of defensive medicine; and three, and most importantly, improving health care outcomes.

Those ideas build on what works. They are not Democratic ideas. They are not Republican ideas. I think they are just smart ideas for the most part. They are ideas that, as time goes by, people will find out if they really do the trick in helping to rein in health care costs so the coverage we extend can be sustained.

I will just close with this, if I could. For the folks in this country who are

totally confused by all this, for the people who are scared that we are doing something really foolish and it is going to be a disaster for our country, let me just say that when all the negative ads sort of stop being funded, when folks have actually had a chance to understand some of the things I have talked about here today and a lot of the aspects of the bill that really will improve outcomes, that really will rein in the growth of cost, that really will extend coverage, I think they really will be pleasantly surprised.

In closing, I am the guy who came here always believing that Democrats and Republicans should work together. I know our chairman tried mightily in the Finance Committee to do that, and I commend him and others for their effort. When we come back, we can't have another 12 months of this or 12 years of this. Our country is in trouble if this is the way we are going to be doing business in the future. Our country is in trouble.

My hope is that we will get this done, we will get it behind us, we will improve the bill in conference, and the President will provide a signature for us, and we will go back to work on implementing this. Just like Medicare. Just like Medicare. The key isn't just to stop; the key is to make it better and to build on this as a foundation. I am committed to doing that. I know my colleagues on this side of the aisle are committed to doing that. My hope and prayer is that our friends on the other side will want to join us in that effort.

Again, I commend our chairman of the Finance Committee, our leadership, Senator REID, and others. I commend my friend OLYMPIA SNOWE, who showed a lot of courage during the course of this debate in committee and here on the floor. She was under enormous pressure, as were some of our Republican colleagues on the Finance Committee whom I am convinced would like to have been with us, and I believe we would have had an even better bill if the pressure from within their own party had allowed them to be more fully participative. But that wasn't the case this time. It has to be the next.

On that happy note, I say to my colleagues, we will gather again after the holidays and get this job done and look forward to working on a host of other issues. None will be more important than this one. None will be more important than this one.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I want to begin by saying I agree with my colleague from Delaware. This partisanship has to stop. It is just too much. It is ironic, it is bittersweet that we are reaching a high point because we are going to pass health care reform legislation, but we are reaching a low point, too, in terms of partisanship. It is very unfortunate. Many of us over the last several days have been scratching our heads just trying to figure out what we can do to avoid this next year. Hope springs eternal.

I know this Senator and I know the occupant of the chair want to try to find ways for this body to be much more civil. We are not just blowing smoke here. We really mean it. I thank very much the Senator from Delaware for raising that point. It is needed, and I do think this country is in trouble if we don't find some solution to handle this excessive partisanship which is certainly hurting our country.

On another matter, some of my colleagues on the other side of the aisle have asserted that the penalty that is proposed under the bill before us for failing to maintain health coverage is unconstitutional. One Senator has raised a point of order—Senator ENSIGN—on that subject, and that is now pending.

Those of us who voted to proceed to the health reform bill and who voted for cloture on the substitute amendment take seriously our oath to defend the Constitution. Every Senator here takes that oath of office very seriously.

We have seriously looked at this question as well and have concluded that the penalty in the bill is constitutional.

Those who study constitutional law as a line of work have drawn that same conclusion. Most legal scholars who have considered the question of a requirement for individuals to purchase health care coverage argue forcefully that the requirement is within Congress's power to regulate interstate commerce.

Take Professor Erin Chemerinsky, a renowned constitutional law scholar, author of four popular treatises and casebooks on constitutional law and the dean of the University of California Irvine School of Law. Professor Chemerinsky has gone so far as to say that those arguing on the other side of the issue do not have ''the slightest merit from a constitutional perspective.''

In arguing that a requirement to have health care coverage falls within Congress's power to regulate interstate commerce, Professor Chemerinsky compares health care reform to the case of Gonzales v. Raich—often cited by the other side. In that case, the Supreme Court held that the Federal Government's commerce clause powers extend to the cultivation and possession of small amounts of marijuana for personal use. Professor Chemerinsky notes that the relationship between health care coverage and the national economy is even clearer than the cultivation and possession involved in Gonzalez v. Raich.

Mr. President, I ask unanimous consent that Professor Chemerinsky's Los Angeles Times article be printed in the RECORD.

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

[FROM THE LOS ANGELES TIMES, OCT. 6, 2009]

THE CONSTITUTIONALITY OF HEALTHCARE

(By Erwin Chemerinsky)

Are the healthcare bills pending in the House and Senate unconstitutional?

That's what some of the bills' critics have alleged. Their argument focuses on the fact that most of the major proposals would require all Americans to obtain healthcare coverage or pay a tax if they don't. Those too poor to afford insurance would have their health coverage provided by the state.

Although the desirability of this approach can be debated, it unquestionably would be constitutional.

Those who claim otherwise make two arguments. First, they say the requirement is beyond the scope of Congress' powers. And second, they say that people have a right to be uninsured and that requiring them to buy health insurance violates individual liberty. Neither argument has the slightest merit from a constitutional perspective.

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

Congress has every right to create either a broad new tax to pay for a national healthcare program or to impose a tax only on those who have no health insurance.

The reality is that virtually everyone will, at some point, need medical care. And, if a person has certain kinds of communicable diseases, the government will insist that he or she be treated whether they are insured or not. A tax on the uninsured is a way of paying for the costs of their likely future medical care.

Another basis for the power of Congress to impose a health insurance mandate is that the legislature is charged with regulating commerce among the states. The Supreme Court has held that this means Congress has the ability to regulate activities that have a substantial effect on interstate commerce. A few years ago, for example, the court held that Congress could prohibit individuals from cultivating and possessing small amounts of marijuana for personal medicinal use because marijuana is bought and sold in interstate commerce.

The relationship between healthcare coverage and the national economy is even clearer. In 2007, healthcare expenditures amounted to $2.2 trillion, or $7,421 a person, and accounted for 16.2% of the gross domestic product.

The claim that individuals have a constitutional ''right'' to not have health insurance is no stronger than the objection that this would exceed Congress' powers. It is hard to even articulate the constitutional right that would be violated by requiring individuals to have health insurance or pay a tax.

Since the 19th century, the Supreme Court has consistently held that a tax cannot be challenged as an impermissible taking of private property for public use without just compensation. All taxes, of course, are a taking of private property for public use, and a tax to pay for health coverage—whether imposed on all Americans or just the uninsured—is certainly something Congress could impose.

The claim that an insurance mandate would violate the due process clause is also specious. Most states have a requirement for mandatory car insurance, and every challenge to such mandates has been rejected. More important, since 1937, the Supreme Court has constantly held that government

regulations of property and the economy will be upheld as long as they are reasonable. Virtually every economic regulation and tax has been found to meet this requirement. A mandate for health coverage would meet this standard, which is so deferential to the government.

Finally, those who object to having health coverage on freedom-of-religion grounds also have no case. The Supreme Court has expressly rejected objections to paying Social Security and other taxes on religious grounds. More generally, the Supreme Court has ruled that individuals do not have a right to an exemption from a general law on the ground that it burdens their religion.

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

Mr. BAUCUS. Mr. President, as a second example, I refer my colleagues to an article by Mark Hall, a law professor at Wake Forest University. His article is a comprehensive peer-reviewed analysis of the constitutionality of a Federal individual responsibility requirement.

In this article, Professor Hall concludes that there are no plausible 10th amendment or States' rights issues arising from the imposition by Congress of an individual responsibility to maintain health coverage.

Professor Hall notes further that health care and health insurance both affect and are distributed through interstate commerce, and that gives Congress the power to legislate a coverage requirement using its commerce clause powers.

Professor Hall notes that the Supreme Court indicated in its decision in U.S. v. Morrison and U.S. v. Lopez—two other cases relied on by the other side—that the noneconomic, criminal nature of the conduct in those cases were central to the Court's decisions in those cases that the government had not appropriately exercised power under the commerce clause.

Health insurance, on the other hand, does not deal with criminal conduct. Health insurance is commercial and economic in nature and, to reiterate, substantially affects interstate commerce.

Health insurance and health care services are a significant part of the national economy. National health spending is 17.6 percent of the economy, and it is projected to increase from $2.5 trillion in 2009 to $4.7 trillion in 2019.

Private health insurance spending is projected to be $854 billion in 2009. It covers things such as medical supplies, drugs, and equipment that are shipped in interstate commerce.

Health insurance is sold by national or regional health insurance carriers. Thus, health insurance is sold in interstate commerce. As well, claims payments flow through interstate commerce.

The individual responsibility requirements, together with other provisions in the act, will add millions of new consumers to the health insurance market, increasing the supply and demand for health care services.

Under existing health and labor laws, the Federal Government has a significant role in regulating health insurance.

Other prominent legal scholars have also said that Congress has the constitutional authority to impose a requirement on individuals to maintain health coverage.

Jonathan Adler, a professor of law at Case Western Reserve University School of Law, stated:

In this case, the overall scheme would involve the regulation of ''commerce'' as the Supreme Court has defined it for several decades, as it would involve the regulation of health care markets. And the success of such a regulatory scheme would depend upon requiring all to participate.

Doug Kendall of the Constitutional Accountability Center similarly concluded:

The fundamental point behind pushing people into the private insurance market is to make sure that uninsured individuals who can pay for health insurance don't impose costs on other taxpayers.

Professor Michael Dorf of the Cornell University Law School also noted:

[T]he individual mandate is ''plainly adapted'' to the undoubtedly legitimate end of regulating the enormous and enormously important health care sector of the national economy. It is therefore constitutional.

Robert Shapiro, a professor of law at Emory University School of Law, stated:

When everyone thinks of the wisdom of an individual mandate, or of health care reform generally, it would be surprising if the Constitution prohibited a democratic resolution of the issue. Happily, it does not.

Thus, Mr. President, the weight of authority is that health care and insurance represent interstate commerce. The individual responsibility requirement to maintain coverage would be within Congress's power to regulate interstate commerce.

Mr. President, in the last hour, several Senators on the other side listed many organizations they claim oppose the bill before us. I will indicate many organizations that favor the health care reform bill.

I will begin with the American Medical Association. That is the major doctors association that supports this legislation. In fact, the incoming president, the president-elect of AMA, at a press conference yesterday, made that statement very clear.

In addition, the American Heart Association supports the legislation. They believe the many patient-centered provisions are a significant step toward meaningful health care.

The American Hospital Association supports passage of the legislation.

The American Cancer Society Action Network supports it.

The Federation of American Hospitals also supports it.

The National Puerto Rican Coalition supports this legislation.

Mr. President, it would be unfair to say that these are all totally 100 percent endorsements. Rather, these are statements of support from these organizations. Some totally support it, and some say there are very good features in it. As far as I know, none of these groups totally oppose this legislation. Some would like to see some changes, but they favor the legislation.

The American Association of Retired People supports this legislation. That is the largest seniors group. They think this is good—I am sure for a lot of reasons, but it extends the solvency to the Medicare trust fund for another 5 years.

The Business Roundtable supports this legislation. They say:

On behalf of the members of Business Roundtable, I want to commend you for your efforts to improve the health care reform legislation currently being considered by the United States Senate. The proposed legislation is a step toward our shared goal of providing high quality, affordable health care for all Americans. . . . As we understand it, the proposed legislation now will include provisions to accelerate and enhance the process for delivery reform for the Medicare system. . . . It strengthens the match between the insurance reforms and the individual obligation. . . . We will continue to work with you, the Congress and the Administration to ensure we achieve the goals we all set when this process began.

The American Diabetes Association also supports this bill. They say it is ''long overdue improvements to our broken health care system.''

The Small Business Majority also believes the managers' amendment ''includes new provisions essential for small business protection and survival.''

Doctors for America supports passage of this bill.

The National Hospice and Palliative Care Organization strongly supports this legislation. There has been confusion as to whether they did. But they strongly support it, saying:

On behalf of hospice and palliative care providers and the more than 1.5 million patients, and their families . . . would like to express our strong support for the national effort to enact health care reform. We acknowledge the enormity and complexity . . . and we applaud your recognition of the importance of various provisions. . . .

Families USA supports this legislation. I already mentioned AARP, which also supports it. Community Catalyst is another organization that supports it. U.S. PIRG supports it. The Center for American Progress supports it. Medco Health, Microsoft, a big company in the United States, makes a strong statement approving the measure we are considering here.

Many organizations support this legislation. I am sure there are more, but this is an example of a few.

How much time remains on our side?

The ACTING PRESIDENT pro tempore. There is 10 minutes remaining.

Mr. BAUCUS. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

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

Mr. CASEY. Mr. President, I commend the work of our Finance Committee chairman, MAX BAUCUS, for so many things in this debate. First, for helping us get health care legislation moving in 2009 and now at the point of getting close to passing the bill. I am grateful for his leadership. There are some highlights of the bill I want to note in the remaining moments of our time.

First, there has been a lot of debate over the last couple of days and weeks—but even over months—about cost and care. Fortunately, we are able to report that with this bill coming out of the Senate, we will have more care and less costs. The deficit will be cut by $132 billion over 10 years as a result of this bill; $1.3 trillion will be cut in the deficit in the second decade.

It will provide coverage for 94 percent of the American people. This has not been talked about much, but the bill is a net tax cut for the American people. We are going to crack down on insurers' practices that have gone on too long, were allowed to go on for too many years: ending preexisting condition discrimination, and discrimination based upon gender, providing protection from exorbitant out-of-pocket costs, something we hear about all the time.

Just with regard to older citizens across our country, one, the bill will extend the solvency of Medicare; two, it makes prescription drugs more affordable by filling the so-called doughnut hole and helping people with those costs; cutting waste, fraud, and abuse in Medicare; ensuring Medicare funding to improving care for seniors not to insurance companies.

Small businesses—if there was one sector of our economy we have heard from over and over about the crushing burden of health care costs, it is small businesses. I know that tens of thousands of small businesses in Pennsylvania, for example, will benefit from this legislation.

There are two points with regard to the bill and small business. First, the bill provides tax credits to small businesses to make employee coverage more affordable.

Second, tax credits of up to 50 percent of premiums will be available to eligible firms that choose to offer coverage—a tremendous breakthrough for people out there who are creating most of the jobs in Pennsylvania and most of the jobs nationally.

One of the more unreported or underreported aspects of the bill is what happens immediately. A lot of folks say: We like your bill. We like what is going to happen. But a lot of it won't take effect for at least several years, until 2014.

A good part of the bill takes effect in 2010. A quick summary of those provisions: First, it provides affordable coverage to the uninsured with preexisting conditions. If there is an insurance company that excludes you because of a preexisting condition, you can go into a high-risk pool to get help right away.

It improves care to older citizens, as I mentioned, and lowers prescription drug costs.

It reduces costs for small businesses through tax credits.

Fourth, it extends coverage for young adults—young adults 25, 26 years old, who may be living under difficult circumstances and don't have insurance coverage. Preventive care—we preached and talked about that for years, and we point to studies and good practices, but we have never made it part of our overall health care bill. This bill does it.

We eliminate lifetime limits on the amount of coverage a person may receive—a terrible problem for families. The message from our system has been that we can cure you, but we have to limit the kind of care we are going to provide for you.

Three more points in this area: What are the immediate benefits in 2010? It prohibits discrimination based upon salary, gender, or illness. We make insurance plans more transparent and competitive.

Finally—and this is a rather new change—it prohibits insurance companies from denying children coverage due to a preexisting condition.

That has moved up in the bill, so to speak, to an immediate benefit for children. So at least in the short term for children, there will be no more denying them coverage due to a preexisting condition—a tremendous breakthrough for a child, for his or her family, and for our economy and for our health care system, to protect children in a very substantial way. Whether it is cutting the deficit, providing better quality of care, providing opportunities for great prevention which will lead to a healthier outcome, protecting people so they do not have to go bankrupt to get the care they need, and especially for protecting older citizens and children, this bill moves forward in a way we have never had an opportunity to move our system forward in a very positive way.

I again commend Chairman BAUCUS on his work and our majority leader, HARRY REID, and all those who made it possible to move this bill forward and to have it passed through the Senate and move it to enactment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I see no Senator seeking recognition. I ask unanimous consent that the next block of time begin immediately.

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

The Senator from Florida.

Mr. LEMIEUX. Mr. President, I thank the chairman of the Senate Finance Committee for his courtesy. I appreciate the opportunity to be here.

I understand, Mr. President, I have a certain allotment of time. If I can be notified when I have 2 minutes remaining, I would appreciate that.

The ACTING PRESIDENT pro tempore. The Chair is unaware of any restrictions. There is 1 hour for the Senator's side.

Mr. LEMIEUX. OK. If I can be notified when I have spoken for 20 minutes.

The ACTING PRESIDENT pro tempore. The Chair will so notify the Senator.

Mr. LEMIEUX. Mr. President, I rise today to talk about this health care bill. I have spoken about it before. I feel obligated on behalf of my State of Florida to explain why I, unfortunately, will not be able to support this bill on final passage. I think, in doing so, it is important to talk about why we are here and how we got here.

I am sure the American people think that in this process of debating health care over the past weeks and months, this has been a process where both sides, Republicans and Democrats, have worked together, sat in an open room and gave ideas back and forth; that there has been give-and-take and compromise so that we could come to the plan that is before us today. I am sure the American people believe that amendments were offered, that each Senator could come to the floor and offer amendments and that his and her colleagues were allowed to hear about those amendments and vote them up or down. I also believe the American people think we do not just come to this Chamber and give monologs. They probably think this room is not empty and that there are just two of my distinguished colleagues here but that we all sit here and listen to each others' arguments and decide what is best for the American people.

Unfortunately, that is not the case with this bill. This bill was designed and crafted by the Democratic leadership, without the input of the colleagues from this side of the aisle. There was no give-and-take. There was no back-and-forth in a conference room with C–SPAN in the room, as the President told us he would ensure when he ran for the Office of the Presidency. And we did not have the opportunity to offer amendments to make this bill better.

I know that seems hard to believe, that we would not have the ability to offer amendments to make this bill better, but I can prove it to you.

I have an amendment at the desk. It is amendment No. 3225. What this amendment does is it takes a piece of legislation I filed shortly after coming to the Senate in September of this year—the legislation is called the Prevent Health Care Fraud Act of 2009. This legislation has 11 cosponsors. It has bipartisan support.

What the bill does is basically three things:

First, it creates the chief health care fraud prevention officer of the United States. It would be the No. 2 person at Health and Human Services. Their only job would be to ferret out health care fraud.

Second, it would use and take a page from the private sector to go after fraud. There is an industry out there right now that does an excellent job of stopping fraud. That industry is about the same size as the health care industry. It is the credit card business. It is about a $2 trillion business. Health care is about a $2 trillion business. In health care and in Medicare alone, estimates are that $1 out of every $7 in Medicare is fraud. In the credit card business, it is pennies on the hundreds of dollars.

How does the credit card business do it? We have all had this experience. You go to purchase something in a store, and when you leave, you get an e-mail or a phone call and your credit card company says to you: Did you really mean to purchase that good or service? Guess what. If you say no, they don't pay. The way we do things in Medicare and Medicaid is we do pay-and-chase. We pay, and then when we think there is fraud, we try to go after it.

This model stops the fraud before it starts. A group here in Washington, DC, has evaluated this legislation and says that it might save as much as $20 billion a year in Medicare alone. We think there is $60 billion in fraud in Medicare—$1 out of every $7.

This proposal that we put forward also would require background checks for every health care provider in America to make sure they are not a criminal. Florida, my State, unfortunately is ground zero for health care fraud. We have the worst health care fraud in America. Just this past weekend, and I sent this letter around to my colleagues—a $61 million Medicare fraud scheme out of Florida and some other States.

My bill, this proposal which has bipartisan support, could save $20 billion a year. We have fashioned this bill into an amendment to this health care bill.

Mr. President, I ask unanimous consent that the pending amendment be set aside to call up my amendment. It is amendment No. 3225.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BAUCUS. Reserving the right to object, and I hope my colleague will let me say a word or two in my reservation, the underlying bill, while certainly objective, was crafted with the guidance of CMS, the Office of the Inspector General, HHS, and the Justice Department for stronger antifraud. It would give CMS new screening authority to provide resources to CMS for new screening authority. It also limits providers in other ways but more oversight when fraud is suspected, such as limiting durable medical equipment providers because we know it is fraught with fraud. We also require providers to have compliance programs, make sure providers know the rules. There are increased penalties for fraudulent activity in the bill as well. Most importantly, we will give CMS, HHS, OIJ, and DOJ more tools at their disposal to preserve and protect the program's integrity. The bill does a lot to protect fraud.

I might say, I know this is on his time, but this procedure has been unusual. I appreciate the indulgence of the Chair, as well as the indulgence of the Senator from Florida.

You will not believe the number of amendments that were offered on a bipartisan basis in the Finance Committee, as well as in the HELP Committee. They were adopted in both committees. It was very transparent, open, bipartisan. Unfortunately, by the time the bill got to the floor, it became apparent we were facing less than the nature of legitimate amendments, more message amendments. So the majority leader resorted to a procedure to move this bill expeditiously.

I am taking advantage of the Senator's time to explain all this. That is not the proper procedure. There are strong antifraud provisions in this legislation, and very respectfully I must object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. LEMIEUX. Mr. President, I thank the distinguished chairman of the Finance Committee. Sure, there are things in this bill that he pointed out to go after fraud. But I would like to inform the Senate of a report that came out evaluating this new bill, the managers' amendment.

I have a table which evaluates how much will be saved from the waste, fraud, and abuse provisions which are in this bill. It is $.9 billion. The proposal that I have, one group—and, again, it is not the CBO—one group has said it might save $20 billion a year.

Putting aside our differences, I sure wish we could talk about my amendment today, I say to my colleague. I hope we can revisit it after this is over because we should be able to agree, and it does have bipartisan support. I wish we could amend the bill today. I hear the objection, and I will move on. I hope we can talk about this.

Mr. BAUCUS. I ask the Senator if he might yield using time on our side. I fully agree with the Senator. It is unfortunate we cannot proceed at this moment. But I pledge my support next year to work aggressively with very strong oversight to boost our antifraud measures even more than they are in this bill.

There will be an awful lot of oversight necessary when the bill is passed to make sure all the provisions that are intended come true. In fact, we think we are working hard to get it passed; frankly, I think we have to work harder next year to make sure the provisions work. I pledge my support to work aggressively in that area.

Mr. LEMIEUX. I thank the chairman. I wish we could do it before we had to rush to judgment on this bill. I wish we had more time. I wish we did not have to be backed up against a wall before Christmas. I understand colleagues on the other side have a desire to get this bill done. But it is my concern with this measure and with the other measures in the bill that we could have worked together.

Mr. President, I say to the chairman, I am new to the Chamber. But this is not the way businesses work. It is not the way American families work. It is not the way even State legislators work, which I have experience with in Florida.

I wish we could have talked about that amendment and offered it. I wish my colleagues were here to debate it up or down. Let's talk about where we are instead. Let's talk about what this bill does and why I cannot, unfortunately, support it as a Senator from Florida.

We know this bill cuts Medicare by nearly $½ trillion. We know this bill raises taxes by nearly $½ trillion. And we know it does not accomplish the fundamental goal the President put forward when we embarked on this debate about health care reform.

