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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, December 14, 2009, at 12.30 p.m.

Senate

SATURDAY, DECEMBER 12, 2009

The Senate met at 9 a.m. and was called to order by the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois.

PRAYER

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

Let us pray.

Almighty God, today we seek the sanctuary of Your presence so that we can face perplexing challenges with strong spirits and quiet minds. Help our lawmakers to recognize truth and to welcome revelation from whatever quarter they arise. Keep them ethically fit, as inwardly they become more adequate and wise, dependable and strong. May they guard the treasures of our freedom, bought with a great cost. Remind them that they will be judged by their fruits and that You require them to be faithful. Empower them to trust You more fully, live for You more completely, and serve You more willingly.

Lord, bless also the support staffs who labor this weekend. Reward them for their faithfulness.

We pray in Your wonderful Name. Amen.

NOTICE

If the 110th Congress, 1st Session, adjourns sine die on or before December 21, 2007, a final issue of the *Congressional Record* for the 110th Congress, 1st Session, will be published on Friday, December 28, 2007, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Thursday, December 27. The final issue will be dated Friday, December 28, 2007, and will be delivered on Wednesday, January 2, 2008.

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".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerk.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–60.

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By order of the Joint Committee on Printing.

ROBERT A. BRADY, *Chairman.*

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

PLEDGE OF ALLEGIANCE

The Honorable ROLAND W. BURRIS 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 12, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. DURBIN. Mr. President, following leader remarks, the Senate will resume consideration of the conference report to accompany H.R. 3288, the consolidated appropriations bill, with the time until 9:30 a.m. equally divided and controlled between the two leaders or their designees. At 9:30 a.m., the Senate will proceed to vote on the motion to invoke cloture on the conference report. Under an agreement reached last night, the vote on adoption of the conference report will occur tomorrow, Sunday, December 13.

RESERVATION OF LEADER TIME

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

DEPARTMENTS OF TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 3288, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 3288, making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 9:30 will be equally divided and controlled between the leaders or their designees.

The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, this morning I will vote no on the cloture motion to H.R. 3288. I oppose H.R. 3288 and will not be able to be present to vote no on final passage. The reason I will not be here is that tomorrow my wife and I will be celebrating our 50th wedding anniversary with our 20 kids and grandkids.

Mr. DURBIN. Mr. President, let me congratulate my colleague from Oklahoma on 50 years of marriage. Your wife must be a saint.

Mr. INHOFE. Indeed, she is.

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

Mr. DURBIN. Mr. President, H.R. 3288 is a consolidated appropriations bill which contains almost all of the remaining spending bills for the fiscal year 2010. This is a process we had not anticipated. We had hoped we could take each bill individually and consider them on the floor and bring them to conclusion. Unfortunately, we ran out of time.

We had over 90 different efforts made to stop debate on the Senate floor on a variety of measures. It took us literally 4 weeks to extend unemployment benefits. This is something usually done routinely on a bipartisan basis, but unfortunately, because of delays and threats of filibusters, it took us 4 weeks to finally come to a vote to extend unemployment benefits in the midst of the worst recession the United States has experienced in over 75 years. It is unthinkable, at a time people were sending us e-mails and letters saying: I can't believe the Senate won't provide a helping hand. It isn't as if the bill itself was controversial. When it finally came to a vote, it passed 97 to nothing. There was no controversy associated with it. The controversy was manufactured on the floor of the Senate to delay consideration of such a very basic bill for 4 weeks.

Those 4 weeks could have been spent calling up these appropriations bills so we could have had what was needed—a healthy, open debate on the bills. Instead, we were forced to wait until toward the end of the session and consolidate the unpassed bills in one measure and bring it to the floor of the Senate today.

I will tell Members of the Senate who wonder if these bills have been carefully reviewed that each and every one of them passed overwhelmingly from the Appropriations Committee. There was one dissenting vote on two or three of these measures, but by and large they passed unanimously. There was little controversy in the Appropriations Committee from either side of the aisle.

The Senate Appropriations Committee, on which I am honored to serve, had been working spring and summer to pass all 12 appropriations bills. Chairman DANNY INOUYE is not only a great America hero, he is a great American chairman. As the Senate Appropriations Committee chairman, this man has taken up a responsibility which few would shoulder and has done it with an extraordinary amount of talent and dedication. At his side has been Senator THAD COCHRAN, Republican of Mississippi, who works just as hard to try to make sure what we produce is a great credit to this institution and meets the needs of this great country.

There is one bill remaining after these six pass. It may be one of the most important—the Defense appropriations bill. It was passed by the committee in September and represents the only remaining bill left for us to pass this year, which we certainly want to do before we adjourn at the end of this period before Christmas.

These bills were reported out of committee with overwhelming bipartisan votes. Nine of the 12 were reported unanimously. However, when we moved these bills to the floor, we ran into these obstacles. At one point when we were considering, for example, the question of extending unemployment benefits to millions of Americans who have lost their jobs, exhausted their savings, lost their health insurance, and stand to lose their homes, there was an argument made by one Senator on the other side of the aisle that he didn't want us to call this bill until he had a chance to offer another amendment—another amendment on the ACORN organization. We have had a series of these amendments. We have flogged this group mercilessly for month after weary month. Yet they were going to hold up unemployment benefits for this Senator to have one more chance, one more swing at this organization. That, to me, is not responsible. The responsible thing to do is to recognize all of these families who were counting on us.

Time was lost that could have been used not only to provide unemployment benefits in a more expeditious manner but also to consider these appropriations bills. Appropriations bills in the past, and not too distant past, used to take 1 or 2 days before the Senate. Members would come to the floor, amendments would be offered, debated, end of story. We would have a final vote, and we would move on. Now even routine bills with no controversy take weeks because of amendments to be offered which, frankly, have little or no relevance to the nature of the bill before us.

We brought up the Commerce-Justice-Science appropriations bill on October 6. We didn't finish that bill until November 5. This is a critically important one, one for which most Members would gladly endorse its mission.

These appropriations bills have taken longer because, unfortunately, the minority will not agree to reasonable time limits to consider amendments and finish debate. Instead, we find ourselves consistently sidetracked.

So here we are. We have 21 days before the end of the calendar year, and we need to finish the business of the Congress. To do so, we engaged Republican Members of the Appropriations Committee and worked on reasonable compromises on the differing bills in the House and Senate. I am troubled that some of the very Republican Members of the Senate Appropriations Committee—not all of them; three of them stood up and voted to move this process forward—some of the very Members of the Senate Appropriations Committee who have sat through the subcommittee hearings, the full committee deliberations, have made valuable contributions to the bills themselves, now want to stop the process. It makes no sense. If we are going to do this in an orderly fashion, we should do it in a bipartisan fashion. I hope that is what will happen today.

This package of appropriations bills is a result of a truly bicameral and bipartisan effort. It represents the priorities of our Nation. It invests in students, veterans, and law enforcement, just to name a few. It makes college education more affordable for students by increasing Pell grants to $5,500 a year. Is there a better time for us to do that, to say to children and families that don't have a lot of money: Now is the time to hone your skills, to create new talents in a more challenging economy. Go to school. If you will go to school, we will help you. This package of bills increases the amount of money available for the children in those families. I hope Members on both sides of the aisle will support it.

The conference report also helps local governments fight crime and put more police on our streets. Take a look at the budgets of cities and towns, of counties, of States, and you will realize they are in a death struggle to provide basic services. We have increased grants for local law enforcement by $480 million over last year. Many of the critics of our efforts say: You are spending more money. Yes, we are spending more money to keep cops on the street, to keep neighborhoods safe so that families feel secure. I think it is money well spent. Money spent to help our first responders, firefighters, and policemen is a critical investment. This bill makes that investment. That grant program was cut by almost $2 billion by the previous administration. We are trying to restore that money so we can put more people on the street protecting our citizens. This conference report sets the right priorities by helping States and local police departments fight crime. We also include $298 million for the COPS Program to put more cops on the beat. This funding will help hire and retain approximately 1,400 police officers. The COPS Program has helped train nearly 500,000 law enforcement personnel.

The conference report also helps veterans. It is not enough to give speeches on the floor about how much we love our men and women in uniform and honor our veterans. It is not enough to wear a lapel pin and participate in parades and then come to the floor and vote against the bills that provide the money for the Veterans' Administration.

What we provide here is increased funding to the Veterans Affairs Department of $5.3 billion over last year's level. Those who come and criticize the level of spending in this package of bills are criticizing the additional investment to help our veterans when we need to more than ever. Returning from Iraq and Afghanistan with posttraumatic stress disorder, traumatic brain injuries, amputations, these men and women need our help. This package of bills provides that help. We will provide increased access to quality care for all of our veterans. The conference report increases discretionary spending at the VA by more than $5 billion to help them care for 6.1 million veterans they expect to see in 2010.

If I understood the unanimous consent order, we were equally dividing time between now and 9:30. I ask how much time I have remaining on the majority side.

The ACTING PRESIDENT pro tempore. There is 3½ minutes.

Mr. DURBIN. I reserve the remainder of my time.

RECOGNITION OF THE MINORITY LEADER

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

Mr. MCCONNELL. Mr. President, I will proceed under my leader time.

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

Mr. MCCONNELL. Mr. President, yesterday may well have been a seminal moment in this debate. We heard from CMS. And for those who do not know what that is, who may be watching C–SPAN 2, that is the Centers for Medicare & Medicaid Services. They did an analysis of the Reid health care bill, a rather detailed analysis. The important part I will summarize. It says: We estimate that total national health expenditures under this bill would increase by an estimated $234 billion during the calendar years 2010 to 2019. In other words, it will increase the deficit. We know there was a letter to Chairman BAUCUS from six Democrats on September 17, 2009, saying:

> There are many, wide-ranging options to address the broad and complicated issue of runaway health care costs, and we pledge our support to you in making the necessary and tough decisions. This is our number one priority. If we pass health [care] reform legislation without addressing the issue of health care spending, we will have failed.

That letter was signed by Senator KOHL of Wisconsin, Senator MCCASKILL of Missouri, Senator PRYOR of Arkansas, Senator BEGICH of Alaska, Senator BAYH of Indiana, and Senator KLOBUCHAR of Minnesota to the chairman of the Finance Committee, saying: ''If we pass health care reform legislation without addressing the issue of health [care] spending, we will have failed.''

We know from CMS, the actuary at the Department of Health and Human Services, that the Reid bill fails the test of Senators KOHL, MCCASKILL, PRYOR, BEGICH, BAYH, and KLOBUCHAR. So we know what CMS thinks.

We also know what CNN thinks. We know where the American people are. We have watched the public opinion polls dramatically shift against the Reid proposal. The well-respected Quinnipiac poll a week or so ago had the proposal disapproved by 14 percent; the week before that, Gallup had it disapproved by 9 percent. And now CNN, just yesterday, the latest poll: people oppose the Senate bill 61 to 36.

We have heard from both CMS and CNN. When will our colleagues on the other side of the aisle respond to either cold, hard facts or the American people? They argue: ''to make history.'' It is clear this would be a historical mistake of gargantuan proportions—a historical mistake of gargantuan proportions. The only history we would be making here is a historical mistake.

We know from the experts it will not achieve the goal. We know from the American people they do not want us to pass it. It is time to stop this effort and to start over and go step by step to fix the problems the American people sent us here to fix regarding the American health care system.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

If no one yields time, time will be charged equally.

The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I want to speak for a moment about the vote we are about to take here to proceed with the so-called Omnibus Appropriations Act, H.R. 3288. This is the bill which for those who have not been following closely cleans up a little bit of a mess that the Congress has created because we did not do our work earlier in the year.

We are supposed to pass appropriations bills to run the government, to run the various Departments, and we did not get around to doing that. So right here, at the very end, we have to combine all kinds of those bills together in what is called an omnibus bill—six bills in total.

I find it ironic we are talking about a bill which is nearly $500 billion—to be exact, it is $446.8 billion in new spending—at a time when our national deficit is $1.4 trillion, the health care bill we are debating in its first 10 years of implementation is $2.5 trillion and, next week, we are going to be asked to raise the debt ceiling in this country by something like $1.8 trillion.

I saw a bumper sticker that said, ''Don't Tell Them What Comes After A Trillion.'' We used to think in billions. When I first came to Congress, millions were a big deal. Now we are talking trillions, and it is being tossed around as if it is nothing. Now another $½ trillion spending bill.

Well, obviously we need to run the government. But do you suppose the government could be a little bit like families and be a little bit prudent in how much it spends or how much it increases its spending over the previous year?

Let me give you some examples. The bill for Transportation and HUD receives a 23-percent increase over last year—23 percent. The State Foreign Operations bill receives a 33-percent increase over last year. Included in that bill is a 24-percent increase for the State Department's salaries and operations. A lot of Americans would like to see their salaries and operations increased by 24 percent. Commerce, State, and Justice receives a 12-percent increase over last year.

You might say, well, the government is in tough shape. We need, for some reason, to increase our spending by 33 percent. No, not with what is in this bill.

My colleagues have done a little bit of a check to see if there are any earmarks in this bill, for example. And guess what—5,224 earmarks and those earmarks alone are over $3.8 billion.

I gave some examples of those earmarks, and I do not want to embarrass any of my colleagues by citing them today. But I think it would be appropriate for us to at least have the opportunity to strike some of these earmarks and save a little bit of money. Because the argument is always made: Well, we can't save money. We have to keep spending what we are spending. There is nothing in there to cut.

There is a lot in there to cut. So the point I want to make to my colleagues here today, before we vote to proceed with this legislation, is we could do better. There is no argument that we have to spend 33 percent more on the State Foreign Operations bill or 23 percent more on what we call affectionately around here the THUD bill, when we have this deficit of $1.4 trillion, when we have to increase the national debt by $1.8 trillion, when we are talking about spending another $2.5 trillion, and that is just for the first 10 years of operation on the health care bill. I have not even mentioned the bills earlier this year—bailing out AIG, the insurance companies, General Motors, Chrysler, and the stimulus package, and well over $1 trillion when you add in the interest.

By the way, I did not mention interest. Part of the problem is we do not have this money. We are borrowing it. We have to borrow this money in order to pay it to these folks, and that means you have to pay interest. I have not even included the interest cost, which for all these bills amounts to several hundreds of billions of dollars.

There is a point at which, if you are talking about your own family and your own credit card, instead of asking the credit card company to expand the limit so you can put even more money on your credit card—which is what we are doing here—you would start paying that credit card down and you would be a little bit more careful about your spending.

All I am asking is: Can't we be a little more careful about our spending so we do not have to increase Departments of government by 23 percent, 33 percent over last year's spending? I do not think that is too much to ask on behalf of our taxpayers.

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

Mr. DURBIN. Mr. President, I want to make a point of pulling out the calendar here and reading the membership on the Senate Appropriations Committee. I thought for sure there were Republicans serving on that committee, and it turns out there are 12 of them. They serve on the committee. They are on the subcommittees. They sat on the full committee deliberations, and they include the Republican minority leader.

Of the six appropriations bills which have come before us today for a vote, they were voted out of the Appropriations Committee by overwhelming votes. In fact, three of the bills were unanimous, meaning that at least the minority leader was counted as voting for the bills which the Senator from Arizona has just criticized, and three of them had a 29-to-1 vote, so I will not suppose what the minority leader's vote was.

But to come before us today and argue that the majority is cramming these votes and bills down the throats of Members without giving them opportunity is to ignore what came before it: the fact that there were subcommittee hearings, the fact that there was a vote in the Appropriations Committee on each of the bills, and they passed overwhelmingly.

So at least at an early stage, an important stage in this process, 11 or 12 Republican Senators signed on and approved the bills. To argue that we are bringing something before the Senate, pushing it through quickly without deliberation, on a partisan basis, does not stand up.

And to listen to the Senator from Arizona, I would tell you, bluntly, the increases in spending in this bill—some of them I hope the Senator from Arizona would not characterize as unwise. I know he feels as I do about veterans in this country. There is a substantial increase in money for veterans for their care. We want to do that. I will be honest with you, we need to pay the real cost of war, and that includes the commitment we have made to men and women who serve our country.

The same thing, I am sure, is true when it comes to law enforcement. I am sure the Senator from Arizona feels as I do.

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

Mr. DURBIN. I urge my colleagues—when this comes for a vote in a few moments—to support the cloture motion. Let's move this forward. Thank you.

Mr. KYL. Mr. President, how much time is remaining on our side?

The ACTING PRESIDENT pro tempore. The Senator from Arizona has 5 minutes.

Mr. KYL. Thank you, Mr. President.

Let me respond to my friend, the majority whip now. Two plain points. First of all: that Republicans also serve on the Appropriations Committee. That is true. If the majority whip, however, wants to defend this bill, that is his prerogative. He can do that. I have the right to vote against it.

I do not serve on the Appropriations Committee, and I do not think it is a good bill. There may be some Republicans who do. I did not contend this was strictly a partisan activity, but I said it was wrong. When our constituents, who pay the taxes in this country, ask us to be more frugal, we could be more frugal than this.

Secondly, undoubtedly, in a bill of almost $500 billion, there are good things. In fact, I know there are some good things in this bill. And I certainly suspect that the increase in veterans spending the majority whip referred to is probably supported by everybody in this body. That is the problem, however. When you do not do these appropriations bills one at a time, so you can vote on each one on its own merits, you are relegated to combining them into one giant bill. That is why it is called an omnibus bill, and you cannot differentiate between the things you support and the things you oppose. So what you have to end up doing is accepting all of the bad stuff in order to be able to support the good things.

That is a time-honored tradition around here. If you cannot get it all passed on its own merits, then bundle it up with a whole bunch of other stuff, and we will have to accept a lot of bad policy and bad spending because we do not want be accused of not supporting our Nation's veterans.

Some of us are willing to say—and I, in fact, have had this conversation with veterans before: Would you rather have us vote against a bill which includes veterans spending but is way more than we should be spending or vote for that bill simply because it has veterans spending in it? I used to have this conversation with veterans when I was in the House of Representatives because they always combine veterans spending with HUD, and it was hard to pass the HUD bill but easy to pass the veterans bill. That is why they did it that way. My veterans were very understanding when I voted against that bill.

We have to be a little bit more courageous around here and a little bit more honest with our constituents in the way we set these bills up, so we do not argue to them: Oh, you don't want to

vote against veterans, do you? No, nobody wants to vote against veterans. But if you get to the point in the year where you have not done your work, and you have to combine all these bills together—and you have some good spending, for example, for veterans, but you are also raising the State Department by 33 percent—I think a lot of folks would say: That is too much. And we could actually save money by being more discreet in supporting some things and opposing others.

That is why it would have been better if the majority could have gotten these bills to us one at a time rather than combined into one omnibus bill.

So, I do think, at a certain point in time, our constituents can demand of us more fiscal prudence, more responsibility in the way we vote. The only way Republicans have to oppose a process by which all of these things came together at once, and the only way other Democrats who wish to demonstrate their prudence in spending to their constituents can do that, is to vote ''no'' so we do not proceed to this bill, so we could try to break it apart and vote on veterans, if you want to vote for veterans, but not a 33-percent increase in the State Department bill.

I urge my colleagues to vote ''no'' and to do this in a more responsible way so we do not have to go home and say to our constituents: Well, we voted for a 33-percent increase in the State Department over last year. I know it is tough for you, but the State Department needed that money. So I hope you will forgive us for doing that.

I do not think we want to do that. I hope my colleagues will vote ''no.''

PROJECT ATTRIBUTION CORRECTION

Mrs. MURRAY. Mr. President, I wish to join with my ranking member, Senator BOND, in a colloquy to correct clerical errors in the attribution table accompanying division A of H.R. 3288. Senator MERKLEY and Senator WYDEN are listed as having requested the Oak Street Extension, Schereville, IN, project under surface transportation priorities. My staff has confirmed that this project was not requested by Senator MERKLEY or Senator WYDEN, and, as such, Senator MERKLEY and Senator WYDEN's names should not be listed as requestors.

Mr. BOND. My colleague and chair, Senator MURRAY, is correct. The names were added as a result of a clerical error, and Senators WYDEN and MERKLEY should not be listed as sponsors.

In addition to this project, there are additional projects for which Senate names were inadvertently left off of the attribution table. I have confirmed with my staff that the Senators listed below did request the following projects, which have been properly disclosed and for which they have certified that they have no pecuniary interest. Specifically, the projects, the account in which they are funded, and the additional sponsors are as follows:

I–49 North, LA, interstate maintenance, Senator VITTER;

Interstate 69, LA, interstate maintenance, Senator VITTER;

I–12 Interchange at LA–16, LA, interstate maintenance, Senator VITTER;

I–20 Lincoln Parish, LA, Delta Regional Transportation Development Program, Senator VITTER;

Clearview at Earhart drainage, LA, Delta Regional Transportation Development Program, Senator VITTER;

Rail spur extension—Greater Ouachita Parish, LA, rail line relocation and improvement, Senator VITTER;

Greater Ouachita Port Surface Development Project, LA, Economic Development Initiative, Senator VITTER;

Earthworks Engineering Research Center—EERC, Iowa State University, IA, transportation planning, research, and development, Senator GRASSLEY;

Jet engine technology inspection to support continued airworthiness—JET, Iowa State University, IA, transportation planning, research, and development, Senator GRASSLEY;

Interstate 74 corridor construction, IA, interstate maintenance, Senator GRASSLEY;

Alice's road extension/Ashworth Road to University Avenue, IA, surface transportation priorities, Senator GRASSLEY;

Construct four lane highway 20 West of U.S. 71, IA, surface transportation priorities, Senator GRASSLEY;

Iowa Highway 92 reconstruction, surface transportation priorities, Senator GRASSLEY;

Roger Snedden Dr. extension/grade separation—phase 1, IA, surface transportation priorities, Senator GRASSLEY;

University Boulevard widening, Clive, IA, surface transportation priorities, Senator GRASSLEY;

Iowa Highway 100 extension and improvements, Cedar Rapids, IA, surface transportation priorities, Senator GRASSLEY;

I–480/Tiedeman Road interchange modification, OH, interstate maintenance, Senator VOINOVICH;

I–76 Access/Martha Avenue connection, Akron, OH, surface transportation priorities, Senator VOINOVICH; and

Warrensville/Van Aken Transit Oriented, OH, surface transportation priorities, Senator VOINOVICH.

Mrs. MURRAY. Mr. President, Senator BOND, is correct. My staff has confirmed that the changes to the attribution table should be made so that the Senators listed above can be appropriately recognized as having requested the projects cited above.

Mr. BOND. I thank the chair for her assistance in this matter.

Ms. COLLINS. Mr. President, I rise today to discuss the conference report before us, which contains six of the seven remaining appropriations bills. Division D of the conference report contains the Financial Services and General Government appropriations bill. As ranking member of the subcommittee responsible for writing this division, I want to thank Senator DURBIN for his leadership and collegiality throughout the past year. Since joining this subcommittee, I have seen Senator DURBIN demonstrate the kind of bipartisan cooperation that is the hallmark of the Appropriations Committee. He and I worked in a collaborative fashion to produce a bipartisan bill.

The Financial Services and General Government Subcommittee has jurisdiction over a diverse group of agencies, many of which have a profound impact on the financial stability of our economy and on the lives of most Americans. This appropriations bill is a key part of efforts to restore the stability of, and the public confidence in, America's financial institutions. It makes needed investments to strengthen the Securities and Exchange Commission's ability to enforce rules governing our financial markets and to detect and prosecute fraudulent schemes. It also increases the Federal Trade Commission's capacity to protect consumers from scams and anticompetitive behavior.

Senator DURBIN and I share many of the same concerns about the ability of our financial regulatory institutions to protect small investors and market participants. For years, the SEC's funding and staffing levels had declined, even as its oversight responsibilities rapidly increased. As a result, staffing shortages and an environment of lax oversight and enforcement at the SEC contributed to our current financial crisis. Funding shortfalls have hampered the ability of this agency to fulfill its mission of protecting the public through enforcement of securities laws.

We have included a 16-percent increase in funding for the SEC that will help the agency better fulfill its mission by giving it the resources to increase staffing levels and to make information technology upgrades.

The conference report also provides important increases above the President's budget request for the Consumer Product Safety Commission and the Federal Trade Commission. The CPSC protects American consumers from defective and unsafe products, while the FTC protects consumers from unscrupulous marketing scams.

The bill also provides ample funding for the Small Business Administration. Our economic strength and future are tied to the strength of small businesses. The conference report funds important SBA programs like Women's Business Centers, Veterans' Programs, Native American Outreach, and HUBZones above the President's budget request. As a former regional administrator of the SBA, I am particularly supportive of the increase of $16 million over the President's request for the Small Business Development Center Program. Each year, the SBDC network of over 900 service centers provides management and technical assistance to an estimated 1.2 million small business owners and aspiring entrepreneurs.

The conference agreement includes an important provision that protects the due process rights of auto dealers. The auto dealers are essential to the success of the auto manufacturers because the dealers facilitate distribution, sales, and servicing of hundreds of millions of vehicles annually. It is in the best interest of the public to have a competitive and viable automobile distribution network throughout the country, including in urban, suburban,

and rural areas. It is also in the interest of the local economies, the national economy, and our economic recovery to preserve jobs at successful small businesses.

Senator DURBIN and I share similar views about the funding priorities for most of the agencies within this bill. One of the few areas where he and I disagree is the DC school voucher program. We both respect one another's different positions on this issue, but I am disappointed that this bill effectively ends this successful program.

The DC Opportunity Scholarship Program has provided additional educational options for some of the District's most at-risk, low-income children who had previously attended some of the lowest-performing schools in the country.

Sadly, DC's public schools continue to underperform despite a per-pupil expenditure rate that is the third highest in the Nation. Experts have carefully studied the DC Opportunity Scholarship Program and concluded that the educational success of the program's participants in reading has outpaced those in DC public schools.

Of the $75.4 million for DC public schools in this bill, $42.2 million is to improve the District's public schools, $20 million is to support DC public charter schools, and $13.2 million is for Opportunity Scholarships. Unfortunately, the conference report contains language that would only allow currently enrolled students to remain in the program. No new students would be permitted, despite the fact that the $7,500 per student cost for scholarship children is less than one-half the $15,511 per student cost for DC public schools.

In May, Senator LIEBERMAN and I held a hearing in the Homeland Security and Governmental Affairs Committee during which we heard compelling success stories of current and former participants in the program. Their testimony helped to highlight the real world implications of discontinuing the program. The fear about this program ending was poignantly stated by a little girl wearing a T-shirt asking: ''What About Me?''

By all accounts, students are succeeding and thriving in their scholarship schools, and their parents are overwhelmingly satisfied with the education that their children are receiving. So I do not see the wisdom of blocking new students from participating in this successful program.

I am disappointed that the full Senate never had an opportunity to take up, debate, and amend the Financial Services and General Government appropriations bill when it was reported out of committee.

This is unfortunate, especially since Senator DURBIN and I worked hard to write a bipartisan bill which had overwhelming support in the committee. The Senate has had time to consider all 12 Appropriations bills. Chairman INOUYE and Vice Chairman COCHRAN both worked hard to complete and report all 12 bills out of committee by September. For the record, the Financial Services bill was reported out of committee on July 9.

Next year we must return to regular order so that all Senators can have an opportunity to debate these important bills.

I thank the Financial Services and General Government Subcommittee staff: Marianne Upton, Diana Hamilton, Melissa Petersen, and Richard Burkard with the majority; and Mary Dietrich and Rachel Jones with the minority.