The American people are beginning to realize and if they have not realized yet will be shocked to hear that this bill is not going to cut the cost of health care for people who have insurance already. That is the very reason this debate was embarked upon, not just access for people who do not have health care insurance but to bring the costs down. Health care has gone up 130 percent in the past 10 years. This bill will not address that. In fact, estimates show that for some folks, the cost of health care will go up.

There are basically five reasons why I cannot support this measure as a Senator from Florida.

I am concerned, first of all, about access and quality of care for our seniors. When you take $½ trillion out of Medicare, my fear is that it is going to diminish the quality of care for seniors in Florida.

It is said on the other side that we are not going to take away benefits, that we are just going to take money away from providers. It was said on the other side that the new insurance will take care of uncompensated care, so that the cuts to hospitals and to other providers will not really hurt seniors in the end. I think that is a tremendously risky experiment.

I cannot believe, at the end of the day, when we pay providers less, it is not going to affect benefits. Right now, studies show that 24 percent of seniors on Medicare trying to find primary care physicians cannot find one. I get letters from seniors in Florida who say they cannot find a doctor who will take their Medicare. We know in Medicaid it is worse. We know in Medicaid that if you are just going into the program and trying to find a physician, almost 40 percent of the physicians will not take you. In metropolitan areas for specialists, it is up to 50 percent who will not take Medicaid.

I fear that if we take nearly $½ trillion out of a program that is already in financial trouble, a program that in the next 7 years is going to be in serious financial trouble and not be able to

meet its obligations, that it is going to hurt seniors.

I have heard this discussion about how we are prolonging the life of Medicare. The distinguished chairman just spoke about it. But when you look at what the Actuary at HHS has said about that assumption, the assumption is that we are not going to restore the 21-percent decrease in physician payments which, of course, as soon as we get back in the new year, we are going to have before us.

You cannot take money out of Medicare and pay for a new program and shore up Medicare. You do not need an actuary or an evaluation or an analyst to tell you that. It is common sense. You cannot get blood from a stone. If the doctor is not in, it is not health care reform.

I have received a letter, as many of my colleagues have, from an organization called 60 Plus which represents 5.5 million seniors. James Martin, the president of 60 Plus, writes:

> Cutting half a trillion dollars from Medicare while adding 31 million more to the health care rolls is an outrage.
>
> 60 Plus strongly supports health care reform but first we should do no harm to a system serving so many so well. . . . Make incremental changes that do not bankrupt a system already teetering on insolvency.

I want to talk a minute about Medicare Advantage. There are more Floridians in Medicare Advantage than any other State. A lot has been said about this program. We have had amendments to try to stop the cuts. Mr. President, 950,000 Floridians—Medicare Advantage is a great program, and people in Florida enjoy it. Seniors enjoy it because they get more than regular care; they get eye care, hearing care, wellness, diabetic supplies, and other things that add to the quality of life of seniors and help their entire health care. These Medicare Advantage providers are actually working hard to make sure their senior customers are happy, not a concept you hear a lot about when the government is in charge.

There is a fix for Florida, as has been talked about, but I wish to talk about what that fix is, as I understand it. It is an off-ramp. For the rest of the country, it is going to be somewhat of an exit. For Florida, it is an off-ramp.

First of all, we don't know what will happen in conference. The Senate cuts $120 billion; the House cuts $170 billion. I don't know if the Florida fix will still be there. But in talking to experts and reading the bill myself—specifically around page 895 through about 901 of the original Reid bill—there is this grandfathering in for folks in Florida, and other areas, but part of Florida is covered. Of the 950,000 people, the experts think 150,000 to maybe as many as 250,000 will not get this grandfathering in. They are going to get the cuts to Medicare Advantage. So this is not good for them. Then, for the others, say, 700,000 people or so, every year, starting in 2013, their benefits—or the payments to the providers for benefits—are going to decline 5 percent a year. That is on pages 895 through 897. So it is an off-ramp. Every year, less payments. Every year, less benefits.

I talked to one provider down in Miami that many Senators in this Chamber have visited. He runs a very successful Medicare Advantage Program. He said these cuts would be devastating. So while it might not be an exit for Florida right away, it is certainly going to be an off-ramp that one day ends up being an exit.

Let's remember that many of the folks on the other side of the aisle who are proposing these cuts to Medicare Advantage didn't vote for Medicare Advantage to start with. They don't like it. They don't like the private sector being involved. They don't like these extra benefits being provided. It goes against what they philosophically believe. But I know Floridians like it. Because this bill cuts it, I can't be for it. No one can guarantee to me that in the next 10 years Medicare Advantage in Florida will be as robust as it is today.

I am concerned also about the home health care payments. I am concerned about what it is going to do to the small business home health care providers in Florida. I talked to the largest provider of home health care services in Florida, and he said: We will be fine, but the small businesses—the mom and pops who do this—will go out of business. That is disconcerting in a State with 11½ percent unemployment.

The second reason I can't support this bill is this is going to have a devastating effect on our State budget in Florida. We talked today to the head of the Florida health care system, the Agency for Health Care Administration, and these increases in Medicaid, raising Medicaid from 100 percent of poverty to 133 percent, are going to cost Florida an estimated $3½ billion over the next 10 years. That is $3½ billion Florida can't afford to pay.

Our budget has gone from $73 billion to $66 billion in a short period of time with the economic decline. Unlike this Chamber, which spends money it doesn't have, Florida has to balance its budget. So what happens when you have less money? You have to cut programs. But when you have a Federal mandate, you can't cut that. So what do you cut? You cut education and teachers. You cut law enforcement—not good for Florida. This is a burden Florida can't afford to pay. That is why all the Governors in the country—virtually Republican and Democratic alike—including our Governor, Charlie Crist, are against this unfunded mandate.

The third reason I can't support this bill is because it raises taxes—$518 billion. What happens when the drug company that makes your medicine or the medical device company that makes the lifesaving implement for you gets taxed? They are going to pass it along to you. They are going to put it right in the bill. That is the way it is going to work. That is why health care costs aren't going down for the 170 million Americans who have health insurance. In fact, for some, they are going to go up. That is not health care reform.

Fourth, this is a budget-busting bill. It is not deficit neutral. Let me explain why. You will hear reports this is going to cut more than $100 billion from the deficit over the next 10 years. Only in Washington, DC, could you come to this calculation. It is funny math. We have this Congressional Budget Office, which is sort of the arbiter of all things financial here in Washington. You send them a proposal and they give you an answer. But it is not a thinking answer; it is an analytical answer, and it gets gamed. What you send them determines what you get back. They only look at a 10-year period—what it is going to cost in the next 10 years. If you bring in more money than you spend in the next 10 years, then it will cut the budget. It will cut the deficit. That is what they say back to you.

So what was done in this bill in order to get something that would fulfill the President's promise to be a budget cut or at least deficit neutral? We have 10 years of taxes and 6 years of benefits. Most of the benefits don't start until 2014, yet the taxes start in 2 weeks—in January. That is akin to you going to buy a home and saying: I am going to live here for 10 years, and they say: That is great, start paying today and you can move in in 2014.

It is funny math. This is a $2.5 trillion new entitlement program we can't afford. We can't afford the programs we have, let alone the programs the majority in this Chamber want. We have a $12 trillion deficit. We have $30-some trillion in unfunded entitlement deficit. We have hundreds of thousands of dollars of debt for every family in America, and no plan to pay for it. We spend more than we take in. We spent $1.4 trillion—we have a $1.4 trillion deficit this year—just the debt this year. That is more than the past 4 years combined.

The American people are on to this and they are angry about it and they should be.

The ACTING PRESIDENT pro tempore. The Senator has used 20 minutes.

Mr. LEMIEUX. Fifth and finally, the reason I can't support this bill is it doesn't lower the cost of health insurance for Americans.

The Congressional Budget Office has said the majority of Americans would see the same increases as they currently get under the current system. For some people, individual policies, for example, they will receive a 10- to 13-percent increase.

I am going to conclude by saying this, and this will probably be the final time I will speak before we have final passage on this bill. I long for what could have been. We could have worked together. We could have had an 80-vote bill. We could have had a bill that would say insurance companies can't drop you if you are sick, insurance

companies can't deny you if you have a preexisting condition, insurance companies can compete across State lines, set up an exchange, give a tax credit to the American people, put money in their pocket, let them be consumers who go out and buy health insurance and drive the cost down because the market economy would, once again, work in health care.

This bill doesn't solve the problem. It perpetuates it and makes it worse. At the same time, it cuts health care for seniors and doesn't lower the cost of health insurance for most Americans. For more and more seniors, the doctor will not be in. That is not reform. For those reasons, respectfully, for that lost opportunity, I will not be able to support this bill.

I yield the remainder of my time to my friend and colleague from Alaska.

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

Ms. MURKOWSKI. Mr. President, I wish to acknowledge the very eloquent and articulate comments of my friend from Florida. We recognize that his time in the Senate has been relatively short, but in terms of an individual jumping in with both feet and embracing the challenges we clearly have in front of us and representing the constituents of the State of Florida in the manner he has, I think that deserves public recognition, and I thank the Senator for his leadership.

We have had occasion to talk about the similarities between Alaska and Florida. You might not think there would be much in relationship there—my being from the North and the cold versus the sunny South in Florida. But when it comes to our senior populations, this is where we truly have a shared interest. Florida has probably the largest number of seniors per capita, and in my State of Alaska, we are the State that has the fastest growing population of seniors per capita.

One might not think of Alaska as being a retirement haven, but more and more we are becoming so, and we share the same problems when it comes to access. When you can't get in to see a provider, when that insurance card is all we have given you, then we haven't done anything to provide for a level of care to improve the situation for the residents of Florida or the residents of Alaska. So what we are doing today—as we move toward final passage on legislation that I would concur with the Senator from Florida does not fix the problem—we are not dealing with how we appropriately and adequately provide for access to quality health care. We have much work remaining before us.

We have had some time these past couple days—actually these past couple weeks—as we have spent a considerable amount of time in our offices waiting for votes at 1 in the morning or votes at 7 o'clock in the morning, and I have had a chance to go through some things on my desk, but I have also had an opportunity to spend a lot of time checking to see what people are saying when they are contacting our office. The volume of correspondence, whether in e-mails or faxes or phone calls, coming in from Alaskans during this time has been absolutely unprecedented.

I think, typically, in the legislative calendar about this time—several days before Christmas—you don't see constituents contacting their Senators and pounding the drum. Well, let me tell you, the people in Alaska are pounding the drum. In just the past 24 hours, we have gotten probably close to about 500 health care e-mails that have come in. Overwhelmingly these are e-mails from constituents saying: No, this is not good. You must do what you can to prevent this reform package, as you call it, from moving forward.

It seems the longer the people from Alaska, the longer the people from around this country have to look at what is contained in this 2,000-plus page bill, the more they realize the negative impacts, the consequences to them and their families and their businesses and they are no longer silent. I have had so many calls and letters coming from people saying: I have never weighed in with you before, never weighed in with my delegation, but this is something I can't keep silent on.

When you look at some of the ones that have come in, these are just today's. This is one from a woman in Anchorage who says: Yesterday on the TV news I heard about the sweetheart deal Senator NELSON made regarding the rest of us paying Nebraska's Medicare bill forever. To say I am angry is putting it mildly.

There is a gentleman in Fairbanks who writes in: I am very skeptical about this mandatory health insurance that apparently everyone will have to buy in.

Here is one from a fellow in Anchorage also. He says: You are moving a health care bill that can't be understood unless a person has a law degree.

Another individual, and this is an interesting one. He and his family apparently own four indoor tanning businesses in Alaska. We need to get a little sunshine, even if it is not what God has provided us. But these are good businesses, and he says: When did this go from a 5-percent tax increase for cosmetic surgery to 10 percent for indoor tanning anyway? And he adds: Adding another 10-percent tax hike on small businesses, like indoor tanning, will likely drive many families, just like mine, into bankruptcy.

I could go on and on in terms of the stacks of correspondence and phone calls we have gotten, but suffice it to say, the more people understand what is in this legislation, the greater their concerns are and the greater their outrage as they learn what is contained in it.

One of the things I learned just yesterday, which I don't think we have gotten the focus or the attention on—and this is a concern that was raised by the Anchorage homebuilders and the Alaska State Home Building Association. They have pointed out that as an industry, the homebuilders industry, they are being unfairly singled out in this bill.

We have talked about the employer mandate that is contained in this legislation, and that mandate applies to those businesses with 50 or more employees. But there is a zing in this legislation to homebuilders who are now responsible for providing federally approved health benefits if they have five or more employees.

Look at what is going on throughout this country in terms of industries that have taken a real hit with this economic downturn and this recession. The homebuilding industry has suffered incredibly during this downturn. On top of depressed house prices and increases in home foreclosures, now we are now going to punish them with an employer mandate that treats them worse than any other employer. In other words, if you have five or more employees as a homebuilder, you need to know that your industry is the one, the only one that will be subject to the employer mandate of $750 per employee.

In Alaska, we checked to see how many individuals are homebuilders within the State. We have about 250 homebuilders in Alaska. But when you look to see how many individuals they employ, that is about 3,078 employees, it is about 12 employees to every builder. So the total homebuilding industry that would be impacted is about 800 employers in my State.

Yesterday, there was a letter sent to Members of the Senate. This is from the homebuilding industry as well as many other associated industries—the air-conditioning contractors, the builders and contractors, the electrical contractors. I wish to mention some of the statements that are contained in this letter. Again, it is written yesterday. They say:

> We are writing to express our strong opposition to language contained in the managers' amendment which excludes the construction industry from the small business exemption contained in the bill. The fact that the managers' amendment was made public less than 2 days before the first vote on the matter has increased the difficulty of playing a constructive role in the legislative process.

I will take a little detour from the letter. This is part of the problem. You have these organizations and groups, and there is a list of about a dozen of them here, that have signed on to this letter. They had literally hours before we were forced to vote on the managers' amendment. They did not know what was in the bill and how it impacted them. They go on to say:

> The managers' amendment singles out the construction industry by altering the exemption so it applies only to firms with fewer than 5 employees. This is an unprecedented assault on our industry. It is unreasonable to presume that small business owners can bear

the increased costs of these new benefits simply because Congress mandates that they do so.

They go on to conclude in the letter:

We are unaware of any data or evidence that suggests that the needs and struggles of a construction contractor with fewer than 50 employees are so different from those of small business owners in other industries, and absent such convincing evidence, we are left to assume that this specific provision is merely a political payoff to satisfy the desires of a small constituency.

Those are some pretty strong words there toward the end. But it does cause you to wonder why, in this legislation, we are going to require that businesses—only businesses in excess of 50 employees are going to be subject to this mandate. Why this unprecedented assault on the homebuilders? I don't get it. But what it does cause me to get is that there is a heck of a lot more out there that, the more we read it, the more we sit down and we connect the dots, the more we realize this fish we have set out on the front porch is going to continue to stink.

It stuns me. We have the homebuilders up in Alaska who are beside themselves, saying: Can you take a look at this and let me know how the Senators feel. What are you going to do about this, LISA, is the question I have received.

This is something we all have to reckon with.

Madam President, at the conclusion of my remarks, I ask unanimous consent that a copy of the letter be printed in the RECORD.

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

(See Exhibit 1.)

Ms. MURKOWSKI. I am going to speak a little bit about how aspects of this legislation have impact specifically on my State. As a rural State, sometimes the impacts we see are different than you have in more urban States. Our geography is different, our lack of providers, our high senior population, our extremely expensive costs, there are a lot of dynamics at play that cause real issues and real concerns.

There have been many words that have been exchanged on this floor about what this bill doesn't do or what it does do. I find it helpful to go to the experts, the think tank in my State, and ask them flat out. We have an institution at the University of Alaska called the Institute of Social Economic Research. I take what they have to say very seriously.

I also take very seriously what our Congressional Budget Office has to say, what the CMS Actuary has to say, because, as my colleague from Florida pointed out, these are the independent arbiters. These are the guys whose job it is to work the numbers. I would like to discuss some of the findings from the University of Alaska and also try to inject a little bit of common sense into the debate as to what it means for Alaska, how it increases their premiums, how it raises that cost curve on the Federal health care expenses, the taxes on small businesses for the individuals, the families, the health benefits of the police, the firefighters, other public protective service people who put their lives on the line for so many. These are the things about which, unfortunately, we might not be getting the full picture.

Our colleagues on the other side have claimed that health care coverage will be expanded. Again, let's go to our nonpartisan entities—the CBO and the Joint Committee on Taxation. The average premium per person, if you purchase in the individual market, is going to be 10 to 13 percent higher in 2016 than the average premium under current law. That tells you if these Federal scorekeepers are correct, your premiums are going to go up under this health bill if you buy insurance yourself.

In Alaska, according to ISER—again, the Institute for Social and Economic Research—you have about 28,000 Alaskans who would pay 12 percent more for their premiums. It is going to cost an individual in my State an extra $1,100 per year and a family in my State nearly $3,000 more per year for the coverage by 2016.

Again, you have to ask the question: Is health care expanding? This bill forces you to purchase federally approved health care; otherwise, you have to pay the penalty of $750 or 2 percent of your income if you earn more than $37,500.

If you look at Alaska's population, this is going to bring in more than 50 percent of Alaska's population who are going to be penalized if they fail to have health insurance. Again, you ask the question: Is health care coverage going to be expanded?

Since the law we are advancing is going to require that you buy federally approved health insurance, and then we are going to penalize you if you do not buy it, then what you have is the heavy hand of the Federal Government that forces you to buy health insurance, which is going to cost about 12 percent more once this bill is enacted—12 percent more than it would today.

The Democrats will also talk about the hidden tax on families and how that will go away because once this bill passes, under this bill, everyone is going to have coverage. Alaskans and all Americans who do not get federally approved health insurance that the Federal Government is going to require that you have, they are going to be fined $750, 2 percent of your taxable income, and what the Democrats will not tell you when they say health care coverage is going to be expanded or the hidden tax is going to go away is, those with income greater than $37,500—again, affecting over 50 percent of the people in my State—are going to be taxed a full 2 percent of their household income, once the bill is fully phased in, if they do not get health insurance. It is this penalty that is going to raise $15 billion to help pay for this bill. This is how we are paying for the bill.

CBO and CMS told us the taxes on medical devices—whether they are tongue depressors or x-rays or blood sugar meters—these are going to be passed on to the individuals so you are going to be taxed for vital medications and other health products. The question you then have to ask yourself: OK, so do these hidden costs actually go away?

I suppose they do because they are no longer hidden. What we will have done is we will have raised your premiums, we will have increased the penalties on those earning more than $37,500 who did not buy into health insurance, and we will have taxed your tongue depressors and x-rays to pay for the bill.

In addition, the smallest of the small businesses are going to be taxed if they do not provide insurance for their employees, and individuals and couples earning over $200,000, they are going to be penalized because they are the higher income earners.

The Democrats are also telling you that as Medicare patients, they are going to get some good, positive things. They will get free preventive services. This is good. This is absolutely great. We should be encouraging preventive services.

But as my colleague from Florida was explaining, as I mentioned, after this bill passes, are any of the 13—I think we are down to only 12 now—primary care doctors in Alaska, in the Anchorage area anyway, accepting new Medicare patients? We are saying we are going to provide this service to you at no cost. But, again, if you can't get anybody who will take you as a patient, how are we helping you? We have heard from a doctor in Anchorage. In fact, I have an opinion piece that was published just this week in the Anchorage Daily News. She indicates she is dropping out of Medicare and she is doing it because of this legislation.

I ask unanimous consent that be printed in the RECORD.

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

[From the Anchorage Daily News, Dec. 18, 2009]

OPINION: DOCTORS AND PATIENTS, NOT FEDS, KNOW BEST

(By Ilona Farr, M.D.)

I have made the heart-wrenching decision as a physician to opt out of Medicare. I do so after working with Sen. Stevens, Sen. Murkowski and Rep. Young for a decade in hopes we could ensure seniors would be able to continue to receive medical services in Alaska.

On a visit costing $115, Medicare pays $40, secondary insurance pays $7, and the rest—$68—is a loss, not a tax write-off. It takes six insurance paying patient visits to offset losses from one Medicare or Medicaid patient.

The House health care bills, HR3590/HR3962, increase the number of people not paying their share of the costs and will lead doctors to opt out of Medicare or retire early.

Anchorage has 75 family physicians, down from 180. Physician shortages like these are

caused by government interference in the free market. Government artificially keeps reimbursement rates low, forcing other patients, and insurance companies, to pick up the additional costs. Family practice residencies are filled with foreign medical graduates because of high costs (more than $200,000) associated with medical school. Low physician reimbursement rates make it difficult to repay loans.

Medicare and Medicaid auditors are paid on commission, can fine us $2,000 to $50,000 for one charting mistake or billing error, and then extrapolate this over the practice and drive us out of business . . . all for one minor mistake. There is fraud, but this system that penalizes us severely for simple errors is untenable.

In these bills malpractice reform is restricted, health savings accounts (which help reduce costs and fraud) are essentially eliminated, and taxes and fees on insurance and medical services are increased. There are no Medicare/Medicaid rate, rule, or audit reforms, or tax write-offs for business losses.

One section in Sen. Harry Reid's bill says Medicare will no longer pay for home health services, durable medical goods, and possibly labs, X-rays, prescriptions or other services written by providers who have opted out of Medicare. Many talented physicians have had to opt out of Medicare (and by this law must opt out of Medicaid and the military's Tricare also) to stay in business. People will no longer be able to see these physicians because of government financial restrictions or will be forced to pay all medical bills associated with these visits themselves.

Bills under consideration cut Medicare spending by $460 billion, raise fees on medical services, increase physicians' administrative burdens, promote electronic medical records with mandated reporting of outcomes data, and increase business costs so it will be impossible for small practices to survive.

My decision to withdraw from Medicare was also precipitated by U.S. Preventive Services Task Force's recommendation that breast cancer screening mammograms should only be done on women between age 50 and 74. Approximately 48 percent of my patients with breast cancer developed it before age 50. Up to 1.2 percent of my practice, mostly young mothers, could have died if this were a national guideline.

The Senate bill has this task force and other committees determining what tests will be covered for patients. I am concerned that penalties may be imposed on insurance companies, and maybe providers, for going against these guidelines. The Hippocratic Oath compels us to protect the health of all humans throughout life, and many provisions in these health care bills would cause us to violate that oath.

Physicians and patients (not government) should decide the best, most cost-effective medical treatment for patients. Government should not dictate to insurance companies or providers which tests can or cannot be covered. Medicine is changing too rapidly for guidelines to be made at a national level.

I have worked in government medical facilities and in private practice for the last 26 years. Physicians provide timelier, less costly and more patient-oriented care if not overseen by hordes of non-producing government administrators.

I am in favor of reform, but current bills before Congress will collapse our health care system and work against the freedoms we are guaranteed under the Constitution. Government should not be allowed to force people to purchase health insurance, mandate what health care services you are allowed, or increase our taxes astronomically to support a huge government health care bureaucracy that will bankrupt us as individuals and as a nation.

Ms. MURKOWSKI. It is no secret, in my State of Alaska and in far too many States around this country, we do not have enough providers that will take these individuals. ISER has said seniors in low payment Medicare States will be forced to wait in line. Alaska is one of two States—we are, I think, second to last in terms of Medicare payments and where we stack up in relation to the reimbursement. ISER goes on to state:

> Independent of the doc fix, in Alaska the remainder of seniors are at risk of long lines to see a primary care doctor and overflowing to community health center and hospital emergency rooms where existing capacity is highly likely to be quickly overwhelmed and long wait times become increasingly common.

ISER has also said that additional new insured patients are going to hurt Medicare beneficiaries, and they state:

> Federal healthcare reform applied to Alaska likely will exacerbate an already very challenging situation for Alaska's seniors as baby boomers age into Medicare and finding themselves waiting in line behind a rapidly expanding line of better paying private plans.

We are told 5 years from now our Medicare population is going to increase by 50 percent. We cannot accommodate those who are Medicare-eligible now. Our boom is not sustainable.

The CMS Actuary has said:

> The Reid bill reduces payments to health care providers, which is unlikely to be sustainable on a permanent basis. As a result, providers could find it difficult to remain profitable and absent legislative intervention, might end their participation in the Medicare program.

It is happening. Doctors, providers, physicians are making those decisions as we speak. They are opting out. So this is not some theoretical approach to the problem. This is happening.

Madam President, how much time do we have on our side?

The PRESIDING OFFICER. The Senator has 17 minutes.

Ms. MURKOWSKI. If I may ask my colleague from Kansas, do I understand the Senator is seeking about 10 minutes?

Mr. BROWNBACK. Yes.

Ms. MURKOWSKI. Madam President, I want to speak about small businesses because we have all been talking about the impact to small businesses. Under this bill, as we know, small businesses are going to be penalized $750 per employee if even one of their employees seeks governmental health care through Medicaid or through Federal subsidies. So if you have 50 or more employees, you can be expected to pay fines in an amount of $750 per employee, which amounts to over $37,000 or $3,000 for that individual employee.

I think we need to put it into perspective in terms of who these businesses are. These are the solo-practitioners, like the one-lawyer office or the small doctor's office. If these individuals purchase health care in the individual market, they are going to see their premiums go up an extra $1,160 per year for a family—nearly $3,000 more in 2016.

Alaska is defined as a high-cost State. If you are a small business that can afford to pay good health and dental benefits for your employees and those benefits amount to $8,500 per individual or $23,000 per family, in a high-cost State such as Alaska, you look to be hit with a 40-percent excise tax because you basically want to provide your employees with good benefits.

Again, according to ISER:

> Alaska is a high cost state and thus, roughly 50 percent of health plans in Alaska will be subject to the tax by 2016, compared to only 19 percent average in the Lower 48.

Again, by 2016, 50 percent of the plans in my State will be subject to this 40-percent excise tax.

I ask unanimous consent to have printed in the RECORD a letter we received from the municipality of Anchorage, Police and Fire Retiree Medical Trust.

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

MUNICIPALITY OF ANCHORAGE, POLICE & FIRE RETIREE MEDICAL TRUST,

December 15, 2009.

PLAN ADMINISTRATOR REPORT

At the November 24, 2009 PFRMT board meeting I brought to your attention a health care bill, HR 3590as—Patient Protection and Affordable Care Act, being considered in the US Senate that contains provisions that if implement into law would require that the Municipality of Anchorage (MOA) and the Trust to make changes to their current business practices. S 1796—America's Healthy Future Act of 2009 also contains these changes and could become effective January 1, 2010.

Three provisions in the bill that are of particular concern are:

1. Inclusion of health care benefits as taxable income to employees. Not only will this increase the employee's taxable income but the MOA's payroll taxes will also increase.

SEC. 9002. INCLUSION OF COST OF EMPLOYER-SPONSORED HEALTH COVERAGE ON W–2. (p. 1996)

(b) EFFECTIVE DATE—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

2. Taxation of MOA health care plans. This tax will be imposed on the employer. The current MOA health plan design is apt to be considered to have an ''excess benefit''. This would make it subject to a 40% excise tax. There is also an aggregation rule for the value of employee coverage with multiple employers or retiree medical (example, veterans and rehired police officers and fire fighters). If a retiree would purchase MOA Health Insurance that is considered excessive, the 40% excise tax would be incurred by the general fund of the Medical Trust. One may argue that the tax is a tax to the employer. The argument can also be made that the Trust is an integral part of the Municipality. This was a conclusion determined in IRS PLR–06164–96. Thus the tax would be payable from the Trust general fund assets.

SEC. 9001. EXCISE TAX ON HIGH COST EMPLOYER-SPONSORED HEALTH COVERAGE. (P. 1979)

''any excess benefit with respect to coverage, there is hereby imposed a tax equal to 40% of the excess benefit.''

(d) (1) (E) GOVERNMENTAL PLANS INCLUDED

IRS PLR–06164–96 Because the Trust is an integral part of the Municipality, it is not required to file an annual federal income tax return. (p.5)

3. Current Municipal employees are able to be reimbursed tax free from money that they have placed in their flexible spending account for over the counter (OTC) medicine. Retired police officers and fire fighters also currently are allowed this reimbursement as part of their medical benefit. Under the rules of this bill, these reimbursements would no longer be allowed. This is a reduction in employee benefits. It is also likely to encourage an increase the utilization of more expensive non-OTC prescriptions, as they are a covered expense.

SEC. 9003. DISTRIBUTIONS FOR MEDICINE QUALIFIED ONLY IF FOR PRESCRIBED DRUG OR INSULIN. (p. 1997)

This bill contains expenses that should be considered and planned for accordingly. A December 2009 press release from Mercer, an HR consultancy stated,

Nearly two-thirds (63 percent) of employers in a recent survey by Mercer say they would cut health benefits to avoid paying an excise tax included in the Senate's Patient Protection and Affordable Care Act, unveiled November 18. Mercer estimates that one in five employers offer health coverage that would be deemed ''too generous'' and thus be subject to the Act's 40 percent non-deductible tax on the excess value.

Two letters have been sent to the MOA informing them of these matters. The dates of these letters were November 25 and December 5, 2009. Since then, Larry Baker, Senior Policy Advisor, in the Mayor's Office informed me that the MOA's benefit consultant, The Wilson Agency, affirmed that the current MOA health plans are going to be subject to the 40% excise tax. They are contacting Senator Begich but beyond that he did not specify what the course of action was going to be.

I recommend two points of action. Bring the PFRMT membership up to date of this situation. And contact Senator Begich to inform him of the negative impact that these bills will have on our retired police officers' and fire fighters' medical benefit.

Sincerely,

LORNE BRETZ,
Plan Administrator.

Ms. MURKOWSKI. The city of Anchorage is the largest city in Alaska. We received this letter last week. In the letter, they cite specifically three provisions in the bill that are of particular concern—No. 1, inclusion of health care benefits as taxable income to employees.

It states:

Not only will this increase the employee's taxable income but the [Municipality of Anchorage's] payroll tax will also increase.

The second point is the taxation of the municipality's health care plans.

This tax will be imposed on the employer. The current [municipality] health plan design is apt to be considered to have ''an excess benefit.'' This would make it subject to a 40% excise tax.

They go on to say:

There is also an aggregation rule for the value of employee coverage with multiple employers or retiree medical. If a retiree would purchase [the municipality's] Health Insurance that is considered excessive, the 40% excise tax would be incurred.

One may argue that the tax is a tax to the employer. The argument can also be made that the Trust is an integral part of the Municipality. Thus the tax would be payable from the Trust general fund assets.

Their third point is:

Current municipal employees are able to be reimbursed tax free from money they have placed in their flexible spending account for over the counter medicine. Retired police officers and firefighters also currently are allowed this reimbursement as part of their medical benefit. Under the rules of this bill, these reimbursements would no longer be allowed. This is a reduction in employee benefits. It is also likely to encourage an increase [in] the utilization of more expensive non-OTC prescriptions, as they are a covered expense.

There are about 400 members that are part of the Police and Fire Retiree Medical Trust. When they find out, as I am sure they will, that essentially they are going to be taxed on their plan—I think most of these firefighters and police officers don't view themselves as having access to a Cadillac plan. They are just firefighters and police officers. But this is coming from their trust fund, expressing great concern over what we have in front of us.

I have mentioned that we have received a copy of an opinion piece from a primary care provider in Anchorage who has outlined why she is opting out of the Medicare system in Alaska.

I ask unanimous consent to have her letter printed in the RECORD.

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

[From the Anchorage Daily News, Dec. 18, 2009]

OPINION: DOCTORS AND PATIENTS, NOT FEDS, KNOW BEST

(By Ilona Farr, M.D.)

I have made the heart-wrenching decision as a physician to opt out of Medicare. I do so after working with Sen. Stevens, Sen. Murkowski and Rep. Young for a decade in hopes we could ensure seniors would be able to continue to receive medical services in Alaska.

On a visit costing $115, Medicare pays $40, secondary insurance pays $7, and the rest—$68—is a loss, not a tax write-off. It takes six insurance paying patient visits to offset losses from one Medicare or Medicaid patient.

The House health care bills, HR3590/HR3962, increase the number of people not paying their share of the costs and will lead doctors to opt out of Medicare or retire early.

Anchorage has 75 family physicians, down from 180. Physician shortages like these are caused by government interference in the free market. Government artificially keeps reimbursement rates low, forcing other patients, and insurance companies, to pick up the additional costs. Family practice residencies are filled with foreign medical graduates because of high costs (more than $200,000) associated with medical school. Low physician reimbursement rates make it difficult to repay loans.

Medicare and Medicaid auditors are paid on commission, can fine us $2,000 to $50,000 for one charting mistake or billing error, and then extrapolate this over the practice and drive us out of business . . . all for one minor mistake. There is fraud, but this system that penalizes us severely for simple errors is untenable.

In these bills malpractice reform is restricted, health savings accounts (which help reduce costs and fraud) are essentially eliminated, and taxes and fees on insurance and medical services are increased. There are no Medicare/Medicaid rate, rule, or audit reforms, or tax write-offs for business losses.

One section in Sen. Harry Reid's bill says Medicare will no longer pay for home health services, durable medical goods, and possibly labs, X-rays, prescriptions or other services written by providers who have opted out of Medicare. Many talented physicians have had to opt out of Medicare (and by this law must opt out of Medicaid and the military's Tricare also) to stay in business. People will no longer be able to see these physicians because of government financial restrictions or will be forced to pay all medical bills associated with these visits themselves.

Bills under consideration cut Medicare spending by $460 billion, raise fees on medical services, increase physicians' administrative burdens, promote electronic medical records with mandated reporting of outcomes data, and increase business costs so it will be impossible for small practices to survive.

My decision to withdraw from Medicare was also precipitated by U.S. Preventive Services Task Force's recommendation that breast cancer screening mammograms should only be done on women between age 50 and 74. Approximately 48 percent of my patients with breast cancer developed it before age 50. Up to 1.2 percent of my practice, mostly young mothers, could have died if this were a national guideline.

The Senate bill has this task force and other committees determining what tests will be covered for patients. I am concerned that penalties may be imposed on insurance companies, and maybe providers, for going against these guidelines. The Hippocratic Oath compels us to protect the health of all humans throughout life, and many provisions in these health care bills would cause us to violate that oath.

Physicians and patients (not government) should decide the best, most cost-effective medical treatment for patients. Government should not dictate to insurance companies or providers which tests can or cannot be covered. Medicine is changing too rapidly for guidelines to be made at a national level.

I have worked in government medical facilities and in private practice for the last 26 years. Physicians provide timelier, less costly and more patient-oriented care if not overseen by hordes of non-producing government administrators.

I am in favor of reform, but current bills before Congress will collapse our health care system and work against the freedoms we are guaranteed under the Constitution. Government should not be allowed to force people to purchase health insurance, mandate what health care services you are allowed, or increase our taxes astronomically to support a huge government health care bureaucracy that will bankrupt us as individuals and as a nation.

Ms. MURKOWSKI. One of the things we don't have in this legislation is a provision that relates to medical malpractice. It has been stated that, in Alaska, you tried medical malpractice reform and we haven't seen the positive impacts.

I ask unanimous consent to have printed in the RECORD a statement from the Alaska State Medical Association, along with an article that was published in Alaska Medicine in September of 2009 entitled ''Malpractice Relief, Lower Premiums, Tort Reform Add to Alaska's Appeal.''

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

ALASKA PHYSICIANS' GROUP: SENATOR ERRED ON TORT REFORM

ANCHORAGE, ALASKA (Dec. 21, 2009)—The Alaska State Medical Association (ASMA), which represents physicians throughout Alaska and is primarily concerned with the health of all Alaskans, is taking issue with Sen. Mark Begich's stance on medical liability reform.

In an interview with Fox News on Dec. 7, 2009, Alaska's junior senator opined that tort reform in his home state has not worked. ASMA asserts that Begich did not accurately portray the facts in that nationally broadcast interview and that medical liability reform in Alaska serves as a shining example for the other 49 states.

''Alaska's physicians have worked hard for at least the last 35 years to achieve meaningful and equitable liability reform measures,'' ASMA President Brion J. Beerle, MD, wrote today in a letter to Sen. Begich. ''Those efforts have resulted in a stable marketplace for insurers that provide medical professional liability coverage to Alaska's physicians at rates that are competitive.''

More than 90% of medical liability coverage in Alaska is provided by two, not-for-profit insurers—MIEC and NORCAL—that are owned by their policyholders (mutual insurers) and overseen by boards of governors, all of whom are physicians, with representation on those boards by Alaska physicians.

''The cumulative result of the Alaska physicians'' advocacy has been a success for physicians and their patients,'' Beerle wrote. ''For example, according to the Medical Liability Monitor Survey, 2008 premiums paid by Alaska's internists average just 24% of those paid by the interests in the five most expensive states; general surgeons pay about 25%; and obstetricians/gynecologists pay about 31%. According to that same 2008 survey, the premiums for those same specialties are in the lowest quartile of all states plus the District of Columbia.

''MIEC also has returned excess earnings to its policyholders in 16 of the last 19 years; and NORCAL policyholders received dividends in 12 of the last 18 years. MIEC has, in addition, reduced its rates by 5% in 2009 and also for 2010,'' the ASMA president added.

Writing on behalf of the association he leads, Beerle noted that because of tort reform, premiums Alaska's physicians pay for liability coverage is generally not significant in the cost of operating a medical practice.

''The factor that does have a material effect is the cost of practicing defensive medicine,'' he wrote.

The American Medical Association has estimated that the annual cost of the practice of defensive medicine in the United States ranges from $99 billion to $179 billion.

''Until medical liability reforms similar to those enacted in Alaska are adopted nationwide, the additional costs of the practice of defensive medicine will continue to be a driver in the cost of health care in Alaska and throughout the country,'' Beerle concluded.

[From Alaska Medicine, Sept. 2009]

MALPRACTICE RELIEF

(By Andrew Firth and Roger Holmes)

It is seemingly a universal truth that wherever one practices in the United States, malpractice insurance costs too much. But in Alaska, the average medical malpractice premiums are lower than at least 35 other states, a national survey shows.

Physicians in Alaska pay much less than their colleagues in the nation's five most costly states, according to the Medical Liability Monitor Survey, 2008. Premiums paid by Alaska's internists average 24 percent of those paid by internists in the five highest states; surgeons here pay roughly 25 percent, and obstetrician/gynecologists pay about 31 percent. (The top five states vary by specialty.) Some of the difference in cost may be societal, but part of it has to do with the tort reforms that have passed, or not passed, in each state.

In Alaska, our history is similar to many states where the costs are lower. It's a state with an active medical society (the Alaska State Medical Association), an engaged membership, a broad coalition of providers and an enlightened legislative body that recognizes the connection between malpractice costs and access to care.

In 1975, Alaskan physicians suddenly were confronted with a disappearing market for medical malpractice insurance. The Legislature stepped in and created the Medical Indemnity Corporation of Alaska (MICA), a quasi-state agency funded with state money but run by a private board of directors appointed by the governor. At the same time, the Legislature modified the law governing medical malpractice claims. Among the key changes:

The burden of proof was codified, making it clear that a practitioner could only be judged against those in the same field or specialty.

Res ipso loquitur, a legal doctrine that switched the burden of proof to the health-care provider in certain instances, was abolished.

The law required that juries be told that injury alone does not raise a presumption of negligence or misconduct.

Plaintiffs were prohibited from filing inflammatory pleadings asking for millions of dollars.

The law of informed consent was codified.

The law prohibited claims that a health-care provider had orally agreed to achieve a specific medical result.

Plaintiffs were prohibited from obtaining a recovery for sums that had been paid by collateral sources, except for a select few federal programs that must, by law, seek reimbursement.

During the 1970s and '80s physicians encountered rising and falling malpractice costs as the insurance cycle reacted to changing claim experience in Alaska and elsewhere, culminating in the departure of several medical professional liability (MPL) insurers in the late 1990s.

In the mid-1990s, the Alaska State Medical Association and several MPL insurers joined with the Alaska State Hospital and Nursing Home Association, Providence Hospital and the business community to press for additional tort reforms. The result was the 1997 Tort Reform Act.

Among its achievements was a cap on non-economic damages of $400,000 except in cases of severe disfigurement or severe permanent impairment, in which the cap rises to $1 million.

Punitive damages were limited, and the standards for awarding them were tightened. Prejudgment interest was tied to the federal discount rate—Alaska's current rate is 3.25 percent. Joint and several liability was abolished in favor of comparative fault, in which each party is responsible only for its percentage share of the total fault. And parties were prohibited from using experts in medical malpractice cases unless the expert is licensed, trained and experienced in the same discipline or school of practice as the physician and certified by a recognized board.

A coalition called Alaskans for Access to Health Care—comprising ASMA, Alaska Physicians & Surgeons, the hospital association and Providence—went back to the Legislature in 2005 and argued for an even lower non-economic damage cap for health-care providers. The result was a limit of $250,000 in all cases except when damages are awarded for wrongful death or a severe permanent physical impairment that is more that 70 percent disabling. For those, the limit is $400,000.

Since then, Alaska has enjoyed a stable malpractice climate, with both of its major insurance carriers reducing rates and/or returning profits through dividend distributions.

The caps make a big difference. For example, NORCAL Mutual, which writes policies in Alaska and California, also does business in Rhode Island, which does not limit non-economic damages in malpractice cases.

''Most rates for physicians with at least three years' practice experience (mature rates) in Rhode Island are at least double the mature rates for physicians in Alaska,'' NORCAL Marketing and Communications Manager Brent Samodurov wrote in an e-mail to Alaska Medicine. ''For several medical specialties NORCAL Mutual's rates for Rhode Island are nearly triple those for Alaska.''

MPL CARRIERS

There are two major MPL insurers in Alaska: MIEC and NORCAL. Both companies are owned by their policyholders (mutual insurers) and are overseen by a board of governors consisting of physicians.

MIEC came to Alaska in 1978 and is sponsored by ASMA. NORCAL became active in 1991 after it purchased MICA.

According to data published by the National Association of Insurance Commissioners, MIEC wrote 69.7 percent of all medical malpractice premiums for physicians in the state during 2008 and NORCAL wrote 23.4 percent. Ten other carriers shared the remaining 6.9 percent of the market.

Typical of these types of policyholder-owned companies, both MIEC and NORCAL have a long history of returning profits to policyholders through dividend distributions:

NORCAL's Alaska clients have received dividends in 12 of the past 18 years, the most recent amounting to 12 percent of each eligible policyholder's premium as of Sept. 30, 2008, according to Samodurov. He noted: ''Dividends declared are directly related to the company's loss experience in each state.''

MIEC has a similar record of returning profits to its Alaska members. MIEC policyholders have received dividends in 16 of the past 19 years in amounts that average 28.8 percent of basic premiums (for $1 million/$3 million limits) in each one of the past 19 years.

Ms. MURKOWSKI. The bottom line is from the Alaska State Medical Association:

The cumulative result of Alaska physicians' advocacy has been a success for physicians and their patients.

Again, we have seen the positive impact in Alaska because of the laws we have passed. It is unfortunate that we didn't take that opportunity as we dealt with health care reform these past many months.

I yield the floor.

EXHIBIT 1

DECEMBER 21, 2009.

U.S. Senate,
Washington, DC.

DEAR SENATOR: We are writing to express our strong opposition to language contained in the Manager's Amendment to H.R. 3590, which excludes the construction industry from the small business exemption contained in the bill. We regret that this is our first opportunity to address this issue, though the

fact that the Manager's Amendment was made public less than two days before the first vote on the matter has increased the difficulty of playing a constructive role in the legislative process.

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

This narrowly focused provision is an unprecedented assault on our industry, and the men and women who every day make the bold decision to strike out on their own by starting a business. Our members' benefit packages reflect the reality of their business models, and they proudly offer the best health insurance coverage that they can afford. It is unreasonable to presume that small business owners can bear the increased cost of these new benefits simply because Congress mandates that they do so.

In the real world, where the rhetoric surrounding this legislation will meet the stark reality of the employer struggling to make payroll, this special interest carve out is simply another bill to pay in an industry that, with an unemployment rate exceeding 18% and more than $200 billion in economic activity lost in the past year, already is struggling to survive.

And, we would be remiss if we failed to question the justification for singling out the construction industry to bear such a burden. We are unaware of any data or evidence that suggests that the needs and struggles of a construction contractor with fewer than 50 employees are so different from those of small business owners in other industries, and absent such convincing evidence, we are left to assume that this specific provision is merely a political payoff to satisfy the desires of a small constituency.

As Congress moves forward in the legislative process for H.R. 3590, we strongly encourage you to address this onerous provision that needlessly singles out small construction industry employers.

Sincerely,

Air Conditioning Contractors of America, American Institute of Architects, Associated Builders and Contractors, Associated Equipment Distributors, Associated General Contractors, Association of Equipment Manufacturers, Independent Electrical Contractors, National Association of Home Builders. National Federation of Independent Business, National Lumber and Building Material Dealers Association, National Ready-Mixed Concrete Association, National Roofing Contractors Association, National Utility Contractors Association, Plumbing-Heating-Cooling Contractors-National Association, Small Business & Entrepreneurship Council, U.S. Chamber of Commerce.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I am glad to join my colleagues in talking about the health care bill. If you looked in the New York Times today, there was a full-page ad describing the bill. I am putting it up here, the same thing that was in the New York Times today. It starts with the question, I want to receive care from my doctor. This, on one page, puts the 2,600 pages in kind of what you are going to see with this bill. It is convoluted. It is difficult. It is expensive. This is what you are going to get. This was in the New York Times today. This is where I sit or this is what is going to happen to me in this overall system. It is no wonder the American public doesn't want this. They are not excited about this. They are not excited about what it is going to do to the budget—$2.5 trillion. That is about $700 million a day, if you are counting in millions a day as one way to look at it.

There are some interesting things hidden within the bill. One of the things I want to point out is the transfer of wealth from young people to old. One of the things that has really bugged me about what we have done in so many of the government systems here—it has been a wealth transfer from younger people to older.

Several of my children are students and working part-time jobs, and they are paying payroll taxes. They say: What is this payroll tax going to? I say: Well, talk to your grandparents and tell them to say thank you to you. These are funds collected that are going to pay for their retirement funds. They do, and the grandparents say thank you. But it doesn't seem to be satisfying to them because they are saying: Why aren't I putting this in something I am saving money for me so that I can have something later on instead of this sort of, OK, I am paying and they are getting. What is going to be there when I get there?

That sort of wealth transfer from young people to old people continues in this bill. Look at this wealth transfer. Younger workers will pay more for health insurance premiums so that older workers can pay less. Their cost at age 25 will go up 25 percent for health insurance premiums. If you are 64, it will go down 20 percent for health care. This is another one of the wealth transfers that take place. It isn't right. It is taking from the kids. It is taking from the grandkids. It should not be continued. It is continued in this bill.