Turning to Division A of the conference report, I would like to speak in support of a provision I authored. This provision will increase safety, save energy, and decrease vehicle emissions by creating a 1-year pilot project to allow trucks weighing up to 100,000 pounds to travel on Maine's interstates. This provision also requires an analysis by the U.S. Department of Transportation and the State of Maine of provision's impact on safety, road and bridge durability, energy use, and commerce.

By way of background, let me explain why this pilot project is needed. Under current law, trucks weighing 100,000 pounds are allowed to travel on the portion of Interstate 95 designated as the Maine Turnpike, which runs from Maine's border with New Hampshire to Augusta, our capital city. At Augusta, the Turnpike designation ends, but I–95 proceeds another 200 miles north to Houlton. At Augusta, however, heavy trucks must exit the modern four-lane, limited-access highway and are forced onto smaller, two-lane secondary roads that pass through cities, towns, and villages. The same problem occurs for Maine's other Interstates like I–295 out of Portland and I–395 in the Bangor-Brewer area.

Diverting trucks onto these secondary roads raises critical safety concerns. In fact, there have been several accidents, some of which have tragically resulted in death, which have occurred after these large trucks were diverted onto secondary roads and through smaller communities. For example, In May 2007, a 17-year-old high school student from Hampden, ME, lost her life when her car was struck by a heavy truck on Route 9. The truck driver could not see the car turning onto that two-lane road as he rounded a corner. Interstate 95 runs less than three-quarters of a mile away, but Federal law prevented the truck from using that modern, divided highway, a highway that was designed to provide ample views of the road ahead.

A year earlier, Lena Gray, an 80-year-old resident of Bangor, was struck and killed by a tractor-trailer as she was crossing a downtown street. Again, that accident would not have occurred had that truck been allowed to use I–95, which runs directly through Bangor.

While improving safety is the key objective, a uniform truck weight limit of 100,000 pounds on Maine's interstate highways also would reduce highway miles, as well as the travel time necessary to transport freight through Maine, resulting in economic and environmental benefits. Moreover, Maine's extensive network of local roads would be better preserved without the wear and tear of heavy truck traffic.

Interstate 95 north of Augusta, ME, where trucks are currently limited at 80,000 pounds, was originally designed and built for military freight movements to Loring Air Force Base at weights much heavier than 100,000 pounds. Raising the truck weight limit would keep heavy trucks on the interstates, which are designed to carry more weight than the rural State roads.

Current Maine law requires that vehicles carrying up to 100,000 pounds on state roads be six-axle combination vehicles. Current Federal law requires that vehicles carrying 80,000 pounds be five-axle. Contrary to erroneous assumptions, six-axle 100,000 pound vehicles are not longer, wider or taller than the five-axle 80,000 pound vehicles. The six-axle 100,000 pound vehicles, which include an additional set of brakes, allow for greater weight distribution thereby not increasing road wear and tear. Further, stopping distances and safety are in no way diminished, and preliminary data from studies conducted by the Maine State Police support this statement. That is why Maine's Commissioner of Public Safety, the Maine State Troopers Association, and the Maine Association of Police all support this pilot project.

A higher weight limit in Maine will not only preserve our rapidly deteriorating roads, but will provide economic relief to an already struggling trucking industry. Trucks weighing up to 100,000 pounds are permitted on interstate highways in New Hampshire, Massachusetts, and New York as well as the Canadian Provinces of New Brunswick and Quebec. Maine truck drivers and the businesses they serve are at a competitive disadvantage.

Last year, I met with Kurt Babineau, a small business owner and second generation logger and trucker from Maine. Like so many of our truckers, Kurt has been struggling with the increasing costs of running his operation. All of the pulpwood his business produces is transported to Verso Paper in Jay, ME, a 165-mile roundtrip. This would be a considerably shorter trip if his trucks were permitted at 100,000 pounds to remain on Interstate 95. Instead, his trucks must travel a less direct route through cities and towns. Kurt estimated that permitting his trucks to travel on all of Interstate 95 would save him 118 gallons of fuel each week. At last year's diesel cost of approximately $4.50 a gallon, and including savings from his drivers spending less time on the trip, he could have saved more than $700 a week, and more than $33,000 and 5,600 gallons of fuel annually. These savings would not only be beneficial to

Kurt's bottom line, but also to his employees, his customers, and to our nation as we look for ways to decrease the overall fuel consumption.

An increase of the Federal truck weight limit in Maine is widely supported by public officials throughout Maine, including the Governor, the Maine Association of Police, and the Maine Department of Public Safety, which includes the State Bureau of Highway Safety, the Maine State Police, and the Bureau of Emergency Communications. The Maine Legislature also has expressed its support for the change having passed resolutions over the past several years calling on Congress to raise the Federal truck weight limit to 100,000 pounds in Maine. I look forward to passage of this important provision, which has been long awaited in my State.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

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 conference report to accompany H.R. 3288, the Transportation, HUD, Related Agencies Appropriations Act for Fiscal Year 2010.

Daniel K. Inouye, Al Franken, Jon Tester, Paul G. Kirk, Jr., Roland W. Burris, Edward E. Kaufman, Jack Reed, Daniel K. Akaka, Mark Begich, Patty Murray, Jeff Bingaman, Robert P. Casey, Jr., Sherrod Brown, Thomas R. Carper, Byron L. Dorgan, Richard J. Durbin, Harry Reid.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 3288, the Transportation, Housing and Urban Development and Related Agencies Appropriations Act of 2010 shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kentucky (Mr. BUNNING), the Senator from Oklahoma (Mr. COBURN), the Senator from South Carolina (Mr. GRAHAM), the Senator from South Carolina (Mr. DEMINT), and the Senator from Indiana (Mr. LUGAR).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted ''nay'' and the Senator from Kentucky (Mr. BUNNING) would have voted ''nay.''

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

The result was announced—yeas 60, nays 34, as follows:

[Rollcall Vote No. 373 Leg.]

YEAS—60

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

NAYS—34

Alexander	Feingold	McConnell
Barrasso	Grassley	Murkowski
Bayh	Gregg	Risch
Bennett	Hatch	Roberts
Brownback	Hutchison	Sessions
Burr	Inhofe	Snowe
Chambliss	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker
Ensign	McCain	
Enzi	McCaskill	

NOT VOTING—6

Bond	Coburn	Graham
Bunning	DeMint	Lugar

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 34. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Minnesota is recognized.

Mr. FRANKEN. Madam President, I rise today to speak in support of amendment No. 2795, which would repeal the antitrust exemption for health insurance and medical malpractice insurance. I thank my colleague Chairman LEAHY for championing this legislation, which is crucial to health reform and to working families around the country who pay too much in health insurance premiums.

We are on the verge of expanding health insurance to 31 million more Americans—an accomplishment that would be truly historic. But as heartened as I am about the relief this will bring to families, I am deeply concerned that this expansion could be a windfall for insurance companies if we don't include additional checks and balances. We should be putting significant Federal funds towards health insurance—but that money should go towards helping people afford health insurance, not towards lining the pockets of insurance companies and their CEOs.

As a country, we have long understood the profound importance of economic competition. Competition leads to greater entrepreneurship, creativity, and productivity for businesses. It leads to lower prices and higher quality for consumers. Competition is why America has created so many of the most innovative businesses in the world. It is also why we enacted antitrust laws—because we need to protect this value we hold dear, and we know that competition won't always happen on its own.

Because I understand the value of competition, I am extremely concerned about the antitrust exemption in current law for health insurance and malpractice insurance. It is indisputable that health insurance premiums have gone through the roof in recent years. From 1999 to 2008, median income rose about 24 percent, but insurance premiums grew by 131 percent. It is no wonder that so many American families are struggling to afford insurance.

These high premiums are directly connected to the lack of competition in statewide health insurance markets. Ninety-four percent of State health insurance markets are considered ''highly concentrated,'' according to the U.S. Department of Justice. In 16 States, the two biggest health care insurance companies controlled 75 percent or more of the market in 2007. In Hawaii, that figure was 98 percent. In Rhode Island and Alaska, it was 95.

But while American families suffer, insurance company profits continue to rise. From 2000 to 2008, the major insurance companies made over $59½ billion. Their profits rose by 428 percent from 2000 to 2007. And their CEOs are making big bucks themselves—in 2007, the CEO of Aetna took home $23 million, while the CEO of CIGNA took home $25.8 million.

The antitrust exemption for health insurance and malpractice insurance may have had a purpose at one point in time—it gave the health insurance companies time to respond to a major change in the law. When Congress passed the McCarran Ferguson Act in 1945, it was responding to a 1944 Supreme Court case that upended the insurance industry as they knew it. The bill passed without any hearings in the Senate and with very little debate in the House.

Most indications suggest that both the House and the Senate expected the antitrust exemption to be temporary. But somehow, through the conference report, this ''temporary fix'' became permanent—and health insurance markets have become more and more concentrated as a result.

This cannot continue. Senator LEAHY's amendment gives us the opportunity to further the American ideal of competition, and help working people in the process. I urge my colleagues to bring this amendment up for a vote, and to vote to repeal the antitrust exemption. This issue is just too important for us to wait any longer.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I rise to speak on the pending bill before us, one of the great porkbarrel, earmark-filled pieces of legislation I have seen come before this body.

I would like to quote from ABC News, by Jonathan Karl and Devin Dwyer, '''Tis the Season of 'Pork': Congress Gifts $4 Billion in Earmarks.''

Just weeks before returning to their districts for Christmas, Congress is poised to give the gift of pork—roughly $4 billion of it.

More than 5,000 earmarks were included in the $447 billion omnibus spending bill passed yesterday by the House, funding ''pet projects'' of key members of Congress from both parties and all regions of the country. The Senate will vote on the bill this weekend. . . .

Independent analyses of the bill reveal a whopping 12 percent increase in government spending for 2010 while the inflation rate in the country remains near zero.

Really, isn't that remarkable? A 12-percent increase in spending when people are out of jobs, out of their homes. They cannot afford, basically, what they need to sustain their lives, and we have increased spending by 12 percent and 4,500 earmarks, about $4 billion of it.

''This Congress has not shown that they are at all serious about the budget deficit in any way,'' said Brian Riedl of the Heritage Foundation. ''The spending spree is continuing even as the deficit escalates to $2 trillion.''

The earmarks are all explicitly listed in the bill—right next to the members of Congress who inserted them: $800,000 for jazz at New York's Lincoln Center, for Rep. Jerold Nadler, D-N.Y., and Sen. Tom Harkin, D-Iowa. Harkin, and Rep. Leonard Boswell, D-Iowa, got $750,000 for exhibits at the World Food Prize Hall in Iowa. Hawaii Democratic senators Dan Inouye and Daniel Akaka helped get $3.4 million for a rural bus program in Hawaii.

''The country needs to be tightening its belt, just like the rest of America,'' said Steve Ellis of Taxpayers for Common Sense.

Republicans have criticized the spending package, but many Democrats say it funds key priorities.

Two of the biggest earmarks are from Republican senators Thad Cochran and Roger Wicker of Mississippi at a cost of $8 million for improvements to four rural State airports. One airport serves fewer than 100 passengers a day and another—the Mid-Delta Regional Airport—sees even less.

By the way, I have seen the pork extended to both of those airports over the years.

The new funds would come on top of $4.4 million the airports just received from the stimulus package.

I am not making this up.

''We obviously have huge aviation and transportation needs in this country and stuffing millions of dollars in small, little-used airports in Mississippi is not a wise use of funds,'' said Ellis.

President Obama had promised to curb the inclusion of earmarks in government spending bills but he has yet to issue the threat of a veto.

My friends, do not wait for the threat of a veto.

In March, Obama signed a $410 billion spending package that contained nearly 8,000 pet projects.

''I am signing an imperfect omnibus bill because it's necessary for the ongoing functions of government,'' Obama said at the time. ''But I also view this as a departure point for more far-reaching change.''

What has changed? What has changed? Nothing. Nothing has changed.

Senate majority leader HARRY REID said about the last omnibus: We have a lot of issues we need to get to after we fund the government—something we should have done last year but could not because of the difficulty we had working with President Bush.

Difficulty working with President Bush? Whom did the majority leader have trouble working with this time?

Again, I repeat, a 1,350-page Omnibus appropriations conference report, 6 bills, spends $450 billion, 4,752 earmarks totaling $3.7 billion, and a full 409 pages of this conference report are dedicated to listing congressional pork-barrel spending. Spending on domestic programs in this bill is increased 14 percent over the last fiscal year, while spending on military construction and care for veterans has increased by only 5 percent.

Let's look at a little bit of it. Transportation, Housing and Urban Development contains 1,400 earmarks totaling over $1 billion. Commerce-Justice-Science contains 1,511 earmarks totaling $715 million. The list goes on and on. Here we are with a deficit of $1.4 trillion, a debt of $12 trillion, unemployment at 10 percent, nearly 900,000 families lost their homes in 2008, yet there is every indication that the aggregate numbers for 2009 will be worse. With all this, we continue to spend and spend and spend. Every time we pass an appropriations bill with increased spending and load it up with earmarks, we are robbing future generations of Americans of the ability to obtain the American dream. Forty-three cents out of every dollar spent in this bill is borrowed from our children and our grandchildren and, unfortunately, generations after theirs. This is the greatest act of generational theft committed in the history of this country.

Let me go through a few of these, if I might, and remind people of the context this is in. In my home State of Arizona, 48 percent of the homes are ''underwater,'' meaning they are worth less than the mortgage payments people have to pay. We have small businesspeople losing credit everywhere. Instead of trying to fix their problems and helping them out, it is business as usual in the Senate of the United States of America and the Congress.

For example: $200,000 for the Washington National Opera, Washington, DC, for set design, installation and performing arts at libraries and schools; $13.9 million on fisheries in Hawaii—there is always Hawaii—nine projects throughout the islands ranging from funding bigeye tuna quotas, marine education and training, and coral research; $2.7 million—one of my favorites—to support surgical operations in outer space at the University of Nebraska. As I have said many times—the common theme—you will always have a location designated for these projects. That is why some of them may be worthwhile, but we will never know because they don't compete them. They earmark them for the particular place they want to help. Unfortunately, that shuts out other people. There may be other places besides the University of Nebraska that can support surgical operations in outer space. I suggest we get Dr. Spock and Bones out there to help at the university. I don't know if they live in Omaha or not. I am sure to them and all the others on ''Star Trek,'' surgical operations in outer space may be one of their priorities. It certainly isn't a priority of the citizens of my State.

One of the great cultural events that took place in the 20th century was the Woodstock Festival. In order to do a lot more research on that great cultural moment, we are going to spend $30,000 for the Woodstock Film Festival Youth Initiative; $200,000 to renovate and construct the Laredo Little Theater in Texas—people from all over America are flocking to the Laredo Little Theater, and they want to invest $200,000 of their tax dollars into the Laredo Little Theater. The money would be used to replace worn auditorium seating and soundproofing materials. Anybody got a little theater that warrants soundproofing? Maybe they should apply to the Senator from Texas.

Continuing: $665,000—I am not making this one up—for the Cedars-Sinai Medical Center in Los Angeles for equipment and supplies for the Institute for Irritable Bowel Syndrome Research. I have a lot of comments on that issue, but I think I will pass so as not to violate the rules of the Senate. There is $500,000 for the Botanical Research Institute of Texas in Fort Worth. I am sure the Botanical Research Institute in Fort Worth is a good one. I would like to see other botanical research institutes able to compete. There is $600,000 for water storage tower construction in Ada, OK, population 16,008; $200,000 for a visitor center in Bastrop, TX, the population is 5,340; $292,200 for elimination of slum and blight in Scranton, PA—that may have been put in by the cast of the office—$229,000 for elimination of slum and blight in Scranton; $200,000 for design and construction of the Garapan Public Market in the Northern Mariana Islands; $500,000 for development of a community center—$\frac{1}{2}$ million—in Custer County, ID, population 4,343; $100,000 for the Cleveland Municipal School District—they just picked one and gave them $100,000—$800,000 for jazz at the Lincoln Center; $300,000 for music programs at Carnegie Hall; $400,000 for Orchestra Iowa Music Education, Cedar Rapids, IA, to support a music education program; $2.5 million for the Fayette County Schools in Lexington, KY, for a foreign language program; $100,000 to the Cleveland Municipal School District in Cleveland, OH, to improve math and language skills through music education; $700,000 for the National Marine Fisheries Service for the project Shrimp Industry Fishing Effort Research Continuation; $1.6 million to build a tram between the Huntsville Botanical Garden and the

Marshall Flight Center in Alabama—how many places need $1.6 million to build a tram, it will probably go out to the statue of Vulcan—$250,000 for the Monroe County Fiscal Court for the Monroe County Farmers Market in Kentucky; $750,000 for the design and fabrication of exhibits to be placed in the World Food Prize Hall of Laureates in Iowa; $500,000 to support creation of a center to honor the contribution of Senator Culver, an Iowa State Senator, at Simpson College; $400,000 to recruit and train closed captioners and court reporters at the AIB College of Business in Iowa; $250,000 for renovating the Murphy Theatre Community Center in Ohio.

There is a lot more, and I will go through them briefly. The point is, you will notice several things. One, the preponderance of these pork-barrel and earmark projects is allocated to members of the Appropriations Committee, which is fundamentally unfair. Second, you will find these are designated to a certain place, to make sure none of that money is spent somewhere else where the need may be greater. Third, it breeds corruption. It is a gateway drug. What we are talking about is a gateway drug. It is especially egregious now.

Continuing: $300,000 to monitor and research herring in Maine; $200,000 to study Maine lobsters; $250,000 for a Father's Day rally parade in Philadelphia. I scoff and make fun of a lot of these but $250,000 for a Father's Day rally parade in Philadelphia. There is $100,000 for the Kentler International Drawing Space, an art education program in Brooklyn. Here is a deprived area, $75,000 for art projects in Hollywood Los Angeles Park; $100,000 for a performing arts training program at the New Freedom Theater in Philadelphia; $100,000 to teach tennis at the New York junior tennis league in Woodside, NY; $2.8 million to study the health effects of space radiation on humans at the Loma Linda University, Loma Linda, CA; $200,000 for the Aquatic Adventures Science Education Foundation in San Diego; $100,000 to archive newspaper and digital media at the Mississippi Gulf Coast Community College in Perkinston, MS; $3.9 million on researching weaving and knitting at Clemson University, Raleigh, NC, Philadelphia University, UC Davis in Davis, CA; $90,000 for a commercial kitchen business incubator at the El Pajaro Community Development Corporation in Watsonville, CA; $500,000 to study vapor mercury in the atmosphere at Florida State; $1 million to examine sea scallops fisheries at the Massachusetts Marine Fisheries in Bedford; $300,000 for seal and stellar sea lion biological research; $300,000 for Bering Sea crab management; $500,000 to upgrade the Baldwin County Courthouse security in Fairhope, AL; $900,000 for the operational costs and capital supporting the Alien Species Action Plan cargo inspection facility in Maui; $2 million to streetscape the city of Tuscaloosa, AL; $100,000 for an engineering feasibility study of a bike connector in Hiran, OH; $400,000 for a pedestrian overpass in Des Moines; $300,000 for a bike path in Cuellar, TX; $900,000 for a river freight development study in Missouri; $800,000 for a scenic trail in Monterey Bay, CA, another deprived area; $750,000 for the Philadelphia Museum of Art Transportation Improvement Program, Brady, PA; $500,000 for park-and-ride lots at Broward County, Meek, FL; $487,000 to restore walkways in Newport Cliff, RI, another low-income area; $974,000 for Regional East-West and Bikeway in Albuquerque.

The list goes on and on and on, up to nearly $4 billion. The problem is, among other problems, in the last campaign, the President campaigned for change, change you can believe in. There is no change here. It is worse. It is worse because of the conditions Americans find themselves in—out of their homes, out of jobs, high unemployment, tough economic conditions. It is business as usual, spending money like a drunken sailor, and the bar is still open.

I tell my colleagues, again, what I keep saying over and over: There is a peaceful revolution going on. They are sick and tired of the way we do business in Washington. They don't think their tax dollars should be spent on these pork-barrel earmarked projects. They are mad about it. We are not getting the message. We are not hearing them. We are not responding to the problems and the enormous challenges the American people have. We are continuing this kind of obscene process, which not only is wrong on its face but breeds corruption in Washington.

I ask unanimous consent that the AP story ''Senate Set to Advance $1.1 trillion Spending Bill'' be printed in the RECORD, as well as the ABC News story and the FOX News story ''Watchdogs Cry Foul Over Thousands of Earmarks in Spending Bills.''

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

SENATE SET TO ADVANCE $1.1T SPENDING BILL

(By Andrew Taylor)

WASHINGTON.—The Senate is poised to clear away a Republican filibuster of a huge end-of-year spending bill rewarding most federal agencies with generous budget boosts.

The $1.1 trillion measure combines much of the year's unfinished budget work—only a $626 billion Pentagon spending measure would remain—into a 1,000–plus-page catch-all spending bill that would give Cabinet departments such as Education, Health and Human Services and State increases far exceeding inflation.

After a 60–36 test vote on Friday in which Democrats and a handful of Republicans helped the measure clear another GOP obstacle, the bill was expected to win on Saturday the 60 Senate votes necessary to guarantee passage. A final vote is expected Sunday.

The measure provides spending increases averaging about 10 percent to programs under immediate control of Congress, blending increases for veterans' programs, NASA and the FBI with a pay raise for federal workers and help for car dealers.

It bundles six of the 12 annual spending bills, capping a dysfunctional appropriations process in which House leaders blocked Republicans from debating key issues while Senate Republicans dragged out debates.

Just the $626 billion defense bill would remain. That's being held back to serve as a vehicle to advance must-pass legislation such as the debt increase.

Saturday's bill would offer an improved binding arbitration process to challenge General Motors' and Chrysler's decisions to close more than 2,000 dealerships, which often anchor fading small town business districts. It also renewed for two more years a federal loan guarantee program for steel companies.

The bill also caps a heated debate over Obama's order to close the military-run prison for terrorist suspects at Guantanamo Bay, Cuba. It would permit detainees held there to be transferred to the United States to stand trial but not to be released.

The bill would also void a long-standing ban on the funding of abortion by the District of Columbia government and overturns a ban on federal money for needle exchange programs in the city. It also phases out a D.C. school voucher program favored by Republicans and opens the door for the city to permit medical marijuana.

It would also lift a nationwide ban on the use of federal funds for needle-exchange programs.

Federal workers would receive pay increases averaging 2 percent, with people in areas with higher living costs receiving slightly higher increases.

Once the bill clears the Senate, it would advance to President Barack Obama's desk.

WATCHDOGS CRY FOUL OVER THOUSANDS OF EARMARKS IN SPENDING BILL

Republicans and taxpayer watchdogs are railing against the thousands of earmarks included in the omnibus spending bill that passed the House Thursday and is awaiting a vote in the Senate.

Republicans and tax watchdog groups are railing against the thousands of earmarks included in the omnibus spending bill that the House passed Thursday and is awaiting a vote in the Senate.

The $1.1 trillion bill includes $447 billion in operating budgets for 10 Cabinet departments. Mixed in are more than 5,000 earmarks totaling $3.9 billion, according to watchdog Taxpayers for Common Sense.

Pork-watchers are only just beginning to sort through the earmarks, which typically are goodies set aside for the districts of members of Congress, as the bill tracks toward a final vote. So far, they've uncovered gems ranging from $700,000 for a shrimp fishing project in Maryland to $30,000 for the Woodstock Film Festival Youth Initiative to $200,000 for a visitor's center in a Texas town with a population of about 8,000.

''Let's stop the madness,'' House Republican Leader John Boehner said, before the bill passed without any GOP support. Twenty-eight House Democrats also opposed it.

House Minority Whip Eric Cantor, R–Va., wrote to President Obama urging him to veto the bill, and pledging that Republicans would stand by him if he did.

Obama in March waved off controversy over a $410 billion spending bill that also was riddled with earmarks, arguing that it represented ''last year's business.'' This time around, Boehner said, the president needs to crack down on the pork under his watch.

Republicans, though, have hardly shied away from the earmarks. Sen. Thad Cochran, R–Miss., is pushing $200,000 for the Washington National Opera. Sen. Judd Gregg, a fiscal hawk, is behind a $1 million earmark for renovation at the Portsmouth Music Hall.

Taxpayers for Common Sense reports a total of 5,224 earmarks in the 2010 spending bill, which also includes funding for Medicare and Medicaid. Groups like Citizens Against Government Waste, as well as Sen. John McCain's staff, have drawn attention to dozens of items they consider questionable. Here's just a sampling:

—$150,000 for educational programs and exhibitions at the National Building Museum.

—$400,000 for renovation of the Brooklyn Botanical Garden.

—$150,000 for exhibits at the Theodore Roosevelt Inaugural Site Foundation in Buffalo, N.Y.

—$500,000 for Mississippi River exhibits at the National Mississippi River Museum and Aquarium in Dubuque, Iowa.

—$200,000 for the Washington National Opera.

—$30,000 for the Woodstock Film Festival Youth Initiative.

—$2.7 million for the University of Nebraska Medical Center, to support surgical operations in space.

—$200,000 for a visitor's center in Bastrop, Texas.

—$700,000 for a project called, ''Shrimp Industry Fishing Effort Research Continuation,'' at the National Marine Fisheries Service in Silver Spring, Md.

—$292,200 for the elimination of blight in Scranton, Pa.

—$750,000 for exhibits at the World Food Prize Hall of Laureates in Iowa.

—$1.6 million for a tram between the Marshall Flight Center and Huntsville Botanical Garden in Alabama.

—$655,000 for equipment at the Institute for Irritable Bowel Syndrome Research in Los Angeles.

Republicans have been on a tear over earmarks and excessive spending over the past week, particularly as Congress prepares to take up a new jobs-creation package and raise the debt ceiling by nearly $2 trillion.

Rep. Mark Kirk, R–Ill., and Rep. Tom Price, R–Ga., on Thursday named what they called the 11 most wasteful spending projects considered by Congress so far this year.

On Wednesday, four Republican lawmakers demanded an audit of the $787 billion stimulus program following reports of exaggerated or inaccurate accounts of the number of jobs created.

McCain, R–Ariz., and Sen. Tom Coburn, R–Okla., on Tuesday released a report on 100 ''questionable'' stimulus projects worth nearly $7 billion.

Mr. MCCAIN. Madam President, I am sorry to be repetitive. I know my colleague is waiting, so I will end with this: This is wrong. We all know it is wrong. The American people know it is wrong. People who vote for this kind of porkbarrel spending are going to be punished by the voters, and we are going to end this obscene process, and we are going to end it soon, as early as the next election.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, we are now considering a bill that represents a dramatic expansion in government spending, as the Senator from Arizona has so eloquently stated. This Omnibus appropriations bill represents a 12-percent increase over last year—a fiscal year that ended with the largest deficit in American history of $1.4 trillion.

I do not know of any other area in the economy where people are spending 12 percent over what they spent last year. Certainly no family budget in America, no business in America is spending 12 percent more this year than they did last year—while we see 10 percent of our people unemployed.

Millions of families across the country and small businesses are, in fact, tightening their budgets. But the budgets of these Federal agencies and of the Federal Government itself keep expanding. There is a 33-percent increase in spending for foreign operations, a 23-percent increase in Transportation, Housing, and Urban Development.

One of the worst things this spending is doing is creating tremendous uncertainty, both here at home and in other places such as China which are buying our debt, about whether we are ever going to get serious about our fiscal responsibility.

The President asked last week why job creators were not stepping up and creating jobs. Well, the fact is, people are watching what we are doing in Congress, and they do not know what the rules will be 6 months from now or a year from now or whether Congress will ever recover from this binge it has been on when it comes to spending.