You can look at it another way: Subsidies in this bill go disproportionately to older Americans. Average subsidies for the 55-year-olds are nearly 10 times that of a 25-year-old. A 25-year-old gets a subsidy of $458, a 55-year-old gets a subsidy of $4,427—another wealth transfer from younger to older.

Then you can look at the claims in this bill that there are going to be tax cuts for the middle class. That is if you are in the lucky group. For every low-to-middle-income family with a tax cut, three low-to-middle-income families have a tax increase in this bill by the structure of this bill, by this structure, this convoluted, difficult-to-navigate, hard-to-understand, expensive, $2.5 trillion structure.

That is where we stand. Likely to pass this body and then go to the House of Representatives where there is a major issue that is still brewing, difficult, and must be dealt with, and that is the issue of public funding of abortion that is in this bill.

If you want to cut some of the cost out of this thing, why don't you take some of those expenses out of this. That would be one way to cut back some of the expenses. But in the House bill, they included Stupak language which continued the Hyde tradition and law of the land that the government will not pay for abortions other than cases of rape, incest, and life of the mother. Except now buried in the Senate bill, in the Reid amendment, is the public funding of abortion, which we haven't done for years.

Yesterday I talked to both Congressman STUPAK and Senator NELSON. They both agree that the Stupak language is far superior. It doesn't publicly fund abortions, whereas what is in this bill now does. You don't need to take my word. Here is what others have said. The U.S. Conference of Catholic Bishops, who want a health care bill but are opposed to the public funding of abortion and opposed to abortion, say:

> The bill is morally unacceptable unless and until it complies with longstanding current laws on abortion funding such as the Hyde amendment.

We voted on this floor for the Nelson-Hatch amendment which is now not in the bill.

You don't have to take that. You can take BART STUPAK, Democrat from Michigan, who voted for the bill in the House. He says:

> It is now not acceptable. A dramatic shift in Federal policy that would allow the Federal Government to subsidize insurance policies with abortion coverage.

The American public doesn't want that either. The latest poll of December 22 shows that 72 percent of Americans oppose using any public money in the health care overhaul to pay for abortion, including 54 percent of Democrats and 74 percent of Independents. That is where they are. That is where the public is.

National Right to Life, which is the gold standard on standing up for life, says:

> The Reid managers amendment requires that all enrollees in an abortion covering plan make a separate payment into an account that will pay for abortions. The bill also contains language that is intended to prevent or discourage any insurer from explaining what this surcharge is to be used for. Moreover, there is nothing in the language to suggest that payment of the abortion charge is optional for any enrollee.

This base bill has another thing in it: It takes the individual opt-out and moves to it a State opt-out. So while let's say Kansas may opt out of the abortion funding in the bill, they still have to pay their taxes that go to another State to pay for abortions there which are equally offensive to my people or other States that don't want to see this funding take place.

It doesn't address the issue of having preventive services include abortion. There was discussion that we are not going to include preventive services in it, but that is not in the language. There was discussion. We tried an amendment. That is not there. It can still be defined. Now it may ultimately

unwind the entire bill based upon the funding of abortion that is in the Senate bill. It will be up to House Members, a number of whom are very concerned and quite fired up about this particular piece, to take this out. I know Congressman STUPAK is working to do that, wants to see that done, agrees with Senator NELSON that his language is far superior, actually does that. It is supported by the Catholic Bishops, the National Right to Life, and other pro-life groups that say the way to go is the Stupak language.

It is not what is in the Senate bill. The Senate bill will actually fund abortions. Then we go through the specifics, as I have in here, of the various places that it has. I met with Senator NELSON about those specifics. I have addressed a number of those concerns. I know he continues to work on it, but at the end of the day this is one of those babies you cannot split. You need to have the Stupak language in this bill. I am afraid at the end of the day that is not going to be in there. I know Congressman STUPAK is pushing very hard for its inclusion, and I wish him all the best.

If this legislation passes this body, it is going to be up to the House of Representatives to put in that Stupak language. And they can do it. It is my hope they will do it. I do not think the overall bill should be passed, but certainly you should not have this piece of funding in this bill, in breaking the longstanding work we have had in the Hyde agreement, in the Hyde language.

Thank you very much, Madam President. How much time do we have remaining on our side?

The PRESIDING OFFICER. One minute.

Mr. BROWNBACK. Madam President, in that concluding minute, what I would like to briefly speak about is the overall process.

I think there are people in this body who did not want to include things such as abortion funding in the bill. But when you operate in a closed process like this, these sorts of things end up happening because the people who work on these issues are excluded. I certainly was not consulted. I am not saying anyone said: Well, look, we are not going to get your vote anyway, so we do not need to have it. But if you do not want to have abortion funding in it, one should look past that and say: Let's get the people who understand and work on this issue—and we agree, we should not have it in there; that is what President Obama said; it should not be in there—and let's see what language passes by their muster.

That was not done. Unfortunately, that is part of what has happened in this process. I think it is tragic that it has happened that way in this process. I think it is wrong. I think it builds a bill that then people are not satisfied with, and certainly a process they do not agree with that takes place in this overall bill.

It is still not too late. There is still time to address these issues, now that we have the bill to be able to look at. If people of good faith on the other side want to get these addressed, there are ways, and we have the language on how to address it. It is called the Stupak language. It has already passed the House of Representatives. It is called the Nelson-Hatch amendment that was debated here, although it was not passed. We can do that. It is important that it get done.

This bill is not supported by the American public, and particularly this funding piece that is so offensive to so many Americans. We can debate about abortion, but the government should not be funding it, and that is agreed to by over 70 percent of the American public.

I just ask my colleagues on the other side, as you move on forward with this—if this bill passes here—take this piece out. We know what language is agreed to and works. This piece can be taken out. It can be taken out yet. And I think the whole bill may unwind if it is not taken out—unwind because of a number of Democrats who voted for the bill on the House side who want the Stupak language, and they do not want the inferior language that was put in on the Senate side that will actually allow and start the funding of abortion, that we have not done for 30 years.

Madam President, I thank my colleagues and yield the floor.

Mr. GRASSLEY. Madam President, My Friend, Senator CASEY, just a few moments ago repeated the frequent claim made by members on the other side of the aisle that the health care bill provides a $40 billion net tax cut.

As I demonstrated in a speech earlier today, this claim is inaccurate and does nothing to address the fact that millions of middle-class Americans will see a tax increase.

I have consistently given my Democratic friends credit for providing a significant benefit to help people buy insurance.

This beneficiary class, however, is small.

At the same time there are 78 million individuals, families, and single parents who will see a tax increase.

Seventy-three million of them are below $200,000.

It is only because the subsidy for this small group is so large—and refundable—that there is a net tax benefit.

For example, the average subsidy is close to $8,000. Around 13.2 million individuals and families receive this subsidy.

But the data also shows that there is a group of 73 million middle-class Americans who will pay on average $710 more in taxes.

My Democratic colleagues want to say that since the cost of providing an average tax benefit of $8,000 to 13.2 million individuals and families is greater than the revenue raised by raising the taxes on 73 million individuals and families by $710 there is a net tax decrease.

The truth is individuals who are seeing a tax increase are not actually benefiting from the very large subsidy. This is because, in general, this group isn't even eligible for the subsidy.

It comes back to this: a small group of Americans benefit under this bill. Another group of Americans pay higher taxes. These Americans include middle-income individuals and families.

Mr. HATCH. Madam President, I rise to speak on my amendment to the Reid health care bill that would add an expedited judicial review provision to the legislation. It would provide a mechanism for the courts expeditiously to handle any future constitutional challenges to this legislation.

Make no mistake. I strongly oppose this Federal takeover of our health care system. I do so for a host of important and serious policy reasons. I believe it is bad for our country, but I also oppose it because I believe some of its core provisions are unconstitutional, undermining the Constitution and the liberty that it makes possible.

I have argued for months that the constitutional problems with this legislation include the requirement that individuals obtain a certain level of health insurance and the differential State-by-State taxation of high cost insurance plans. Other scholars and commentators have argued that restrictions on the ability of insurance providers to make risk-adjusted decisions about coverage and premiums amount to a taking of private property in violation of the fifth amendment. Others have said that requiring States to pass legislation creating health benefit exchanges exceeds Congress's power in our Federal-State system.

I do not necessarily believe that each of these constitutional arguments is as substantive or as persuasive as the next. Some may agree with this one or that one, all of them, or none at all. These and other arguments, however, are real, substantive, and many of them are as yet untested by the courts because this legislation goes so far beyond anything the Federal Government has ever attempted. These and other issues very well may be the basis for litigation against this legislation. Therefore, I think it is in everyone's interest to provide a mechanism for future constitutional challenges to be handled expeditiously by the courts.

The supporters of this legislation, those who are so confident that no conceivable constitutional argument has any merit whatsoever, should be the strongest supporters of this amendment. More than anyone, they would want to eliminate as quickly as possible anything that could delay or prevent full implementation of this legislation. Frankly, I am surprised that they are not the ones offering this amendment and I hope they will support it.

Madam President, I now wish to speak about my amendment No. 3294. My amendment would ensure that all Americans would be able to keep the health care coverage they already have.

My amendment is simple. If adopted, it would ensure that the implementation of the Democrat's health care bill shall be conditioned on the Secretary of Health and Human Services certifying to Congress that this legislation would not cause more than 1,000,000 Americans to see higher premiums as compared to projections under current law.

This amendment would ensure that this $2.5 trillion tax-and-spend bill would not go into effect if the Secretary of Health and Human Services finds that it would actually raise health insurance premiums for more than 1 million Americans compared to projections under current law contrary to the promise made by President Obama that health care reform would result in average savings of $2,500 per family.

One of the major reasons for enacting health care reform is to ensure that we control rising health care costs that continue to put increasing pressure on American families and small businesses. However, according to the nonpartisan Congressional Budget Office, the premiums under this bill would actually rise for Americans purchasing insurance on their own by as much as 13 percent and will continue to rise at double the rate of inflation for both the small group and large group markets.

Spending $2.5 trillion of hard-earned taxpayer dollars on a system that already spends almost $2.2 trillion a year without any impact on controlling health care premiums should be unacceptable to every American.

Madam President, I also wish to speak to my amendment No. 3296 to H.R. 3590, the health care reform legislation. This amendment isn't complicated. It would prevent the provisions of the bill from taking effect in the event that it imposes unfunded mandates on the States. As we all know, this legislation imposes significant new burdens on the States and the proposed funding for this program is, in some cases, likely to fall short. Simply put, the Congress should not impose upon the States new Federal policy requirements without ensuring they are adequately reimbursed. In the event that Congress does not provide full funding for these programs, my amendment would ensure that none of the new mandates will be binding on the States.

MEDICAID PHARMACY REIMBURSEMENT

Mrs. LINCOLN. I would like to engage my colleague, the distinguished Senate Finance Committee chairman, in a short colloquy regarding the Medicaid pharmacy reimbursement provisions in the Senate health care reform bill.

Mr. BAUCUS. I would be happy to engage Senator LINCOLN in a colloquy. I commend her for all her leadership over the years on this issue, because she recognizes that it is important to reimburse pharmacies adequately for the generic medications they dispense to Medicaid patients. In rural States like ours, Medicaid patients need access to their community pharmacies to obtain their medications. Sometimes community pharmacies are the only health care providers for many miles. So, it is important that we permanently fix in this health care reform bill the problems for pharmacies caused by the severe reimbursement cuts from the Deficit Reduction Act of 2005.

Mrs. LINCOLN. I thank my colleague and agree with him. That is why I ask him the purpose behind the language in the bill that would establish the Federal upper limit for generics at no less than 175 percent of the weighted-average average manufacturer price. I know this amount is less than the chairman originally proposed in the Medicaid Fair Drug Payment Act from last Congress, which I cosponsored. However, in what cases would it be the intent of the intent of the chairman that the Federal upper limit would be set at more than 175 percent? I am particularly concerned about my small independent pharmacies in Arkansas that fill a significant number of Medicaid prescriptions. Would it be the intent to set a higher rate for these pharmacies? Would it be the intent to set a higher rate for generics that might be in short supply or for which there are availability problems to encourage more manufacturers to make them?

Mr. BAUCUS. I would say to my colleague that the language indicating that the Secretary could set the Federal upper limit at no less than 175 percent the weighted average average manufacturer price could be used in those types of circumstances. It would give the Secretary flexibility to set the Federal upper limits in cases where there is a need to provide states with a higher match in order to assure that appropriate payment is made to pharmacies to encourage the use of generic drugs.

Mrs. LINCOLN. I thank the chairman for his insights into this provision and his work on behalf of our Nation's community pharmacies.

WISCONSIN'S MEDICAID PROGRAM

Mr. KOHL. Madam President, I rise to discuss language in the Reid substitute amendment to H.R. 3590 that would have a dramatic effect on Wisconsin's Medicaid Program. I would like to converse about this with two of my distinguished colleagues—the other Senator from my home State of Wisconsin, Senator FEINGOLD, and Senator BAUCUS, chairman of the Senate Finance Committee.

I commend Senator BAUCUS's long and hard work in crafting this historical piece of legislation, and today, I seek clarification of one piece of this bill.

Mr. FEINGOLD. I also seek clarification of this piece of the Patient Protection and Affordable Care Act, specifically in section 2001, regarding the definition of individuals that would be considered newly eligible under Medicaid.

Mr. BAUCUS. I thank the Senator. I would be pleased to enter into a colloquy with the Senators from Wisconsin on this subject.

Mr. KOHL. I thank the Senator. Section 2001 of the legislation describes which individuals in each State will be deemed ''newly eligible'' for Medicaid. It is my understanding that the Federal Government will provide 100 percent of the funds to cover this group of newly eligibles from 2014 to 2016 and that States will be provided with their current law FMAP rates, which are below 100 percent, for individuals already covered. Is this correct?

Mr. BAUCUS. I thank the Senator for the question. Yes, that is correct, and it is my understanding of the legislation as well.

Mr. FEINGOLD. I thank the Senator. As the Senator knows, to be considered ''newly eligible'' under this bill, individuals must not be eligible under the State plan or under a waiver of the plan for full benefits or for benchmark coverage as described in section 1937 of the Social Security Act. Two of the benefits that must be incorporated into benchmark coverage under section 1937 of the Social Security Act are mental health and substance use disorder services, and prescription drug coverage. If these two benefits are not offered at all, then the coverage will not count as benchmark coverage.

Mr. KOHL. As my two colleagues are aware, Wisconsin currently provides coverage for a number of individuals under a Medicaid waiver, but this coverage does not meet the requirements for benchmark or benchmark-equivalent coverage under the Social Security Act. The Centers for Medicare & Medicaid Services, the Federal agency that oversees Medicaid, has confirmed this for us. Senator FEINGOLD and I understand that, because of this, the individuals in Wisconsin who do not receive benchmark or benchmark-equivalent coverage will be considered newly eligible, and therefore Wisconsin will receive 100 percent Federal funds for those individuals in 2014, 2015, and 2016. Is this the Senator's understanding of the legislation as well?

Mr. BAUCUS. Yes. I thank the Senator.

RELIGIOUS CONSCIENCE EXEMPTION

Mr. CASEY. May I ask the Senator from Iowa to yield for a question about the managers' amendment, amendment 3276, to amendment 2786 to H.R. 3590?

Mr. HARKIN: Of course.

Mr. CASEY. Chairman HARKIN, the managers' amendment includes a religious conscience exemption from the individual requirement to maintain minimum essential coverage in section 1501. Is it the intent of the managers that this exemption apply to an individual who is a member of recognized religious sect described in Internal Revenue Code section 1402(g) regardless of employment status?

Mr. HARKIN. Yes, the intent of the religious exemption is to focus on an individual who is a member of a religious

sect described in 1402(g) and who is an adherent of the teachings of that sect notwithstanding his or her employment status.

Mr. CASEY. I thank the chairman. So, for example, an Amish person working in a factory or store for a non-Amish employer and meeting the 1402(g) requirements would not be required to obtain insurance coverage against his or her religious convictions?

Mr. HARKIN. The Senator is correct. The managers' amendment creates a clear bright line exemption for individuals described in 1402(g). This religious conscience exemption applies whether one is unemployed, a self-employed Amish person, an Amish person working for an Amish employer, or an Amish person working for a non-Amish employer.

Mr. CASEY. I thank the Senator for that clarification.

The PRESIDING OFFICER. The majority leader is recognized.

ORDERS FOR WEDNESDAY, DECEMBER 23, 2009

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today it adjourn until 9:45 a.m., Wednesday, December 23; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 3590, the health care reform legislation, with the time following any leader remarks and until 10 a.m. equally divided and controlled between the two leaders or their designees; that at 10 a.m. and until 2 p.m. the time be controlled in alternating 1-hour blocks of time, with the majority controlling the first hour; further that the remaining time until 2:13 p.m. be equally divided and controlled between the two leaders, with the majority leader controlling the final half.

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

PROGRAM

Mr. REID. Madam President, Senators should expect a series of rollcall votes, maybe as many as five, to begin at approximately 2:13 tomorrow afternoon.

ORDER FOR ADJOURNMENT

Mr. REID. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order, following the remarks of Senator DODD of Connecticut.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

HEALTH CARE REFORM

Mr. DODD. Madam President, I want to take a few minutes, if I may, this evening to speak about what this health care bill means to my constituents in Connecticut. I say to the Presiding Officer, the benefits to our States are very similar in many ways, but, obviously, we like to point out what this particularly means in our own respective jurisdictions that we represent.

But before doing so, I want to take a few minutes, if I could, because, again, tomorrow will be a short day, and then there are the votes, apparently, that we are going to have Thursday, and then we will be leaving the Senate for a number of weeks before we return in mid-January, and it might not be possible tomorrow or in the very early hours of Christmas Eve to say a special thanks to the people who work with our offices in this Chamber, both on the minority side and the majority side, who rarely get the kind of recognition they deserve.

I have tried periodically over the years to make sure that as to the consideration of every major bill we talk about the staff and what they have done. So I want to take a couple minutes and identify people with whom I have worked. This not an inclusive list. There are many more people who work for individual Senators who have done outstanding work. Our floor staff here, both on the majority side and the minority side, do a remarkable job and have great patience with all of us. I am very grateful to them, as well as for the jobs they perform.

I want to take a few minutes and recognize the people I have worked very closely with over the last—well, intensely—over the last almost year now on this issue.

Certainly in Senator REID's office, the majority leader's office, Kate Leone, Carolyn Gluck, Jacqueline Lampert and Randy Devalk deserve a great deal of credit. All of us know them and how much they have been involved in this issue.

And for those of us who serve in our caucus, we have listened to Kate Leone on numerous occasions go over the details of these bills, answer the questions Members have raised about the importance of the legislation. So to the members of Senator REID's staff—and, obviously, there are a lot more people in his office who deserve recognition—but I want to particularly recognize these four individuals with whom we have worked very closely.

Senator Kennedy, as we all know, was such a lion of this institution and cared so deeply about this issue. Over the years, he attracted some wonderful people to work with him, as he fought year in and year out to bring us to the moment we are about to enjoy; and that is, to see some national health care legislation adopted for the very first time.

Michael Myers had worked on this issue for a number of years for Senator Kennedy, and still is here working with Senator HARKIN now as part of the Health, Education, Labor, and Pensions Committee.

Mark Childress, again, worked for the majority leader, worked for Tom Daschle, has worked for others in this body, and has just done a fantastic job. He stayed on at my request and the request of Leader REID to help us work on this issue. He was involved with the White House as well, and really understood the substance of this bill as well as the political navigation that was necessary to bring us to this moment.

I thank Pam Smith as well for her fine work for Senator HARKIN. Jenelle Krishnamoorthy made a wonderful contribution. She worked closely with Senator HARKIN, and I want to thank her. Connie Garner was responsible, for many years, working on the CLASS Act, which is a part of our bill. Portia Wu and David Bowen did a remarkable job. John McDonough and Topher Spiro, as well, are individuals who certainly made a significant contribution to our product her.

Senator BAUCUS's staff: Liz Fowler, Bill Dauster, Russ Sullivan, Cathy Koch, Yvette Fontenot, David Schwartz, Neleen Eisinger, Chris Dawe, Shawn Bishop, and Kelly Whitener—I want to thank them for their efforts as well.

Again, we could give separate remarks about each of these individuals and their contributions.

In my office, again, like others, I have been blessed with some wonderful people. Jim Fenton is my legislative director and has done a terrific job. Tamar Magarik Haro, who is sitting with me on the floor this evening—I know we are not supposed to recognize people other than Members—along with Jeremy Sharp, they have just done a wonderful, wonderful job, and I know all of my colleagues have gotten to know both of them because of their work.

Monica Feit, Joe Caldwell, Bryan DeAngelis, Andy Barr, Lia Lopez, Daniel Barlava, and Rachael Holt all have made wonderful contributions as well.

Senate legislative counsel, with special thanks to Bill Baird, who was present throughout the entire HELP Committee consideration, has gone way above and beyond. And legislative counsel never gets the kind of recognition they deserve.

They do a tremendous job in drafting the actual legislation. Once these ideas are developed, then they require legislative language to be written.

From the administration, Nancy Ann DeParle, whom all of us have gotten to know very well; Jeanne Lambrew—I

want to give a special thanks to Jeanne. She has been just incredible in terms of her encyclopedic knowledge of the issues, working very closely with our staffs. Again, individuals who may not be well known to the public, but when this bill becomes law, these are the individuals who deserve special credit for their tremendous work.

Mike Hash, Lauren Aronson, Secretary Sebelius, Kathleen Sebelius, who left the governorship of Kansas to come here to be head of the Health and Human Services agency and has done a magnificent job in her new capacity; Jim Messina, who worked with MAX BAUCUS for years up here and has been the Deputy Chief of Staff at the White House and has done a tremendous job. Phil Schilliro and Shawn Maher both worked to represent the administration and their Legislative Affairs Office and they do a great job; Dana Singiser as well, for her work.

We will make this list available for the RECORD. I wanted to thank these individuals again for their fine work.

I wish to speak, if I can today, not in my capacity as a senior member of the Health, Education, Labor, and Pensions Committee nor in my capacity as one of the coauthors of the underlying legislation, but rather in my capacity, as I said at the outset, as a Senator representing 3.5 million residents of the State of Connecticut. Our neighboring State, my good friend and colleague, the Senator from New Hampshire, the Presiding Officer, represents New England.

If you travel my State, you will meet some of the world's most talented and dedicated health care professionals. You will tour some of the Nation's finest hospitals where patients get world-class treatment. But you will also hear some heartbreaking stories from people in my State who come from middle-class families who have lost everything—their homes, their life's savings, their hope for the future—just because someone in their family got sick. They needed special care. You will meet hard-working men and women who have seen their insurance premiums skyrocket over the last decade from around $6,000 for a family of four to over $12,000 annually for that same family, and they wonder how much longer they will be able to continue to afford the coverage they have. You will meet small business owners facing an impossible choice between cutting off health care benefits to their employees or laying off those workers.

I have talked specifically about constituents of mine, small businesspeople who literally have been faced with that choice or who have had employees who dreaded having to leave the job they had because there were no health care benefits. They took reductions in pay because they just couldn't stay given the health conditions of their family. Having to leave a job they had for 20 years or more to find new work where there was health care coverage; leaving a job they loved for less pay because they weren't able to get that health care coverage—not because their employer didn't want to give it to them but because that small employer just could not afford to do so and stay in business. Even those who are healthy in my State, who have insurance, there is that worry as well.

What I have described is not an irrational fear they have that someone in their family will lose their job that provides the coverage as I just described, worrying about that child who may develop an illness not covered by their policies, or worrying about no matter how much they pay in premiums their insurance doesn't allow them to be sure of anything at all.

The residents of my State understand the status quo is no longer sustainable because the so-called status quo threatens the basic economic security of every family in my State, as it does across this country. They and their fellow Americans in all 50 States sent us here to take action, and it is action that we shall take.

When this bill becomes law, the people of my State will begin to reap the benefits right away. One in four of my constituents have high blood pressure. One in four teens suffers from diabetes in Connecticut. Today, insurance companies can use these preexisting conditions, along with many others, as an excuse to deny these people coverage. Immediately, young people in our State and across the country will be protected against these preexisting conditions to receive the coverage they need. Beginning 90 days after this bill becomes law, every uninsured resident of my State who has been denied coverage because of a preexisting condition will be able to find the affordable coverage they need to treat that condition.

Small businesses make up more than three and four businesses in the State of Connecticut, but today only one-half of them are able to offer health benefits to their workers. Beginning in 2010, next year, some 37,000 small businesses in my State, as well as others across the nation, will be eligible for tax credits to make those benefits more affordable. A 50-percent tax break, $40 billion in this bill, is provided specifically for that purpose: to assist the 37,000 small businesses in Connecticut, and others across the country, to get a tax credit, as much as 50 percent, to allow them to defer or reduce the cost of health insurance for their employees.

Small business owners throughout Connecticut have experienced persistent annual increases in premiums. In recent years—and this is true across the country, but certainly true in my State—it is not uncommon for small business owners to be told they have to pay 20 percent or more for the same insurance they had the previous year.

So the bill we are about to pass will empower the State insurance exchanges such as the one we will have in Connecticut in 2014 to deny insurers access to the exchange if they engage in consumer price gouging in the next few years. That is going to be critically important. For the more than half million seniors in Connecticut, this bill protects Medicare, keeping it solid into the future. Nearly 100,000 seniors in my State hit what is called the doughnut hole in the prescription drug benefit area, costing them an average of more than $4,000 annually.

This bill we are about to adopt takes the first critical step toward closing that doughnut hole, and Connecticut seniors should know that I and Chairman BAUCUS, along with majority leader HARRY REID, have committed to completing that job in conference, and we will do so.

Meanwhile, in Connecticut, seniors will see their Medicare premiums go down. They will see major improvements in the quality of care they receive, resulting in as many as 29,000 hospital readmissions being prevented. In my State of Connecticut, 3 in 10 Connecticut residents have not had a colorectal cancer screening.

One in six women over the age of 50 have not had a mammogram in the past 2 years. These are important screenings. They and other wellness programs will be provided at no cost to people in my State as well as others across the country. Beginning in 2011, seniors will be able to get a free annual checkup so they can stay well instead of simply receiving care when they get sick. That annual free checkup can make such a difference. I am a living example of that where—because under our health care plan, I can have a free medical checkup once a year. As a result of that, I discovered that I had prostate cancer, and what a difference that made to be able to discover that, to get through the surgery, and to know that I have a bright future ahead of me, not one that I would discover later on when the kind of surgery I received might have been worthless and pointless.

So these are the kinds of annual physicals Members of Congress get under our health care plans, and our fellow citizens ought to be able to as well, particularly our seniors.

In addition, there are some 255,000 Connecticut residents between the ages of 55 and 64 who will need home health services after they turn 65 because of an illness or an injury. These services, whether they involve installing a handicap shower or hiring a home health care aide, will help these older Americans live in their homes in dignity and with independence. But today these services are not always covered by Medicare or private insurance. Rather than having to impoverish themselves so they can qualify for Medicaid by transferring all of their wealth and assets to a family member or rely on the full-time help of loved ones, these seniors will be able to take advantage of a new voluntary program called the CLASS Act—authored by Senator Kennedy years ago and which is now a part of this bill—that will provide a cash

benefit to be used on these services and supports, totally paid for by the individual themselves. Not a nickel, not a penny of Federal money is in that program. It is totally based on the contribution that people make to that program.

So when I hear people talk about this as if it was some great robbery from the Federal Treasury, it doesn't involve the Federal Treasury at all. As the bill takes effect, the health insurance exchanges are set up and health insurance will become a buyer's market for people in my State as well. More than 350,000 Connecticut residents who today do not have insurance will finally have affordable options to choose from. Nearly a quarter of a million people in my State would be eligible for premium credits to help take care of the cost of insurance. That doesn't go into effect until 2014, but in 2010, next year, insurance companies will be prohibited from imposing lifetime caps on the amount of care you can receive.

Insurance companies will be prohibited next year from taking away your coverage, and they will be prohibited from discriminating based on gender or income in the year 2014. The insurance industry will be forced to spend more of your premium dollars on your health care, not on bureaucrats hired to come up with reasons to deny you the care you need. This is called the so-called medical loss ratios which require that resources be spent on patient care and needs of the policyholder rather than on profits or administrative costs.

The industry will also be required to offer an appeal if your claim is denied, and each State will set up its own independent appeals process to keep the industry honest. Next year the industry will be forced to provide more details about their policies so that you can shop for health insurance the same way you shop for anything else, armed with enough information to be a smart consumer.

All of these insurance items will take effect at least by 2014, many of them next year, as I have just mentioned.

It is not just consumers who will benefit. Connecticut's 15,000 physicians will also benefit. Today these physicians spend, on average, 140 hours and $68,000 every year just dealing with bureaucrats at the health insurance companies. Let me repeat that: 140 hours and roughly $68,000 every year just dealing with bureaucrats at the insurance companies. That is 2.1 million hours and $1 billion in costs overall, time and money wasted in my State alone. That is going to end.

This bill cuts down on bureaucratic redtape and needless paperwork. Doctors will be able to spend their time caring for patients, not fighting with the insurance industry. Meanwhile, more than 5,000 Connecticut primary care physicians will qualify for the new 5- to 10-percent payment bonus. That happens next year in 2010. New programs will incentivize many more young doctors to stay in primary care, which we all know is critically important.

Today, 9 percent of Connecticut residents can't access a primary care physician because there aren't enough doctors to go around. This bill makes an investment in our medical workforce and a $10 billion investment in community health centers and the National Health Service Corps, which begins taking effect immediately in 2010. It will be phased in over 5 years. That is going to expand dramatically the availability of patient care with our community health care system.

As more uninsured people gain coverage, Connecticut will no longer have to subsidize the $383 million it spends in uncompensated care our providers deliver each year—important at a time when my State is already, like every State—almost every State—in serious budget trouble.

I have just recited a long list of statistics showing how my State will benefit from this bill—in many instances, benefit immediately. Some will take a little longer, but many of these provisions go into effect in the next year. More important than any statistic will be what you will see when you tour my State, or any other State for that matter, after this bill takes effect—or more accurately, what you will not see. You will not see 100 people losing their insurance, their health insurance every single day, finding themselves cast into uncertainty and fear—100 people every day—that will no longer be the case. You will not see families paying an extra $1,100 a year in health insurance premiums, the so-called hidden tax paid by everyone with insurance as a result of the nearly 50 million uninsured Americans. You will not see seniors facing the loss of their Medicare benefits because overpayments to private insurance companies have rendered the program insolvent. You will not see parents laying awake at night praying that their child's cough goes away because they can't afford to take him or her to see a doctor. You will not see people losing their homes, their life's savings, losing their economic security, all because they got sick or a child or a spouse did. You will not see people dying, as 45,000 do every year in our country, because they couldn't afford access to the health care system.

So as a senior member of the Health, Education, Labor and Pensions Committee, and a close and dear friend of our departed colleague, Senator Ted Kennedy, who led this fight for so long, it will be my honor—a deep honor indeed, one of the highest honors I would have had in the 30 years I have served here—to cast a vote in favor of this landmark legislation.

As one of two Senators whose job it is to look out for the people of my home State of Connecticut, supporting this bill is nothing short of my duty, and I intend to fulfill it with great pride at 8 a.m. on Christmas Eve. What better gift could I give to my folks at home than to cast my vote as 1 of 100 in this body for health care reform in our Nation, so long overdue, so long waited for. And on this Christmas Eve it will become an accomplished feat of the U.S. Senate.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

Mr. DODD. Mr. President, there were a number of other people I wished to mention. I will not go through the list of all the staff involved in this effort in the Senate. I am sure I would miss some people. It is a lengthy list of those who played such an important role. I was fearful I wouldn't have a chance between now and the actual vote on Thursday morning, Christmas Eve, to express my deep gratitude as one Member who benefited tremendously from the participation of my staff, two of whom are seated with me this evening. I know that is probably a violation of Senate rules to recognize them, but I want my constituents at home and the American public to know how many dedicated people there are whose names they never know, faces they will never see.

I ask unanimous consent that a list of staff be printed in the RECORD.

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

REID

Kate Leone, Carolyn Gluck, ard Randy DeValk.

HARKIN/KENNEDY

Michael Myers, Mark Childress, Pam Smith, Jenelle Krishnamoorthy, Connie Garner, Portia Wu, David Bowen, John McDonough, Topher Spiro, Stacey Sachs, Tom Kraus, Terri Roney, Craig Martinez, Taryn Morrissey, Andrea Harris, Sara Selgrade, Lee Perselay, Caya Lewis, Stephanie Hammonds, Andrew Garrett, Joe Hutter, Lauren McFerran, Jeff Teitz, Kate Cyrul, Dan Goldberg, Caroline Fichtenberg, Bill McConagha, Lory Yudin, and Evan Griffis.

BAUCUS

Liz Fowler, Bill Dauster, Russ Sullivan, Cathy Koch, Yvette Fontenot, David Schwartz, Neleen Eisinger, Chris Dawe, Shawn Bishop, Kelly Whitener, Tony Clapsis, Diedra Henry-Spires, Tom Reeder, Bridget Mallon, Tiffany Smith, and Catherine Dratz.

DODD

Jim Fenton, Tamar Magarik Haro, Jeremy Sharp, Monica Feit, Joe Caldwell, Bryan DeAngelis, Andy Barr, Lia Lopez, Daniel Barlava, and Rachael Holt.

Senate Legislative Counsel, with special thanks to Bill Baird, who, along with Stacy Kern-Scheerer, was present throughout the entire HELP Committee and has gone above and beyond.

OBAMA ADMINISTRATION

NancyAnn DeParle, Jeanne Lambrew, Mike Hash, Lauren Aronson, Secretary

Sebelius, Jim Messina, Phil Schilliro, Shawn Maher, and Dana Singiser.

Mr. DODD. Mr. President, let me say this to the minority staff as well. While we have disagreed, and while they didn't vote for the bill, there are people I admire immensely on the minority staff. On our committee, there were wonderful suggestions and contributions that came from the Republican side of the aisle. While they didn't support the bill, I think they made it a better bill because of their contributions. I want to add their names as well. MIKE ENZI of Wyoming, the ranking member—and I worked with every Republican minority member of the HELP Committee—offered amendments that were included. While they may not want to admit it or acknowledge it, they made a contribution to this bill that makes it stronger and a better piece of legislation. I add their names as well for their efforts.

MORNING BUSINESS

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

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

TRIBUTE TO BARBARA A. SOULIOTIS

Mr. KIRK. Mr. President, I know all my colleagues share an indebtedness to the many staff members who work so (skillfully and) tirelessly behind the scenes each day. They assist us in serving the public and responding to the needs of our constituents. Today, I am honored to pay particular tribute to the contributions of one truly outstanding member of the Senate staff. She will retire at the end of this session of Congress after 47 years of impressive service to the citizens of Massachusetts.

Barbara Souliotis worked on Senator Edward M. Kennedy's first campaign for the Senate in 1962. She was the first employee in Senator Kennedy s office in November of that year And from the moment he joined this body until the end of his life, Barbara served as a member of his staff and for the last 23 years, she was the State director of his Boston office.

''Barbs'' recalls that on her first day at work here in Washington, she spilled a glass of Coca Cola on Senator Kennedy. When she started to apologize, he smiled his iconic smile and said ''Barbara, you and I are going to get along just fine.''

And they did. She served him brilliantly throughout his entire Senate career—the only member to run the full race as a ''staffer'', though many of us have reported back in whenever Barbara sent out the call.

Senator Kennedy considered ''Barbs'' to be his most indispensable assistant. If anyone ever had a question relating to the Massachusetts people whom he loved, he would inevitably ask; ''Have you checked with Barbs?'' I know how proud Ted would be that this tribute honoring Barbara's extraordinary example of public service to our Senate, our Commonwealth and our country is taking place this day.

I first met Barbara Souliotis when I joined Senator Kennedy's staff in 1969–40 years ago. I could see right away that behind Barbara's modest demeanor was a remarkable woman who would never let Senator Kennedy down. Why?

Because she had learned that his values and his commitment to making a positive difference in peoples lives was the very reason she wanted to work for him in the first place. As I have thought about public service through the years, it has become clear that the best of our Nation was built on the labors of loyalty and love of unsung public heroines like Barbara Souliotis.

It was once said that ''Loyalty means nothing unless it has at its heart—the absolute principle of self sacrifice''. If that is the standard of loyalty, I can tell you this,—there is no more loyal United States Senate staffer than Senator Kennedy's own ''Barbara Souliotis''.

She embodies the admirable quality of loyalty no matter the circumstances. Barbs planned to retire years ago, but her loyalty to Senator Kennedy and her leadership position on his staff kept her with him to the end. Just as she had throughout his storied career, she worked unfailingly for Senator Kennedy through the difficult months of his illness and during his final days.

After Senator Kennedy passed away in August, Barbara continued her remarkable life's work of service as the director of my Boston office. This woman I had known as a colleague came, once again, to the aid of a friend. As one who was appointed to, among other things, continue constituent services for the people of Massachusetts, I knew I could keep that pledge—because Barbara Souliotis volunteered to stay on to lead the Kennedy team during these last few months.

Barb's loyalty, integrity and commitment are legendary. She is the true noble public servant, the tireless and compassionate friend, the unassuming aid to all around her.

If public service is Barb's vocation, sports is her avocation. There is no more avid fan of the Boston Red Sox, the Boston Bruins, the Boston Celtics, and the New England Patriots than Barbara Souliotis.

And she's also an outstanding golfer who plays without a handicap and who has at least one hole-in-one on her score card. In Massachusetts, sports and politics are our passion. And Barbs has scored literally thousands of holes-in-one for the constituents of Massachusetts. A lifelong resident of Haverhill, she has travelled tens of thousands of miles through the years serving the people of our Commonwealth.

In acknowledging Barbara's years of All-Star service to Senator Kennedy for 47 years and to me for these few important and historic months, I add my own personal heartfelt thanks to her, especially for the blessings of her friendship, support, and counsel over the many decades, and I wish her a well-deserved happy and healthy retirement in the many years to come. Thank you, Barbs. We love you. Hit 'em long and hit 'em straight!

NOMINATION OF ERROLL SOUTHERS

Mr. DURBIN. Mr. President, it is only fitting that during this travel-heavy holiday season, we urge our colleagues on the other side of the aisle to work with us in confirming the nomination of Erroll Southers as Assistant Secretary for the Transportation Security Administration.

The Transportation Security Administration is tasked with ensuring the security and safety of travelers using our transportation network. Most often associated with security at airports, TSA responsibilities also include highway, rail, port, bus, and mass transit security. The agency grew out of the aftermath of 9/11, a somber reminder of the need for vigilant attention to transportation security.

Erroll Southers is the chief of homeland security and intelligence for the Los Angeles International Airport police force. He is ready for this job. He has nearly three decades working in public safety, homeland security, and intelligence. Chief Southers has worked as a Santa Monica police officer, special agent for the Federal Bureau of Investigation, and as a top officer with the Los Angeles International Airport, assisting in the management of the largest U.S. airport police force.

Unfortunately, without Chief Southers in the position he has been nominated to, TSA is without the leadership necessary to move forward. The President nominated Chief Southers in September, and the nomination has been reported favorably to the Senate by both the Homeland Security and Commerce Committees, it is being held up by Senate Republicans.

At the same time Senate Republicans are insisting on expanding the role and responsibility of TSA by requiring guns to be allowed on Amtrak, they block and delay the permanent leadership necessary to implement these new policies.

And what is the justification for delaying Chief Southers' confirmation? It is not his qualifications, his past actions or experience. These are generally accepted to be outstanding. No, it is instead an unreasonable demand that he predetermine if TSA employees should be allowed to form unions. Instead of bending to political pressure, Chief Southers has taken the stance that this decision should be made with the input of all stakeholders, using

good information, to find the best solution that does not jeopardize safety and security.

The Senate must move past these disagreements and provide the administration with the leadership agencies need to implement congressionally mandated duties. Chief Southers is an excellent candidate to lead the Transportation Security Administration, and he should be in place at the agency today. In the midst of the heaviest travel period of the year, it is irresponsible that the Senate has left this post unfilled. I urge my colleagues to support the confirmation of Chief Southers.

BIODIESEL TAX CREDIT

Mr. GRASSLEY. Mr. President, the biodiesel tax credit will expire on December 31, 2009. I am speaking today to set the record straight about why the biodiesel tax credit will not be extended before the end of the year.

Some have suggested that Republicans are to blame for not getting the biodiesel tax credit extended before the end of the year. This is simply inaccurate.

The bottom line is that the Senate Democratic leadership decided they were going to attach the tax extender package to a controversial estate tax bill in an attempt to get moderate Democrats and Republicans to vote for an estate tax bill that does not provide sufficient estate tax relief.

If the Senate Democratic leadership had not chosen to hold the tax extender package hostage in an attempt to force moderate Democrats and Republicans to vote for an estate tax bill that lacks support, the tax extender package would have easily passed separately.

The tax extenders bill could have passed as a stand-alone bill easily at any time during this whole year. In fact, the Senate Democratic leadership could simply bring up a noncontroversial version of the tax extenders bill and pass it by unanimous consent like we have done in the past. We wouldn't even need to be talking about the tax extenders package in relation to the Department of Defense funding bill.

However, because the Senate Democratic leadership failed to act on the tax extenders package this entire year, one of the only legislative vehicles left to pass the tax extenders package was the Department of Defense funding bill.

Instead of just adding to the Defense bill a noncontroversial tax extenders package that both Republicans and Democrats could agree on, the Senate Democratic leadership instead decided that they would also try to attach the controversial estate tax bill and a controversial increase in the debt limit.

They could have instead just included a noncontroversial tax extenders package with the Defense bill, and it would have easily passed. Again, they did not do this because they wanted to use the tax extenders package as leverage to get moderate Democrats and Republicans to vote for an estate tax bill that lacks support.

It is also worth noting that there are 60 Senators that caucus with the Democrats, so they can pass anything if they vote together. It rings hollow to place the blame on Republicans for failing to enact the tax extenders package before the end of the year when the Democrats hold a supermajority of 60 Senators, an overwhelming majority in the House, and the Presidency.

The House, waiting until the last month of the year, finally passed a tax extenders bill. However, the House usually passes an extenders bill prior to the last month of the year.

For example, in 2008 the House passed a tax extenders bill on September 26, 2008, and in 2007 the House passed a tax extenders bill on November 9, 2007. This year, the House passed an extenders bill that they knew the Senate would not accept. And then they left town for the year. This is called a dump and run.

The House dumped a tax extenders bill that they knew the Senate would not agree to, and left town before the Senate could have any chance to negotiate a tax extenders bill that both the House and Senate could agree to.

The House also had a choice to make regarding whether they wanted to pass a tax extenders bill this year by simply attaching a noncontroversial version of the tax extenders bill, which both the House and Senate could agree on, to the House Department of Defense bill, without attaching either the controversial estate tax bill or the increase of the debt limit on the Defense bill. However, the House chose not to do so.

Therefore, this should set the record straight. The Democratic leadership in the House and the Senate, and not Republicans, are responsible for the failure to pass a tax extenders bill before the end of this year.

This failure has very serious consequences to the U.S. biodiesel industry, which will grind to a halt as of January 1, 2010. I remind my colleagues of the economic challenges faced by this industry. In 2008, the biodiesel industry supported more than 52,000 green jobs.

Because of the downturn in the economy, the biodiesel industry has already lost 29,000 green jobs in 2009. The industry is poised to lose another 23,000 jobs if nothing is done on the tax incentive or regulatory delays at the Environmental Protection Agency.

So where are these jobs? Some might think they are all in the Midwest, but they are not. These green jobs are in 44 of the 50 States. I would like to list the 13 largest biodiesel-producing States in the country.

There are 24 facilities in Texas. There are 15 facilities in Iowa. There are 6 facilities in Illinois and 6 in Missouri. There are 4 facilities in Washington. Ohio has 11 facilities. There are 5 facilities in Indiana. There are 3 facilities each in Mississippi and South Carolina. There are 7 facilities in Pennsylvania and 4 in Arkansas. New Jersey has 2 facilities. There is 1 facility in North Dakota.

Only 6 of the 50 States do not have some biodiesel production. They are Alaska, Delaware, Maine, New Hampshire, Vermont, and Wyoming. The other 44 States have some biodiesel presence.

So workers in 44 States will be negatively affected by the inaction of this Congress to extend the tax credit.

You don't have to take my word for it. On November 25, I received a letter from the Iowa Renewable Fuels Association.

The letter outlined the economic and job ramifications of allowing the tax credit to expire, even if it is a short-term expiration. I would like to read directly from that letter.

It states in part:

> Simply put, if the biodiesel tax incentive is allowed to expire—even for a brief period of time—the Iowa biodiesel industry will cease production and many plants will likely not reopen under current ownership.
>
> If the biodiesel tax incentive expires, biodiesel blends will be priced out of the marketplace and our customers—the oil companies—will stop purchasing biodiesel. In reality, we already cannot book any first quarter sales for next year.
>
> No retroactive action on the tax credit sometime next year will undo the harm caused by the lost sales and shuttered plants over the holidays.
>
> Quite frankly, the biodiesel industry is facing shutdowns that would certainly lead to a much longer—and unpaid—Christmas break than anticipated for the hundreds of workers at Iowa biodiesel plants.
>
> But there are long-term impacts potentially even more far-reaching. After more than a year of mainly breakeven or negative margins, most of Iowa's biodiesel plants simply do not have the cash reserves to withstand even a two or three month shutdown.
>
> So, even if the biodiesel blenders' tax credit is retroactively enacted, several of Iowa's biodiesel plants are unlikely to reopen under the current local-ownership. Please do not let the Iowa-owned biodiesel industry disappear on your watch.

I would ask unanimous consent that the entire letter from the Iowa Renewable Fuels Association to which I referred be printed in the RECORD.

The dire situation reflected in this letter applies to all 173 biodiesel plants around the country. The expiration of this tax credit on December 31, 2009, will affect all 23,000 workers in this green energy sector.

It is unfortunate that we have to be faced with the loss of 23,000 green jobs because of inaction on the extension of the biodiesel tax credit. I hope this explanation makes clear who is responsible for this terrible situation.

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

IOWA RENEWABLE FUELS ASSOCIATION,
November 25, 2009.

Hon. CHARLES E. GRASSLEY,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRASSLEY: First, thank you for taking the time to meet with Iowa Renewable Fuels Association members on November 17, 2009. At that meeting, we discussed the absolute necessity of extending the biodiesel blenders' tax credit prior to the end of this year. With this letter, we want to reinforce the economic and job ramifications of allowing the tax credit to expire—even for a couple of months.