But it is clear we cannot spend—we cannot spend—our way out of this recession. Job creators are scared. They are scared, and they are sitting on the sidelines because all of the spending, all of the tax increases, all of the government takeovers coming out of Washington, DC, these days leave them with the sense that they do not know what the rules are going to be. And why in the world would you want to create a job, expand your business, or make an investment when the very premise upon which you did so would change because of all the chaos in Washington?

The facts of our debt crisis are not in dispute. The total public debt stands at about $12 trillion. We have, in 2009, a $1.4 trillion fiscal deficit. In other words, we have spent more than $1.4 trillion than the Treasury brought in in fiscal year 2009. Then we are accumulating debt even faster during this year than we did last year.

According to the Treasury Department, the deficit for the first 2 months—2 months—of the new fiscal year was almost $300 billion—$300 billion for 2 months—a total larger than the full-year deficits in 2002, 2006, or 2007. So in 2 months, the deficit was worse than it was for the entire years of 2002, 2006, and 2007.

Our deficits will average nearly $1 trillion every year for the next decade—$1 trillion every year for the next decade—according to the administration. This ought to be a shot across our bow.

Moody's Investors Service said its debt rating on U.S. Treasury securities may ''test the Triple-A boundaries.'' The translation of that is they are beginning to doubt whether at some point the U.S. Government will be able to pay its bills or will default on those bills at some point hopefully not any time soon. But this is the sort of pressure we are putting not only on our ability to create jobs but on our future and particularly on our children's future, if we cause Moody's Investors Service and others to rate U.S. Treasury securities less than a Triple-A rating.

Well, we know soon our colleagues on the other side of the aisle are going to ask Congress to vote to lift the debt ceiling. In other words, this is like the credit limit on your credit card. Once Congress is bumped up against that $12 trillion debt ceiling, Congress is going to have a vote on whether to ask the American people and people buying our debt whether we can increase the limit of our credit card because we have maxed it out.

Media reports indicate that the majority intends to slip this provision into a bill on funding our troops in Afghanistan because, frankly, they are embarrassed to have a stand-alone vote on raising the debt ceiling, especially because they know there are many of us on both sides of the aisle who will insist on some measure to effect some discipline on this spending binge as a condition to voting on the debt ceiling. But whatever the vehicle the majority leader decides upon, they cannot hide the fact that we are borrowing money so fast that we will have to raise the debt ceiling another 15 percent.

Conveniently, this increase will get the government through the next midterm elections, it is reported according to some experts. Not a coincidence. No one, particularly those in control of the Congress, wants to have another vote on lifting the debt ceiling or asking the American people to raise the credit card limit before the next election because they know the American people are increasingly angry and frightened by the spending binge they see here, and particularly the accumulating debt.

That is not even getting to the financial crisis that entitlement programs are facing, such as Medicare and Social Security. We know Medicare's unfunded liabilities are roughly $38 trillion. I realize that number is so big that there are perhaps none of us who can fully comprehend how much money that is—but $38 trillion in unfunded liabilities for Medicare alone. Yet the proposed Medicare ''compromise'' among 10 Democrats would roughly double the burden of Medicare and not fix it but actually make things worse.

Well, I want to mention one other item of fiscal irresponsibility I have witnessed. I think we need to cancel one of the credit cards that has been used by the administration—not just this administration but the past administration—and Congress for purposes Congress never intended when it authorized this program, the Troubled Asset Relief Program or TARP.

I know the Senator from South Dakota is on the Senate floor. He has been one of the leaders in this effort

because he believes, I think, as I do, that we cannot amend it, so we need to end it. We need to cut out this revolving credit account that is being used for inappropriate purposes known as TARP, the Troubled Asset Relief Program.

Let's go back and look at why TARP was authorized by Congress in October of 2008. It is important to remember what the situation was at that time. Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke had many conversations with legislators on both ends of the Capitol on both sides of the aisle, and they said in their public testimony—on September 23, Secretary Paulson said that Congress must act ''in order to avoid a continuing series of financial institution failures and frozen credit markets that threaten . . . the very health of our economy.''

In private, their diagnosis was even more dire. We were told ''that we're literally maybe days away from a complete [financial] meltdown of our financial system'' in the United States unless Congress acts to authorize the Troubled Asset Relief Program.

Many of us, including myself, voted for TARP because we were told by the smartest people on the planet that unless we did this, our economy would suffer an economic meltdown. But I must tell you, I am extremely disappointed that the very nature of the program was changed after Congress authorized it. For example, we were told by Secretary Paulson and others that the money would be used for one purpose, and one purpose only; that is, to purchase toxic assets.

Well, there is a saying that says: ''Fool me once, shame on you. Fool me twice, shame on me.'' And we were fooled into believing that the TARP would be used to purchase these toxic assets and get them off the books as a way of protecting pensions, savings, and investments of hard-working American taxpayers.

Unfortunately, the very people who promised us and told us what purpose the TARP would be used for misled us because two administrations now—the previous administration and this administration—have used TARP as if it were a big government slush fund. They ignored the clear language of the TARP legislation, and they have repeatedly defied the will of Congress.

Let me briefly mention how the TARP funds have been used in a way that Congress never authorized and never intended.

Only weeks after TARP was enacted, the Bush administration abandoned this stated goal of purchasing toxic assets. Instead, the administration funneled billions of dollars directly into some of the Nation's largest financial institutions, making huge purchases of stock and warrants of some of the Nation's largest financial institutions.

The Federal Government, in other words, began acquiring ownership, stakes in banks, financial institutions, and, yes, even car manufacturers, with the full support of the Obama administration. In fact, the Obama administration has even gone so far as to use TARP to set executive pay at several companies. During the reorganization of General Motors, the Obama administration has used that leverage to benefit its union allies over the rights of secured bondholders who had loaned their money to these companies. I have been a vocal opponent of this misuse of TARP by both administrations.

In December 2008, I joined my colleagues in voting against the government bailout of the auto industry, a vote ignored by both the previous administration and the current administration.

Earlier this year, I supported a TARP disapproval resolution that would have stopped the program dead in its tracks because of this misrepresentation of the purpose for which these funds would be used. I have also supported several initiatives that would have increased TARP transparency and congressional oversight.

Then, in September, I joined many of our colleagues in sending a letter to Secretary Tim Geithner, at Treasury, asking him not to extend his TARP authority beyond the end of this year, as the law allows him to do. This would have eliminated the need for the government to borrow more money through this program. But, unfortunately, Secretary Geithner notified Congress that he has extended TARP authority until next October.

Now we read that the administration is proposing using repaid TARP funds; that is, money that was loaned to these large financial institutions that is now being repaid—that Treasury anticipates using this for a second stimulus plan. Well, I guess that is because they think the first stimulus plan worked so well.

You will recall, the stated objective was to hold unemployment below 8 percent. Well, it has gone above 10 percent and, frankly, I think we need to learn from our mistakes as well as things we have done right. It would be a mistake to put more money, particularly TARP money, into a new stimulus plan and have it work so ineffectively, as the first stimulus plan did.

Repaid TARP dollars cannot pay for anything. TARP is like a credit card. Every dollar spent is a borrowed dollar, adding up additional deficits, additional debt. Using TARP on new spending would break the promise the President made when he voted for TARP in this very Chamber. At that time, then-Senator Obama said:

> [I]f American taxpayers are financing this solution, then they have to be treated like investors. They should get every penny of their tax dollars back once the economy recovers.

That was then-Senator Obama, now President of the United States.

I would just conclude by saying, Congress should help the President keep his promises, even when it seems he has changed his mind now, by suggesting that we extend TARP and use TARP on a purpose that Congress has never authorized and never intended.

It seems like the bad ideas never end when it comes to spending and debt out of Washington, DC, these days. In addition to all of these other problems I have mentioned, I have not talked about this health care bill, which would exacerbate and make much worse the deficits and debt situation, and not make it better—all the time while not bending the cost curve down but making things worse, raising premiums, raising taxes, cutting Medicare.

We need to end TARP because, frankly, it is being misused in ways that Congress has never authorized and never intended and, indeed, over the very objections of Congress. We need to learn from our mistakes. Frankly, the stimulus spending, which I voted against because I thought it was based on an academic theory which had not been proven, which was that Congress knew better than the American people how to get the economy working again—by direct spending, by spending borrowed money, the $1.1 trillion in the stimulus plan—we need to end these free-spending ways and show some fiscal responsibility. The best way we could do that, in my opinion, would be to end this program which has been the subject of so much abuse and misuse.

I ask unanimous consent that the following letter, dated January 15, 2009, from then-Director-Designate of the National Economic Council, Lawrence H. Summers, be printed in the RECORD.

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

THE OFFICE OF THE PRESIDENT ELECT,
Washington, DC, January 15, 2009.

Hon. NANCY PELOSI,
Speaker,
House of Representatives.
Hon. JOHN BOEHNER,
Republican Leader,
House of Representatives.
Hon. HARRY REID,
Majority Leader,
U.S. Senate.
Hon. MITCH MCCONNELL,
Republican Leader,
U.S. Senate.

DEAR MADAM SPEAKER, LEADER BOEHNER, LEADER REID AND LEADER MCCONNELL: Thank you for the extraordinary efforts you have made this week to work with President-Elect Obama in implementing the Emergency Economic Stabilization Act of 2008. In addition to the commitments I made in my letter of January 12, 2009, the President-Elect asked me to respond to a number of valuable recommendations made by members of the House and Senate as well as the Congressional Oversight Panel. We completely agree that this program must promote the stability of the financial system and increase lending, preserve home ownership, promote jobs and economic recovery, safeguard taxpayer interests, and have the maximum degree of accountability and transparency possible.

As part of that approach, no substantial new investments will be made under this program unless President elect Obama has reviewed the recommendation and agreed

that it should proceed. If the President elect concludes that a substantial new commitment of funds is necessary to forestall a serious economic dislocation, he will certify that decision to Congress before any final action is taken.

As the Obama Administration carries out the Emergency Economic Stabilization Act, our actions will reflect the Act's original purpose of preventing systemic consequences in the financial and housing markets. The incoming Obama Administration has no intention of using any funds to implement an industrial policy.

The Obama Administration will commit substantial resources of $50–100B to a sweeping effort to address the foreclosure crisis. We will implement smart, aggressive policies to reduce the number of preventable foreclosures by helping to reduce mortgage payments for economically stressed but responsible homeowners, while also reforming our bankruptcy laws and strengthening existing housing initiatives like Hope for Homeowners. Banks receiving support under the Emergency Economic Stabilization Act will be required to implement mortgage foreclosure mitigation programs. In addition to this action, the Federal Reserve has announced a $500B program of support, which is already having a significant beneficial impact in reducing the cost of new conforming mortgages. Together these efforts will constitute a major effort to address this critical problem.

In addition to these commitments, I would like to summarize some of the additional reforms we will be implementing.

1. Provide a Clear and Transparent Explanation for Investments:

For each investment, the Treasury will make public the amount of assistance provided, the value of the investment, the quantity and strike price of warrants received, and the schedule of required payments to the government.

For each investment, the Treasury will report on the terms or pricing of that investment compared to recent market transactions.

The above information will be posted as quickly as possible on the Treasury's website so that the American people readily can monitor the status of each investment.

2. Measure, Monitor and Track the Impact on Lending:

As a condition of federal assistance, healthy banks without major capital shortfalls will increase lending above baseline levels.

The Treasury will require detailed and timely information from recipients of government investments on their lending patterns broken down by category. Public companies will report this information quarterly in conjunction with the release of their 10Q reports.

The Treasury will report quarterly on overall lending activity and on the terms and availability of credit in the economy.

3. Impose Clear Conditions on Firms Receiving Government Support:

Require that executive compensation above a specified threshold amount be paid in restricted stock or similar form that cannot be liquidated or sold until the government has been repaid.

Prevent shareholders from being unduly rewarded at taxpayer expense. Payment of dividends by firms receiving support must be approved by their primary federal regulator. For firms receiving exceptional assistance, quarterly dividend payments will be restricted to $0.01 until the government has been repaid.

Preclude use of government funds to purchase healthy firms rather than to boost lending.

Ensure terms of investments are appropriately designed to promote early repayment and to encourage private capital to replace public investments as soon as economic conditions permit. Public assistance to the financial system will be temporary, not permanent.

4. Focus Support on Increasing the Flow of Credit:

The President will certify to Congress that any substantial new initiative under this program will contribute to forestalling a significant economic dislocation.

Implement a sweeping foreclosure mitigation plan for responsible families including helping to reduce mortgage payment for economically stressed but responsible homeowners, reforming our bankruptcy laws, and strengthening existing housing initiatives like Hope for Homeowners.

Undertake special efforts to restart lending to the small businesses responsible for over two-thirds of recent job creation.

Ensure the soundness of community banks throughout the country.

Limit assistance under the EESA to financial institutions eligible under that Act. Firms in the auto industry, which were provided assistance under the EESA, will only receive additional assistance in the context of a comprehensive restructuring designed to achieve long-term viability.

The incoming Obama Administration is committed to these undertakings. With these safeguards, it should be possible to improve the effectiveness of our financial stabilization efforts. As I stressed in my letter the other day, we must act with urgency to stabilize and repair the financial system and maintain the flow of credit to families and businesses to restore economic growth. While progress will take time, we are confident that, working closely with the Congress, we can secure America's future.

Sincerely,

LAWRENCE H. SUMMERS,
Director-Designate,
National Economic Council.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Madam President, I ask unanimous consent to speak as in morning business.

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

Mr. NELSON of Florida. Madam President, we have in front of us appropriations bills. We have heavy matters of the deficit. We have heavy matters of how we are going to get the U.S. Government to get its fiscal house in order.

I remind the Senate the last time we had a surplus was in 2001. If we had been wise and had not cut the revenue of this country so significantly, we could have been good stewards of that healthy surplus and we could have paid off the national debt over a 12-year period, and we wouldn't be where we are today, but we are. While these matters are weighing heavily on us, it seems our attention is being continuously diverted to other things, such as White House party crashers and the unfortunate circumstance that one of the most famous athletes, Tiger Woods, finds himself in.

We have a debate about the health care bill and it seems that during the course of last summer, the whole health care debate was about one subject and that was the question of the public option. We now know, because all the experts are telling us, that if we have a public option as a part of this health insurance exchange, the exchange itself will only cover something like 15 to 20 percent max of the people, and the public option would only include something like 4 million or 5 million people, and that we are talking about 1.5 percent of the total folks in the country. Yet the debate raged all summer as if that were the only issue about health reform.

So here we find ourselves trying to pass a health reform bill with so much attention diverted elsewhere, with people pushing and pulling and tugging—all the special interests—how in the world can we bring this together? How do we bring it together so we can get the high threshold of 60 votes in the Senate?

On the one hand, there are the insurance companies. The insurance companies have a huge stake. Now the insurance companies are running TV advertisements all over the country trying to kill this bill because they realize there is going to be a limitation on their ability to do everything they want to do and to charge what they want to charge and to cancel at will, and to have frivolous reasons such as a skin rash as a preexisting condition and therefore we are not going to insure you. That is what has led to us getting to the point of saying, ''Enough. We are going to pass a health insurance reform bill.''

Then, of course, what comes to light is suddenly, in this package that was not in the package that came out of the Senate Finance Committee but is in this package, there is actually a nod to the insurance industry in the form of a limitation on the amount of payments that could be made on anyone's insurance policy in one year. Well, again, there is a lot of opportunity for mischief and abuse. We have to correct things such as that.

Is there anyone who doubts that we don't need health insurance reform and health care reform, even though we are getting the opposite messages from the insurance companies; that we are getting the opposite messages from anybody who is a special interest that doesn't get entirely what they want? What are some of those? Hospitals, doctors, all kinds of health providers, medical device manufacturers, and the various interests of patients. But if you look at it, you can't get all that you want, Mr. Special Interest, and instead, keep in mind the goal we are trying to achieve, and that is take a system that is near tilt and get it on the road to reform.

There is another part of this reform we have to do and that is that the U.S. Government cannot afford the cost escalation that is going on in its payment of Medicare and Medicaid. So there are reforms we can enact, many of which are in this bill, such as accountable care organizations that will follow the patient; electronic records

that will modernize records so that any doctor or health care provider who sees the patient will have up-to-date access to what has been the care so that records are not lost; emphasis on a primary care physician who can do a lot of preventive care before the emergency ever gets there; then, of course, utilizing a lot of the miracles of modern medicine including pharmaceuticals to hold off conditions so that we don't get to that emergency; so that if you are not insured you end up at the emergency room, or even if you are insured you end up at the emergency room, which is the most expensive place to get care.

Is there a lot we can do? Yes. It is what we must do. With the hurdle in this Senate being so high that we have to get 60 votes to close off debate, we have to be successful. It will not be pretty and it will not be perfect, but it will be a step in the right direction.

There are portions of this proposed law that will take effect not immediately but a year or two or three down the road, and if we have made mistakes, we can correct those mistakes, but we must be successful. For us to turn back now, no matter who is arguing against it, for us to protect a special interest, no matter who is arguing for it, at the expense of the greater good of health care reform, would be a drastic mistake. Not one of us will be happy going home to our families for Christmas if we don't enact this. It is for those reasons that I feel very strongly we will be successful, as difficult and as tortuous as this process is. This Senator will keep pressing forward until we get that final passage.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I understand that maybe I will have my speech interrupted by a unanimous consent request from the leadership, so if that happens, I ask that my remarks be continuous throughout the RECORD.

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

Mr. GRASSLEY. There has been a lot of talk over the past few days about Senator REID's so-called compromise. Although he said he has broad agreement, I have yet to see any specific details. In fact, it sounds as though Members of his very own caucus, the Democratic caucus, aren't aware of these details either.

I find it quite hard to understand how there can be ''broad agreement'' on something when they don't know what is in it. Of course, I hope we will see details very soon. An issue such as health care reform affecting 306 million Americans and restructuring one-sixth of our economy is something that should not be done in secret. And when the so-called compromises come out, I would expect we would have the same 72 hours on the Internet for the public and the 99 Members of this body other than the leader to review them in the totally transparent way we have always been promised, and as this 2,074-page bill has been transparent, as well as all of the amendments. Because this is one of the biggest and most important pieces of legislation I have worked on in all of my years in the Congress. So I hope Senator REID is not planning to keep the details of his compromise under wraps and then ask us to vote on it. This piece of legislation is going to touch the lives of every single American, from the cradle to the grave, so we owe it to our constituents to make sure we have sufficient time to study any changes to the underlying bill. We all need to remember that it is their money, the taxpayers' money, that is being spent on this bill, not ours.

As I have said, so far, Senator REID is keeping this ''broad agreement'' under wraps. So today I can only talk about what I have heard from my colleagues or read in the newspaper, and who knows whether what the newspaper or our colleagues are surmising what this compromise might be actually is.

I have heard the majority leader is planning to expand the already unsustainable Medicare Program. The idea has been met with, of course, strong opposition, as we would expect from hospitals, doctors, and other health care providers, particularly from rural America, because expanding Medicare to people ages 55 to 64 and paying Medicare rates is going to make it even more difficult for our hospitals to survive because the Federal Government only reimburses 80 percent of costs.

Today, with people over 65, with the government not paying more than 80 percent, it can be offset by private sector charges by the hospitals to a greater amount to make it up. But if you load another tens of millions of people on Medicare—and it is just about broke anyway—you can see that this deficit of our hospitals is going to be greater and it is going to be even more difficult to make up because there will be fewer private-paying people to make up the deficit.

I said the hospital, doctors, and health care providers are bringing strong opposition to this idea of expanding the Medicare Program because they fear that the largest expansion of Medicaid in history and an expansion of Medicare to people age 55 to 64 will drive providers out of business. And then what, of course, does that do for our seniors? It makes it even harder for low-income Americans under Medicaid and seniors under Medicare to have access to care. What are the promises of the Federal Government in Medicare worth if you don't have doctors to provide the services to the seniors when they get sick?

I have already spoken over the last few days about why I agree with these providers and why I oppose that part of Senator REID's so-called compromise. Of course, now we have the administration's own Chief Actuary confirming that the Medicare cuts already in this bill—in other words, the 2,074-page bill, without even considering the so-called Reid compromise, which we don't know what it is—the Chief Actuary confirmed that the Medicare cuts already in the bill are so severe that providers might, even now, end their participation in the program, even before you add on all the people who are 55 to 64. If the compromise expands Medicare even further, then this is going to make this problem even worse.

I also find it curious that some would even consider this a compromise. For instance, Speaker PELOSI could not convince House Democrats to support a government-run plan paying Medicare rates, but that is exactly what Senator REID's compromise is proposing, I have been told. That doesn't sound like much of a compromise to me.

In fact, let me quote another Congressman, ANTHONY WEINER of New York, who doesn't see it as a compromise either. In fact, he sees it as a big step toward their ultimate goal of a single-payer health plan where government is going to run everything. And you will have one choice: the government plan. You won't have choices the way we have in America today.

Congressman WEINER said this:

> This exchange would perhaps get us on the path to a single-payer model.

I don't see this as a compromise to a government-run plan. In fact, in some ways, it is worse because this could harm seniors' access to care starting not down the road but on day one.

I don't want to spend too much time today talking about Medicare expansion. I think I have made my feelings on this idea pretty clear. Instead, I would like to focus on another aspect of the supposed new Reid compromise we are hearing about.

This is what we are hearing about—that the newest Reid proposal would have the Office of Personnel Management operate a national health insurance plan. This may sound pretty harmless at first glance, especially since Senator REID has refused to release any details, but there are some very big problems with a proposal like having the Office of Personnel Management take over.

Around here, we use the term ''OPM'' for the Office of Personnel Management. It is the office in charge of the Federal Government's 2 million-person workforce. One could consider OPM as the human resource agency or department for all of the Federal Government, dealing with everything from salaries to the operation of the Federal Employees Health Benefits Program, which I think is the reason Senator REID thinks this agency would be well equipped to run the largest insurance company in the country.

Unfortunately, a former Director of OPM disagrees. He was asked about giving new responsibilities to the Office of Personnel Management. This former Director, Linda Springer, said this:

> I flatout think that OPM doesn't have the capacity to do this type of role.

Federal employees have also expressed concern. People in this body—particularly the other party—ought to be listening to the National Treasury Employees Union or the National Active and Retired Federal Employees Association. They have come out in opposition to this proposal of OPM running a national health insurance company.

In a Washington Post story highlighting union opposition, the author writes that unions raise these concerns:

. . . legitimate concerns about expanding the size and scope of OPM beyond its capacity.

So there are already concerns from a former Director and more than 5 million Federal workers and retirees and dependents that OPM is not equipped to handle this new responsibility. That alone should make any Member pause before signing on to this so-called broad agreement.

I also think it is important that Members are aware of some of the challenges the Office of Personnel Management faces with its current responsibility, without loading it down with a lot more, because being the human resources department for the Federal Government is, obviously, no easy task. In fact, I would imagine it is a pretty thankless job that entails a lot of long hours.

Please don't misconstrue my comments as an attack on OPM, its Director, or any of its employees. They do the best job they can under difficult circumstances. But they are going to have real problems if Senator REID's compromise does include a government-run insurance plan operated by OPM. If he is going to come out of nowhere with a new proposal to hastily hand the American health insurance system over to this government agency, I think it is important for the American people to know what they are getting into.

We need to be asking some hard questions. Is this expansion of the Federal Government necessary? We are about to vote to raise the debt ceiling by $1.8 trillion because the national credit card has maxed out. Some Members of the Senate seem intent upon increasing the size of the Federal Government even more.

There is a second question beyond the generic one of, can you afford to expand the Federal Government role and expenditures. It is, should the OPM, a government agency, be handed the key to the largest health insurance plan in the entire country? I don't know that the current OPM Director—and I would imagine he is a very nice person, and since I don't know him, I don't want him to take offense to what I say. But I think it is fair to point out that his position, just prior to taking over at OPM, was running the National Zoo. Does this really mean we should put him in charge of the national health insurance plan?

The Office of Personnel Management has been consistently criticized for being out of date and being inefficient on everything from processing national security projects to administering Federal benefits. We have all heard about the massive backlog in people waiting for Social Security disability benefits. Some 833,000 Americans are currently on a waiting list to see if they qualify for government disability benefits, and some Members blame OPM for this backlog.

I am going to put a chart up here from a person whom I trust in the House of Representatives, Representative EARL POMEROY. I think he does very excellent work. He heard about this backlog. He made some comments about OPM. Congressman POMEROY is a Democrat from North Dakota and a member of the very powerful House Ways and Means Committee. He said:

The Office of Personnel Management is fiddling around, years go by before they can even get around to all the things they have to get around to. . . .

This seems to reinforce what the government unions and the former Director have expressed about OPM's ability to handle this new responsibility.

I want to continue to quote Congressman POMEROY:

People are being hurt, some of the most vulnerable people in this country are being hurt every day because of bureaucratic bungling at OPM. . . .

Senator REID hasn't provided enough details, but Congressman POMEROY's comments certainly raise concerns.

Undermining the availability of disability benefits is bad enough, but do my colleagues want to also be responsible for setting up an unworkable system that leaves hundreds of thousands of Americans on the waiting list for their health care benefits?

Government agencies, whether it is the Office of Personnel Management or some other agency, do not have an impeccable track record. As President Reagan often said, the nine most terrifying words in the English language are ''I'm from the government and I'm here to help.'' Think of a health care system with the responsiveness of Hurricane Katrina or think of the efficiency of the Internal Revenue Service or the customer service at the department of motor vehicles. That doesn't sound like a recipe for real health reform to me.

The OPM has also taken considerable criticism for its handling of retiree benefits. The agency's own 2008 financial report stated:

[The Office of Personnel Management] had increased difficulty keeping up with retirement claims and had a decrease in the number of customers satisfied with their services.

That is coming directly from the agency, saying how it is coming up short responding to the needs of the American people, and particularly government employees, and that is before we are talking about adding a new government health insurance program to the responsibilities of OPM.

The Hill newspaper wrote this last week:

Watchdogs maintain the program is riddled with inefficiencies that ultimately cost both the agency and the Federal Government money.

So I think there are legitimate concerns about whether this Federal agency is even equipped to take on the additional responsibilities of a whole new government countrywide program that is obviously a massive undertaking.

I also wonder why this proposal is even necessary. The bill already sets up government-run exchanges that would offer a choice of competing for-profit or not-for-profit plans. My colleagues on the other side of the aisle have compared this system to the Federal Employees Health Benefits Program. This bill already has provisions that encourage national health plans. This leads me to ask the question: Why does this bill need another layer of bureaucracy to create a national plan run by a government agency?

Some have suggested this is just another backdoor attempt to end up with a government-run plan. Another detail that has been reported supports this claim. We have been told that if not enough not-for-profit plans agree to contract with the Office of Personnel Management or if they do not meet certain affordability standards, the Office of Personnel Management will have the authority to establish its own government-run plan.

With some of the other provisions that are in this bill, this trigger approach seems to be rigged. There are at least two reasons why this is the case. First, the bill undermines any ability to avoid the first government plan trigger to make health coverage more affordable. The bill puts in place a bunch of new regulatory reforms, a bunch of fees, and a lot of taxes that will drive up premiums, making it impossible for health plans to meet new affordability requirements.

Again, you are going to say you question this Senator's judgment saying that. Do not take my word for it. The nonpartisan Congressional Budget Office, a group of professionals who do not care about politics, predicts premiums will be 10 to 13 percent more expensive as a result of this bill.

Then, of course, we have the second government plan trigger which gives the Office of Personnel Management the authority to create a government-run plan if not enough not-for-profit national plans contract with OPM.