As a longtime supporter of Iowa biodiesel, you know that the biodiesel tax incentive, which allows blenders to claim a $1 excise tax credit for each gallon of biodiesel blended with diesel, is set to expire on December 31, 2009. Simply put, if the biodiesel tax incentive is allowed to expire—even for a brief period of time—the Iowa biodiesel industry will cease production and many plants will likely not reopen under current ownership.

With the tax credit, biodiesel blends are very competitive in today's marketplace. However, if the biodiesel tax incentive expires, biodiesel blends will be priced out of the marketplace and our customers—the oil companies—will stop purchasing biodiesel. In reality, we already cannot book any first quarter sales for next year. Therefore, biodiesel plants are unable to purchase feedstocks for the beginning of 2010 because there is no guarantee that a market for biodiesel will exist come January 1, 2010. As a result, many plants will likely begin to stop operations in mid-December.

No ''retroactive'' action on the tax credit sometime next year will undo the harm caused by the lost sales and shuttered plants over the holidays. Quite frankly, the biodiesel industry is facing shutdowns that would certainly lead to a much longer—and unpaid—Christmas break than anticipated for the hundreds of workers at Iowa biodiesel plants.

That is a prospect that any industry hopes to avoid. But there are long-term impacts potentially even more far-reaching. While 2009 has been a rough economic year for many industries, the biodiesel industry has been hit harder than most. In fact, of Iowa's fifteen biodiesel refineries, only nine are currently operating—and most of those at a severely reduced capacity. After more than a year of mainly breakeven or negative margins, most of Iowa's biodiesel plants simply do not have the cash reserves to withstand even a two or three month shutdown.

So even if the biodiesel blenders' tax credit is retroactively enacted, several of Iowa's biodiesel plants are unlikely to reopen under the current local-ownership. In fact, if recent history from the ethanol industry is any indication, Big Oil companies may swoop in, buy the closed plants for pennies on the dollar and then reopen them as part of their multi-national, vertically-integrated business plan. While this would be better than having the doors of these plants closed for good, keeping these plants in the hands of Iowa investors provides the most benefits to the local communities.

During our meeting, there was discussion of using a tax extenders package or estate tax bill as a vehicle to extend the biodiesel tax credit this year. That type of decision is best left to you—we just know the extension needs to happen this year. We have also increasingly heard of the need for a ''jobs bill'' this year in response to U.S. unemployment surpassing ten percent. We urge you to consider the extension of the tax credit as part of any ''jobs bill'' that Congress may consider. After all, extending the tax credit—something most people believe will happen ''eventually''—is an easy way to maintain hundreds of jobs in Iowa and thousands around the country. Failure to extend the biodiesel tax credit will undoubtedly add to the jobless rolls.

We thank you for your support of the Iowa biodiesel industry, and we encourage you to do all you can to ensure that the biodiesel tax incentive is extended as soon as possible. We are not trying to be alarmist. Rather, we want you to have a clear picture of the prospects facing the Iowa biodiesel industry as the tax credit expiration comes closer each day. Please do not let the Iowa-owned biodiesel industry disappear on your watch.

Sincerely,

MONTE SHAW,
Executive Director.

THANKING STAFF

Mr. NELSON of Nebraska. Mr. President, I want to take a few minutes in the midst of this debate to acknowledge some individuals who work for us here in the Senate. As chairman of the Legislative Branch Appropriations subcommittee that funds these agencies, I have had the opportunity to get to know these staffs and have a good understanding of the work they do for us here in the Senate. These folks work tirelessly behind the scenes at all times to keep this institution running safe and sound under any circumstances.

We have been in session every weekend since Thanksgiving, including during the largest December snowstorm in Washington's history, and we have worked uninterrupted thanks to the dedication and hard work of these individuals. It is easy to take for granted the hard work they perform on a daily basis—and we often do, but today, on behalf of the entire Senate I would like to say a heartfelt thank you to all of them.

I want to start by thanking the U.S. Capitol Police Force, led by Chief Philip Morse and Assistant Chief Dan Nichols. This force of 1800 officers put their lives on the line every day to protect us and this institution, and they have all worked a tremendous amount of overtime lately. I want to particularly mention the terrific work of Inspector Sandra Coffman and her staff in the Capitol Division for all the extra hours they have worked in securing and protecting the Capitol and the Chamber. They have gone above and beyond their normal duty, and we are extremely grateful for their dedication to our safety and protection.

Next I want to thank the staff of the Senate Sergeant at Arms, led by Sergeant at Arms Terry Gainer and Deputy Sergeant at Arms Drew Willison. The SAA staff of nearly 900 people includes the doorkeepers who have worked nonstop through the last month keeping access to the Senate available for staff and visitors who have traveled to Washington to witness this historic debate firsthand. They have kept our computer systems and overstretched telephone systems running, kept the mail moving, and the recording studio functioning, not to mention the facilities staff who have kept the Capitol Building clean and warm, replenishing wood for the fireplaces nonstop.

I want to thank the staff of the Architect of the Capitol, led by Acting Architect Stephen Ayers, and the many, many folks who have worked around the clock from Ted Bechtel and the Capitol Grounds crew who have been removing snow from the road, sidewalks, and parking lots of the Capitol Complex, to Robin Morey and his staff who have kept the Senate buildings clean and warm throughout these long, long weeks. I truly appreciate the extra hours of work provided by these individuals.

I want to thank the Secretary of the Senate, Nancy Erickson, and her staff, including the legislative clerks, the bill clerks, the enrolling clerks, the executive clerks, Parliamentarians, official reporters of debates, captioning services, journal clerks, and the staff of the Daily Digest. These folks have been here around the clock, under some very tiring circumstances, to deliver the services that are needed to keep this institution running.

Last but not least, I want to thank Lula Davis and David Schiappa, our floor leaders, for their tireless guidance in keeping us—the Members—where we need to be when we need to be there. We are in your debt.

Mr. President, I have undoubtedly left out many people in the Senate who deserve to be thanked, and I hope they know who they are and how much we appreciate them.

ADDITIONAL STATEMENTS

100TH ANNIVERSARY OF THE HOUSE OF JACOB

• Mr. VOINOVICH. Mr. President, today I am pleased to extend my warmest congratulations to the Supreme Council of the House of Jacob of the United States of America as it celebrates its 100th anniversary with delegates from 41 locations from around the United States travelling to Coshocton, OH, for services in the church's newly constructed Mount Zion Tabernacle.

For 100 years, the Supreme Council of the House of Jacob of the United States of America has invited men and women of diverse backgrounds to worship God according to the teachings of Jesus Christ, advocating strong family ties, a high standard of moral values and civic participation.

I would like to recognize Supreme Bishop, Father J. Daniel Israel, J.O.G., and the Board of Directors of the House of Jacob of the United States of America, which make up the leadership of this church. I commend the ministries and the good works under their supervision within Ohio, and across our Nation.

I encourage my fellow Ohioans, my colleagues in the Senate and the entire

Nation to recognize this memorable anniversary celebration and to congratulate the Supreme Council of the House of Jacob of the United States of America on its 100-year anniversary on the 1st day in January 2010. Also, may God continue to bless this Church, its leaders and its faithful members.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–4144. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Update to Notice 2009–38'' (Notice No. 2010–2) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Finance.

EC–4145. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Extension of Notice 2008–55'' (Notice No. 2010–3) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Finance.

EC–4146. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance Under Section 409A(a) Regarding Complying with Opinions Issued By the Special Master Under the EESA'' (Notice No. 2009–92) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Finance.

EC–4147. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Extension of Deadline to Adopt Certain Retirement Plan Amendments'' (Notice No. 2009–97) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Finance.

EC–4148. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''2009 Cumulative List of Changes in Plan Qualification Requirements'' (Notice No. 2009–98) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Finance.

EC–4149. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Arbitrage Treatment of Certain Guarantee Funds'' (Notice No. 2010–5) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Finance.

EC–4150. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Reduction in Taxable Income for Housing Hurricane Katrina Deplaced Individuals'' ((TD 9474)(RIN1545–BF14)) received in the Office of the President of the Senate on December 17, 2009; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 3819. A bill to extend the commercial space transportation liability regime.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. HATCH:

S. 2922. A bill to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to extend the Rural Community Hospital Demonstration Program; to the Committee on Finance.

By Mrs. MURRAY:

S. 2923. A bill to provide funding for summer and year-round youth jobs and training programs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEAHY (for himself, Mr. HATCH, Mr. KOHL, and Mr. SESSIONS):

S. 2924. A bill to reauthorize the Boys & Girls Clubs of America, in the wake of its Centennial, and its programs and activities; to the Committee on the Judiciary.

By Mr. WYDEN (for himself and Mr. CORNYN):

S. 2925. A bill to establish a grant program to benefit victims of sex trafficking, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BURR (for himself and Mrs. HAGAN):

S. Res. 384. A resolution honoring United States Army Special Operations Command on their 20th anniversary; to the Committee on Armed Services.

By Mr. LUGAR:

S. Res. 385. A resolution recognizing the great progress made by the people of Ukraine in the establishment of democratic institutions, and supporting a free and transparent presidential election on January 17, 2010; to the Committee on Foreign Relations.

By Mr. KAUFMAN (for himself, Mr. LIEBERMAN, Mr. MCCAIN, Mr. DODD, Mr. KYL, Mr. CASEY, Mr. GRAHAM, Mr. LEVIN, Mr. BROWNBACK, and Mr. HATCH):

S. Res. 386. A resolution condemning the Government of Iran for restricting and suppressing freedom of the press, freedom of speech, freedom of expression, and freedom of assembly, and for its human rights abuses, and for other purposes; considered and agreed to.

ADDITIONAL COSPONSORS

S. 619

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 619, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S. 891

At the request of Mr. DURBIN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 891, a bill to require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes.

S. 987

At the request of Mr. DURBIN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 987, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 1076

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1297

At the request of Mr. CONRAD, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1297, a bill to amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments.

S. 1927

At the request of Mr. DODD, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1927, a bill to establish a moratorium on credit card interest rate increases, and for other purposes.

S. 1939

At the request of Mrs. GILLIBRAND, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1939, a bill to amend title 38, United States Code, to clarify presumptions relating to the exposure of certain veterans who served in the vicinity of the Republic of Vietnam, and for other purposes.

S. 2781

At the request of Ms. MIKULSKI, the names of the Senator from New Jersey

(Mr. LAUTENBERG) and the Senator from Massachusetts (Mr. KIRK) were added as cosponsors of S. 2781, a bill to change references in Federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual to references to an individual with an intellectual disability.

S. 2787

At the request of Mr. THUNE, the name of the Senator from Florida (Mr. LEMIEUX) was added as a cosponsor of S. 2787, a bill to repeal the authority of the Secretary of the Treasury to extend the Troubled Asset Relief Program.

S. 2847

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 2847, a bill to regulate the volume of audio on commercials.

S. 2862

At the request of Ms. SNOWE, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 2862, a bill to amend the Small Business Act to improve the Office of International Trade, and for other purposes.

S. 2917

At the request of Mr. BAUCUS, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Nebraska (Mr. JOHANNS) were added as cosponsors of S. 2917, a bill to amend the Internal Revenue Code of 1986 to modify the penalty for failure to disclose certain reportable transactions and the penalty for submitting a bad check to the Internal Revenue Service, to modify certain rules relating to Federal vendors, and for other purposes.

S. CON. RES. 39

At the request of Mr. MENENDEZ, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. Con. Res. 39, a concurrent resolution expressing the sense of the Congress that stable and affordable housing is an essential component of an effective strategy for the prevention, treatment, and care of human immunodeficiency virus, and that the United States should make a commitment to providing adequate funding for the development of housing as a response to the acquired immunodeficiency syndrome pandemic.

S. RES. 158

At the request of Mr. KERRY, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. Res. 158, a resolution to commend the American Sail Training Association for advancing international goodwill and character building under sail.

AMENDMENT NO. 2995

At the request of Mr. SCHUMER, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of amendment No. 2995 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3218

At the request of Mr. DORGAN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of amendment No. 3218 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. MURRAY:

S. 2923. A bill to provide funding for summer and year-round youth jobs and training programs; to the Committee on Health, Education, Labor, and Pensions.

Mrs. MURRAY. 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. 2923

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Youth Jobs Act of 2010''.

SEC. 2. SUMMER AND YEAR-ROUND YOUTH JOBS.

(a) FINDINGS.—Congress finds that—

(1) a $1,500,000,000 investment in summer and year-round employment for youth, through the program supported under this section, can create up to 450,000 temporary jobs and meaningful work experiences for economically disadvantaged youth and stimulate local economies;

(2) there is a serious and growing need for employment opportunities for economically disadvantaged youth (including young adults), as demonstrated by statistics from the Bureau of Labor Statistics stating that, in November 2009—

(A) the unemployment rate increased to 10 percent, as compared to 6.8 percent in November 2008;

(B) the unemployment rate for 16- to 19-year-olds rose to 26.7 percent, as compared to 20.4 percent in November 2008; and

(C) the unemployment rate for African-American 16- to 19-year-olds increased to 49.4 percent, as compared to 32.2 percent in November 2008;

(3) research from Northwestern University has shown that every $1 a youth earns has an accelerator effect of $3 on the local economy;

(4) summer and year-round jobs for youth help supplement the income of families living in poverty;

(5) summer and year-round jobs for youth provide valuable work experience for economically disadvantaged youth;

(6) often, a summer or year-round job provided under the Workforce Investment Act of 1998 is an economically disadvantaged youth's introduction to the world of work;

(7) according to the Center for Labor Market Studies at Northeastern University, early work experience is a very powerful predictor of success and earnings in the labor market, and early work experience raises earnings over a lifetime by 10 to 20 percent;

(8) participation in a youth jobs program can contribute to a reduction in criminal and high-risk behavior for youth; and

(9)(A) youth jobs programs benefit both youth and communities when designed around principles that promote mutually beneficial programs;

(B) youth benefit from jobs that provide them with work readiness skills and that help them make the connection between responsibility on the job and success in adulthood; and

(C) communities benefit when youth are engaged productively, providing much-needed services that meet real community needs.

(b) REFERENCES.—

(1) CERTIFICATE; CREDENTIAL.—In subsection (d), references to the terms ''certificate'' and ''credential'' have the meanings prescribed by the Secretary of Labor.

(2) YOUTH-RELATED REFERENCES.—In this Act, and in the provisions referred to in subsections (c) and (d) for purposes of this Act—

(A) a reference to a youth refers to an individual who is not younger than age 14 and not older than age 24, and meets any other requirements for that type of youth; and

(B) a reference to a youth activity refers to an activity covered in subsection (d)(1) that is carried out for a youth described in subparagraph (A).

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Labor for youth activities under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), $1,500,000,000, which shall be available for the period of January 1, 2010 through June 30, 2011, under the conditions described in subsection (d).

(d) CONDITIONS.—

(1) USE OF FUNDS.—The funds made available under subsection (c) shall be used for youth jobs and training programs, to provide opportunities referred to in subparagraphs (C), (D), (E), and (F) of section 129(c)(2) of such Act (29 U.S.C. 2854(c)(2)) and, as appropriate, opportunities referred to in subparagraphs (A) and (G) of such section, except that no such funds shall be spent on unpaid work experiences and the opportunities may include learning described in paragraph (3)(B).

(2) LIMITATION.—Such funds shall be distributed in accordance with sections 127 and 128 of such Act (29 U.S.C. 2852, 2853), except that no portion of such funds shall be reserved to carry out 128(a) or 169 of such Act (29 U.S.C. 2853(a), 2914).

(3) PRIORITY.—In using funds made available under subsection (c), a local area (as defined in section 101 of such Act (29 U.S.C. 2801))—

(A) shall give priority to providing—

(i) work experiences in viable, emerging, or demand industries, or work experiences in the public or nonprofit sector that fulfill a community need; and

(ii) job referral services for youth to work experiences described in clause (i) in the private sector, for which the employer involved agrees to pay the wages and benefits, consistent with Federal and State child labor laws; and

(B) may give priority to providing—

(i) work experiences combined with linkages to academic and occupational learning, so that the experiences and learning provide opportunities for youth to earn a short-term certificate or credential that has value in the labor market; and

(ii) work experiences combined with learning that are designed to encourage and maximize the likelihood of a participant's return to, or completion of, a program of study leading to a recognized secondary or postsecondary degree, certificate, or credential.

(4) MEASURE OF EFFECTIVENESS.—The effectiveness of the activities carried out with such funds shall be measured, under section

136 of such Act (29 U.S.C. 2871), only with performance measures based on the core indicators of performance described in section 136(b)(2)(A)(ii)(I) of such Act (29 U.S.C. 2871(b)(2)(A)(ii)(I)), applied to all youth served through the activities.

By Mr. LEAHY (for himself, Mr. HATCH, Mr. KOHL, and Mr. SESSIONS):

S. 2924. A bill to reauthorize the Boys & Girls Clubs of America, in the wake of its Centennial, and its programs and activities; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I am pleased today to introduce legislation to reauthorize the Department of Justice grant program for Boys & Girls Clubs. I thank Senator HATCH, Senator KOHL and Senator SESSIONS for joining me in this effort.

I have partnered with Senator HATCH for many years on issues concerning the Boys & Girls Clubs, and this bipartisan bill shows the commitment of both Democrats and Republicans to the good work done by Boys & Girls Clubs across the Nation.

Children are the future of our country, and we have a responsibility to make sure they are safe and secure. I know firsthand how well Boys & Girls Clubs work, and the real impact they have in our communities. In my home State of Vermont, we are fortunate to have 6 Boys & Girls Clubs operating in 25 locations. These clubs serve more than 14,000 youth in the State. I often hear from parents, educators, law enforcement officers and others in Vermont about just how successful these Clubs are, and how they inspire youth to reach their full potential.

As a senior member of the Senate Appropriations Committee, I have pushed for more Federal funding for Boys & Girls Clubs. This year, I recommended additional funding for youth mentoring programs, so that youth-serving organizations like the Boys & Girls Clubs of America are able to continue making a substantial and real difference in the lives of vulnerable children. I was pleased that Congress included $100 million for competitive youth mentoring grants in the recently passed consolidated appropriations bill.

The current recession has hit many organizations around the country, threatening their financial health, and the Boys & Girls Clubs are no different. At the same time, participation in these clubs has never been higher, and it continues to increase. I believe funding is well spent at the community level, however, where the positive impact on our youth is felt most directly.

In the 108th Congress, Senator HATCH and I worked together to pass a bill to reauthorize and extend the programs of the Boys & Girls Clubs of America through fiscal year 2009. Due in part to the support of Congress, there now exist over 4,300 Boys & Girls Clubs in all 50 states, serving more than 4.8 million young people. The bill we introduce today will help us continue to support these important programs by authorizing Justice Department grants through 2015.

We need safe havens where our youth—the future of our country—can learn and grow up free from the influences of drugs, gangs and crime. That is why Boys & Girls Clubs are so important to our children.

I hope all Senators will support this bipartisan bill to provide Federal support for the Boys & Girls Clubs of America. Our greatest responsibility is to our children, and supporting Boys & Girls Clubs is just one way in which we can show our commitment to their future.

Mr. President, I ask unanimour 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. 2924

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 ''Boys & Girls Clubs Centennial Reauthorization Act of 2009''.

SEC. 2. BOYS & GIRLS CLUBS OF AMERICA.

Section 401 of the Economic Espionage Act of 1966 (42 U.S.C. 13751 note) is amended—

(1) in subsection (a), by striking paragraph (1) and inserting the following:

''(1) FINDINGS.—Congress finds that—

''(A) for over 100 years, the Boys & Girls Clubs of America, a national organization chartered by an Act of Congress, has proven itself as a positive force in the communities it serves;

''(B) Boys & Girls Clubs and the programs and services implemented therein by over 50,000 professional staff, and 194,000 volunteers promote and enhance the development of boys and girls by instilling a sense of competence, usefulness, belonging and influence thereby making Boys & Girls Clubs a safe place to learn and grow;

''(C) the purpose of the program established by this section has been to provide adequate resources in the form of seed money for the Boys & Girls Clubs of America to assist local communities to form partnerships in a collaborative manor so education, youth development and prevention programs could be available for the youth in those communities;

''(D) in 1990 there were 1,810 Boys and Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 2,400,000 youths nationwide;

''(E) due to the public investment via the program established pursuant to this section, resulting congressional appropriations, and private partnership support, there are now 4,387 Boys & Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 4,500,000 youths nationwide;

''(F) with the assistance of the Federal Government, local communities have collaborated to establish and operate the Clubs in schools, parks, parks and recreation facilities, libraries, and community centers;

''(G) these new partnerships have resulted in 33 percent of the Boys & Girls Clubs located in or on school campuses where Club programs enhance and enrich the learning opportunities for youth;

''(H) the growth of Boys & Girls Clubs also includes an increase in Clubs located in public housing sites across the Nation, having grown from 289 in 1990 to 440 in 2009;

''(I) the growth of Boys and Girls Clubs also includes the growth of Boys & Girls Clubs on Native American land, having grown from 0 in 1990 to 225 in 2009 serving 140,000 Native American youth;

''(J) investment in our school partnerships has positively impacted graduation rates as demonstrated in recent survey of Clubs conducted by BGCA's CareerLaunch career preparation program, in which 96.68 percent of participants progressed successfully to the next grade level at the end of the 2008-2009 school year;

''(K) public housing projects and Native American land in which there is an active Boys and Girls Club have experienced a reduction in the presence of crack cocaine, and a reduction in juvenile crime and gang violence;

''(L) Boys & Girls Clubs are locally run and have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement as evidenced by collaborations and partnerships with schools, cities, counties, Sea Research, other youth providers such as Big Brothers Big Sisters, Police Athletic League (PAL), Cal Ripken Sr. Foundation, Boy Scouts, Girl Scouts, 4–H, and public libraries; and

''(M) further investment in Boys & Girls Clubs, which celebrated 100 years of service in 2006 will—

''(i) inure to our collective national benefit;

''(ii) continue to assist in the effort to reduce crime and drug use among our Nation's youth by teaching young people how to avoid gangs, resist alcohol, tobacco, and other drug use;

''(iii) continue to assist in improving educational opportunities and create centers of learning in and with schools thereby reducing the drop out rate and helping to improve the economy (if the national male graduation rate were increased by only 5 percent, the Nation would see an annual savings of $4,900,000,000 in crime related costs);

''(iv) continue in the efforts of reducing childhood obesity by teaching young people about the benefits of healthy habits such as eating right and being physically active;

''(v) continue to serve youth in rural communities including Native American land, by engaging and creating partnerships in those communities;

''(vi) continue to serve youth in urban and suburban communities including Public Housing by engaging and creating partnerships in those communities;

''(vii) continue to provide outdoor and environmental education programs for kids that would otherwise not have those educational and enriching opportunities;

''(viii) continue to develop job training programs for teens; and

''(ix) better equip communities to continue to sustain and improve the quality of these programs through effective use of existing resources, merging operations, and working collaboratively within communities to provide the highest quality programs for the youth in the Boys & Girls Clubs.'';

(2) in subsection (c)(1)—

(A) by striking ''2006, 2007, 2008, 2009, and 2010'' and inserting ''2011, 2012, 2013, 2014, and 2015''; and

(B) by striking ''establishing and extending Boys & Girls Clubs facilities where needed, with particular emphasis placed on establishing clubs in and extending services to public housing projects and distressed areas'' and inserting ''improving the quality of youth development and educational programs, health, physical fitness, and prevention services for youth at existing and new

Boys & Girls Clubs facilities with special emphasis on reducing high school drop out rates'';

(3) in subsection (c)(2)—

(A) by striking subparagraphs (A) and (B); and

(B) by redesignating subparagraphs (C) and (D) as subparagraphs (A) and (B), respectively; and

(4) by amending subsection (e) to read as follows:

''(e) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

''(A) $85,000,000 for fiscal year 2011;

''(B) $85,000,000 for fiscal year 2012;

''(C) $85,000,000 for fiscal year 2013;

''(D) $85,000,000 for fiscal year 2014; and

''(E) 85,000,000 for fiscal year 2015.''.