Senator REID failed to mention in announcing his broad agreement that there is not one national plan in existence today, for-profit or not-for-profit—not one national plan—that is offered in all 50 States. It does not exist.

Once again, it sounds to me like this so-called trigger is being rigged to shoot. I can only assume this backdoor attempt to shoehorn in a government-run plan at the last minute happens to be an act of desperation. Senator REID and his colleagues have seen the facts. You have heard them from our distinguished Republican leader. According

to a CNN poll from December 2 and 3, 61 percent of Americans oppose this 2,074-page bill. At a time when the Democratic leadership is pushing a $1.8 trillion increase in the debt limit, we learn from the White House's own Actuary that this $2.5 trillion bill, this 2,074-page bill bends the cost curve up by increasing health care spending. If you go back to day one of this year, when we first started talking about health care reform, one of the overriding goals was to bend that cost curve down. After 11 months of activity, we have a bill with that cost curve going up—not one of the major goals we set out to do 11 months ago.

This bill is also under pressure from opposition by the National Federation of Independent Business, speaking for the small businesses of America, the ones that do 70 percent of the net hiring. It is also opposed by the National Association of Manufacturers, the Chamber of Commerce, the National Retail Federation, and almost every other business group across the country.

Because of this last-minute, desperate attempt to appease the far left, this rumored new compromise now is being opposed by hospitals, doctors, and other health care providers. These people were on board through most of these 11 months promising their support, and now they see it going in the wrong direction.

With all those factors, I do not see how anyone, let alone 60 Senators, can vote for this bill, this last-minute, desperate attempt to expand Medicare and hand over private health insurance systems over to a Federal agency, the Office of Personnel Management. This step, if it materializes, has made a bad bill even worse.

I have another part of the bill to which I wish to speak. We have this 2,074-page bill before us, and I wish to refer to just a few words on page 2,034, way at the tail end of the bill, in section 9012 of the Reid bill. It only takes up eight lines, but it could have a major impact on millions of retirees and even on the entire U.S. economy.

Listen to this. The AFL–CIO, the Americans Benefits Council, and the Business Roundtable have all joined in opposition to this provision, section 9012. How often do we have the AFL–CIO, the American Benefits Council, and the Business Roundtable—that roundtable is the big corporations in America—joining in opposition to anything? But they are in opposition to section 9012 of the bill.

This would prohibit businesses from fully deducting a subsidy they receive to maintain retiree drug coverage. The Medicare Modernization Act of 2003 created this subsidy to encourage businesses to keep offering retiree drug coverage once the Part D benefit was established because back in 2003, our goal in passing the prescription drug bill for seniors was not to disturb people who already had drug coverage and they liked what they had and they wanted to keep it. We did not want these big corporations dumping these people off into something with which they were unfamiliar. So we helped to encourage companies and save the taxpayers money. I will refer to those specific dollar figures in a minute.

In Federal tax policy, it is very unusual to provide a deduction for a business expense, such as retiree health costs, if that expense is subsidized by a Federal program. But in this case, the conferees decided to provide this unusual tax treatment for compelling health policy purposes, some to which I have already referred.

If people are satisfied with what they have, we should not pass a bill pushing people out of a plan they like. But it was also to save taxpayers' dollars because the rationale was, it was cheaper to pay a $600 subsidy than to have these people forced out of their corporate plan and then to have the taxpayers pay an average of $1,100 that it will cost if the retiree joined the Part D government plan.

You know what. After 6 years, so far it has worked. Millions of seniors have been able to keep their retiree coverage as a result of this subsidy, and the Part D Program continues to come in under budget and also to receive high marks from our senior citizens.

But the provision tucked away in this 2,074-page bill on page 2034 could change all that and, in fact, have severe consequences and, let me say, unintended consequences not just on those retirees but for the entire U.S. economy.

In an effort to pay for this massive expansion of a government-run health plan, the Reid bill proposes to eliminate the tax deductibility of this provision. This could cause employers all across the country to drop retiree coverage. This will not only break the President's promise by preventing millions of seniors from keeping what they have—remember that promise during the campaign—it will also cause the costs of the Part D Program to go up.

In addition, accounting rules for retiree benefits require that the businesses that do keep offering plans, offering these benefits, will have to report the total revised cost on the day the bill becomes law.

We have an op-ed written in the Wall Street Journal about this point. This could cause businesses to post billions of dollars in losses and significantly impact an already struggling economy.

Is this something we want to do when we still have 10-percent unemployment? I think the majority ought to give second thought to that.

A letter sent on December 11 from the chief financial officers of some of the largest employers in the country stated:

> The impact of the proposed Medicare Part D changes would be felt throughout the overall U.S. economy as corporate entities and investors would be forced to react.

Another letter signed by the AFL–CIO stated this provision would ''unnecessarily destabilize employer-sponsored benefits for millions of retirees.''

Once again, how often do we get these large corporations and the AFL–CIO singing off the same song sheet?

This simple provision tucked away on page 2034 is just one more in a long list of policies that could have serious unintended consequences for American businesses and retirees.

At this point, it appears the majority is so determined to get a bill at any cost that they will put in place bad policies and promises to somehow clean up the mess later on. That is not the way to write legislation. That is not what the American people were hoping for when they were told Congress was going to fix the health care system. This provision is just one more reason we need to scrap this product and go back to the drawing board.

In finishing, I will say what I have probably said two or three times before. We are trying to fix the health care system, health care reform. The word ''reform'' implies all of that. If you were having a coffee klatch in rural New York or rural Iowa this very morning and one of us Senators dropped in on it and they started asking us about a bill because they were already talking about health care reform and any one of us told them it would increase taxes, it would increase health insurance premiums, that it would not do anything about decreasing inflation of health care—in other words, costs are going to go up yet—and we are going to take $464 billion out of Medicare, a program that is already in distress, to set up a whole new government program, you know what. Every one of those people around the table would say: That doesn't sound like health care reform to me. Let's not denigrate the word ''reform.''

I ask unanimous consent to have printed in the RECORD a letter from the AFL–CIO.

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

NOVEMBER 2, 2009.

Re Retiree health coverage

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: We are writing to express our serious concerns regarding two provisions included in H.R. 3200, The Affordable Health Care for America Act, and urge that they not be included in legislation approved by Congress. Section 110 would curtail the ability to change retiree health coverage and Section 534 would change the tax treatment of subsidies provided to employers who provide retiree drug coverage. Both provisions would likely have the unintended effect of discouraging the provision of employer-sponsored retiree health coverage, thereby undermining one of the goals of health reform legislation and placing the cost and burden of providing this vital coverage onto the federal government.

SECTION 110

Retiree health coverage has long been the subject of collective bargaining and is an important part of the overall package of benefits and compensation negotiated between

labor and management. By severely restricting the ability to modify retiree health coverage this provision limits the flexibility that parties have during negotiations. In some situations, existing labor agreements already contain cost sharing arrangements that would be unilaterally overridden by this provision.

This restriction could unintentionally result in employers dropping sponsorship of retiree health coverage altogether to avoid future restrictions. Rising health costs and financial accounting rules have resulted in a steady erosion of employer-sponsored retiree coverage; and no doubt this decline is the motivation for this provision. It would be disastrous for millions of Americans still covered by retiree health plans to see those plans severely limited or eliminated altogether as employers seek to avoid being locked into a particular benefit in perpetuity.

SECTION 534

This provision of the bill would cease the current tax excludability of the 28% subsidy provided to employers who continue to provide prescription drug coverage to their retirees. The $3 billion in federal tax revenue estimated to be raised from this provision is highly unlikely to be realized. The current tax treatment was included in the Medicare Modernization Act of 2003 precisely to encourage employers to continue sponsoring drug coverage—not only helping to preserve this important benefit, but also resulting in savings to the federal government by avoiding the necessity of many retirees to obtain Medicare Part D coverage. If only the tax revenue to be collected is calculated, but not also the federal outlays to provide the comparable benefit, then the actual cost to the government is not being accurately considered.

Moreover, Congress must consider the impact of this provision in the context of a reformed health system, as opposed to the current system. Other features of H.R. 3200, including the aforementioned limits on the ability to modify retiree health coverage, could well lead to an unintended and precipitous decline in some of the most comprehensive health coverage protection for retirees available today.

Finally, Congress has not considered at all the negative impact, required under Financial Accounting Standard 106, on the financial statements of companies that currently provide retiree health coverage. Regardless of the ultimate effective dates of Sections 110 and 534, accounting rules dictate that immediately upon being signed into law, these provisions would substantially increase the FAS 106 liability for the very companies providing the most comprehensive coverage to current and future retirees. In the current economic environment, this would be particularly ill-advised and disruptive.

Health care reform must be about stabilizing and expanding the employer-sponsored health benefits system. These two provisions would unnecessarily destabilize employer sponsored benefits for millions of retirees at a time of unprecedented changes in health coverage. Whatever differences the undersigned organizations may have on other aspects of pending health care reform legislation, on these two matters both labor and management are in full agreement. We respectfully urge that both these provisions be deleted from the legislation under consideration.

Sincerely,

DIANN HOWLAND,
Vice President, Legislative Affairs, American Benefits Council.

WILLIAM SAMUEL,
Director, Department of Legislation, AFL-CIO.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, we had indicated to Senators REID and DURBIN that we wanted to see if there was a way to develop some path forward on the health care bill, and I wish to at this point propound a consent agreement that might well give us a way to move forward on some of the amendments that have been pending for quite some time, some of which are both supported and opposed on each side.

Having said that, I ask unanimous consent that after the vote on the adoption of the pending conference report, the Senate resume consideration of H.R. 3590 under the following order; there be 2 hours of debate equally divided between the two leaders or their designees and following the use or yielding back of that time, the Senate proceed to a series of stacked votes in relation to the following amendments or motions; a Baucus sense-of-the-Senate amendment related to taxes, the pending Crapo motion—which I might add parenthetically has been out there since last Tuesday—the Crapo motion to commit the bill related to taxes, then the Dorgan amendment, which is on the drug importation issue, No. 2793, and then a McCain amendment, No. 3200, on the same subject.

I further ask unanimous consent that the above referenced motion and amendments be subject to an affirmative 60-vote threshold, and if they achieve that threshold, they become agreed to; further, if they do not achieve that threshold, they be withdrawn; finally, I ask that no amendments be in order to any of the mentioned amendments and motion.

Before the Chair rules, I wish to make a quick point. The majority leader has been proposing a series of votes, which regretfully has not held to our pattern of alternating back and forth. We have many people interested in the pending amendments, and under the agreement I put forward, each side would get two votes, as we have tried to operate throughout the health care debate, and then we would move forward.

The PRESIDING OFFICER. Is there objection?

The Senator from Illinois.

Mr. DURBIN. Mr. President, reserving the right to object, I ask unanimous consent to engage in a colloquy with the minority leader. Perhaps there will be a better understanding of his unanimous consent request before I make my final decision.

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

Mr. DURBIN. I wish to ask, as I understand it now, when it comes to—and let's set aside Crapo-Baucus and assume there is commonality in that. As I understand it now, the Dorgan amendment, which would allow for the importation of pharmaceuticals and drugs into the United States, has been offered on our side as well as a Lautenberg amendment, which has some history in the Senate. It was previously offered by Senator COCHRAN of Mississippi and establishes a standard for certification of safety of the drugs coming in.

Could the Senator from Kentucky describe to me what the new McCain amendment No. 3200 does?

Mr. MCCONNELL. Well, fortunately, Senator MCCAIN is on the floor at this time, and I will ask him to describe it.

Mr. MCCAIN. I wish to say to my colleague, first of all, as is well known, side-by-sides have been one side of the aisle and the other side of the aisle. If the Lautenberg amendment were in order on the Dorgan amendment as a side-by-side, that would obviously be a change from what we have been doing.

Basically, what my amendment does is make some perfecting changes to the underlying Dorgan amendment. It has some sense-of-the-Senate provisions and several other provisions which I think would help make it more effective. I have to be very honest with my friend from Illinois, it doesn't undermine the Dorgan amendment. I think it supplements the Dorgan amendment, just as the Bennet amendment to Medicare costs supplemented the position we had that Medicare benefits wouldn't be cut.

So side-by-side amendments aren't necessarily in contrast with each other; sometimes they perfect, and I think my amendment makes it a better amendment—makes the Dorgan amendment a better proposal.

Mr. DURBIN. I ask unanimous consent to expand the colloquy to include Senator MCCAIN.

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

Mr. DURBIN. Does the amendment of the Senator from Arizona, No. 3200, include the existing language of the Dorgan amendment?

Mr. MCCAIN. Yes, plus some perfecting language, as far as the Senate is concerned, about other procedures that would expedite the Dorgan amendment as well.

Mr. DURBIN. Is the Senator from Arizona prepared to offer the Lautenberg language in his amendment?

Mr. MCCAIN. No, obviously not, because I don't agree with the Lautenberg language in my amendment, as you know. But what we are trying to do is, obviously, make the Dorgan amendment better, just as other amendments that are side-by-sides have tried to make amendments better. They do not necessarily cancel them out but make them better.

Mr. DURBIN. Is the Senator from Arizona a cosponsor of the Dorgan amendment?

Mr. MCCAIN. Yes, a proud cosponsor.

Mr. DURBIN. Would the Senator from Arizona consider offering whatever is different in 3200 as a separate amendment to the Dorgan amendment?

Mr. MCCAIN. I guess what I am not sure—if I understand my friend, I am offering an amendment as a side-by-side in order to, in my view, improve the Dorgan amendment; again, in all candor, not to undermine but to make it better.

Mr. DURBIN. Well, Mr. President, I have an obligation to not only my leader but obviously to Senator LAUTENBERG, who is being dealt out of the picture here with this unanimous consent request, and he has been offering an amendment which is well known and has been offered previously by Senator COCHRAN of Mississippi, a Republican. At this point, if Senator LAUTENBERG is offering—I think at this point I am constrained to object based on this new McCain amendment, and we will discuss it with Senate leadership as to whether we can find a path through this.

This is the third day we have been struggling with this. It appears there is a lot of credence put in the belief that we have to have exactly the same number of Republican and Democratic amendments, and I understand that from the minority point of view.

Mr. MCCONNELL. Maybe I have a solution to the problem. It actually involves my side agreeing to a procedure we have not followed throughout this bill, but let me suggest the following, which I think would get us out of this conundrum we seem to be in: that even though we have alternated from side to side, we would agree to both Dorgan and Lautenberg in conjunction, right after Crapo and Baucus; and then we get in the queue our next two—which I believe you are already familiar with, because they have been discussed on the floor—the Hutchison-Thune amendment, and then a Snowe amendment.

Mr. MCCAIN. And I withdraw, with great reluctance and great anger, my amendment, because I think the Lautenberg amendment would be in violation of what we have agreed to.

Mr. MCCONNELL. In other words, Mr. President, putting it another way, we are basically conceding to what the Senator had earlier proffered as a way to get moving on the bill, and then we would get back into our process of going side to side. And we want you to know that our next two—as we have been letting each side know what the other side was going to offer—our next two would be the Snowe amendment and the Hutchison-Thune amendment.

Mr. DURBIN. Let me suggest this. I will formally object to the original unanimous consent request, and I will then take what I consider to be a good-faith offer from your side as to the next two amendments to the majority leader. We will review the amendments, and I hope even today we will be back to Senators and suggest whether that is a path out of this.

Mr. MCCAIN. Could I be clear with the Senator from Illinois that what this means is we would move forward with the side-by-side Dorgan and Lautenberg—we would agree to that—and then we would also expect agreement on following amendments so that we could lock those in for debate and votes?

Mr. DURBIN. May I ask whether the two amendments the minority leader mentioned, which would be Thune and Hutchison, and the other amendment, Snowe, we would be allowed to have side-by-sides to those?

Mr. MCCONNELL. Of course.

Mr. DURBIN. If you would be kind enough——

Mr. MCCONNELL. If you so chose.

Mr. DURBIN. If you are kind enough to give us time to review that proposal, we will be sure to get back to you.

Mr. MCCONNELL. I understand capitulation when we do it, and we have essentially said to the majority we will go along with what you had earlier requested and we would like for you to take ''yes'' for an answer and for us to wrap this up and have a sense of where we are going from here.

Mr. DURBIN. I promise we will get back in a timely fashion.

I object to the initial unanimous consent request.

The PRESIDING OFFICER. Objection is noted.

Mr. SESSIONS. Mr. President, the vote we had earlier this morning, moving forward onto the omnibus spending bill that is before us, is a stunning statement that we are not listening to the American people; that we are unaware or indifferent to the level of spending that is occurring in this country, which is unlike anything that has occurred before. Many have complained that President Bush overspent, and on some occasions he did. One expert told me recently that they have compared President Bush's misdemeanors to felony murder when you look at the seriousness of the spending levels that we are now undertaking in the baseline budgets of the various Federal agencies.

This is different from the stimulus package that is already out there—to spend $800 billion in stimulus funding that has been poured into this economy—on top of the baseline budget spending items. So not only do we have this unprecedented stimulus package from earlier this year—the largest single spending bill in the history of the American Republic—but we are now moving forward with baseline budget items that have increases that are stunning, unjustified, irresponsible, and put us on a pathway to double domestic spending in far less than 10 years. This is unthinkable.

I have to go back to the core threat we are facing, as more and more experts and economists are reminding us of it. This is based on the Congressional Budget Office study; it is based on the budget presented by the President of the United States over 10 years. Earlier this year, he presented us a budget. And what did it show? It showed our total American debt in 2008 was $5.8 trillion. That is a tremendous amount of money. That is what the total debt from the founding of the American Republic was—$5.8 trillion. They project that by 2013 that debt will increase to $11.8 trillion—doubling in 5 years—and increasing to $17.3 trillion in the year 10 of the President's budget—tripling the national debt.

They say: Well, we have an economic recession. Well, we have had recessions before. We have a recession more often than every decade. We had thought that, hopefully, we could maybe figure a way to avoid them, but we haven't done that yet. I guess blame can go around to a lot of different people. But I would say this does not project another recession in the 10 years we are tripling the debt.

As I have said, we are on an unprecedented course of spending that has never been seen in our country before. The only thing like it was during World War II and we were in a life-and-death struggle, fighting wars on both the Pacific and Atlantic, and Africa—around the world. Virtually every able-bodied person was either in the military or building ships and airplanes and weaponry to send to our soldiers. The whole country was mobilized.

We never did this to our deficit then, and we did it in a way that commenced a pay-down of those debts after it was over. What I wanted to emphasize was—many of my colleagues have heard it stated, people seem to all admit it—we are on an unsustainable path. This is not a sustainable spending schedule. Then how do we get off of it? When do we get off of it, if it is unsustainable?

Is it by producing a bill that we just voted on that increases spending at 12 percent, a rate of spending that would double those six discretionary spending bills' accounts in 5, 6, or 7 years? It would double it. Is that the way to get spending under control? I don't think so.

Remember, I am not counting in this 12-percent increase the stimulus package that was passed. I would also note, under the budget the President submitted, the deficits in the outyears are not going down. There is no projection in those 10 years that we would have a recession, but there is also no projection that the deficits would be falling. In fact, the deficit, in 1 year, in 2019, would be over $1 trillion. So these are stunning numbers.

The highest deficit we have ever had was at $450 billion. The year before this year—we just concluded in September 30 of this year—$1.4 trillion. Next year it will be $1.5 trillion. There should be some dip, we hope, for a few years, and then it is going back up on an unsustainable path. It is just stunning. We cannot do this. That is one of the big things that is occurring in the streets of America with our tea parties and others. People are saying: Congress, what is the matter with you? Don't you understand you are mortgaging our children's future; you are

devaluing the dollar; you are placing our economy at risk, as virtually every expert economist you talk to says, including Mr. Bernanke—not very aggressively, in my view, but he said that recently. This is a bad path.

What does that mean when you have a big debt? The debt goes up. How do you get the money? Where does the money come from? You have to borrow it. We put on the market Treasury bills and notes, and we ask people to loan us the money so we can spend, spend, spend more than we take in, year after year.

Some say it is the entitlements that are causing this, and entitlements are growing. That is our Social Security and our Medicare. One reason those are growing is, frankly—it is a very serious reason—we have more seniors and they are living longer. They have been going up 6 or 7 percent a year. We are troubled by that. But the truth is, Social Security and Medicare have been in surplus.

What has happened to the surplus? It has been spent on discretionary spending. We are spending the Social Security surplus and Medicare surplus—but it is going caput. Medicare is fading fast, and by 2017 the trust fund will be exhausted. So we are not going to have a surplus to spend. So you borrow the money; this is what you do.

In 2009, we paid interest on the money that people loaned us—much of it from China and oil-rich States, many of which are not friendly to us. We are paying them huge amounts of interest—$170 billion. How much is that? That is a lot of money. My State of Alabama is about an average size State. We are a frugal State. We don't have huge government. We have some pretty good economic growth as a result of that. But we have a $2 billion annual general fund budget—$2 billion. We paid $170 billion, the United States of America, in interest alone in 2009.

Look what CBO says, our objective Budget Office. It is under the control, really, of the Democratic majority, but they take pride in giving us numbers that are valid and reliable. I think they do that for the most part.

Look at this. They say by 2019, the interest we will be paying on the debt will not be $170 billion but $799 billion because we cannot stop spending. It is just unthinkable.

People say we have to do better. This is unsustainable. We need to do something.

When? We just voted this morning for a bill. I don't have a chart on that, but I will just read the numbers to you. It increases spending on 6 of the 13 appropriations bills. We try to pass them individually, 13 appropriations bills that fund the Federal Government. When we get to the end, it is easier sometimes for the leadership just to cobble all six of them together in a big package and put it out there and say vote up or down. That is what we have done. That is not a good policy. We need to do better than that. We really need 2-year budgeting, and then we would have time to bring up these bills one by one and give them the scrutiny they deserve. But if we look at the overall spending in these 6 bills, 6 of the 13 that have been put together in a package, it shows that the percentage of growth in spending on the baseline level is 12 percent.

That is a stunning figure, when you think about it. What is the inflation rate today? Zero. We do not have inflation. The last number was .2 percent deflation over the past year. The average family is containing their spending. Ask the average city mayor. Aren't they trying to contain spending and be more efficient and be leaner and more effective? What about our State governments? The same thing. They are facing real problems, and they are trying to contain the growth of spending and we increase it by 12 percent.

What kind of increase did the average working American get in their salary? Probably zero and lucky to hold it. If they had been getting overtime, they are probably not getting overtime today. Maybe in the family two people were working, maybe now only one is working.

What about the State Department and foreign operations, what kind of increase did they get? A 33-percent increase in spending, most of which I assume will be spent around the world somewhere.

What about Transportation and HUD? I have a chart on that. I just have the last 2 years since our colleagues have been in the majority. Last year it was a 12.3-percent increase—a stunning increase. Look at this year, 2010—23-percent increase on HUD, Housing and Urban Development, and Transportation; 23 percent on top of 12. This is the kind of spending that would double the HUD budget in 3 to 4 years. The foreign operations, I just mentioned, at the rate of increase we have, it would double in 2 to 3 years. The whole budget would double in 2 to 3 years.

Let's talk about Transportation/HUD. Did they get any money out of the stimulus package? You are counting that in here, aren't you, Senator SESSIONS, the money that Transportation/HUD got out of it?

No, I am not. This is baseline spending. What did they get? The total Transportation/HUD budget—I hope my colleagues will think about these numbers—is $68 billion this year. Remember, I just noted interest in 2019 would be $800 billion. That gives some perspective on the level of spending we have. But, again, that is just the baseline spending, and it does not count the $62 billion of spending that came out of the stimulus package, according to this chart. Remember, only a small percentage of the stimulus package went to highways. They said it was for bridges and infrastructure and highways, and I think about 4 percent of the overall amount went to highways. Now they are claiming we don't have enough money for highways and they talk about another stimulus bill of another couple of hundred billion dollars—just another $100 billion, $200 billion.

Remember, $100 billion—the entire Transportation-HUD expenditure this year is $68 billion.

I don't think this is any kind of exaggeration. I am not an alarmist, but I am alarmed because I am telling the truth about these numbers.

What have we done on previous spending bills that have come through the Senate? Two other bills have already come through the Senate and had stunning increases in them. Look at this. This is Interior and the Environment expenditures—Department of the Interior and the Environment—EPA, basically. Look at that: 16.6 percent increase in 1 year. It had a tight budget last year, but it had a 16-percent increase this year. The EPA, the Environmental Protection Agency, which now is claiming the ability to regulate CO_2, they got a 33-percent increase in spending. EPA got a 33-percent increase in spending. We have never seen those kinds of numbers before.

Look at these expenditure growth items over the last number of years. When President Bush was in, everybody said he was a spendthrift, that President Bush put us in debt.

Democrats say: We are not doing anything. This is a President Bush—it is all his fault. He was a big spender.

I criticized him some for overspending. A lot of Republicans have. But look at his averages for those Interior and Environment appropriations.

It averaged 1 percent from 2001 to 2009, so he was holding the line. He had some 5-percent years, 5.6, but some negative years too. So the average was a modest 1 percent. Remember, 16 percent growth in spending at a time when inflation is zero.

Another example of that—let's take the Agriculture bill. I believe in agriculture. I have tried to support most of these bills. I have worried sometimes that we were spending too much on agriculture. But I can't vote for this. We have already moved this legislation through the Senate, the Agriculture appropriations discretionary spending. Here we had in 2004 a minus 1 percent, zero in 2005, zero in 2006, a 6-percent jump in 2007, 1.1 percent in 2008, now 15 and 14.5 percent increases. How can we say we are responsible when we are doing that? We were having deficits through these years.

We have never seen deficits averaging $1 trillion a year, which is basically what is going to occur under President Obama's budget. I wish it weren't so. I wish I didn't have to make this speech, because these deficits are dangerous to the American economy.

These numbers remain here are stunning numbers. The only one that got a modest increase was for the men and women in uniform of the Defense Department. But State and Foreign Ops,

32.8–33 percent; Interior, 16.6; Commerce-Justice-Science, 12.3 percent; T–HUD, 23 percent; Agriculture, 14 percent; Defense, 4.1. That should tell us something about maybe where the priorities are around here. It is troubling to me.

What do the American people think about this? I have heard a lot of my colleagues say: We have a recession and we have this war that is going on. We just have to spend more. The American people understand that. It is all right. We just want to do this, and let's do it.

Look at this poll that came out recently. Actually, it was November, last month, a CNN poll. The question was, Which of the following comes close to your view of the budget deficit: The government should run a deficit, if necessary, when the country is in a recession and at war or the government should balance the budget even when the country is in a recession and is at war. Sixty-seven percent say balance the budget. First, they know this isn't World War II. We have a very expensive war. We need to make sure our men and women are well funded. But it is not the driving factor in the deficits we are having today. Only 30 percent said, run a deficit. Four percent had no opinion. Sixty-seven percent said we ought to have a balanced budget, even in a time of war and recession.

There are other problems. There are ramifications that arise from this kind of reckless spending. It has been a catch line for a number of our colleagues who support this health care bill that it would reduce the deficit. Past history with entitlements has shown that is not so. Estimates don't prove to be accurate, No. 1. No. 2, there are gimmicks in this health care bill that hide its true cost. I will mention one of them for the moment.

One of the big ones is that we don't pay the doctors. The doctors are projected, after this next year and for 9 years under this budget scheme, to take a 23-percent cut in their payments for the work they do for Medicare—a 23-percent cut. Many doctors already are leaving Medicare and Medicaid because they are not paid enough. They are paid substantially less by the U.S. Government for Medicare and Medicaid than private insurance companies pay them for the work they do.