By Mr. WYDEN (for himself and Mr. CORNYN):

S. 2925. A bill to establish a grant program to benefit victims of sex trafficking, and for other purposes; to the Committee on the Judiciary.

Mr. WYDEN. Mr. President, I am pleased to join today with my colleague from Texas, Senator CORNYN, to introduce the Trafficking Deterrence and Victims Support Act of 2009.

This bill addresses a serious problem that is modern day slavery, pure and simple—human sex trafficking. You could almost call it a war, where all too often, children are the casualties.

The statistics on minors involved in sex trafficking are shocking. Experts estimate that over 100,000 children in the U.S. are at risk for prostitution. The average age of entry into prostitution is 12. The children at greatest risk of becoming involved in sex trafficking are what they call ''repeat runaways''—kids who have run away over and over again. They need help right away if they are going to avoid being caught by pimps. One third of runaway children are lured into prostitution within 48 hours of leaving home and 75 percent of minors caught in this web of prostitution have a pimp.

This problem is on the rise because criminal gang members are increasingly turning to pimping. Gang members have discovered that they are less likely to get prosecuted for trafficking a person than trafficking drugs. While drugs can only be sold once, a pimp can sell a person over and over. It is just as lucrative. A pimp can make $200,000 a year on one trafficking victim.

This situation is horrifying and totally unacceptable. The bill I am introducing today will bring a smart strategy that will give some teeth to the efforts law enforcement across the country have made to combat sex trafficking. It will give them additional resources they need to lock up pimps and sex traffickers. It will also help victims break away from their abusers and get the treatment and services they need to take their lives back.

Let us be absolutely clear about this—the pimps who prey upon vulnerable young people are criminals, and they should be put behind bars. The young women, girls, and sometimes boys who are trafficked are not criminals—they are victims of crime. They don't need to be prosecuted. They need all the help they can get to escape the clutches of pimps.

Unfortunately, until now, the government has been a step behind. Right now, it is very difficult for law enforcement officers and prosecutors to build criminal cases and crack down on pimps. The Trafficking Deterrence and Victims Support Act would change that.

Here is how it would work: The bill would establish a pilot project of 6 block grants in locations in different regions of the country with significant sex trafficking activity. The block grants would be awarded by the Department of Justice to State or local government applicants that have developed a workable, comprehensive plan to combat sex trafficking. The grants would require a comprehensive, multi-disciplinary approach to addressing trafficking problems. Applicants for the grants would have to demonstrate they can work together with local, State, and Federal law enforcement agencies, prosecutors, and social service providers to achieve the goals the bill would set out for them.

Government agencies that get the grants would be required to create shelters where trafficking victims would be safe from their pimps, and where they could start getting treatment for the trauma they have suffered. The shelters would provide counseling, legal services, and mental and physical health services, including treatment for substance abuse, sexual abuse, and trauma-informed care. The shelters would also provide food, clothing, and other necessities, as well as education and training to help victims get their lives on track.

It is going to take this kind of comprehensive plan to finally turn the tables on pimps who, right now, just wait for their victims to be released from jail so they can put them back out on the streets to make money for them. Once those girls are out, they don't come back to testify against their pimps—they're just gone.

This bill fixes that problem by giving the young victims a safe haven. It is only by addressing the needs of these victims that law enforcement officers will be able to work with them to build criminal cases against their pimps. The block grants will also provide for specialized training for law enforcement officers and prosecutors to help them learn how to handle trafficking victims and build trafficking cases.

This bill would also strengthen reporting requirements for runaway or missing children, and authorize funding to the FBI to enhance the National Crime Information Center, NCIC, database, which is where missing child reports are filed. This would give law enforcement officers better information on the children at greatest risk of being lured in to sex trafficking by being able to show a tally of how many times a child has run away, and can flag them as ''repeat runaways'' who are at high risk of being lured into prostitution.

Sex trafficking is a complex issue that requires the comprehensive, wraparound approach that this bill would deliver. As daunting as this problem is, there are bright examples of how to address the challenge, such as the achievements of Sergeant Byron Fassett of the Dallas Police Department. Just listening to Sergeant Fassett, who spoke at a recent congressional briefing that I hosted, is an education in how to do this right. The lessons he has learned in over 20 years of combating sex trafficking are a primer for how to get victims out of the clutches of pimps and build cases to put pimps away. Sergeant Fassett is not the only officer out there who's attacking this challenge the right way. In my home town of Portland, the officers on the human trafficking task force are doing excellent work. But right now, they simply don't have the resources to crack this problem. The Trafficking Deterrence and Victims Support Act would deliver the training and resources they need.

I want to also thank the many individuals and organizations who attended the briefing and participated in efforts to craft this legislation. I particularly want to acknowledge the Polaris Project and the National Center for Missing & Exploited Children, for their instrumental roles in this effort.

I look forward to working with Senator CORNYN and other colleagues to move this important legislation forward. There are children out on the streets tonight who shouldn't have to wait for the help this bill can give. Let us end this appalling war on those kids. Let us give them the help they need by passing this piece of legislation with all the speed possible.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2925

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Trafficking Deterrence and Victims Support Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Human trafficking is modern day slavery. It is the fastest-growing, and second largest, criminal enterprise in the world. Human trafficking generates an estimated profit of $32,000,000,000 per year, world wide.

(2) In the United States, human trafficking is an increasing problem. This criminal enterprise includes citizens of the United States, many of them children, who are forced into prostitution, and foreigners brought into the country, often under false pretenses, who are coerced into forced labor or commercial sexual exploitation.

(3) Sex trafficking is one of the most lucrative areas of human trafficking. Criminal gang members in the United States are increasingly involved in recruiting young

women and girls into sex trafficking. Interviews with gang members indicate that the gang members regard working as an individual who solicits customers for a prostitute (commonly known as a ''pimp'') to being as lucrative as trafficking in drugs, but with a much lower chance of being criminally convicted.

(4) Minors in the United States are highly vulnerable for sexual exploitation and sex trafficking. As many as 2,800,000 children live on the streets. Of the estimated 1,600,000 children who run away each year, 77 percent return home within 1 week. However, 33 percent of children who run away are lured into prostitution within 48 hours of leaving home.

(5) National Incidence Studies of Missing, Abducted, Runaway and Throwaway Children, the definitive study of episodes of missing children, found that of the children who are victims of non-family abduction, runaway or throwaway children, the police are alerted by family or guardians in only 21 percent of the cases. In 79 percent of cases there is no report and no police involvement, and therefore no official attempt to find the child.

(6) In 2007, the Administration of Children and Families, Department of Health and Human Services, reported to the Federal Government 265,000 cases of serious physical, sexual, or psychological abuse of children.

(7) Experts estimate that over 100,000 children in the United States are at risk for prostitution.

(8) Children who have run away from home are at a high risk of becoming involved in sex trafficking. Children who have run away multiple times are at much higher risk of not returning home and of engaging in prostitution.

(9) The vast majority of children involved in sex trafficking have suffered previous sexual or physical abuse, live in poverty, or have no stable home or family life. These children require a comprehensive framework of specialized treatment and mental health counseling that addresses post-traumatic stress, depression, and sexual exploitation.

(10) The average age of entry into prostitution is 12. Seventy-five percent of minors engaged in prostitution have a pimp. A pimp can earn $200,000 per year prostituting 1 trafficking victim.

(11) Sex trafficking is a complex and varied criminal problem that requires a multi-disciplinary, cooperative solution. Reducing trafficking will require the government to address victims, pimps, and johns; and to provide training specific to sex trafficking for law enforcement officers and prosecutors, and child welfare, public health, and other social service providers. A good model for this type of approach is the Internet Crimes Against Children task force program.

(12) Human trafficking is a criminal enterprise that imposes significant costs on the economy of the United States. Government and non-profit resources used to address trafficking include those of law enforcement, the judicial and penal systems, and social service providers. Without a range of appropriate treatments to help trafficking victims overcome the trauma they have experienced, victims will continue to be involved in crime, unable to support themselves, and continue to require government resources rather than being productive contributors to the legitimate economy.

(13) Many domestic minor sex trafficking victims are younger than 18 years old and are below the age of consent. Because trafficking victims have been forced to engage in prostitution rather than willfully to committing a crime, these victims should not be charged as criminal defendants. Instead, these victims of trafficking should have access to treatment and services to help them escape and overcome being sexually exploited, and should also be allowed to seek appropriate remuneration from crime victims' compensation funds.

(14) The State of New York has adopted a safe harbor law that establishes a presumption a minor charged with a prostitution offense is a severely trafficked person. This law allows the child to avoid criminal charges of prostitution and instead be considered a ''person in need of supervision.'' The statute also provides support and services to sexually exploited youth who are under the age of 18 years old. These services include safe houses, crisis intervention programs, community-based programs, and law-enforcement training to help officers identify sexually exploited youth.

(15) Sex trafficking is not a problem that occurs only in urban settings. This crime exists also in rural areas and on Indian reservations. Efforts to address sex trafficking should include partnerships with organizations that seek to address the needs of such under-served communities.

SEC. 3. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the Attorney General should implement changes to the National Crime Information Center database in order to ensure that—

(A) a child entered into the database will be automatically designated as an endangered juvenile if the child has been reported missing not less than 3 times in a 1 year period;

(B) the database be programmed to cross-reference newly entered reports with historical records already in the database; and

(C) the database be programmed to include a visual cue on the record of a child designated as an endangered juvenile in order to assist law enforcement officers in recognizing the child and providing the child with appropriate care and services; and

(2) funds awarded under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.) (commonly known as Byrne Grants) should be used to provide programs relating to sex trafficking education, training, deterrence, and prevention.

SEC. 4. SEX TRAFFICKING BLOCK GRANTS.

(a) DEFINITIONS.—In this section—

(1) the term ''Assistant Attorney General'' means the Assistant Attorney General for the Office of Justice Programs of the Department of Justice;

(2) the term ''domestic minor'' means an individual who is—

(A) a citizen of the United States or a lawful permanent resident of the United States; and

(B) under the age of 18 years old; and

(3) the term ''eligible entity'' means a State or unit of local government that—

(A) has significant sex trafficking activity;

(B) has demonstrated cooperation between State and local law enforcement agencies, prosecutors, and social service providers in addressing sex trafficking; and

(C) has developed a workable, multi-disciplinary plan to combat sex trafficking, including—

(i) the establishment of a shelter for sex trafficking victims;

(ii) the provision of comprehensive services to domestic minor victims;

(iii) the provision of specialized training for law enforcement officers and social service providers; and

(iv) deterrence and prosecution of sex trafficking offenses.

(b) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Assistant Attorney General is authorized to award 6 block grants to eligible entities in different regions of the United States to combat sex trafficking, and not less than 1 of the block grants shall be awarded to an eligible entity with a State population of less than 5,000,000.

(2) GRANT AMOUNT.—Each grant awarded under this section shall be in the amount of $2,500,000.

(3) DURATION.—

(A) IN GENERAL.—A grant awarded under this section shall be for a period of 1 year.

(B) RENEWAL.—The Secretary may renew a grant under this section for 2 1-year periods.

(c) USE OF FUNDS.—

(1) ALLOCATION.—For each grant awarded under subsection (b)—

(A) not less than 25 percent of the funds shall be used to provide shelter and services to victims of sex trafficking; and

(B) not less than 10 percent of the funds shall be awarded by the eligible entity to a subcontractor with annual revenues of less than $750,000, to provide services to victims of sex trafficking or training for law enforcement and social service providers.

(2) OTHER ACTIVITIES.—Grants awarded pursuant to subsection (b) may be used for activities such as—

(A) providing shelter to domestic minor trafficking victims, including temporary or long-term placement as appropriate;

(B) providing trafficking victims with clothing and other daily necessities needed to keep the trafficking victims from returning to living on the street;

(C) counseling and legal services for victims of sex trafficking, including substance abuse treatment, trauma-informed care, and sexual abuse or other mental health counseling;

(D) specialized training for law enforcement personnel and social service providers, specific to sex trafficking issues;

(E) funding salaries, in whole or in part, for law enforcement officers, including patrol officers; detectives; and investigators; provided that the percentage of the salary of the law enforcement officer paid for by funds from a grant awarded under subsection (b) shall be no less than the percentage of the time dedicated to working on sex trafficking cases by the law enforcement officer;

(F) funding salaries for State and local prosecutors, including assisting in paying trial expenses for prosecution of sex trafficking law offenders;

(G) investigation expenses, including—

(i) wire taps;

(ii) consultants with expertise specific to sex trafficking cases;

(iii) travel; and

(iv) any other technical assistance expenditures; and

(H) outreach and education programs to provide information about deterrence and prevention of sex trafficking, including programs to provide treatment to men charged with solicitation of prostitution in cases where—

(i) a treatment program is an appropriate alternative to criminal prosecution; and

(ii) the men were not charged with solicitation of sex with a minor.

(d) APPLICATION.—

(1) IN GENERAL.—Each eligible entity desiring a grant under this Act shall submit an application to the Assistant Attorney General at such time, in such manner, and accompanied by such information as the Assistant Attorney General may reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Secretary determines to be essential to ensure compliance with the requirements of this Act.

(e) EVALUATION.—The Assistant Attorney General shall, in consultation with the Comptroller General of the United States, enter into a contract with an academic or non-profit organization that has experience in sex trafficking issues and evaluation of grant programs to conduct an annual evaluation of grants made under this section to determine the impact and effectiveness of programs funded with grants awarded under subsection (b).

(f) AUTHORIZATION OF APPROPRIATIONS.—For fiscal years 2011 through 2014, there are authorized to be appropriated, to carry out the provisions of this section, the following sums:

(1) $45,000,000 to fund grants awarded under subsection (b).

(2) $1,500,000 to conduct the evaluation under subsection (e).

(3) $3,500,000 to the Attorney General, to design and implement improvements to the NCIC database.

SEC. 5. REPORTING REQUIREMENTS.

(a) REPORTING REQUIREMENT FOR STATE CHILD WELFARE AGENCIES.—

(1) REQUIREMENT FOR STATE CHILD WELFARE AGENCIES TO REPORT CHILDREN MISSING OR ABDUCTED.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

(A) in paragraph (32), by striking ''and'' after the semicolon;

(B) in paragraph (33), by striking the period and inserting ''; and''; and

(C) by inserting after paragraph (33) the following:

''(34) provides that the State has in effect procedures that require the State agency to promptly report information on missing or abducted children to the law enforcement authorities for entry into the National Crime Information Center (NCIC) database.''.

(2) REGULATIONS.—The Secretary of Health and Human Services shall promulgate regulations implementing the amendment made by paragraph (1). The regulations promulgated under this subsection shall include provisions to withhold federal funds to any State that fails to substantially comply with the requirement imposed under the amendment made by paragraph (1).

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 2010, without regard to whether final regulations required under paragraph (2) have been promulgated by that date.

(b) ANNUAL STATISTICAL SUMMARY.—Section 3701(c) of the Crime Control Act of 1990 (42 U.S.C. 5779(c)) is amended by inserting '', that includes the total number of reports received and the total number of entries made to the National Crime Information Center (NCIC) database'' after ''of this title''.

(c) STATE REPORTING.—Section 3702 of the Crime Control Act of 1990 (42 U.S.C. 5780) is amended in paragraph (4)—

(1) by striking ''(2)'' and inserting ''(3)'';

(2) in subparagraph (A), by inserting '', and a photograph taken within the previous 180 days'' after ''dental records'';

(3) in subparagraph (B), by striking the ''and'' after the semicolon;

(4) by redesignating subparagraph (C) as subparagraph (D); and

(5) by inserting after subparagraph (B) the following:

''(C) notify the National Center for Missing and Exploited Children of each report received relating to a child reported missing from a foster care family home or childcare institution; and''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 384—HONORING UNITED STATES ARMY SPECIAL OPERATIONS COMMAND ON THEIR 20TH ANNIVERSARY

Mr. BURR (for himself and Mrs. HAGAN) submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 384

Whereas since the establishment of United States Army Special Operations Command (USASOC) on December 1, 1989, its personnel have operated in some of the most remote and hostile regions of the world;

Whereas the 7 components of USASOC consist of the John F. Kennedy Special Warfare Center and School, the United States Army Special Forces Command, the 75th Ranger Regiment, the 160th Special Operations Aviation Regiment, the 4th Psychological Operations Group, the 95th Civil Affairs Brigade, and the 528th Sustainment Brigade;

Whereas USASOC provides 70 percent of special operations personnel in Central Command's theater and approximately 63 percent of the total overseas military commitments of the United States;

Whereas in the 8 years since the start of Operation Enduring Freedom and Operation Iraqi Freedom, 245 USASOC soldiers have made the ultimate sacrifice; and

Whereas Master Sergeant Brendan O'Connor, Chief Warrant Officer David Cooper, Colonel Mark Mitchell, Master Sergeant Donald Hollenbaugh, and Master Sergeant Daniel Briggs, all of whom have served this Nation as soldiers assigned to USASOC, received the Distinguished Service Cross for actions in support of the Global War on Terrorism: Now, therefore, be it

Resolved, That the Senate—

(1) commends the United States Army Special Operations Command for more than 20 years of dedicated service to our Nation;

(2) honors the more than 27,000 personnel who serve in the United States Army Special Operations Command; and

(3) pledges its continued support for the men and women of the United States Armed Forces.

SENATE RESOLUTION 385—RECOGNIZING THE GREAT PROGRESS MADE BY THE PEOPLE OF UKRAINE IN THE ESTABLISHMENT OF DEMOCRATIC INSTITUTIONS, AND SUPPORTING A FREE AND TRANSPARENT PRESIDENTIAL ELECTION ON JANUARY 17, 2010

Mr. LUGAR submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 385

Whereas adherence by Ukraine to democratic, transparent, and fair election standards has been necessary for full integration into the community of democracies;

Whereas steps undertaken by Ukraine in recent years, including reform of election laws and regulations, the development of a free and independent press, and the establishment of public institutions that respect human rights and the rule of law, have enhanced Ukraine's progress toward democracy and enhanced prosperity;

Whereas elections in Ukraine in 2004, 2006, and 2007 were determined by the Organization for Security and Cooperation in Europe (OSCE) to have been consistent with international election standards;

Whereas the United States has closely supported the people of Ukraine in their bold efforts to pursue a free and democratic future following the declaration of their independence in 1991;

Whereas the NATO Freedom Consolidation Act of 2007 (Public Law 110–17; 22 U.S.C. 1928 note), signed into law by President George W. Bush on April 9, 2007, recognized the progress made by Ukraine toward meeting the responsibilities and obligations for membership in the North Atlantic Treaty Organization (NATO) and designated Ukraine as eligible to receive assistance under the NATO Participation Act of 1994 (title II of Public Law 103–447; 22 U.S.C. 1928 note);

Whereas Ukraine has made steps toward integration within European institutions through a joint European Union–Ukraine Action Plan, as part of the European Neighbourhood Policy; and

Whereas the United States–Ukraine Strategic Partnership Commission was inaugurated by Secretary of State Hillary Clinton and Ukrainian Foreign Minister Petro Poroshenko on December 9, 2009: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the great progress made by the people of Ukraine in establishing democratic institutions and carrying out peaceful election processes in 2004, 2006, and 2007;

(2) supports a free and transparent election process in the presidential election in Ukraine on January 17, 2010, that comports with the international election standards of the Organization for Security and Cooperation in Europe;

(3) encourages all parties to respect the independence and territorial integrity of Ukraine, as well as the full integration of Ukraine into the international community of democracies; and

(4) pledges support for the creation of a prosperous free market economy and the strengthening of a free and open democratic system in Ukraine.

SENATE RESOLUTION 386—CONDEMNING THE GOVERNMENT OF IRAN FOR RESTRICTING AND SUPPRESSING FREEDOM OF THE PRESS, FREEDOM OF SPEECH, FREEDOM OF EXPRESSION, AND FREEDOM OF ASSEMBLY, AND FOR ITS HUMAN RIGHTS ABUSES, AND FOR OTHER PURPOSES

Mr. KAUFMAN (for himself, Mr. LIEBERMAN, Mr. MCCAIN, Mr. DODD, Mr. KYL, Mr. CASEY, Mr. GRAHAM, Mr. LEVIN, Mr. BROWNBACK, and Mr. HATCH) submitted the following resolution; which was considered and agreed to:

S. RES. 386

Whereas hundreds of thousands of Iranian citizens have engaged in peaceful protest since the June 12, 2009, presidential election in Iran;

Whereas the Government of Iran has responded to these protests with a concerted campaign of intimidation, repression, and violence, including human rights abuses against Iranian citizens;

Whereas there have been numerous allegations of torture, rape, imprisonment, and violence perpetrated against Iranian citizens by the Government of Iran since the June 12 elections;

Whereas the Government of Iran has sought to restrict and suppress the legitimate right of the people of Iran to exercise

freedom of speech, freedom of expression, freedom of assembly, and freedom of the press;

Whereas the Government of Iran has monitored, controlled, and censored access to the Internet, and has conducted a campaign of harassment and intimidation through the electronic media;

Whereas Freedom House assesses Internet and digital media in Iran as ''Not Free,'' and characterizes the Government of Iran as wielding ''one of the world's most sophisticated apparatuses for controlling the internet and other digital technologies'';

Whereas the Government of Iran is engaged in a range of activities that interfere with, or infringe upon, the right of the people of Iran to access accurate, independent news and information;

Whereas, according to Amnesty International, the Government of Iran has banned several newspapers, including Farhang-e Ashti, Arman-e Ravabet-e Omomi, Tahlil-e Rooz, and Sarmayeh;

Whereas the Government of Iran has harassed, arrested, detained, imprisoned, and assaulted numerous Iranian and foreign journalists, publishers, editors, photographers, cameramen, and bloggers;

Whereas the Government of Iran has prohibited Iranian and non-Iranian news services from distributing reports in Farsi;

Whereas the Government of Iran has revoked and temporarily suspended the accreditation of foreign journalists to report on current events and news developments in Iran;

Whereas the Government of Iran has interrupted short message service (SMS), preventing text message communications and blocking Internet sites that utilize such services;

Whereas the Government of Iran has partially jammed shortwave and medium wave transmissions of Radio Farda, the Persian language service of Radio Free Europe/Radio Liberty;

Whereas the Government of Iran has intermittently jammed satellite broadcasts by Radio Farda, the Voice of America's Persian News Network (PNN), the British Broadcasting Corporation (BBC), and other non-Iranian government news services;

Whereas the Government of Iran has blocked Web sites and blogs, including social networking, content-sharing, and blogging sites, such as Facebook, Twitter, YouTube, Orkut, Blogger, and Persianblog;

Whereas the Government of Iran has targeted, blocked, and limited Internet connections and mobile network access to thwart communication in advance of planned demonstrations, and has seized mobile phones that were used to film or document the demonstrations;

Whereas the Government of Iran has monitored online activities of Iranians and threatened them and their families with punitive action, including citizens of Iran and Iranian-Americans living in the United States and elsewhere overseas;

Whereas, in November 2009, the police forces of the Government of Iran formed a special unit to monitor websites and ''Internet crimes,'' including political offenses;

Whereas the Victims of Iranian Censorship Act (subtitle D of title XII of Public Law 111–84), which was signed into law on October 28, 2009, stipulates that ''it shall be the policy of the United States to encourage the development of technologies, including Internet Web sites, that facilitate the efforts of the Iranian people to gain access to and share accurate information and exercise freedom of speech, freedom of expressions, freedom of assembly, and freedom of the press, through the Internet or other electronic media'';

Whereas on December 10, 2009, President Barack Obama affirmed in his statement accepting the Nobel Peace Prize, ''We will bear witness to the quiet dignity of reformers...to the hundreds of thousands who have marched silently through the streets of Iran. It is telling that the leaders of these governments fear the aspirations of their own people more than the power of any other nation. And it is the responsibility of all free people and free nations to make clear to these movements that hope and history are on their side.''

Whereas, on December 18, 2009, the United Nations General Assembly passed a resolution calling on the Government of Iran to respect its human rights obligations, including its obligations under its own constitution as well as those of international human rights law; and

Whereas, on December 18, 2009, the Department of State issued a statement welcoming the passage of the United Nations resolution which stated, ''The resolution, first adopted last month by the UN Third Committee, expresses deep concern over the brutal response of Iranian authorities to peaceful demonstrations in the wake of the June 12 election...Those in Iran who are trying to exercise their universal rights should know that their voices are being heard.'': Now, therefore, be it

Resolved, That the Senate—

(1) supports the right of the people of Iran to peacefully express their voices, opinions, and aspirations, despite intimidation, repression, and violence;

(2) condemns the human rights abuses committed by the Government of Iran against Iranian citizens;

(3) condemns the efforts of the Government of Iran to restrict and suppress freedom of the press, freedom of speech, freedom of expression, and freedom of assembly;

(4) condemns online censorship, monitoring, intimidation, and harassment conducted by the Government of Iran, including threats against citizens of Iran and Iranian-Americans living in the United States;

(5) condemns an atmosphere of impunity in Iran for those who employ censorship, intimidation, harassment, or violence to restrict and suppress freedom of speech, freedom of expression, freedom of assembly, and freedom of the press;

(6) condemns the Government of Iran for violating the International Covenant on Civil and Political Rights, done at New York December 16, 1966, and entered into force March 23, 1976, which has been ratified by Iran and states, ''Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'';

(7) welcomes the decision made by the Department of State on December 15, 2009, to foster and support the free flow of information to Iranian citizens by recommending that the Department of the Treasury's Office of Foreign Assets Control (OFAC) issue a general license that would authorize downloads of free mass market software to Iran necessary for the exchange of personal communications or sharing of information or both over the Internet as deemed ''essential to the national interest of the United States''; and

(8) urges the implementation of the Victims of Iranian Censorship Act (subtitle D of title XII of Public Law 111–84).

AMENDMENTS SUBMITTED AND PROPOSED

SA 3294. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3295. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3296. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3297. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3294. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title I, insert the following:

SEC. ___. ENSURING THE AFFORDABILITY OF COVERAGE.

Notwithstanding any other provision of this Act, this Act (and the amendment made by this Act) shall not take effect until the date on which the Secretary of Health and Human Services certifies to Congress that the implementation of this Act (and amendments) will not result in a greater increase in health insurance premiums than the increase that is otherwise projected under current law for more than 1,000,000 Americans.

SA 3295. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. CIVIL ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.

(a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.—If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in any United States District Court and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

(2) A copy of the complaint shall be delivered promptly to the Secretary of the Senate and the Clerk of the House of Representatives.

(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(4) It shall be the duty of the United States District Court in which the action is brought and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(b) APPLICABILITY.—

(1) INITIAL CLAIMS.—With respect to any action initially filed on or before July 31, 2010, the provisions of subsection (a) shall apply with respect to each action described in such section.

(2) SUBSEQUENT ACTIONS.—With respect to any action initially filed after July 31, 2010, the provisions of subsection (a) shall not apply to any action described in such section unless the person filing such action elects such provisions to apply to the action.

SA 3296. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title I, insert the following:

SEC. ___. PROHIBITION ON UNFUNDED MANDATES.

Notwithstanding any other provision of this title (or an amendment made by this title), no State or locality shall be required to comply with a requirement of this title (or amendment) prior to the date on which funds are appropriated at the full authorized level as provided for in this Act (or an amendment made by this Act).

SA 3297. Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. POINT OF ORDER.

(a) IN GENERAL.—It shall not be in order in the Senate to consider a congressionally directed spending item, a limited tax benefit, or a limited tariff benefit, if a Senator, Member, Delegate, or Resident Commissioner has conditioned the inclusion of language to provide funding for a congressional directed spending item, a limited tax benefit, or a limited tariff benefit in any amendment, bill, or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (including an accompanying joint explanatory statement of managers) on any vote cast by any Senator, Member, Delegate, or Resident Commissioner.

(b) WAIVER.—The provisions of this section be waived or suspended only by the affirmative vote of two-thirds of the Members, present and voting.

(c) APPEALS.—Appeals from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the measure. An affirmative vote of two-thirds of the Members of the Senate, present and voting, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

NOTICE OF INTENT TO SUSPEND THE RULES

Mr. DEMINT. Mr. President, I submit the following notice in writing: In accordance with Rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend Rule XXII, Paragraph 2, for the purpose of proposing and considering the following amendment, including germaneness requirements:

At the appropriate place, insert the following:

SEC. ___. POINT OF ORDER.

(a) IN GENERAL.—It shall not be in order in the Senate to consider a congressionally directed spending item, a limited tax benefit, or a limited tariff benefit, if a Senator, Member, Delegate, or Resident Commissioner has conditioned the inclusion of language to provide funding for a congressional directed spending item, a limited tax benefit, or a limited tariff benefit in any amendment, bill, or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (including an accompanying joint explanatory statement of managers) on any vote cast by any Senator, Member, Delegate, or Resident Commissioner.

(b) WAIVER.—The provisions of this section be waived or suspended only by the affirmative vote of two-thirds of the Members, present and voting.

(c) APPEALS.—Appeals from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the measure. An affirmative vote of two-thirds of the Members of the Senate, present and voting, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

EXTENDING GENERALIZED SYSTEM OF PREFERENCES AND THE ANDEAN PREFERENCE ACT

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4284, received from the House and at the desk.

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

The clerk will state the bill by title.

The bill clerk read as follows:

A bill (H.R. 4284) to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DODD. Mr. President, I ask unanimous consent that the bill be read the third time, passed, the motion to reconsider be laid upon the table, and that any statements on the bill be printed in the RECORD, with no intervening action.

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

The bill (H.R. 4284) was ordered to a third reading, read the third time, and passed.

COMMENDING THE SOLDIERS AND CIVILIAN PERSONNEL AT FORT GORDON

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Armed Services be discharged from further consideration and the Senate now proceed to H. Con. Res. 206.

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

The clerk will report.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 206) commending the soldiers and civilian personnel stationed at Fort Gordon and their families for their service and dedication to the United States and recognizing the contributions of Fort Gordon to Operation Iraqi Freedom and Operation Enduring Freedom and its role as a pivotal communications training installation.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The concurrent resolution was agreed to.

The preamble was agreed to.

CONDEMNING THE GOVERNMENT OF IRAN

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 386, submitted earlier today.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 386) condemning the Government of Iran for restricting and suppressing freedom of the press, freedom of speech, freedom of expression, and freedom of assembly, and for its human rights abuses, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 386) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 386

Whereas hundreds of thousands of Iranian citizens have engaged in peaceful protest since the June 12, 2009, presidential election in Iran;

Whereas the Government of Iran has responded to these protests with a concerted campaign of intimidation, repression, and violence, including human rights abuses against Iranian citizens;

Whereas there have been numerous allegations of torture, rape, imprisonment, and violence perpetrated against Iranian citizens by the Government of Iran since the June 12 elections;

Whereas the Government of Iran has sought to restrict and suppress the legitimate right of the people of Iran to exercise freedom of speech, freedom of expression, freedom of assembly, and freedom of the press;

Whereas the Government of Iran has monitored, controlled, and censored access to the Internet, and has conducted a campaign of harassment and intimidation through the electronic media;

Whereas Freedom House assesses Internet and digital media in Iran as ''Not Free,'' and characterizes the Government of Iran as wielding ''one of the world's most sophisticated apparatuses for controlling the internet and other digital technologies'';

Whereas the Government of Iran is engaged in a range of activities that interfere with, or infringe upon, the right of the people of Iran to access accurate, independent news and information;

Whereas, according to Amnesty International, the Government of Iran has banned several newspapers, including Farhang-e Ashti, Arman-e Ravabet-e Omomi, Tahlil-e Rooz, and Sarmayeh;

Whereas the Government of Iran has harassed, arrested, detained, imprisoned, and assaulted numerous Iranian and foreign journalists, publishers, editors, photographers, cameramen, and bloggers;

Whereas the Government of Iran has prohibited Iranian and non-Iranian news services from distributing reports in Farsi;

Whereas the Government of Iran has revoked and temporarily suspended the accreditation of foreign journalists to report on current events and news developments in Iran;

Whereas the Government of Iran has interrupted short message service (SMS), preventing text message communications and blocking Internet sites that utilize such services;

Whereas the Government of Iran has partially jammed shortwave and medium wave transmissions of Radio Farda, the Persian language service of Radio Free Europe/Radio Liberty;

Whereas the Government of Iran has intermittently jammed satellite broadcasts by Radio Farda, the Voice of America's Persian News Network (PNN), the British Broadcasting Corporation (BBC), and other non-Iranian government news services;

Whereas the Government of Iran has blocked Web sites and blogs, including social networking, content-sharing, and blogging sites, such as Facebook, Twitter, YouTube, Orkut, Blogger, and Persianblog;

Whereas the Government of Iran has targeted, blocked, and limited Internet connections and mobile network access to thwart communication in advance of planned demonstrations, and has seized mobile phones that were used to film or document the demonstrations;

Whereas the Government of Iran has monitored online activities of Iranians and threatened them and their families with punitive action, including citizens of Iran and Iranian-Americans living in the United States and elsewhere overseas;

Whereas, in November 2009, the police forces of the Government of Iran formed a special unit to monitor websites and ''Internet crimes,'' including political offenses;

Whereas the Victims of Iranian Censorship Act (subtitle D of title XII of Public Law 111–84), which was signed into law on October 28, 2009, stipulates that ''it shall be the policy of the United States to encourage the development of technologies, including Internet Web sites, that facilitate the efforts of the Iranian people to gain access to and share accurate information and exercise freedom of speech, freedom of expressions, freedom of assembly, and freedom of the press, through the Internet or other electronic media'';

Whereas on December 10, 2009, President Barack Obama affirmed in his statement accepting the Nobel Peace Prize, ''We will bear witness to the quiet dignity of reformers...to the hundreds of thousands who have marched silently through the streets of Iran. It is telling that the leaders of these governments fear the aspirations of their own people more than the power of any other nation. And it is the responsibility of all free people and free nations to make clear to these movements that hope and history are on their side.''

Whereas, on December 18, 2009, the United Nations General Assembly passed a resolution calling on the Government of Iran to respect its human rights obligations, including its obligations under its own constitution as well as those of international human rights law; and

Whereas, on December 18, 2009, the Department of State issued a statement welcoming the passage of the United Nations resolution which stated, ''The resolution, first adopted last month by the UN Third Committee, expresses deep concern over the brutal response of Iranian authorities to peaceful demonstrations in the wake of the June 12 election...Those in Iran who are trying to exercise their universal rights should know that their voices are being heard.'': Now, therefore, be it

Resolved, That the Senate—

(1) supports the right of the people of Iran to peacefully express their voices, opinions, and aspirations, despite intimidation, repression, and violence;

(2) condemns the human rights abuses committed by the Government of Iran against Iranian citizens;

(3) condemns the efforts of the Government of Iran to restrict and suppress freedom of the press, freedom of speech, freedom of expression, and freedom of assembly;

(4) condemns online censorship, monitoring, intimidation, and harassment conducted by the Government of Iran, including threats against citizens of Iran and Iranian-Americans living in the United States;

(5) condemns an atmosphere of impunity in Iran for those who employ censorship, intimidation, harassment, or violence to restrict and suppress freedom of speech, freedom of expression, freedom of assembly, and freedom of the press;

(6) condemns the Government of Iran for violating the International Covenant on Civil and Political Rights, done at New York December 16, 1966, and entered into force March 23, 1976, which has been ratified by Iran and states, ''Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'';

(7) welcomes the decision made by the Department of State on December 15, 2009, to foster and support the free flow of information to Iranian citizens by recommending that the Department of the Treasury's Office of Foreign Assets Control (OFAC) issue a general license that would authorize downloads of free mass market software to Iran necessary for the exchange of personal communications or sharing of information or both over the Internet as deemed ''essential to the national interest of the United States''; and

(8) urges the implementation of the Victims of Iranian Censorship Act (subtitle D of title XII of Public Law 111–84).

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appoints the following Senator as a delegate of the U.S.-China Interparliamentary Group conference during the 111th Congress: The Honorable MICHAEL ENZI of Wyoming.

The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appoints the following Senator as a delegate of the U.S.-China Interparliamentary Group conference during the 111th Congress: the Honorable ROLAND BURRIS of Illinois.

Mr. DODD. Mr. President, I yield the floor.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:45 a.m. tomorrow.

There being no objection, the Senate, at 7:06 p.m., adjourned until Wednesday, December 23, 2009, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate:

THE JUDICIARY

J. MICHELLE CHILDS, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, VICE GEORGE ROSS ANDERSON, JR., RETIRED.

RICHARD MARK GERGEL, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, VICE HENRY M. HERLONG, JR., RETIRED.

DEPARTMENT OF JUSTICE

WILLIAM N. NETTLES, OF SOUTH CAROLINA, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF SOUTH CAROLINA FOR THE TERM OF FOUR YEARS, VICE WILLIAM WALTER WILKINS, III.

KELVIN CORNEILIUS WASHINGTON, OF SOUTH CAROLINA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF SOUTH CAROLINA FOR THE TERM OF FOUR YEARS, VICE JOHNNY MACK BROWN.

IN THE COAST GUARD

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT AS COMMANDANT OF THE UNITED STATES COAST GUARD AND TO THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 44:

To be admiral

VICE ADM. ROBERT J. PAPP, JR.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S13713–S13793

Measures Introduced: Four bills and three resolutions were introduced, as follows: S. 2922–2925, and S. Res. 384–386. **Page S13785**

Measures Reported:

H.R. 3819, to extend the commercial space transportation liability regime. **Page S13785**

Measures Passed:

Generalized System of Preferences and the Andean Trade Preference Act Extension: Senate passed H.R. 4284, to extend the Generalized System of Preferences and the Andean Trade Preference Act, clearing the measure for the President. **Page S13792**

Commending the Soldiers, Civilian Personnel, and Families at Fort Gordon: Committee on Armed Services was discharged from further consideration of H. Con. Res. 206, commending the soldiers and civilian personnel stationed at Fort Gordon and their families for their service and dedication to the United States and recognizing the contributions of Fort Gordon to Operation Iraqi Freedom and Operation Enduring Freedom and its role as a pivotal communications training installation, and the resolution was then agreed to. **Page S13792**

Condemning the Government of Iran: Senate agreed to S. Res. 386, condemning the Government of Iran for restricting and suppressing freedom of the press, freedom of speech, freedom of expression, and freedom of assembly, and for its human rights abuses. **Pages S13792–93**

Measures Considered:

Service Members Home Ownership Tax Act—Agreement: Senate continued consideration of H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, taking action on the following amendments proposed thereto:

Pages S13714–44, S13745–51

Adopted:

By 60 yeas to 39 nays (Vote No. 387), Reid Amendment No. 3276 (to Amendment No. 2786), of a perfecting nature. **Pages S13714–15, S13716**

Rejected:

Reid Amendment No. 3278 (to the language proposed to be stricken by Amendment No. 2786), to change the enactment date. (By 60 yeas to 39 nays (Vote No. 386), Senate tabled the amendment.)

Pages S13714, S13715

Withdrawn:

Reid Amendment No. 3277 (to Amendment No. 3276), to change the enactment date.

Pages S13714, S13715–16

Pending:

Reid Amendment No. 2786, in the nature of a substitute. **Pages S13714–44, S13745–51**

Reid (for Cardin) Amendment No. 2878 (to Amendment No. 2786), to provide for the establishment of Offices of Minority Health.

Pages S13714, S13716

Reid Amendment No. 3292 (to Amendment No. 2878), to change the effective date. **Pages S13716–44**

During consideration of this measure today, Senate also took the following action:

Reid Amendment No. 3279 (to Amendment No. 3278), to change the enactment date, fell when Reid Amendment No. 3278 (to the language proposed to be stricken by Amendment No. 2786) (listed above), was tabled. **Page S13714**

By 60 yeas to 39 nays (Vote No. 388), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the Reid Amendment No. 2786, in the nature of a substitute. **Page S13716**

A unanimous-consent agreement was reached providing that all post-cloture time be considered expired on the bill at 8 a.m., Thursday, December 24, 2009, if cloture is invoked, and immediately the bill, as amended, be read a third time, and Senate vote on passage of the bill. **Page S13747**

A unanimous-consent-time agreement was reached providing for further consideration of the bill at approximately 9:45 a.m., on Wednesday, December 23, 2009, with the time following any Leader remarks and until 10 a.m. equally divided and controlled between the two Leaders, or their designees; that at 10 a.m. and until 2 p.m. the time be controlled in alternating one hour blocks of time, with the Majority controlling the first hour; provided further, that the remaining time until 2:13 p.m. be equally divided and controlled between the two Leaders, with the Majority controlling the final half. **Page S13779**

Appointments:

U.S.-China Interparliamentary Group Conference: The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appointed the following Senator as a delegate of the U.S.-China Interparliamentary Group conference during the 111th Congress: Senator Burris. **Page S13793**

U.S.-China Interparliamentary Group Conference: The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appointed the following Senator as a delegate of the U.S.-China Interparliamentary Group conference during the 111th Congress: Senator Enzi. **Page S13793**

Continued Financing of Government Operations—Agreement: A unanimous-consent agreement was reached providing that on Thursday, December 24, 2009, after passage of H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, as amended, Senate immediately begin consideration of H.R. 4314, an act to permit continued financing of Government operations; that no amendments be in order; Senate vote on passage of the bill; that passage require a 60 affirmative vote threshold. **Page S13747**

Increasing the Statutory Limit on the Public Debt—Agreement: A unanimous-consent agreement was reached providing that on Wednesday, January 20, 2010, at a time to be determined by the Majority Leader, following consultation with the Republican Leader, the Committee on Finance be discharged of H.J. Res. 45, increasing the statutory limit on the public debt; Senate proceed to the measure; that immediately after the joint resolution is reported, the Majority Leader, or his designee, be recognized to offer a substitute amendment; and that the following be the only first-degree amendments in order to the joint resolution: Thune Amendment relative to TARP; Murkowski Amendment relative to Endangerment EPA regulations; Coburn Amendment relative to Rescissions package; Sessions Amendment relative to Spending caps; McConnell Amendment relative to any on list; Reid Amendment relative to any on list; Reid Amendment relative to pay go; three Baucus Amendments relative to any on list; and Conrad/Gregg Amendment relative to fiscal taskforce; that each of the listed amendments be subject to an affirmative 60 vote threshold; and that if any achieve that threshold, then they be agreed to; that if they do not achieve the 60 vote threshold, then they be withdrawn; that upon disposition of all amendments, the substitute amendment, as amended, if amended, be agreed to; that Senate vote on passage of the joint resolution, as amended, that passage also be subject to an affirmative 60 vote threshold. **Page S13747**

Martin Nomination—Agreement: A unanimous-consent-time agreement was reached providing that on Wednesday, January 20, 2010, after a period of morning business, Senate begin consideration of the nomination of Beverly Baldwin Martin, of Georgia, to be United States Circuit Judge for the Eleventh Circuit; that there be 60 minutes of debate with respect to the nomination, with time equally divided and controlled between Senators Leahy and Sessions, or their designees; that upon the use or yielding back of time, Senate vote on confirmation of the nomination. **Pages S13747–48**

Nominations Received: Senate received the following nominations:

J. Michelle Childs, of South Carolina, to be United States District Judge for the District of South Carolina.

Richard Mark Gergel, of South Carolina, to be United States District Judge for the District of South Carolina.

William N. Nettles, of South Carolina, to be United States Attorney for the District of South Carolina for the term of four years.

Kelvin Corneilius Washington, of South Carolina, to be United States Marshal for the District of South Carolina for the term of four years.

1 Coast Guard nomination in the rank of admiral. **Page S13793**

Executive Communications: **Page S13785**

Additional Cosponsors: **Pages S13785–86**

Statements on Introduced Bills/Resolutions: **Pages S13786–91**

Additional Statements: **Pages S13784–85**

Amendments Submitted: **Pages S13791–92**

Notices of Intent: **Page S13792**

Record Votes: Three record votes were taken today. (Total—388) **Pages S13715–16**

Adjournment: Senate convened at 7:01 a.m. and adjourned at 7:06 p.m., until 9:45 a.m. on Wednesday, December 23, 2009. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S13779.)

Committee Meetings

(Committees not listed did not meet)

No committee meetings were held.

House of Representatives

Chamber Action

The House currently stands in recess. The House is scheduled to meet at 11:30 a.m. on Wednesday, December 23, 2009.

Committee Meetings

No committee meetings were held.

Joint Meetings

No joint committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D1507)*

H.R. 3326, making appropriations for the Department of Defense for the fiscal year ending September 30, 2010. Signed on December 19, 2009. (Public Law 111–118)

COMMITTEE MEETINGS FOR WEDNESDAY, DECEMBER 23, 2009

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Finance: business meeting to consider the nominations of Lael Brainard, of the District of Columbia, to be Under Secretary, Michael F. Mundaca, of New York, and Mary John Miller, of Maryland, both to be Assistant Secretary, and Charles Collyns, of Maryland, to be a Deputy Under Secretary, all of the Department of the Treasury, Michael W. Punke, of Montana, to be a Deputy United States Trade Representative, with the rank of Ambassador, Islam A. Siddiqui, of Virginia, to be Chief Agricultural Negotiator, Office of the United States Trade Representative, with the rank of Ambassador, and Jim R. Esquea, of New York, and Ellen Gloninger Murray, of Virginia, both to be Assistant Secretary, and Bryan Hayes Samuels, of Illinois, to be Commissioner on Children, Youth, and Families, all of the Department of Health and Human Services, Time to be announced, S–216, Capitol.

House

No committee meetings are scheduled.

Next Meeting of the SENATE

9:45 a.m., Wednesday, December 23

Senate Chamber

Program for Wednesday: Senate will continue consideration of H.R. 3590, Service Members Home Ownership Tax Act, with a series of up to five rollcall votes to begin at approximately 2:13 p.m.

Next Meeting of the HOUSE OF REPRESENTATIVES

11:30 a.m., Wednesday, December 23

House Chamber

Program for Wednesday: to be announced.

Congressional Record

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