That was part of the plan to fix Medicare, to fix permanently the payments for our physicians. When the numbers didn't add up—and if you paid the physicians what you are supposed to pay them, it would cost $250 billion over 10 years—they attempted to take the doctor fix payment and put it in a separate bill, every penny of it going to the debt, saying: Our health care bill is deficit neutral. The health care bill is deficit neutral. I am voting for a bill that is not going to impact the debt.

Well, when you move a $250 billion hole out of your bill and put it over here, that is one way to hide what you are doing. If you count that, we have a $120 billion deficit in the bill by the scoring of our own colleagues. They just took that out because the numbers wouldn't add up if it were in. It is wrong. It is the kind of gimmicks and manipulation the American people are getting tired of. Some people are going to pay at the ballot box for continuing this kind of thing.

Let me give some examples of how even the estimates of these bills fundamentally turn out to be wrong. In 1967, the estimate for how much Medicare would cost in 1990 was $12 billion. They projected how much Medicare would cost in 1990. What was the actual cost in 1990? It was $98 billion, not $12 billion. That means the estimates were off by a factor of 8. In 1987, Congress estimated that Medicaid payments to hospitals would cost $1 billion in 1992. That was just 5 years out. The 5-year projection was Medicaid payments to hospitals would be $1 billion. What was the actual cost? It was $17 billion, meaning the estimate was off by a factor of 17 in only 5 years.

This kind of recklessness jeopardizes our economy. I don't think this spending is helping our economy because I think what is occurring is that people who invest in the future, hundreds of millions, maybe billions of dollars in big factories, are worried about our recklessness. They are worried about future economic stability. They are not as willing to invest because we are not acting responsibly.

Stanford University economist Michael Boskin stated in a recent editorial in the Wall Street Journal:

> The explosion of spending, deficits and debt foreshadows even higher prospective taxes on work, saving, investment and employment. That not only will damage our economic future but is harming jobs and growth now.

There is too much truth in that.

Brian Riedl at the Heritage Foundation, on October 6, in the Washington Times, did an op-ed that said that estimates on the size of the deficits I have just given are likely to be wildly optimistic. When I said the debt triples from $5.8 to $17.3 trillion, I am not including health care in those numbers. It hasn't passed. That is not current law. They didn't count that in the numbers when they were scoring it. He notes that the President assumed that spending would only increase at the rate of inflation for 9 years after 2010, after he included an 8-percent increase for spending in 2010.

The President's deficit estimates also assume interest rates lower than those in the 1980s or 1990s. Once all the factors in Mr. Riedl's analysis are added up, he projects a total deficit for the next 10 years to be $13 trillion—an unsustainable level for sure and well above what CBO has scored. He is projecting higher interest rates on the debt because so much money would be borrowed worldwide. How do you induce people to loan you money? You have to offer them higher interest rates to get them to loan you money. They will not be loaning money at the low interest rates we have today because of this economic slowdown. Interest rates are going up. CBO acknowledges that in their score. The Heritage scholar said it is going to go up higher than CBO had scored.

An October 14 New York Times article said that the reason we are not pressing China to appreciate its currency, to stop devaluing its currency against ours is because we rely on them to purchase our debt.

Dong Tao, an economist at Credit Suisse, said:

> Obama's interest is not to push China to appreciate its currency, but to get them to pay the bills.

In other words, to get them to keep buying our Treasury bills so we can keep borrowing money.

Small manufacturers all over the country, including Alabama, have suffered from China's undervalued currency. They not only have a wage advantage over us to a significant degree, they also don't have the environmental laws we have. They also devalue their currency—all of which makes them more able to undercut American companies' manufacturing and adversely compete against them. I am constantly hearing about it from my State. I know others are hearing the same thing.

However, China and other countries may not be able to keep financing our debt in the future. Professor Allan Meltzer, a well-known scholar on the Federal Reserve and monetary policy, noted in a column in the Wall Street Journal that our current and projected deficits are too large relative to current and prospective world savings to rely on other countries being able to finance them for the next 10 years. We just can't expect to be able to have that much wealth out there in terms of our own citizens saving money to buy the Treasury bills and debt of the United States. Other countries are not going to have it either.

In a Budget Committee hearing on budget reform, November 10, former Comptroller of the Currency and GAO David Walker testified that by 2040—time flies faster than we like to admit—we will have to double taxes to keep current with our commitments. This is the former Comptroller General of the United States, the head of the GAO, the Government Accountability Office. He knows these numbers, and he has been very concerned about our reckless spending for quite a number of years. He is basically committing himself to trying to get this country on a sound financial track. Mr. Walker stated that in 12 years, interest will be the single biggest line item in the budget, even assuming interest rates don't change from today's low rates. But interest rates are going to go up, at least some. He also said that debt and deficits are the public's largest concern by 20 points in the opinion polls.

That is what I am hearing from my constituents. They want some leadership up here. They want us to say: We would like to be able to provide more

for this, that, and the other. But we simply have to get our house in order. And in the long run, if we hold the line now, we can get this house back into order. I believe we can. But we cannot on the path we are today. In a Financial Times editorial in May of this year, Mr. Walker warned that the United States is in danger of losing its triple-A financial credit rating. Well, is that possible that the United States of America would not have the highest credit rating in the world? Mr. Walker said it is possible. He made that comment in May of this year.

Of course, if you do not have the highest credit rating, you have to pay higher interest rates to get people to buy your debt, to loan you money. So if you want to loan two people money, and one is rock solid, you might loan it to them for 4 percent. But if another person is risky, you may want 5, 6, 7, 8, 9 percent from them.

So Moody's rates people to see how reliable they are in paying their debt back with dollars worth the same as you loan them. Mr. Walker warned that our reckless spending was putting us on a path where we would no longer have our triple-a credit rating.

Well, sure enough, in a report just this week, the big rating service, Moody's, stated that the U.S. is in danger of losing its triple-A credit rating. Pierre Cailleteau, chief international economist at Moody's, stated that unlike several years ago, ''now the question of a potential downgrade of the U.S. is not inconceivable.''

Well, that would make the interest payment of $799 billion for 1 year, in 2019, be low. If we get downgraded, that interest payment is going to go up.

So under the most pessimistic scenario put forward by Moody's, the United States would lose its top rating in 2013.

This is a great country. We have such dynamic people and economy. They are willing to work. They are willing to compete. They are willing to save and all. But we need some leadership, and we need some leadership from Congress. We are oblivious to what the American people are telling us, and we are oblivious to the massive debt increases we are putting on the American people.

Therefore, this bill that cloture was invoked on today, should not pass because having a 12-percent increase in spending, which would double that whole bill's financial spending in—what?—5, 6, or 7 years, is unthinkable at this point in time, and I am against it. I hate to be against it. I see a lot of things in there I like. But I do not believe the Republic is going to sink into the ocean if we would have a 1- or 2-percent increase in spending for these six bills. I do not believe everything is going to collapse if we were to have a little frugality around here—give up some of our pork spending, give up some of our special projects and focus on what is the national interest for a change, and try to contain the surging growth of spending.

I do not know when it is going to occur. Everybody says we have to stop. So when? I say now. I say, let's send this bill back. Let's do not pass this bill. Let's send it back to the conferees and the appropriators and say: Come back with a bill that is more responsible. Then we will pass it. We are not going to not pass legislation to fund these things. Don't let anybody say that.

But the question is, What kind of increases can we justify? I am worried about it. The American people are worried about it. Soon Congress needs to get worried about it. If not, we are going to have some new people in Congress, and some new people are going to fix it because it can be fixed if we show determination.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I rise this afternoon to speak about health care and the bill that is on the Senate floor that we have been debating now for a number of days, the Patient Protection and Affordable Care Act. I want to provide, first, a brief overview, but in particular to focus on provisions that relate to our children and then get into some detail about those provisions and the important programs that are contained within those parts of the bill.

First of all, as we all know from the debate, what this side of the aisle has been trying to do is not just to pass legislation, but to do it in a way that meets the goals we set forth many months ago and, as well, what President Obama indicated much earlier this year in terms of some basic goals.

I will just cite a few of those: To make sure when we are enacting legislation that we do not add to the deficit; that we at least break even, so to speak. But the good news is, on the scoring done by the Congressional Budget Office, the Patient Protection and Affordable Care Act will actually lower—lower—the deficit over 10 years by some $130 billion, and then lower it even further over the course of the next 10 years, by one estimate, over $600 billion. So that is good news about deficit reduction as it relates to this bill. Even if we broke even, it would be significant.

Also, we are obviously trying to cover tens of millions of Americans who do not have coverage. The foundation of the bill on that issue is that some 94 percent of the American people will be covered, adding some 30 million to 31 million in terms of coverage. That is also a goal. I think we are going to be able to meet that.

Then there are a whole series of things we have talked and talked about for years and have never done. We talk about how we have to enhance health care quality. We have not done much about it, and we are going to be able to make changes in this bill to do that.

Certainly prevention. Everyone knows—the studies on this are, in a word, irrefutable—that prevention is not only good for a patient and good for his or her own family, and good for the economy long term because you are going to have a healthier worker, but it is also a giant cost saver, sometimes in a way that you cannot quantify or even often get credit for from the Congressional Budget Office.

I have no doubt—and I think I join a lot of other people who know a lot more about prevention than I do—that this will be a huge cost saver in addition to being something that leads to better health outcomes. So in terms of quality and prevention and deficit reduction and coverage, it is a very strong bill.

It is also a strong bill in terms of dealing with what we can call, in two words, consumer protections. That does not even begin to describe what this bill will do in terms of helping at least one category of Americans. We saw a study a couple months ago that indicated over a several-year period of time—if my recollection serves me, 3 years—millions of Americans—not thousands or tens of thousands, but millions of Americans—have been denied coverage because of a preexisting condition. That is because we have allowed insurance companies to do it year after year, and in some cases a lot longer than that.

Well, we do not need to just talk about it and decry it and condemn it, we need to make it illegal. But we also have to make sure we do not just pass legislation—a lot of which has to be implemented down the road—and then say to those with preexisting conditions: We have changed the law, but you have to wait several years.

One of the immediate benefits under the Patient Protection and Affordable Care Act relates to those Americans who have preexisting conditions. The act will provide $5 billion in immediate Federal support for a new program to provide affordable coverage to uninsured Americans with preexisting conditions. Coverage under the program will continue until the new exchanges are operational. That is good news for millions of Americans who have been denied coverage.

I cannot tell you—I think every Senator in this Chamber on both sides of the aisle, Democrat, Republican, Independent—has received letters from Americans, horrific, tragic stories, in many instances, where they have been denied coverage, sometimes leading to death, sometimes leading to, even if it is not death, the worst of health care outcomes. So that high-risk pool, as it is called, for those with preexisting conditions will mean immediate benefit under the bill.

I will mention a couple of other things that will happen immediately, and then I will move to the provisions on children. We hear a lot about business on this floor and arguments about who is stronger or who is more of an advocate for small business especially. But what we do not say enough is, this

act, the Patient Protection and Affordable Care Act, will offer tax credits to small businesses to make employee coverage more affordable, and those tax credits will go up to 50 percent of premiums, which will be available to firms that choose to offer coverage.

That is another not just good reform—good for the small businesses, good for the employee, and really good for our economy short term and long term—but it is one of those immediate benefits.

I will cite one more, and then I will move on.

This Congress, a couple years ago, passed Medicare Part D, as it is known, adding prescription drug coverage. One of the adverse impacts from that legislation is, an older citizen gets the benefit of that and is able to benefit from the prescription drug coverage, but then they fall into the so-called doughnut hole. That is a very innocent-sounding phrase, ''doughnut hole.'' It does not sound that bad. It is a nightmare for someone.

Basically, what it means is that an older citizen has to carry the whole freight for a long time and pay a lot of money at a certain period of time when they fall within that category.

The Patient Protection and Affordable Care Act will reduce the size of the so-called doughnut hole by raising the ceiling on the initial coverage period by $500 in 2010. That is another immediate benefit of the enactment of this bill.

The act will also guarantee 50-percent price discounts on brand-name drugs and biologics purchased by low-income and middle-income beneficiaries up to the coverage cap. That is another immediate benefit.

These are benefits in terms of small business, in terms of covering those with preexisting conditions immediately, as well as helping older citizens deal with and manage the difficult doughnut hole problem so many of them have been suffering from.

Let me do a quick summary. I will start with this chart. As shown on this chart, this is just a summary of some of the challenges of where we are now and what happens if we do nothing. It says: Status Quo is Unacceptable and Unsustainable. That is an understatement.

The first bullet point on there: Every week, 44,230 people are losing their health insurance coverage. So every week that goes by, every day that goes by, we have Americans losing their coverage—bad for the individual and their family, and it is real bad for our economy.

The second bullet point: Between January 2008 and December 2010—roughly you are looking there at a 3-year type period—178,520 individuals in Pennsylvania are projected to lose their health care coverage. There is no way to adequately describe the adverse impact that projection and that data point has on the people of Pennsylvania. You cannot have a growing economy if people are losing their health coverage. The numbers are spiraling out of control, not only in Pennsylvania but across the country. You cannot sustain any economy that way long term.

The third and final bullet point: Without reform, family coverage will cost $26,679 in 2016—just 7 years from now—consuming 51.7 percent of projected Pennsylvania family median income. The cite is the New American Foundation.

That same number for the country—in other words, the percentage of median family income going to pay for health care—for health care, something so fundamental and basic in our society—it is 51.7 percent in Pennsylvania in 2016. The good news for the rest of the country is that the national average is only—only—a little more than 45 percent.

I have not met a person in Pennsylvania or anywhere else in this country, but I know I have not met a person in Pennsylvania who says: Do you know what. Don't worry about it. Don't worry about passing any health care reform bill. Don't worry about getting it done because in 2016—I am living in Pennsylvania—I can come up with 51.7 percent of my income for health care. Don't worry about it. I can handle it.

We know no one can afford that. Even a family of tremendous means might have trouble affording more than half their income—half their income—to pay for health care.

What if the projection is wrong? What if it is off by 10 percentage points? That is 40 percent. What if it is wrong even more? What if it is only 30 percent? I do not know of a family who can afford that.

So we have a lot of reasons to get this right and to pass the bill. That projection is one of the most horrific.

Now I will move to the chart on children.

I will give just a quick summary of what the bill does for children, and then we will walk through the Children's Health Insurance Program.

A couple of basic points: pediatric benefit package; that comes with this legislation, including oral and vision coverage for children. Many health plans do not provide that kind of coverage. It is one of those unwritten stories—or if it has been written, it has not been written about enough—where children lose out, sometimes even in a good health care plan for their parents. So it is not good enough to say, well, we have some coverage here and kids will be just OK. Children, as the advocates remind us all the time—these are not my words—are not small adults. They have different health care needs, and they have different health care problems and challenges.

Pediatric benefits, as part of the benefit package, is a dramatic change and a very important change.

This bill will not only require coverage for basic pediatric services under all health plans but also oral and vision needs, which improve a child's ability to learn and perform in school. So we can't talk about getting better test scores in school and doing all kinds of things that are in our education system if a child is not given the basic health care a child needs, not the health care an adult needs.

The second point under what the bill would do is more pediatric providers. We have to have strategies in place to recruit and incentivize and train more pediatricians. You can't just say you want more coverage for kids and throw more money at it; you need to have the workforce to do it. The Patient Protection and Affordable Care Act will expand the workforce, including pediatricians, pediatric nurse practitioners, specialists in pediatrics, and pediatric oral health professionals to give kids what they should have in this country of ours where we know what works. We know exactly what works when it comes to children's health insurance.

Then, providing greater quality, improving the quality of coverage for children. The preventive health care we are going to provide for children is dramatic.

Finally, let me make a point about children overall. We hear a lot of discussion about where health care—what part of the country benefits the most and who will benefit the most. Well, under this legislation, there is not an American, I believe, who will not be positively impacted one way or another, sometimes directly. But one message came out loudly and clearly during the debate on children's health insurance going back a number of years in the Senate. Often, most people think of children under the benefit of the Children's Health Insurance Program as living in urban areas maybe or in a big city because that is where poverty is highest and, therefore, lower and middle-income families benefit from Medicaid or children's health insurance. That is largely true, for sure. But what came through to me in that debate many years ago—several years ago now—is something I never knew before, which is that one-third of rural children in America are the beneficiaries of either Medicaid or the Children's Health Insurance Program. Not many people heard that until a couple years ago. So this isn't about one specific demographic—or geographic, I should say—location where children are and who need these benefits, where there is Medicaid or the Children's Health Insurance Program. We know this is a problem for rural children, for urban children, for children who live in small towns, and even in suburban communities that are perceived to be a little more secure economically.

When I have been talking about what we have to do for children, I often point to a line from the Scriptures, a very simple line, but I think it holds us accountable in this debate as it relates to children. There is a line in the Scriptures that says, ''A faithful friend is a sturdy shelter.'' The question we

have to ask when we are debating how we are going to help our children in this legislation is: Will we be a faithful friend to children? It is actually a pretty simple question, with profound, almost incalculable implications. Are we going to be that sturdy shelter for children, children who don't have a voice, who don't have economic power, who don't have a lobbyist showing up on Capitol Hill every day saying: Take care of this child or help this group of children. So the question for the Senate, one of many questions we have to answer by the end of this debate is: Will we be a sturdy shelter for children? Will we be a faithful friend to children?

Let me conclude with a couple remarks about the Children's Health Insurance Program, in particular. My colleagues can see up here, in Pennsylvania—this is typical of a number of States but not every State—through Pennsylvania's Children's Health Insurance Program benefits, children are guaranteed to receive comprehensive insurance coverage, including the following:

Every child should have this. I don't care who they are or where they live or what their economic status is, they should have immunizations. They should have routine checkups, prescription drugs, dental care, maternity care for their mothers, mental health benefits, up to 90 days' hospitalization per year, durable medical equipment, substance abuse treatment, partial hospitalization for mental health services, and, finally, rehabilitation therapies and home health care. That whole menu of benefits for children is not some theory or some hope, in a sense; this is what the Children's Health Insurance Program means to America's children, their parents, their family, and, I would argue, this is about economic development in the long run.

This is about developing a high-skilled workforce. If a child has these benefits in place, they can make it in life, with a couple other breaks and some other incentives. But if they don't have this list and they don't have the best possible health care, they are going to be in a lot of trouble. All of us will be in trouble because our economy will never be as strong as it can be and must be unless we do that.

Let me go to the next chart, which is a subset of that. This chart depicts what is in children's health insurance now: Well-child visits. I have talked about that a lot. It is not a real glitzy subject for people to debate but a critically important part of what children's health insurance means and the benefits mean, a well-child visit. In the course of 1 year, under the Children's Health Insurance Program—under the program we put in place and Congress enacted almost 15 years ago and then we reauthorized it just this year and President Obama signed the legislation—it means, instead of 7 million kids covered—that is a great amount and that is great, but in a couple years, we are going to be able to expand that to 14 million children. I wish to make sure—and I am sure this view is shared across the aisle as well—that every child should have six of those well-child visits in a year. It is a key time for a parent and physician to communicate. Doctors recommend six visits in the first year. They get a complete physical examination, including height, weight, and other developmental milestones are measured. Hearing and vision are checked. We have all had the experience where a child doesn't get those kinds of basic checks and they have a hearing problem because it wasn't detected early or a vision problem. One of my four daughters had a vision problem. It wasn't caught at an early enough stage and we had some real difficulties making sure she had the right care.

Important topics discussed, including normal development. What does that mean? A doctor should be able to talk to a parent about that, and the program covers that. Nutrition, sleep, safety, infectious diseases, and then general preventive care. Why should there even be a debate about whether children get this? The good news is, we have a program that does that and the good news is also that we have just expanded that program.

Here is where the challenge comes in. In the midst of health care reform, the House of Representatives did a lot of good things in their bill. One thing they did not do well is make sure the Children's Health Insurance Program is as strong as it needs to be and must be, and that is the reason why I received the following letter. I will not read the whole letter, but this letter came from Barbara Ellis. She is in Broomall, PA. I spoke to her a couple days ago about her letter. I will not read all of it, but I think it describes pretty aptly what we are talking about.

Barbara and her husband Ben live in Delaware County, PA, in Broomall. She says:

> We are a one income family with two sons, ages 6 and 8. Due to the high price of health insurance my children are currently covered under the free Pennsylvania Children's Health Insurance Program.

That is the good news. But here is the part where she is worried:

> We qualify for free Children's Health Insurance coverage in Pennsylvania, but my husband's income is greater than 150 percent of the Federal poverty level which means our children won't qualify for the coverage under the House's proposed plan.

Then she says—probably the most important part of this whole letter: ''This has us terrified.''

So it would any parent who does not have the peace of mind to know, when they fall asleep at night, they don't have to worry about whether their children have health insurance. But if we don't do the right thing, she will have that sense of terror. She says this as she concludes the letter:

> It would help us tremendously if you could support keeping the Children's Health Insurance provisions intact which would, in turn, support families like ours.

That is what I have done by way of an amendment to our bill to make sure we strengthen what the House did and strengthen even our own bill. Our children's health insurance amendment, which I will not go through today, strengthens and safeguards the program through 2019 and beyond to address any changes health care reform may bring.

We will talk more about it, but this is key to be able to make sure we have not just a set of benefits for children that are directly tied to their care and will help them for decades afterward and help our economy and give their families peace of mind but also that in the process of making sure we keep these kinds of benefits, we keep the program strong, not just until 2013 but at least all the way to 2019. I think we can do that. I think we can do that in the midst of this debate and get it right and give families and especially children that kind of protection.

In a word, what we have to make sure we do is to ensure that the Senate and the Congress and this administration do everything they can to prove and to demonstrate that we are a faithful friend to children, that we will always be their sturdy shelter.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, I appreciate the good Senator from Pennsylvania and his discussion and his clear and constant focus on children and children's health. I wish to commend him for his good work and for always reminding us of the importance of our children in so many aspects of our policies. So I thank him for that.

I, too, rise this afternoon to talk about the debate on health care and the debate we seem to have ongoing with the numbers. Whether it is numbers that are coming out from the Congressional Budget Office, the CBO, or from our States or from other noteworthy entities, there is a great deal of back and forth as to whose numbers are right, whose numbers are wrong.

There has been a great deal of discussion in the past day or so about the numbers we have received and the analysis we received from the Office of the Actuary, from CMS, the Centers for Medicare and Medicaid Services. The Chief Actuary is Mr. Richard Foster. A good deal of discussion has been had as to these numbers, and the question that needs to be asked is: Why would the numbers from the CMS Actuary be any more significant than, say, what we have seen coming out of the Congressional Budget Office?

The Chief Actuary of CMS is kind of the independent arbiter, if you will. They look at both the private and public health care expenditures. The Chief Actuary provides actuarial details that I think we recognize can be critically important for certainly my State and

for any of our States' economists to develop individual State estimates of the financial impacts, the effects of the health care reform proposal.

As important as discussion on the broader scale is, the people back in my State want to know: Well, what does it mean for us in Alaska? What does it mean for increased access? What does it mean for us in terms of our premiums? Are they going up? Are they going down? How do we as a State that is very unique in its markets—geographically dislocated, smaller population—how does this health care reform proposal impact us? So the numbers and the assessment we have received from the Office of the Actuary are very important.

I have mentioned we all want to know what this Democratic health care proposal will mean to us as individuals in terms of the increase to premiums, the impact on the long-term sustainability of Medicare, whether it is going to restrict access to care in a State such as Alaska or throughout rural America. And ultimately, will this $2.5 trillion bill bend this cost curve down on health care expenses that are pricing so many Americans out of the market on health insurance.

I think it is so important that we be focused on the cost side and on the spending side. That is a bipartisan thing. We haven't done a lot that is bipartisan of late, but it is clear we all want to know we are doing all we can effectively to reduce those costs.

I will note a letter that came from six colleagues on the Democratic side. This was sent when the Finance Committee bill was being considered. A letter went out to Chairman BAUCUS that provided that:

> There are many wide-ranging options to address the broad and complicated issues of runaway health care costs, and we pledge our support to you in making the necessary and tough decisions.

''This is our No. 1 priority,'' the letter states. ''If we pass health care reform without addressing the issue of health care spending, we have failed.''

I couldn't agree more with my Democratic colleagues who signed that letter. We will have failed if we have not addressed the issue of cost, the issue of spending.

Again, this takes me back to the report from CMS, the Actuary's report. I want to highlight some of the very important points that were raised by the Chief Actuary.

First, the Reid bill reduces payment updates to health care providers, which are unlikely to be sustainable on a permanent basis. If you go through the report, on page 9 is a statement that:

> As a result, providers could find it difficult to remain profitable, and absent legislative intervention might end their participation in the Medicare Program. The Reid bill is especially likely to result in providers who are unwilling to treat Medicare or Medicaid patients.

On page 18, the statement is:

> Providers might tend to accept more patients who have private insurance and fewer Medicare and Medicaid patients, exacerbating existing access problems for the latter group. Either outcome, or a combination of both, should be considered plausible and even probable.

I can tell you for a fact this is not just some maybe or if, in fact, these things happen; this is happening.

I received a call 1 week ago from a practitioner in Alaska, in Anchorage, a family care practitioner. I was told that this practitioner, who has been practicing for many years in the family care practice—that the decision had been made to opt out of Medicare. In the e-mail we received and the followup conversation that was had with this practitioner, it was specifically cited that it is due to what is—I am reading from the e-mail we received—''due to what is in the Reid bill, as it will collapse my practice.''

This is incredibly important to us not only in a State such as Alaska, where we are in a crisis situation when it comes to providers who are willing to take new Medicare individuals. Right now, in our State's largest city, we have 13 providers who will take new Medicare individuals—13. Well, if this individual whom we have communicated with a week ago is making the decision to opt out of Medicare because of the low reimbursement rates, because of what is seen developing here on the floor of the Senate, and the impact that will have on that family care practice—talk about not being able to sustain things—it is not acceptable.

When I read the language in the Actuary report that says that providers might tend to accept more patients or might find it more difficult to remain profitable and might end their participation in the Medicare Program—to me, I am saying it is not ''might,'' it is happening, it is now, and it is impacting Alaskans' access to care in my State.

This is something we should all be concerned about. It is not just this one practitioner. We have heard this has caused a great deal of anxiety within Alaska, primarily because that is where I am checking in with folks. But the anxiety about their ability to sustain a practice, again, with Medicare reimbursement rates as low as they are—in our State, we don't have a medical school, so it is not as if we are growing more practitioners to come in. It is very costly to have a practice in Alaska. We have a lot of strikes against us.

We have to figure out a way we can continue to receive care from these fine professionals. But right now, from a policy perspective, it seems as if we are doing everything possible to drive them out.

I am talking a lot about the situation in Alaska, but don't think for a minute that it is isolated to my State. The statement that is made by the Actuary is devastating news for States that are also facing problems of access, in terms of finding a general care doctor to see them, such as Oregon, Nevada, Colorado, and New Mexico.

There was a GAO report—granted, this is a 2006 GAO report, but it did an assessment of what is happening in locations across the country, and those areas where access is compromised. You look at the statistics coming out of GAO, and their wording is:

> This suggests the distinct possibility of a deepening problem in many of our Western States.

So it is not just in a few isolated communities. We have States that are looking at this and calling the crisis for what it is. What we are doing in this health care bill currently before us is we are using Medicare as kind of this guinea pig, if you will, cutting from the Medicare—from the health program, even though we all recognize Medicare is slated to go broke by 2017—and using the Medicare money to expand Medicaid and, if the Medicare reports are true, expanding Medicare as well. So the end result is to harm Medicare patients as we expand Medicaid.

Alaska is a little bit unique. We are one of two States where Medicaid is actually a better payer, or better in terms of the reimbursements, than Medicare. But even still, the economists we have at the University of Alaska's Institute for Social and Economic Research have said that Medicare patients will lose access and, as they have suggested, kind of go to the back of the bus, if we expand Medicare.

I want to use their language specifically. This is from the analyst at ISER. He has stated that:

> We can continue to be concerned that the newly enrolled through the Medicaid expansion and the new exchange will create a big surge in demand that could easily create a traffic jam in the health care system and send the Medicare beneficiaries to the back of the line in Alaska due to Medicare's low reimbursement rate. Expanding Medicaid is bad for Alaska.

The Chief Actuary at CMS is saying Medicare and Medicaid patients will both face limited access to care under this bill. While in Alaska Medicaid patients may fare better, what is happening is at the cost, or expense, if you will, of Medicare patients. So you are robbing Peter to pay Paul.

Keep in mind that, as we look at the CMS letter—the Chief Actuary's letter—it doesn't even address the Democratic leader's desire to bring to the floor the provision that would expand Medicare to those 10 years younger than the current threshold age for Medicare. So what we are seeing within this analysis is probably just the floor in terms of what the impact will be if we allow for this expanded Medicare provision, this buy-in, if you will.

Again, my State's seniors are absolutely suffering on Medicare, with virtually no primary doctors who will see them in our State's largest city. Now we have experts saying Medicare's patient access to care is going to suffer.

We simply cannot expand broken health care systems. We have to fix the systems. You don't expand a broken thing and hope it will fix itself.

Yesterday, in our State's largest newspaper, the headline at the bottom of the fold was:

''Health Bills May Hurt Some Alaskans,'' consultant says.

And it says:

Older residents could have more trouble seeing doctors.

If you don't think that sends chills up and down the seniors in my State, knowing that the difficulty they are facing now could be made worse—a point that I think is important to add to the conversation here. You might think, well, Alaska, you don't typically have a lot of seniors, you are a younger population. We are that, but it should be noted that we are, per capita, the State with the fastest growing senior population in the Nation. We have a situation where, as we have our baby boomers aging in, the numbers are increasing dramatically, as far as those who will require the care. The number of patients who are 65 and older at the health care facilities, Anchorage Neighborhood Health Center, has jumped on the order of 50 percent within a few years. The neighborhood health center saw twice as many Medicare patients in 2007 as in 2001.

The report also found that older Alaskans have been visiting the emergency room in growing numbers. What we are seeing is an expansion of those who will be our Medicare consumers. In 2008, there were 49,455 Alaskans 65 and older; but by 2015, 5 years from now, the number is expected to increase 50 percent. By 2020, 10 years from now, the number is projected to increase to over 86,000 individuals in Anchorage. Yet, we have fewer and fewer primary care doctors who are willing to accept these Medicare patients.

The proposal out there is that we are going to cut $½ trillion from Medicare to pay for a new government entitlement. That doesn't add up.

Back to the Actuary's report. It goes on to state that:

We estimate that total national health expenditures under this bill would increase by an estimated total of $234 billion during calendar years 2010 to 2019.

We know that bending down the cost curve, which has been so essential to the health care reform bill, according to our own government's expert, is not going to be achieved in the Democratic leader's health care proposal.

Contrary to what Senator BAUCUS said last week, that Senator MCCONNELL's statement that this bill raises costs was ''a false statement,'' this bill does, in fact, raise health care expenditures, and all you need to do is go to the Actuary's statement to determine that.

The Actuary's report goes on to provide:

The new fees for drugs, devices, and insurance plans in the Reid bill will increase prices and health insurance premium costs for consumer. This will increase national health expenditures by approximately $11 billion per year.

We know this bill is going to raise money on the backs of patient consumers. This is going to happen in my State. It is going to happen in every other State. And it is going to be done by taxing the industries that provide us with the prescription drugs, the medical devices, such as tongue depressors, medical thermometers, blood sugar meters, x-ray machines, and the like.

Whether or not you agree on taxing these industries, what the CMS Actuary is telling us is that these additional taxes are going to be passed on to the patient consumer to the tune of $11 billion every year. Again, the American people should know that their costs on drugs, thermometers, diabetes test strips, labs, and x rays are all going to go up because new penalties imposed by the Federal Government will be passed on to the patients.

I appreciate the work Mr. Foster, the Chief Actuary, has done in getting us this report. I wrote him a letter on Monday asking if we could get the report so the folks in our respective States could look through it and better assess and understand. They want to know that they are relying on a good, sound assessment. But I will tell you, after reviewing the Actuary's report, I do not know how anyone could come to a different conclusion other than that these proposals, these bills, do not look good for my State, they do not look good for the medically underserved areas of the country, such as urban areas with limited access to care because of their high Medicaid populations or for rural America where general-care doctors just simply are not taking Medicare patients.

This is just a bad bill. It is a bad bill. It hurts our seniors, it does not bend down the cost curve, it spends $2.5 trillion, and it raises health care costs. We have to figure out a path forward that is reform that does not increase the cost to our constituents around this country, that truly does make a difference when it comes to the delivery of health care costs in this Nation, and that really does provide for expanded access.

I have said numerous times that just by giving an individual a card that says: OK, now you are part of a health care plan but you don't have access to a provider, we really haven't done what we have promised to do to help you receive good health care.

There is a great deal that is floating out there in terms of ''he said, she said'' type of conversation on the numbers. It is incumbent on us in the Senate to give thorough vetting, thorough assessment. We have to rely on the experts. We hope we rely on those experts who have been able to look at the proposals fairly and evenly and give their best assessment. I have a great deal of confidence in our independent entity in the State of Alaska, the Institute for Social Economic Research at the University of Alaska. I appreciate what they have done to provide more focus on what this national proposal will do to access to care in my State and costs that will be borne by my constituents.

I think the more time we spend understanding what we have in front of us, the more we realize this is a bad deal for America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Utah.

Mr. HATCH. Mr. President, yesterday the administration's own Department of Health and Human Services health analysis warned Americans about the impact of this bill. According to the official scorekeepers at CMS, the Centers for Medicare and Medicaid Services, the Reid health care bill will actually not only increase our national health care costs by $234 billion over the next 10 years but will also reduce access and cut benefits for our seniors. This nonbiased report simply proves what we have been saying all along: You cannot reform a $2.4 trillion health care system simply by spending another $2.5 trillion of hard-earned taxpayer money. Despite all the rhetoric from the other side about this historic legislation, the only thing this bill accomplishes, after imposing $½ trillion in new taxes and $½ trillion in Medicare cuts, is to simply bend our Nation's health care cost curve up.

As a longtime supporter of the Medicare Advantage Program, I offered an amendment on the Senate floor to strip nearly $120 billion in cuts to the Medicare Advantage Program that provides comprehensive health benefits, including vision, dental, and reduced cost-sharing, to almost 11 million seniors.

Unfortunately, despite statements from the Congressional Budget Office that these cuts would result in reduced cuts for seniors enrolled in Medicare Advantage, Democrats in the Senate voted to keep the cuts in the package to finance more Federal spending—$500 billion in cuts in Medicare. Whom are they kidding? Medicare has $38 trillion in unfunded liabilities.

This report is another reminder of why it was a mistake to not adopt my amendment. The CMS Actuary found that the cuts to the Medicare Advantage Program in the Reid bill would not only result in ''less generous benefit packages'' for our seniors but, more important, it would decrease enrollment in Medicare Advantage plans by 33 percent.

Clearly, health care spending continues to grow too fast. This year will mark the largest ever 1-year jump in the health care share of our GDP. This jump is a full percentage point to 17.6 percent. You can think of this as a horse race between costs and resources to cover those costs. The sad reality is that costs win year after year.

Growing health care costs translate directly into higher coverage costs. Since the last decade, the cost of health coverage has increased by 120 percent, three times the growth of inflation and four times the growth of wages. Rising costs is the primary driver behind why we continue to see a rising number of uninsured in our country

and why increasing numbers of businesses find it hard to compete in a global market.

Without addressing this central problem, we cannot have a real and sustainable health care reform bill. So what does this $2.5 trillion tax-and-spend bill do to address health care costs? Absolutely nothing. According to the Congressional Budget Office, the premiums for Americans who buy insurance on their own will actually increase by 10 to 13 percent, while premiums for small and large groups will largely remain unchanged and continue to rise between 5 to 6 percent a year.

Furthermore, according to the CMS report, the new fees on prescription drugs, medical devices, such as wheelchairs and hearing aids, and health care plans will not only increase overall health care prices but also health insurance premiums for millions of Americans.

Let me make this point as clearly as I can. This bill does not address the underlying problem of slowing down the growth of health care costs. It simply spends hundreds of billions of dollars in new subsidies to buy out the cost of these increases for families making up to $80,000 a year. Instead of fixing the real problems, this bill simply tries to spend its way out of the problems. Does that sound new to you? This administration seems to think that just throwing money at things is going to help.

We have been hearing a lot recently about how Democrats are throwing the government-run plan out of their bill to quickly jam this bill through the Senate before Christmas. The American people need to be careful about believing this propaganda. The Democratic solution to the government plan is a Ponzi scheme that would embarrass even Bernie Madoff himself.

I have to be fair here. I have to rely on news reports to discuss these provisions. You heard me right—news reports. Why is that? Because no one knows what is actually in the bill they have sent to the CBO. Not even my friends on the Democratic side, by and large, know. The Reid bill was put together by very few Democrats with the White House in the back rooms of the Capitol. Nobody really knew what they were doing until they came out with it.

Once we all saw it, we all realized what a mess that is. They found themselves in trouble, so they have gone and done another bill and submitted it to CBO, and hardly anybody on the floor knows exactly what the features are in that bill. No one knows actually what is in the bill. And despite the continuous claims of transparency our friends on the other side are always talking about, the real bill continues to change on a daily basis behind the closed doors of the majority leader's office.

I am really glad to know that it is not just the Republicans who are in the dark about what is actually in this bill. Democratic Members of Congress in this body are also in the same boat. It is really unbelievable. We are being asked to move forward on legislation that will reform one-sixth of the American economy and impact every American life and business without knowing what is actually in the bill. We have to rely on news reports. I have never seen anything like this in my 33 years of Senate service.

One proposal that has come to the floor in recent days is the idea of expanding Medicare to include coverage for Americans 55 and over. Currently, we all know Medicare is for Americans 65 and over. It is a bankrupt program. It is well intentioned, it does a lot of good, but it is bankrupt. It is a program that can barely pay for the benefits of the 40 million seniors in it today. Medicare is on a path to fiscal meltdown, with Part A facing bankruptcy by 2017. I don't think anybody denies that. It underpays doctors by 20 percent and hospitals by 30 percent compared to the private sector, forcing an increasing number of providers to simply stop seeing our Nation's seniors.

According to the June 2008 MedPAC report, 9 out of 10 Medicare beneficiaries have to get additional benefits beyond their Medicare coverage.

What is Washington's solution to address this problem and crisis? Take up to $500 billion out of this bankrupt program and at the same time push millions of Americans into it. Does that sound logical to you?

The CMS report states in clear terms that the Medicare cuts in this bill could jeopardize our seniors' access to care. The cuts would result in nearly 20 percent of all Part A providers, such as hospitals and nursing homes, operating in the red within the next 10 years as a result of these cuts. Twenty percent—that is a pretty big number.

It should come as no surprise that this proposal faces strong opposition from a wide variety of provider groups, from doctors and hospitals that are already under tremendous financial pressure due to underpayments from Medicare.

Keep in mind, the AMA here in Washington has backed this monstrosity. Now some people think that AMA represents all the doctors. It does not. The average doctor out there is incensed about this. Adding more lives to this insolvent Medicare Program will only further limit their ability to see all Medicare patients, not just the new ones.

Even more troubling is the impact of this expansion on the premiums of our Medicare seniors from this ill-conceived policy. This expansion would encourage an influx of sick Americans in private coverage into Medicare, which will simply raise premiums for seniors already enrolled in Medicare. So seniors, expect your cost of Medicare to go up.

So why are Democrats pushing this idea? Congressman ANTHONY WEINER said it best. I think he was very honest; very upfront. He said this:

> Extending this successful program to those between 55 and 64, a plan I proposed in July, would be the largest expansion of Medicare in 44 years and would perhaps get us on the path to a single-payer model.

Well, the Democratic endgame on health care reform is crystal clear: Make as many Americans as possible dependent on the Federal Government programs. Democrats believe by making millions of Americans dependent on big government programs, on the backs of their grandchildren's future, they are taking a huge leap toward creating a permanent majority for themselves. Why, it would be a natural constituency for them.

Well, let me tell you this—America is built on the spirit of self-reliance, not government handouts. Poll after poll, especially the CNN poll, has said 61 percent of Americans are now opposed to the bill, and study after study is warning us this is the wrong solution for our Nation. This unknown bill, which continues to change by the day behind closed doors, is a direct violation of the President's own pledge to only support a reform that would reduce costs, protect benefits, and not raise taxes.

I sincerely hope the Democrats will step away from their arrogance of power and listen to the will of the American people. It is not too late for us to push the reset button and work on health care reform in a truly bipartisan manner. We are eager and willing, as we have been all year, to work on a responsible solution that every American can be proud of. There are all kinds of things we could agree on, that Republicans would work hand in glove with Democrats to solve, if they were willing to do it.

But keep in mind the HELP Committee bill was totally Democratic. Not one Republican was asked to help write it. The House bill, totally Democratic. Not one Republican was asked to help write it. I admit my friend, the Senator from Montana, MAX BAUCUS, worked hard to try to get a bipartisan bill. But in the end, he did not have enough flexibility to reach a deal. All of a sudden, he finds his bill being put together—between the House bill and the HELP Committee bill—behind closed doors, with very few people involved—all Democrats and the White House and probably two or three or four or five from the Senate but no more than that.

Throughout this debate, I have heard a lot of rhetoric from the other side of the aisle how Republicans are opposed to this $2.5 trillion tax-and-spend bill because, as the Democrats incorrectly suggest, we want the status quo. Oh, give me a break. We all know this is completely false. We on this side of the aisle have asked the Democrats over and over again to step back and write a new bill with us. But they are so consumed with their arrogance of power that they simply want to push what they have always wanted; that is, more government and more government controls over all our lives. America is a

free nation, the greatest Nation in the history of mankind. What makes us great is not our reliance on the Federal Government but our individual resolve and strength. Americans want the Federal Government to help them, not support them.

Well, let me tell you the other side of this. In a recent Gallup Poll, Independents around this country opposed this bill 53 to 37. These are Independents. So it would be wise for my Democratic friends to realize America is not behind them; not behind this bill. It is time for them to listen to what the majority of Americans want and that is not this bill.

I cannot tell you the kind of opposition I have seen in my State to this bill. It is almost unprecedented. I read it in the letters, hear it in the calls. At airports and grocery store aisles and on the streets people stop me and say: Don't let that thing pass.

Absolute power corrupts, and that is what we are seeing in Washington today. Democrats control the White House, the House, they have a filibuster-proof Senate and they have used this absolute power to rubberstamp this administration's big-government agenda and have tripled our deficit within 1 year—1 year. We will run deficits of at least $1 trillion a year for the foreseeable future, while our national debt will triple. We are literally mortgaging the future of this country to foreign countries as we speak. Enough is enough. Let us step back and start over on a plan we can all be proud of and all work on.

We hear a lot about how the Republicans are simply standing for big and evil insurance companies and how the Democrats are the defenders of American families. Well, these days, nowhere is this Democratic hypocrisy more clear than the individual, mandated policy that is part of this tax-and-spend legislation.

Let's be very clear about who would benefit the most from this provision, which would, for the first time in our Nation's history, give the Federal Government the power to force Americans to either buy health insurance or face a tax penalty enforced by our friends at the Internal Revenue Service. There are only two clear winners under this policy, and it is not the American families. First, it is the Federal Government, that will now use this authority as a blank checkbook to increase the penalty in the future as a new revenue stream for its out-of-control spending habits; and, second, are the insurance companies, that will now reap the benefits of having Americans being forced to buy coverage at the decree of the Federal Government.

Right now, States are responsible for determining policies that best meet their unique demographic needs and challenges. Massachusetts, for example, has decided to implement an individual mandate, while Utah has decided not to. Under this bill, we are explicitly taking away this State flexibility and authority to give the Federal Government the authority to make this one-size-fits-all decision for all 50 States and every American. This is an unprecedented grab of State power by Washington—a fundamental threat to the very Federalist vision our Founding Fathers used more than 200 years ago to create the greatest Nation in the history of the world, in the history of mankind.

I am gravely concerned about the precedent this policy will set for us as a nation going forward. If the Federal Government can force us to buy health insurance, what else can it force us to do? The possibilities are endless, just like my concerns, which I share with millions of Americans, on Washington's growing role in our private lives and personal decisions. Think about it. Washington has become an unwanted houseguest in our homes and lives who will not leave. If it does not start listening to the families, it will get kicked out, sooner rather than later. Think about it.

A couple of our friends have even said: Well, it is similar to car insurance. The States require you to buy insurance for your car, and it is in the best interest of the community that you do so. Well, the reason they do is because you want to drive. It is an activity you want to participate in, and so they get away with it. Here, if they have an individual mandate, they are forcing you to buy policies that are defined by Washington. If you don't, you are going to be penalized.

This has never happened before in our lives. If they can get away with this, I have to tell you, they can get away with anything. The liberties of all Americans are going to be affected by it. This is not an activity. This is not something we choose to do necessarily. If we choose to do it on our own, that is great. But to have the government come in and say you have to buy this policy—for the first time in history—you have to do this, even though you don't want to buy it, is unprecedented.

Well, let me say, I think it is fair to see I am not very enthused about the health care ideas of our colleagues. But I do wish to end on a positive note. There are some good things we can all do, some of which are in the bill. It is not totally bad. It is only about 90 percent bad, but there is at least 10 percent we could build on; that we could work together on.

I am not just saying that. Look, I have been around here a long time. I can name all kinds of bills I have worked on with some of the most liberal people in the whole Congress to pass. Hatch-Waxman is a perfect illustration. That created the modern generic drug industry. HENRY WAXMAN is as liberal as it gets but he was willing to face up to these realities with me, and we did Hatch-Waxman. I call it Waxman-Hatch when I am around him.

I might add the orphan drug bill. We found there were only maybe two or three orphan drugs being developed. These are drugs to benefit population groups of less than 200,000. Well, it is clear the drug companies can't afford to do it for 200,000 people because it costs upward of $1 billion. Biological drugs cost even more than that, and they are not truly drugs. But the fact is, they cost even more than that. We came up with some very small incentives—but they were incentives with prestige—and some tax breaks and all of a sudden it was about a $14 million or $15 million bill, as I recall, in the early 1980s, when I was chairman of the Labor and Human Resources Committee. Today, we have well over 300 orphan drugs being developed, many of which have been developed, and from some of them blockbuster drugs have evolved.

Let's take the CHIP bill. That was the Hatch-Kennedy bill. Ted Kennedy, very liberal. He would have preferred to have the Federal Government do it all—just like our colleagues do today with this enormous number of 60 votes on their side—but he was willing to work with me. I went to him and said: Look, I had two families from Provo, UT, come to visit me—husbands and wives. In each family's case, both the husband and the wife work. Neither family's combined joint income is over $20,000 a year. At that time, it was too much to have their kids qualify for Medicaid and too little for them to be able to buy health insurance. I said: The only kids left out of the health care equation are children of the working poor. Teddy, we have to do something about that. He saw it, and he said yes.

He wasn't happy with the bill, in the end, because it was exactly what I told him it would be. It would basically be block-grants to states, where the States would handle it in accordance with their own demographics. It has worked amazingly well, until now. They are shoving more and more people into CHIP, other than the children of the working poor whom we originally decided to help.

Well, I could go on and on and on, on so many pieces of legislation, but I will just mention those few. I am very concerned because I actually believe that if we get what they are talking about on the other side, it will not only bankrupt the country, it will make more and more people dependent upon the Federal Government. Like I say, a natural constituency for the Democratic Party, but it is a matter of great concern to me.

Are our colleagues bad people? No. They simply believe the Federal Government can do it better. There are some things the Federal Government can do better, such as defending our national security interests, which is what the Constitution expects the Federal Government to do.

But even there, under this administration, we are not doing as well as we should. Although I commend the President for deciding to send the people to

Afghanistan and for standing on these issues. Once he saw the intelligence and the other information, it infused reality into his decision-making process. I give him credit. I am one who believes he deserves great credit for the decision he made. But even in that decision, he had to be very careful how he characterized when we are going to leave. He did leave it flexible. In that alone, he deserves a lot of credit because he knows there may not be enough time to do all we have to do to create the well-trained police and security forces that are necessary to keep Afghanistan free and to keep the world from allowing the Taliban and al-Qaida to obtain nuclear weapons.

Well, that is another subject for another day. I wish to end by saying I don't believe anybody on the other side is an evil person or a person who doesn't believe they are acting in the best interest of the country, but I do not see how—I do not see how they can continue to push what they are trying to push, I think to the detriment of this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Before my colleague leaves the floor, I wish to ask him a question or two if he wouldn't mind. He has been involved in most of the major health issues that have passed this body in the last 15 years. What was the vote margin in the Senate on some of those bills, on the Hatch-Kennedy, Hatch-Waxman bills? How many votes, roughly? I am not asking you to pull that up from memory, and it may not be fair to do. As I recall, a number of people on both sides of the aisle ended up supporting those bills.

Mr. HATCH. On the CHIP bill I can't remember what the exact number was but I think it was between 70 or 80 votes. It was a bipartisan bill. In fact, on the Finance Committee when I brought it up only two Senators voted against it. It was like 19 to 2.

Mr. BROWNBACK. In the Finance Committee?

Mr. HATCH. Every Republican except two, and every Democrat voted for it.

Mr. BROWNBACK. And Hatch-Waxman? It is longer back.

Mr. HATCH. That was unanimous. If I recall correctly, I think it was done through a unanimous consent.

Mr. BROWNBACK. I believe you did a major health care bill with Senator DODD from Connecticut.

Mr. HATCH. Yes.

Mr. BROWNBACK. Do you recall the split?

Mr. HATCH. They were all bipartisan. That is what gets me, because people know—people such as myself, such as the senior Senator from Kansas—we are willing to work on it with them. We know we can't get everything we want. Our colleagues have different viewpoints than we do. But tell me that I am wrong—I know you can't—that the HELP Committee bill was done solely between a few people at the White House and the Kennedy staff, and basically a few Democrats. That was it. No Republicans.

The House bill, I wish to ask the Senator, does he know of any Republican who was asked to participate in helping to develop that monstrosity they call the House bill?

Mr. BROWNBACK. If I could respond to my colleague, I do not know of any. I don't know of any who were even asked. I know of some who were told you can join this bill, or asked that—OK, can you join our bill but you don't have any input.

Mr. HATCH. After they came up with it, but how about the Reid bill? Does the Senator know if any Republicans were involved, able to participate in that bill, after the discussion between the White House and Senator REID and a few Democrats?

Mr. BROWNBACK. None. I know of none.

Mr. HATCH. None were involved. After they get it they say we want to work with you. After they get it done in the ways that I don't think any Republican can support, then they will say, yes, we would like it to be bipartisan. Has the Senator seen any acceptance of amendments here on the floor?

Mr. BROWNBACK. I haven't seen any at all, and particularly when we tried to work in a bipartisan fashion to add Hyde language into the bill that was defeated, not accepted.

My point is something I have seen the Senator say in a quote, that a good health care bill should have 70 votes because it is major legislation that affects everybody in the United States. It has huge costs associated with it. So it is not something you do on a single-party basis, it is something you work extensively on over a long period of time.

I ask my colleague again, over how many years he worked with Senator Kennedy on getting the Hatch-Kennedy bill, or Waxman—my guess is those are lengthy pieces of negotiations that take a period of time to get something that has bipartisan support.

Mr. HATCH. That is right. One thing I appreciated very much about Senator Kennedy, as liberal as he was—he was the leading liberal lion in the Senate, in the whole Congress, in my opinion—he knew unless we could get together in a bipartisan way we could not get the job done. This involves one-sixth of the American economy; one-sixth. We are being told take it or leave it. That is what I call an arrogance of power.

I don't want to be mean to my colleagues, I think many of them are very sincere, but it is an arrogance of power to not deal with the other side and to not even talk to us about it until after you have done what you want to do. I have to say, this is the worst I have seen it in the whole 33 years I have been in the Senate.

Mr. BROWNBACK. If I could ask one more question before my colleague leaves—and also a comment that I like the Senator's tie, nice bright colors on a Saturday session.

Mr. HATCH. It is a western tie. I thought I would wear it out of loudness today.

Mr. BROWNBACK. What does the Senator think of getting—how many total votes could you get for a bipartisan health care bill along the lines of which a number of people on our side have discussed, where you expand access, you try to bend the cost curve down, you try to get more access to low-income individuals? Does the Senator think he could craft a bipartisan bill that could get well over 60 votes on health care reform?

Mr. HATCH. I believe we could craft a bill that would get almost 100 votes. I think we would at least get between 70 and 80 votes and probably more if we worked together to do it. I don't think there is any question we could do that.

Look, we all want prevention, we want maintenance, we all want to cover as many people as we possibly can, we all want to correct some of the deficiencies that are in these bills, we all want to take care of people with preexisting illnesses. I could go on and on. Those are things we could build upon in ways that would work.

This bill is not going to work very well. But we could build upon that, bipartisan-wise, and build a complete bill We Republicans would not get everything we want. But I think there are Democrats who believe we ought to use the principles of federalism, have 50 State laboratories out there, let them work on their own problems in accordance with their own demographics. I know Kansas is not New Jersey. Neither is Utah. And New Jersey is not Kansas or Utah, to pick three States. You can do that with any three States. But we know one thing, if we follow the principles of federalism—that is what we did in CHIP, and CHIP worked well by anybody's measure—if we follow the principles of federalism we would be able to look and pick and choose from the various States what works and what does not.

You would have the usually big Democratic States that probably wouldn't function no matter what you do. But even they would benefit. Even they would benefit from looking at the other States and saying will that work in our State. Frankly, that is what made this country great.

There are friends on the other side who do not agree with me on that but there are friends over there who do agree with me on that, as you can see, getting 70 or 80 votes on the CHIP bill. There were other bills we put through by unanimous consent, because people recognized they were well intentioned, well written, had bipartisan support and nobody wanted to vote against them.

Mr. BROWNBACK. I said I would only ask the Senator one more question, but I have one more. My question is you didn't do those bills on the fly where you were amending them, saying

OK, we can't quite find 60, let's go back to a closed room and let's rebuild the bill. You built them over a long period of time. You did a good job of working the problems out together, and then you built it as it went along. You didn't say OK, let's do it on the fly, let's change this, let's change that. You build a solid piece of legislation and move it forward, not changing it at the 11th hour as we are seeing take place now.

Mr. HATCH. That is right. When Senator Kennedy and I did the CHIP bill, as an illustration, we had to go up and down this country giving speeches everywhere, building constituencies, working very hard together. It is no secret, in the end it was not everything he wanted. It wasn't everything I wanted either. He wanted the Federal Government in control of it. I wanted the States to be in control of it. But in the end I happen to know, as one of the dearest friends of Senator Kennedy, with all the differences we had—and we had plenty, we fought each other most of the time, but in the end he was as proud of that bill as any bill he passed or he worked on—even though it was put together in a way that brought a great number of Republicans on board.

Frankly, that can be done here. I have no doubt it could be done here. I look at the distinguished Senator in the chair. He is one of the brightest guys in the Senate. He has a lot of experience in this area. I personally believe the people such as the Senator from Rhode Island, the Senator from Kansas, myself—if we got together we could do things that our respective States would be proud of and would be pleased to work on—even though there would be some give and take, and that is what we need to do.

Look, I point out one more time, the HELP bill is totally Democratic, not one Republican, until they brought the bill to the committee. The House bill—totally Democratic, not one Republican was even asked to give input. And this bill, not one Republican. In fact, not many Democrats.

I made the point here a few minutes ago, most of the Democrats do not know what is in the bill that was submitted to the Congressional Budget Office. You heard the very competent minority—majority whip, the Senator from Illinois, say he did not know what was in the bill either. When the minority—excuse me, the majority; I have that in my mind, I think. If the majority whip didn't know, how in the world are we Republicans going to know? And how in the world are the rest of the Democrats going to know? These are things that worry me and bother me.

I believe they believed with President Obama's aura, with his strength in politics, with all of us wanting to help him and with their distinctive 60-person majority, that they could put over whatever they wanted to. This was their opportunity to go to a single-payer system—or at least to move the whole system much farther toward a single-payer system than it even is today.

These things bother me a great deal. Frankly, I hope we can get our colleagues to sit down and work with us. I think both sides would have to give. Both sides would have to get together. But at least one-sixth of the American economy would be treated with respect rather than one side saying take it or leave it.

Mr. BROWNBACK. I thank my colleague from Utah for that explanation and also for the years of service he has given, and particularly a lot of focus on health care issues. I haven't always agreed with my colleague from Utah. I have always found him, though, very sound in his thinking, very knowledgeable in his ways, in knowing how you do this, and particularly when you are talking about health care these are bipartisan issues in and of themselves and they need to be in this body.

He also talked about the principles of federalism, which I think we have deviated from in what we see from this bill. I wish to read from the Constitution, article I, section 8. That is the piece I wish to focus on here for a minute about the constitutional question involved in this health care bill. Article I, section 8 reads simply this way, that the Congress shall have—and then it lists a series of enumerated powers: power to ''regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.''

That is our ability to regulate commerce, with the foreign nations, among the several States, and with the Indian tribes. There are a number of people raising the question about whether you can constitutionally require everybody in the United States, by virtue of their citizenship or status in the United States, to have health insurance. I think it is highly questionable.

It appears to me from several legal scholars that this is unconstitutional for us to do. It is a major plank in the health care legislation that has been brought forward by the Democratic majority and I do not believe it is going to stand constitutional challenge. I want to develop that for my colleagues here today.

The Congressional Budget Office said this about the constitutional question here. They said forcing individuals to buy insurance would be '' . . . an unprecedented form of federal action.'' Those are big words in a time when we are seeing a lot of what I think are unprecedented Federal actions. Then going on to say, ''The Government has never required people to buy any good or service as a condition of lawful residence in the United States.''

You would be requiring, as a condition for lawful residence in the United States, the purchasing of a good or a service—in this case health insurance. As laudable as some people may look at that or say that is, that would be what is being required. The Congressional Budget Office does not know of any time where a person in the United States has been required to buy any good or service as a condition simply of lawful residence in the United States. I think it raises significant constitutional questions.

You have to remember, as everybody does, but I think we have to remind ourselves because too often we act as if we don't remember that the Federal Government is a constitutional government of limited powers.

From James Madison in the Federalist Papers, quoted often but it bears repeating because it is a foundational issue:

> [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.

Which is what I just read from in article I, section 8.

Chief Justice John Marshall, in the famous Marbury v. Madison case, stated:

> The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written.

We can't violate that. The Federal Government is limited to enumerated powers granted by the Constitution. The Founding Fathers who drafted and ratified the Constitution were unwavering in their desire to restrict the powers of States and limit the powers of Congress. To achieve their goal they created a system that splits State and Federal authority so that one government, Federal or State, does not maintain too much power over the liberty of the American people. Therefore, the Framers created a system with a legislature of limited and enumerated powers, the Congress, to enact laws which shall be necessary and proper for the execution of powers. One of those is the commerce clause I just read which grants Congress the authority to regulate commerce with foreign nations, among the several States, interstate commerce, and with Indian tribes.

Many have used the commerce clause to justify the implementation of this unconstitutional mandate. Those individuals often cite the case of Wicker v. Filburn, a 1942 case. The U.S. Supreme Court decision found that a law prohibiting a commercial farmer growing an additional acre of wheat to feed chickens beyond the limits imposed on wheat production mandated by the Federal Government was constitutional and fell under the enumerated powers granted by the commerce clause. Filburn was ordered to destroy his crops and pay a fine to the government for being too productive.

The Supreme Court, interpreting the Constitution's commerce clause, decided that Filburn's wheat growing activities reduced the amount of wheat he would buy for chicken feed on the open market and affected interstate commerce and, thus, could be regulated by the Federal Government. However, that Supreme Court decision, agree with it or not, still does not expand the

powers of this body under the commerce clause to impose a monetary fine or penalty upon a citizen who fails to purchase or enter into a private contract for health insurance. That doesn't expand our authority under the commerce clause. It doesn't change the commerce clause. For us to require somebody to do something simply as a status of citizenship, the Congressional Research Service says:

Despite the breadth of powers exercised under the Commerce Clause, it is unclear whether the clause would provide a solid constitutional foundation for legislation containing a requirement to have health insurance. Whether such a requirement would be constitutional under the Commerce Clause is perhaps the most challenging question posed by such a proposal, as it is a novel issue whether Congress may use this clause to require an individual to purchase a good or a service.

To think that the Federal Government can compel any individual to purchase a commodity because that individual is alive and breathing is unconstitutional and is at least a novel issue that this $2.5 trillion proposal is built around. Should we be doing this major change in health care, $2.5 trillion in spending, ½ trillion in reduction in Medicare, ½ trillion raising in taxes off of a novel constitutional question involved in the inherent piece of it, that being the requirement for everybody to have health insurance? I think not. Along with all the other problems with it, I think it has an enormous constitutional question right in the middle of it. And what if you pull that out and the Supreme Court says, ultimately, you can't require that. Then you have done $2.5 trillion, $½ trillion in Medicare cuts, $½ trillion in tax increases, and your core piece is pulled out; it is unconstitutional. Then the whole house of cards falls apart.

Another popular argument for forcing citizens to purchase health insurance under penalty of law is that States require people to buy car insurance. This argument is not only constitutionally flawed but also an underwhelming argument that in many respects hardly deserves comment and adds little to the debate. It is recognized that States maintain inherent police powers to regulate behavior and enforce order within their borders to promote public welfare, security, health, and safety. This is a fundamental difference between the power of States and the enumerated powers of the national government, such as commerce between States and Indian tribes. This is a much broader granting of jurisdiction to the States.

State vehicle insurance laws are exactly that, laws implemented by States, and are generally derived from State constitutions and not the Federal Constitution under which this body operates. Furthermore, these laws require an individual who voluntarily participates in the use of an automobile to insure that vehicle. It is not a right of citizenship as a Kansan that you have to buy auto insurance. But if you want to operate a car on our roads, you have to have auto insurance. It isn't a requirement of citizenship.

We are requiring this as an article of citizenship. You have to have health insurance, a novel and enormously expansive role of the Federal Government.

The Federal mandate for the purchase of health insurance forces individuals to purchase a commodity not because they choose to participate in an economic or commercial activity such as what one would think would be covered under the commerce clause but forces an individual to purchase a product simply because that person exists. This mandate is an abuse of the power granted to this Congress by the Constitution.

Last night I spent some time developing another thought that I think is an important one for us to consider. It is one this body has spent some time over the last decade dealing with; that is, the removal of the marriage penalty from our Tax Code, which we haven't gotten very far in doing, but getting the marriage penalty out, the thought being that marriage is a good institution. It is a fabulous institution for the formation of family. It is something that has an enormous role in our culture and society and should be rewarded and should not be taxed.

The fundamental principle exists, if you want less of something, tax it; if you want more of something, subsidize it. In the Democratic health care bill there are marriage penalties on both low-income and upper income individuals that will reduce the incidence of marriage in this society, under the principle that if you are going to tax something, you will get less of it.

This bill has marriage penalty taxes in it. I want to go through a series of these, starting with the high cost plan tax, the Cadillac insurance plan. Married couples under this bill are hit hardest by the high cost plans tax. The number of single and married tax filers is equal, but married taxpayers pay more than twice as much as singles as a percent of new tax revenue in this bill.

So if you are married filing jointly, you will pay 62 percent—single filers, 25 percent—in this bill. Is that something we want to do? Do we want to say, if you are married, you will pay more of the tax? Most people would say: We want to encourage marriage and the formation of family around marriage. We should have these at least equal or maybe do a higher tax on the other end. But most would say let's have these be equal.

Instead, in this we have a huge increase in the amount of money married filers will have to pay as compared to taxes paid by single filers. Consequently, you encourage people to say: Let's not get married because we don't want to pay the increase in taxes.

The high cost plans tax, the Cadillac plans tax, will hit married couples' households far more severely than single filers. Even though the number of married filers and single filers is roughly equal, the high cost plans tax will impact the total tax bill of married couples much more severely: 25 percent of the revenue will be from single filers, 62 percent of the bill will go to married filers. One thing is certain, 62 percent of married couples' households don't make more than $250,000. So not only is this unfair to married households, it is a direct contradiction of the President's promise that you wouldn't pay more taxes if you were making below $250,000. In this case you do under the Cadillac insurance plan proposal or piece in this proposal.

I want to look at another chart on this subject. If we wanted to talk about factors that impact an individual's decision to enter the workforce or to invest in a business, an important factor is the marginal tax rate they will face on the next dollar they earn. Basically, it is a question of whether it is worth the effort and risk to work. What is my marginal tax? If I work longer and make another $100, how much do I get to keep? The marginal tax rate.

This is an especially important factor for low-income households, people who don't have much marginal income to work off of. They need every dollar they can get. So if you are going to tax their marginal rate, they are looking at this saying: I don't want to get in that category. I need to hold back from getting in that category.

We have tried to help the less economically fortunate with various types of support programs: TANF, food stamps, the earned-income tax credit, the additional child tax credit, to name a few. Low-income families already face high marginal tax rates as a result of the phaseout of their benefits and tax rates that mean the loss of benefits they get under TANF, food stamps, the earned-income tax credit, housing assistance, the welfare package we put together for low-income individuals. Low-income families already face high marginal tax rates as a result of the phaseout of their benefits. These phaseouts already impose significant barriers to marriage.

In other words, whenever you get a combined income of a low-income couple, you lose more benefits. Consequently, people don't get married because they look and say: I will lose my health benefits if I get married. I will lose my medical benefits, my housing benefits. I may lose food stamps. I will not get married.

Yet you look at the chances for children in that situation to get out of poverty, their best chance is to have a stable mom and dad and a stable marriage environment, providing for the comfort and support of those children. Our incentives are disincentives toward marriage in this way, and they are built even more significantly into this health care bill.

As an example, let's take two individuals at 150 percent of the poverty level. After the new subsidies proposed

in this legislation are taken into account, these two individuals would pay $1,478 for their health insurance. But if they get married, their bill will increase to $2,308, a marriage penalty of $830, if you are at the 150 percent of poverty level or below. If you are at 150 percent of poverty or below, you don't have marginal income to mess around with. You need everything you have just to provide the basics. So if you are looking at this increase in the marriage penalty of $830, you are saying: We can't afford to get married.

Is that the signal we want to send from the Federal Government? No. Everybody in this body would say that.

Let's take a pair of individuals earning 250 percent of the poverty level. One has no children; the other has two children. Unmarried they will, after subsidies, pay $5,865 for their health coverage. If they decide to marry, they will face a penalty of $2,050.

Let's turn to the new Medicare tax that will go into effect in 2013. The tax will apply to wage and salary income as well as certain business income for individuals. The tax will apply to income of that type for above $200,000 for individuals and $250,000 for joint filers.

The penalty is obvious on its face. Let's take an example. Two unmarried individuals earn $200,000 each, and their total Medicare taxes would be $11,600. But if they get married, the penalty is $750. Or take two individuals, one making $150,000 and the other $200,000. Single, their Medicare taxes total $10,150; if they get married, they will pay an additional $500. This is on top of the marriage penalties that two earners face under current law. The marriage penalty is there. I don't think it is as significant as for the low-income individuals, but it is here as well.

My point is, why on Earth would that even be built into the base of the bill, particularly on the low-income couples? Why on Earth would you build in a marriage penalty on people who can't afford it? If combined income is over $250,000, you can afford another $500. I am willing to agree with that. But not this couple that is making at 150 percent of poverty or 250 percent of poverty, one with two kids. They can't afford that. Why on Earth would you build it into this? This is ridiculous that it be placed in the proposal. It makes no sense.

Creating and expanding on the penalties for marriage makes zero sense. Families are a critical determinant of the well-being of our society. Family structure also has a significant impact on economic well-being, on education, and the effect on the social fabric of this Nation is positive.

It is a fundamental law of economics that when you tax something, you get less of it. Why would we tax marriage, particularly for low-income individuals, when it is the best chance for those children involved with this couple to have a stable environment, if they will form a solid marriage unit? And we are going to tax it and discourage it. That is wrong. That is wrong as a policy matter.

There is a number of other problems I have had with this overall bill. This piece of it absolutely makes no sense to me, why we would do something like this. I urge my colleagues to vote against this bill, to take these sorts of things out, to take them out of the base law. Unfortunately, in the United States today, this is kind of repeating what already takes place in food stamps, what takes place in health benefits for low-income individuals right now. They cannot afford to get married or they lose their benefits. It is ridiculous. We ought to give people bonuses for getting married, not penalties for getting married. Now we are going to add to it by putting it in this health insurance bill. It is wrong and it is bad policy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

MORNING BUSINESS

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

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

NOMINATION OF ALAN D. SOLOMONT

Mr. GRASSLEY. Mr. President, on September 21, 2009, I announced my intention to object to proceeding to the nomination of Alan D. Solomont to be the Ambassador to Spain because of the incomplete responses that the Corporation for National and Community Service, CNCS, had provided to my document requests regarding the removal of its Inspector General, Gerald Walpin. Mr. Solomont was the chairman of the board of CNCS at the time that my requests went unanswered, and he began the process that led to Mr. Walpin's removal by contacting the White House Counsel's Office on May 20, 2009.

Since September 21, the White House produced approximately 1,900 additional pages of previously withheld documents. During that time, my staff conducted a series of negotiations with CNCS and the White House Counsel's Office over the hundreds of pages of remaining documents that were being withheld or had been redacted. As a result of these negotiations, this week the White House authorized and CNCS provided: 1. descriptions of the information redacted from several CNCS documents, 2. 37-previously produced documents with substantive redactions removed, and 3. 370 pages of previously withheld documents. In addition, the White House made Mr. Solomont available for a follow-up interview on December 8, 2009, so that he could be questioned about new information that had been learned from these documents and other sources since his initial interview on July 15, 2009.

In order to obtain this additional information, I agreed to no longer object to proceeding to Mr. Solomont's nomination if the White House took these steps. I have kept my word and informed leadership that I no longer intend to object. However, I remain concerned about the accuracy and completeness of Mr. Solomont's answers to questions during both his July 15 and December 8, 2009 interviews. I understand Congressman ISSA of the House Committee on Oversight and Government Reform shares those concerns and has sent a letter to Mr. Solomont to that effect.

Although CNCS has produced a total of approximately 3,000 pages of material responsive to my request, the record should also be clear that the White House continues to withhold 46 documents, on grounds of deliberative process and attorney work product privileges. The White House did not provide a detailed log of the documents being withheld despite my requests. I will continue to seek answers to the remaining questions in this matter.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3199. Mr. CORKER 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 3200. Mr. MCCAIN 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 3199. Mr. CORKER 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:

Beginning on page 399, strike line 10 and all that follows through page 403, line 17, and insert the following:

''(y) INCREASED FMAP FOR MEDICAL ASSISTANCE FOR NEWLY ELIGIBLE MANDATORY INDIVIDUALS.—

''(1) 100 PERCENT FMAP.—Notwithstanding subsection (b), the Federal medical assistance percentage determined for a State that is one of the 50 States or the District of Columbia with respect to amounts expended for medical assistance for newly eligible individuals described in subclause (VIII) or (IX) of section 1902(a)(10)(A)(i) shall be equal to 100 percent.

''(2) DEFINITIONS.—In this subsection:

''(A) NEWLY ELIGIBLE.—The term 'newly eligible' means an individual described in subclause (VIII) or (IX) of section 1902(a)(10)(A)(i) who, on the date of enactment of the Patient Protection and Affordable Care Act, is not eligible under the State plan or under a waiver of the plan for full benefits or for benchmark coverage described in section 1937(b)(1) or benchmark equivalent coverage described in section 1937(b)(2), or is eligible but not enrolled (or is on a waiting list) for such benefits or coverage through a waiver under the plan that has a capped or limited enrollment that is full. Such term includes an individual for whom the State elects to provide medical assistance prior to January 1, 2014, under section 1902(k)(2).

''(B) FULL BENEFITS.—The term 'full benefits' means, with respect to an individual, medical assistance for all services covered under the State plan under this title that is not less in amount, duration, or scope, or is determined by the Secretary to be substantially equivalent, to the medical assistance available for an individual described in section 1902(a)(10)(A)(i).''.

(4) MEDICAL CARE ACCESS PROTECTION ACT.—

(A) SHORT TITLE.—This paragraph may be cited as the ''Medical Care Access Protection Act of 2009'' or the ''MCAP Act''.

(B) FINDINGS AND PURPOSE.—

(i) FINDINGS.—

(I) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(II) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(III) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(aa) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(bb) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(cc) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(C) PURPOSE.—It is the purpose of this paragraph to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(i) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(ii) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(iii) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(iv) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(v) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

(D) DEFINITIONS.—In this paragraph:

(i) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(ii) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(iii) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(I) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(II) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(III) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(IV) any other publicly or privately funded program.

(iv) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(v) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(vi) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(vii) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(viii) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(ix) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(x) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(xi) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(xii) HEALTH CARE PROVIDER.—

(I) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(II) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this paragraph, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under clause (I).

(xiii) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(xiv) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(xv) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(xvi) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(xvii) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(E) ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.—

(i) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(ii) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(I) fraud;

(II) intentional concealment; or

(III) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(iii) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(iv) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this Act applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

(F) COMPENSATING PATIENT INJURY.—

(i) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this paragraph shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in clause (ii).

(ii) ADDITIONAL NONECONOMIC DAMAGES.—

(I) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(II) HEALTH CARE INSTITUTIONS.—

(aa) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(bb) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(iii) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(I) an award for future noneconomic damages shall not be discounted to present value;

(II) the jury shall not be informed about the maximum award for noneconomic damages under clause (ii);

(III) an award for noneconomic damages in excess of the limitations provided for in clause (ii) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(IV) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in clause (ii), the future noneconomic damages shall be reduced first.

(iv) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this subparagraph, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(G) MAXIMIZING PATIENT RECOVERY.—

(i) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(I) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(II) CONTINGENCY FEES.—

(aa) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(bb) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(AA) 40 percent of the first $50,000 recovered by the claimant(s).

(BB) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(CC) 25 percent of the next $500,000 recovered by the claimant(s).

(DD) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(ii) APPLICABILITY.—

(I) IN GENERAL.—The limitations in clause (i) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(II) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this subparagraph.

(iii) EXPERT WITNESSES.—

(I) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(aa) except as required under subclause (II), is a health care professional who—

(AA) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(BB) typically treats the diagnosis or condition or provides the type of treatment under review; and

(bb) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(II) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(III) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in subclause (I), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with subclause (I)(bb), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(IV) LIMITATION.—The limitations in this clause shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

(H) ADDITIONAL HEALTH BENEFITS.—

(i) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(ii) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, clause (i) shall not apply.

(iii) APPLICATION OF PROVISION.—This subparagraph shall apply to any health care lawsuit that is settled or resolved by a fact finder.

(I) PUNITIVE DAMAGES.—

(i) PUNITIVE DAMAGES PERMITTED.—

(I) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(II) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(III) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(aa) whether punitive damages are to be awarded and the amount of such award; and

(bb) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(IV) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(ii) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(I) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(aa) the severity of the harm caused by the conduct of such party;

(bb) the duration of the conduct or any concealment of it by such party;

(cc) the profitability of the conduct to such party;

(dd) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(ee) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(ff) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(II) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(iii) LIABILITY OF HEALTH CARE PROVIDERS.—

(I) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(II) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

(J) AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.—

(i) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(ii) APPLICABILITY.—This subparagraph applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

(K) EFFECT ON OTHER LAWS.—

(i) GENERAL VACCINE INJURY.—

(I) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(aa) this paragraph shall not affect the application of the rule of law to such an action; and

(bb) any rule of law prescribed by this paragraph in conflict with a rule of law of such title XXI shall not apply to such action.

(II) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this paragraph or otherwise applicable law (as determined under this paragraph) will apply to such aspect of such action.

(ii) SMALLPOX VACCINE INJURY.—

(I) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(aa) this paragraph shall not affect the application of the rule of law to such an action; and

(bb) any rule of law prescribed by this paragraph in conflict with a rule of law of such part C shall not apply to such action.

(II) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this paragraph or otherwise applicable law (as determined under this paragraph) will apply to such aspect of such action.

(iii) OTHER FEDERAL LAW.—Except as provided in this subparagraph, nothing in this paragraph shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

(L) STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.—

(i) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this paragraph shall preempt, subject to clauses (ii) and (iii), State law to the extent that State law prevents the application of any provisions of law established by or under this paragraph. The provisions governing health care lawsuits set forth in this paragraph supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(I) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this paragraph; or

(II) prohibits the introduction of evidence regarding collateral source benefits.

(ii) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this paragraph shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this paragraph, notwithstanding subparagraph (F)(i).

(iii) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(I) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this paragraph (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(II) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to—

(aa) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this paragraph;

(bb) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(cc) create a cause of action that is not otherwise available under Federal or State law; or

(dd) affect the scope of preemption of any other Federal law.

(M) APPLICABILITY; EFFECTIVE DATE.—This paragraph shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 3200. Mr. MCCAIN 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 end, add the following:

TITLE X—IMPORTATION OF PRESCRIPTION DRUGS

SEC. 10001. SHORT TITLE.

This title may be cited as the ''Pharmaceutical Market Access and Drug Safety Act of 2009''.

SEC. 10002. FINDINGS.

Congress finds that—

(1) Americans unjustly pay up to 5 times more to fill their prescriptions than consumers in other countries;

(2) the United States is the largest market for pharmaceuticals in the world, yet American consumers pay the highest prices for brand pharmaceuticals in the world;

(3) a prescription drug is neither safe nor effective to an individual who cannot afford it;

(4) allowing and structuring the importation of prescription drugs to ensure access to safe and affordable drugs approved by the Food and Drug Administration will provide a level of safety to American consumers that they do not currently enjoy;

(5) American spend more than $200,000,000,000 on prescription drugs every year;

(6) the Congressional Budget Office has found that the cost of prescription drugs are between 35 to 55 percent less in other highly-developed countries than in the United States; and

(7) promoting competitive market pricing would both contribute to health care savings and allow greater access to therapy, improving health and saving lives.

SEC. 10003. REPEAL OF CERTAIN SECTION REGARDING IMPORTATION OF PRESCRIPTION DRUGS.

Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804.

SEC. 10004. IMPORTATION OF PRESCRIPTION DRUGS; WAIVER OF CERTAIN IMPORT RESTRICTIONS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 10003, is further amended by inserting after section 803 the following:

''SEC. 804. COMMERCIAL AND PERSONAL IMPORTATION OF PRESCRIPTION DRUGS.

''(a) IMPORTATION OF PRESCRIPTION DRUGS.—

''(1) IN GENERAL.—In the case of qualifying drugs imported or offered for import into the United States from registered exporters or by registered importers—

''(A) the limitation on importation that is established in section 801(d)(1) is waived; and

''(B) the standards referred to in section 801(a) regarding admission of the drugs are subject to subsection (g) of this section (including with respect to qualifying drugs to which section 801(d)(1) does not apply).

''(2) IMPORTERS.—A qualifying drug may not be imported under paragraph (1) unless—

''(A) the drug is imported by a pharmacy, group of pharmacies, or a wholesaler that is a registered importer; or

''(B) the drug is imported by an individual for personal use or for the use of a family member of the individual (not for resale) from a registered exporter.

''(3) RULE OF CONSTRUCTION.—This section shall apply only with respect to a drug that is imported or offered for import into the United States—

''(A) by a registered importer; or

''(B) from a registered exporter to an individual.

''(4) DEFINITIONS.—

''(A) REGISTERED EXPORTER; REGISTERED IMPORTER.—For purposes of this section:

''(i) The term 'registered exporter' means an exporter for which a registration under subsection (b) has been approved and is in effect.

''(ii) The term 'registered importer' means a pharmacy, group of pharmacies, or a wholesaler for which a registration under subsection (b) has been approved and is in effect.

''(iii) The term 'registration condition' means a condition that must exist for a registration under subsection (b) to be approved.

''(B) QUALIFYING DRUG.—For purposes of this section, the term 'qualifying drug' means a drug for which there is a corresponding U.S. label drug.

''(C) U.S. LABEL DRUG.—For purposes of this section, the term 'U.S. label drug' means a prescription drug that—

''(i) with respect to a qualifying drug, has the same active ingredient or ingredients, route of administration, dosage form, and strength as the qualifying drug;

''(ii) with respect to the qualifying drug, is manufactured by or for the person that manufactures the qualifying drug;

''(iii) is approved under section 505(c); and

''(iv) is not—

''(I) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

''(II) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262), including—

''(aa) a therapeutic DNA plasmid product;

''(bb) a therapeutic synthetic peptide product;

''(cc) a monoclonal antibody product for in vivo use; and

''(dd) a therapeutic recombinant DNA-derived product;

''(III) an infused drug, including a peritoneal dialysis solution;

''(IV) an injected drug;

''(V) a drug that is inhaled during surgery;

''(VI) a drug that is the listed drug referred to in 2 or more abbreviated new drug applications under which the drug is commercially marketed; or

''(VII) a sterile opthlamic drug intended for topical use on or in the eye.

''(D) OTHER DEFINITIONS.—For purposes of this section:

''(i)(I) The term 'exporter' means a person that is in the business of exporting a drug to individuals in the United States from Canada or from a permitted country designated by the Secretary under subclause (II), or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(II) The Secretary shall designate a permitted country under subparagraph (E) (other than Canada) as a country from which an exporter may export a drug to individuals in the United States if the Secretary determines that—

''(aa) the country has statutory or regulatory standards that are equivalent to the standards in the United States and Canada with respect to—

''(AA) the training of pharmacists;

''(BB) the practice of pharmacy; and

''(CC) the protection of the privacy of personal medical information; and

''(bb) the importation of drugs to individuals in the United States from the country will not adversely affect public health.

''(ii) The term 'importer' means a pharmacy, a group of pharmacies, or a wholesaler that is in the business of importing a drug into the United States or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(iii) The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(iv) The term 'pharmacy' means a person that—

''(I) is licensed by a State to engage in the business of selling prescription drugs at retail; and

''(II) employs 1 or more pharmacists.

''(v) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(vi) The term 'wholesaler'—

''(I) means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A); and

''(II) does not include a person authorized to import drugs under section 801(d)(1).

''(E) PERMITTED COUNTRY.—The term 'permitted country' means—

''(i) Australia;

''(ii) Canada;

''(iii) a member country of the European Union, but does not include a member country with respect to which—

''(I) the country's Annex to the Treaty of Accession to the European Union 2003 includes a transitional measure for the regulation of human pharmaceutical products that has not expired; or

''(II) the Secretary determines that the requirements described in subclauses (I) and (II) of clause (vii) will not be met by the date on which such transitional measure for the regulation of human pharmaceutical products expires;

''(iv) Japan;

''(v) New Zealand;

''(vi) Switzerland; and

''(vii) a country in which the Secretary determines the following requirements are met:

''(I) The country has statutory or regulatory requirements—

''(aa) that require the review of drugs for safety and effectiveness by an entity of the government of the country;

''(bb) that authorize the approval of only those drugs that have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs;

''(cc) that require the methods used in, and the facilities and controls used for the manufacture, processing, and packing of drugs in the country to be adequate to preserve their identity, quality, purity, and strength;

''(dd) for the reporting of adverse reactions to drugs and procedures to withdraw approval and remove drugs found not to be safe or effective; and

''(ee) that require the labeling and promotion of drugs to be in accordance with the approval of the drug.

''(II) The valid marketing authorization system in the country is equivalent to the systems in the countries described in clauses (i) through (vi).

''(III) The importation of drugs to the United States from the country will not adversely affect public health.

''(b) REGISTRATION OF IMPORTERS AND EXPORTERS.—

''(1) REGISTRATION OF IMPORTERS AND EXPORTERS.—A registration condition is that the importer or exporter involved (referred

to in this subsection as a 'registrant') submits to the Secretary a registration containing the following:

''(A)(i) In the case of an exporter, the name of the exporter and an identification of all places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter.

''(ii) In the case of an importer, the name of the importer and an identification of the places of business of the importer at which the importer initially receives a qualifying drug after importation (which shall not exceed 3 places of business except by permission of the Secretary).

''(B) Such information as the Secretary determines to be necessary to demonstrate that the registrant is in compliance with registration conditions under—

''(i) in the case of an importer, subsections (c), (d), (e), (g), and (j) (relating to the sources of imported qualifying drugs; the inspection of facilities of the importer; the payment of fees; compliance with the standards referred to in section 801(a); and maintenance of records and samples); or

''(ii) in the case of an exporter, subsections (c), (d), (f), (g), (h), (i), and (j) (relating to the sources of exported qualifying drugs; the inspection of facilities of the exporter and the marking of compliant shipments; the payment of fees; and compliance with the standards referred to in section 801(a); being licensed as a pharmacist; conditions for individual importation; and maintenance of records and samples).

''(C) An agreement by the registrant that the registrant will not under subsection (a) import or export any drug that is not a qualifying drug.

''(D) An agreement by the registrant to—

''(i) notify the Secretary of a recall or withdrawal of a qualifying drug distributed in a permitted country that the registrant has exported or imported, or intends to export or import, to the United States under subsection (a);

''(ii) provide for the return to the registrant of such drug; and

''(iii) cease, or not begin, the exportation or importation of such drug unless the Secretary has notified the registrant that exportation or importation of such drug may proceed.

''(E) An agreement by the registrant to ensure and monitor compliance with each registration condition, to promptly correct any noncompliance with such a condition, and to promptly report to the Secretary any such noncompliance.

''(F) A plan describing the manner in which the registrant will comply with the agreement under subparagraph (E).

''(G) An agreement by the registrant to enforce a contract under subsection (c)(3)(B) against a party in the chain of custody of a qualifying drug with respect to the authority of the Secretary under clauses (ii) and (iii) of that subsection.

''(H) An agreement by the registrant to notify the Secretary not more than 30 days before the registrant intends to make the change, of—

''(i) any change that the registrant intends to make regarding information provided under subparagraph (A) or (B); and

''(ii) any change that the registrant intends to make in the compliance plan under subparagraph (F).

''(I) In the case of an exporter:

''(i) An agreement by the exporter that a qualifying drug will not under subsection (a) be exported to any individual not authorized pursuant to subsection (a)(2)(B) to be an importer of such drug.

''(ii) An agreement to post a bond, payable to the Treasury of the United States that is equal in value to the lesser of—

''(I) the value of drugs exported by the exporter to the United States in a typical 4-week period over the course of a year under this section; or

''(II) $1,000,000.

''(iii) An agreement by the exporter to comply with applicable provisions of Canadian law, or the law of the permitted country designated under subsection (a)(4)(D)(i)(II) in which the exporter is located, that protect the privacy of personal information with respect to each individual importing a prescription drug from the exporter under subsection (a)(2)(B).

''(iv) An agreement by the exporter to report to the Secretary—

''(I) not later than August 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the 6-month period from January 1 through June 30 of that year; and

''(II) not later than January 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the previous fiscal year.

''(J) In the case of an importer, an agreement by the importer to report to the Secretary—

''(i) not later than August 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the 6-month period from January 1 through June 30 of that fiscal year; and

''(ii) not later than January 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the previous fiscal year.

''(K) Such other provisions as the Secretary may require by regulation to protect the public health while permitting—

''(i) the importation by pharmacies, groups of pharmacies, and wholesalers as registered importers of qualifying drugs under subsection (a); and

''(ii) importation by individuals of qualifying drugs under subsection (a).

''(2) APPROVAL OR DISAPPROVAL OF REGISTRATION.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a registrant submits to the Secretary a registration under paragraph (1), the Secretary shall notify the registrant whether the registration is approved or is disapproved. The Secretary shall disapprove a registration if there is reason to believe that the registrant is not in compliance with one or more registration conditions, and shall notify the registrant of such reason. In the case of a disapproved registration, the Secretary shall subsequently notify the registrant that the registration is approved if the Secretary determines that the registrant is in compliance with such conditions.

''(B) CHANGES IN REGISTRATION INFORMATION.—Not later than 30 days after receiving a notice under paragraph (1)(H) from a registrant, the Secretary shall determine whether the change involved affects the approval of the registration of the registrant under paragraph (1), and shall inform the registrant of the determination.

''(3) PUBLICATION OF CONTACT INFORMATION FOR REGISTERED EXPORTERS.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall make readily available to the public a list of registered exporters, including contact information for the exporters. Promptly after the approval of a registration submitted under paragraph (1), the Secretary shall update the Internet website and the information provided through the toll-free telephone number accordingly.

''(4) SUSPENSION AND TERMINATION.—

''(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under paragraph (1):

''(i) Subject to clause (ii), the Secretary may suspend the registration if the Secretary determines, after notice and opportunity for a hearing, that the registrant has failed to maintain substantial compliance with a registration condition.

''(ii) If the Secretary determines that, under color of the registration, the exporter has exported a drug or the importer has imported a drug that is not a qualifying drug, or a drug that does not comply with subsection (g)(2)(A) or (g)(4), or has exported a qualifying drug to an individual in violation of subsection (i), the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registrant an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

''(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registrant has demonstrated that further violations of registration conditions will not occur.

''(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under paragraph (1) of a registrant if the Secretary determines that the registrant has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registrant. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration is terminated, any registration submitted under paragraph (1) by the registrant, or a person that is a partner in the export or import enterprise, or a principal officer in such enterprise, and any registration prepared with the assistance of the registrant or such a person, has no legal effect under this section.

''(5) DEFAULT OF BOND.—A bond required to be posted by an exporter under paragraph (1)(I)(ii) shall be defaulted and paid to the Treasury of the United States if, after opportunity for an informal hearing, the Secretary determines that the exporter has—

''(A) exported a drug to the United States that is not a qualifying drug or that is not in compliance with subsection (g)(2)(A), (g)(4), or (i); or

''(B) failed to permit the Secretary to conduct an inspection described under subsection (d).

''(c) SOURCES OF QUALIFYING DRUGS.—A registration condition is that the exporter or importer involved agrees that a qualifying drug will under subsection (a) be exported or imported into the United States only if there is compliance with the following:

''(1) The drug was manufactured in an establishment—

''(A) required to register under subsection (h) or (i) of section 510; and

''(B)(i) inspected by the Secretary; or

''(ii) for which the Secretary has elected to rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided for under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(2) The establishment is located in any country, and the establishment manufactured the drug for distribution in the United States or for distribution in 1 or more of the permitted countries (without regard to whether in addition the drug is manufactured for distribution in a foreign country that is not a permitted country).

''(3) The exporter or importer obtained the drug—

''(A) directly from the establishment; or

''(B) directly from an entity that, by contract with the exporter or importer—

''(i) provides to the exporter or importer a statement (in such form and containing such information as the Secretary may require) that, for the chain of custody from the establishment, identifies each prior sale, purchase, or trade of the drug (including the date of the transaction and the names and addresses of all parties to the transaction);

''(ii) agrees to permit the Secretary to inspect such statements and related records to determine their accuracy;

''(iii) agrees, with respect to the qualifying drugs involved, to permit the Secretary to inspect warehouses and other facilities, including records, of the entity for purposes of determining whether the facilities are in compliance with any standards under this Act that are applicable to facilities of that type in the United States; and

''(iv) has ensured, through such contractual relationships as may be necessary, that the Secretary has the same authority regarding other parties in the chain of custody from the establishment that the Secretary has under clauses (ii) and (iii) regarding such entity.

''(4)(A) The foreign country from which the importer will import the drug is a permitted country; or

''(B) The foreign country from which the exporter will export the drug is the permitted country in which the exporter is located.

''(5) During any period in which the drug was not in the control of the manufacturer of the drug, the drug did not enter any country that is not a permitted country.

''(6) The exporter or importer retains a sample of each lot of the drug for testing by the Secretary.

''(d) INSPECTION OF FACILITIES; MARKING OF SHIPMENTS.—

''(1) INSPECTION OF FACILITIES.—A registration condition is that, for the purpose of assisting the Secretary in determining whether the exporter involved is in compliance with all other registration conditions—

''(A) the exporter agrees to permit the Secretary—

''(i) to conduct onsite inspections, including monitoring on a day-to-day basis, of places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter;

''(ii) to have access, including on a day-to-day basis, to—

''(I) records of the exporter that relate to the export of such drugs, including financial records; and

''(II) samples of such drugs;

''(iii) to carry out the duties described in paragraph (3); and

''(iv) to carry out any other functions determined by the Secretary to be necessary regarding the compliance of the exporter; and

''(B) the Secretary has assigned 1 or more employees of the Secretary to carry out the functions described in this subsection for the Secretary randomly, but not less than 12 times annually, on the premises of places of businesses referred to in subparagraph (A)(i), and such an assignment remains in effect on a continuous basis.

''(2) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the exporter involved agrees to affix to each shipping container of qualifying drugs exported under subsection (a) such markings as the Secretary determines to be necessary to identify the shipment as being in compliance with all registration conditions. Markings under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings to any shipping container that is not authorized to bear the markings; and

''(B) include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies.

''(3) CERTAIN DUTIES RELATING TO EXPORTERS.—Duties of the Secretary with respect to an exporter include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the exporter at which qualifying drugs are stored and from which qualifying drugs are shipped.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the exporter, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an exporter.

''(C) Randomly reviewing records of exports to individuals for the purpose of determining whether the drugs are being imported by the individuals in accordance with the conditions under subsection (i). Such reviews shall be conducted in a manner that will result in a statistically significant determination of compliance with all such conditions.

''(D) Monitoring the affixing of markings under paragraph (2).

''(E) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records, of other parties in the chain of custody of qualifying drugs.

''(F) Determining whether the exporter is in compliance with all other registration conditions.

''(4) PRIOR NOTICE OF SHIPMENTS.—A registration condition is that, not less than 8 hours and not more than 5 days in advance of the time of the importation of a shipment of qualifying drugs, the importer involved agrees to submit to the Secretary a notice with respect to the shipment of drugs to be imported or offered for import into the United States under subsection (a). A notice under the preceding sentence shall include—

''(A) the name and complete contact information of the person submitting the notice;

''(B) the name and complete contact information of the importer involved;

''(C) the identity of the drug, including the established name of the drug, the quantity of the drug, and the lot number assigned by the manufacturer;

''(D) the identity of the manufacturer of the drug, including the identity of the establishment at which the drug was manufactured;

''(E) the country from which the drug is shipped;

''(F) the name and complete contact information for the shipper of the drug;

''(G) anticipated arrival information, including the port of arrival and crossing location within that port, and the date and time;

''(H) a summary of the chain of custody of the drug from the establishment in which the drug was manufactured to the importer;

''(I) a declaration as to whether the Secretary has ordered that importation of the drug from the permitted country cease under subsection (g)(2)(C) or (D); and

''(J) such other information as the Secretary may require by regulation.

''(5) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the importer involved agrees, before wholesale distribution (as defined in section 503(e)) of a qualifying drug that has been imported under subsection (a), to affix to each container of such drug such markings or other technology as the Secretary determines necessary to identify the shipment as being in compliance with all registration conditions, except that the markings or other technology shall not be required on a drug that bears comparable, compatible markings or technology from the manufacturer of the drug. Markings or other technology under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings or other technology to any container that is not authorized to bear the markings; and

''(B) shall include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of such technologies.

''(6) CERTAIN DUTIES RELATING TO IMPORTERS.—Duties of the Secretary with respect to an importer include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the importer at which a qualifying drug is initially received after importation.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the importer, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an importer.

''(C) Reviewing notices under paragraph (4).

''(D) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records of other parties in the chain of custody of qualifying drugs.

''(E) Determining whether the importer is in compliance with all other registration conditions.

''(e) IMPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the importer involved pays to the Secretary a fee of $10,000 due on the date on which the importer first submits the registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the importer involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for importers for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered importers, including the costs associated with—

''(i) inspecting the facilities of registered importers, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(6);

''(ii) developing, implementing, and operating under such subsection an electronic system for submission and review of the notices required under subsection (d)(4) with respect to shipments of qualifying drugs under subsection (a) to assess compliance with all registration conditions when such shipments are offered for import into the United States; and

''(iii) inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered importers under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during that fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered importers during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered importer on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL IMPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an importer shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the importer of the volume of qualifying drugs imported by importers under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(f) EXPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the exporter involved pays to the Secretary a fee of $10,000 due on the date on which the exporter first submits that registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the exporter involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for exporters for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered exporters, including the costs associated with—

''(i) inspecting the facilities of registered exporters, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(3);

''(ii) developing, implementing, and operating under such subsection a system to screen marks on shipments of qualifying drugs under subsection (a) that indicate compliance with all registration conditions, when such shipments are offered for import into the United States; and

''(iii) screening such markings, and inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered exporters under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during that fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered exporters during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered exporter on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL EXPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an exporter shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the exporter of the volume of qualifying drugs exported by exporters under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(g) COMPLIANCE WITH SECTION 801(a).—

''(1) IN GENERAL.—A registration condition is that each qualifying drug exported under subsection (a) by the registered exporter involved or imported under subsection (a) by the registered importer involved is in compliance with the standards referred to in section 801(a) regarding admission of the drug into the United States, subject to paragraphs (2), (3), and (4).

''(2) SECTION 505; APPROVAL STATUS.—

''(A) IN GENERAL.—A qualifying drug that is imported or offered for import under subsection (a) shall comply with the conditions established in the approved application under section 505(b) for the U.S. label drug as described under this subsection.

''(B) NOTICE BY MANUFACTURER; GENERAL PROVISIONS.—

''(i) IN GENERAL.—The person that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country shall in accordance with this paragraph submit to the Secretary a notice that—

''(I) includes each difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling); or

''(II) states that there is no difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling).

''(ii) INFORMATION IN NOTICE.—A notice under clause (i)(I) shall include the information that the Secretary may require under section 506A, any additional information the Secretary may require (which may include data on bioequivalence if such data are not required under section 506A), and, with respect to the permitted country that approved the qualifying drug for commercial distribution, or with respect to which such approval is sought, include the following:

''(I) The date on which the qualifying drug with such difference was, or will be, introduced for commercial distribution in the permitted country.

''(II) Information demonstrating that the person submitting the notice has also notified the government of the permitted country in writing that the person is submitting to the Secretary a notice under clause (i)(I), which notice describes the difference in the qualifying drug from a condition established in the approved application for the U.S. label drug.

''(III) The information that the person submitted or will submit to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in the country which, if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation.

''(iii) CERTIFICATIONS.—The chief executive officer and the chief medical officer of the manufacturer involved shall each certify in the notice under clause (i) that—

''(I) the information provided in the notice is complete and true; and

''(II) a copy of the notice has been provided to the Federal Trade Commission and to the State attorneys general.

''(iv) FEE.—

''(I) IN GENERAL.—If a notice submitted under clause (i) includes a difference that would, under section 506A, require the submission of a supplemental application if made as a change to the U.S. label drug, the person that submits the notice shall pay to the Secretary a fee in the same amount as would apply if the person were paying a fee pursuant to section 736(a)(1)(A)(ii). Fees collected by the Secretary under the preceding sentence are available only to the Secretary and are for the sole purpose of paying the costs of reviewing notices submitted under clause (i).

''(II) FEE AMOUNT FOR CERTAIN YEARS.—If no fee amount is in effect under section 736(a)(1)(A)(ii) for a fiscal year, then the amount paid by a person under subclause (I) shall—

''(aa) for the first fiscal year in which no fee amount under such section in effect, be equal to the fee amount under section 736(a)(1)(A)(ii) for the most recent fiscal year for which such section was in effect, adjusted in accordance with section 736(c); and

''(bb) for each subsequent fiscal year in which no fee amount under such section is effect, be equal to the applicable fee amount for the previous fiscal year, adjusted in accordance with section 736(c).

''(v) TIMING OF SUBMISSION OF NOTICES.—

''(I) PRIOR APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (C) applies shall be submitted to the Secretary not later than 120 days before the qualifying drug with the difference is introduced for commercial distribution in a permitted country, unless the country requires that distribution of the qualifying drug with the difference begin less than 120 days after the country requires the difference.

''(II) OTHER APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (D) applies shall be submitted to the Secretary not later than the day on which the qualifying drug with the difference is introduced for commercial distribution in a permitted country.

''(III) OTHER NOTICES.—A notice under clause (i) to which subparagraph (E) applies shall be submitted to the Secretary on the date that the qualifying drug is first introduced for commercial distribution in a permitted country and annually thereafter.

''(vi) REVIEW BY SECRETARY.—

''(I) IN GENERAL.—In this paragraph, the difference in a qualifying drug that is submitted in a notice under clause (i) from the U.S. label drug shall be treated by the Secretary as if it were a manufacturing change to the U.S. label drug under section 506A.

''(II) STANDARD OF REVIEW.—Except as provided in subclause (III), the Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, using the safe and effective standard for approving or disapproving a manufacturing change under section 506A.

''(III) BIOEQUIVALENCE.—If the Secretary would approve the difference in a notice submitted under clause (i) using the safe and effective standard under section 506A and if the Secretary determines that the qualifying drug is not bioequivalent to the U.S. label drug, the Secretary shall—

''(aa) include in the labeling provided under paragraph (3) a prominent advisory that the qualifying drug is safe and effective but is not bioequivalent to the U.S. label drug if the Secretary determines that such an advisory is necessary for health care practitioners and patients to use the qualifying drug safely and effectively; or

''(bb) decline to approve the difference if the Secretary determines that the availability of both the qualifying drug and the U.S. label drug would pose a threat to the public health.

''(IV) REVIEW BY THE SECRETARY.—The Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, not later than 120 days after the date on which the notice is submitted.

''(V) ESTABLISHMENT INSPECTION.—If review of such difference would require an inspection of the establishment in which the qualifying drug is manufactured—

''(aa) such inspection by the Secretary shall be authorized; and

''(bb) the Secretary may rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(vii) PUBLICATION OF INFORMATION ON NOTICES.—

''(I) IN GENERAL.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall readily make available to the public a list of notices submitted under clause (i).

''(II) CONTENTS.—The list under subclause (I) shall include the date on which a notice is submitted and whether—

''(aa) a notice is under review;

''(bb) the Secretary has ordered that importation of the qualifying drug from a permitted country cease; or

''(cc) the importation of the drug is permitted under subsection (a).

''(III) UPDATE.—The Secretary shall promptly update the Internet website with any changes to the list.

''(C) NOTICE; DRUG DIFFERENCE REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under subsection (c) or (d)(3)(B)(i) of section 506A, require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) Promptly after the notice is submitted, the Secretary shall notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general that the notice has been submitted with respect to the qualifying drug involved.

''(ii) If the Secretary has not made a determination whether such a supplemental application regarding the U.S. label drug would be approved or disapproved by the date on which the qualifying drug involved is to be introduced for commercial distribution in a permitted country, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country not begin until the Secretary completes review of the notice; and

''(II) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the order.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease, or provide that an order under clause (ii), if any, remains in effect;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(iv) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the Secretary shall—

''(I) vacate the order under clause (ii), if any;

''(II) consider the difference to be a variation provided for in the approved application for the U.S. label drug;

''(III) permit importation of the qualifying drug under subsection (a); and

''(IV) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(D) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under section 506A(d)(3)(B)(ii), not require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) During the period in which the notice is being reviewed by the Secretary, the authority under this subsection to import the qualifying drug involved continues in effect.

''(ii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade

Commission, and the State attorneys general of the determination.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the difference shall be considered to be a variation provided for in the approved application for the U.S. label drug.

''(E) NOTICE; DRUG DIFFERENCE NOT REQUIRING APPROVAL; NO DIFFERENCE.—In the case of a notice under subparagraph (B)(i) that includes a difference for which, under section 506A(d)(1)(A), a supplemental application would not be required for the difference to be made to the U.S. label drug, or that states that there is no difference, the Secretary—

''(i) shall consider such difference to be a variation provided for in the approved application for the U.S. label drug;

''(ii) may not order that the importation of the qualifying drug involved cease; and

''(iii) shall promptly notify registered exporters and registered importers.

''(F) DIFFERENCES IN ACTIVE INGREDIENT, ROUTE OF ADMINISTRATION, DOSAGE FORM, OR STRENGTH.—

''(i) IN GENERAL.—A person who manufactures a drug approved under section 505(b) shall submit an application under section 505(b) for approval of another drug that is manufactured for distribution in a permitted country by or for the person that manufactures the drug approved under section 505(b) if—

''(I) there is no qualifying drug in commercial distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries with the same active ingredient or ingredients, route of administration, dosage form, and strength as the drug approved under section 505(b); and

''(II) each active ingredient of the other drug is related to an active ingredient of the drug approved under section 505(b), as defined in clause (v).

''(ii) APPLICATION UNDER SECTION 505(b).—The application under section 505(b) required under clause (i) shall—

''(I) request approval of the other drug for the indication or indications for which the drug approved under section 505(b) is labeled;

''(II) include the information that the person submitted to the government of the permitted country for purposes of obtaining approval for commercial distribution of the other drug in that country, which if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation;

''(III) include a right of reference to the application for the drug approved under section 505(b); and

''(IV) include such additional information as the Secretary may require.

''(iii) TIMING OF SUBMISSION OF APPLICATION.—An application under section 505(b) required under clause (i) shall be submitted to the Secretary not later than the day on which the information referred to in clause (ii)(II) is submitted to the government of the permitted country.

''(iv) NOTICE OF DECISION ON APPLICATION.—The Secretary shall promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of a determination to approve or to disapprove an application under section 505(b) required under clause (i).

''(v) RELATED ACTIVE INGREDIENTS.—For purposes of clause (i)(II), 2 active ingredients are related if they are—

''(I) the same; or

''(II) different salts, esters, or complexes of the same moiety.

''(3) SECTION 502; LABELING.—

''(A) IMPORTATION BY REGISTERED IMPORTER.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered importer, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the qualifying drug bears—

''(I) a copy of the labeling approved for the U.S. label drug under section 505, without regard to whether the copy bears any trademark involved;

''(II) the name of the manufacturer and location of the manufacturer;

''(III) the lot number assigned by the manufacturer;

''(IV) the name, location, and registration number of the importer; and

''(V) the National Drug Code number assigned to the qualifying drug by the Secretary.

''(ii) REQUEST FOR COPY OF THE LABELING.—The Secretary shall provide such copy to the registered importer involved, upon request of the importer.

''(iii) REQUESTED LABELING.—The labeling provided by the Secretary under clause (ii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the qualifying drug;

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof;

''(III) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the qualifying drug is safe and effective but not bioequivalent to the U.S. label drug; and

''(IV) if the inactive ingredients of the qualifying drug are different from the inactive ingredients for the U.S. label drug, include—

''(aa) a prominent notice that the ingredients of the qualifying drug differ from the ingredients of the U.S. label drug and that the qualifying drug must be dispensed with an advisory to people with allergies about this difference and a list of ingredients; and

''(bb) a list of the ingredients of the qualifying drug as would be required under section 502(e).

''(B) IMPORTATION BY INDIVIDUAL.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered exporter to an individual, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the packaging and labeling of the qualifying drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and the labeling of the qualifying drug includes—

''(I) directions for use by the consumer;

''(II) the lot number assigned by the manufacturer;

''(III) the name and registration number of the exporter;

''(IV) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug;

''(V) if the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(aa) a prominent advisory that persons with an allergy should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(bb) a list of the ingredients of the drug as would be required under section 502(e); and

''(VI) a copy of any special labeling that would be required by the Secretary had the U.S. label drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears any trademark involved.

''(ii) PACKAGING.—A qualifying drug offered for import to an individual by an exporter under this section that is packaged in a unit-of-use container (as those items are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(I) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(II) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the exporter will provide the drug in packaging that is compliant at no additional cost.

''(iii) REQUEST FOR COPY OF SPECIAL LABELING AND INGREDIENT LIST.—The Secretary shall provide to the registered exporter involved a copy of the special labeling, the advisory, and the ingredient list described under clause (i), upon request of the exporter.

''(iv) REQUESTED LABELING AND INGREDIENT LIST.—The labeling and ingredient list provided by the Secretary under clause (iii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the drug; and

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof.

''(4) SECTION 501; ADULTERATION.—A qualifying drug that is imported or offered for import under subsection (a) shall be considered to be in compliance with section 501 if the drug is in compliance with subsection (c).

''(5) STANDARDS FOR REFUSING ADMISSION.—A drug exported under subsection (a) from a registered exporter or imported by a registered importer may be refused admission into the United States if 1 or more of the following applies:

''(A) The drug is not a qualifying drug.

''(B) A notice for the drug required under paragraph (2)(B) has not been submitted to the Secretary.

''(C) The Secretary has ordered that importation of the drug from the permitted country cease under subparagraph (C) or (D) of paragraph (2).

''(D) The drug does not comply with paragraph (3) or (4).

''(E) The shipping container appears damaged in a way that may affect the strength, quality, or purity of the drug.

''(F) The Secretary becomes aware that—

''(i) the drug may be counterfeit;

''(ii) the drug may have been prepared, packed, or held under insanitary conditions; or

''(iii) the methods used in, or the facilities or controls used for, the manufacturing, processing, packing, or holding of the drug do not conform to good manufacturing practice.

''(G) The Secretary has obtained an injunction under section 302 that prohibits the distribution of the drug in interstate commerce.

''(H) The Secretary has under section 505(e) withdrawn approval of the drug.

''(I) The manufacturer of the drug has instituted a recall of the drug.

''(J) If the drug is imported or offered for import by a registered importer without submission of a notice in accordance with subsection (d)(4).

''(K) If the drug is imported or offered for import from a registered exporter to an individual and 1 or more of the following applies:

''(i) The shipping container for such drug does not bear the markings required under subsection (d)(2).

''(ii) The markings on the shipping container appear to be counterfeit.

''(iii) The shipping container or markings appear to have been tampered with.

''(h) EXPORTER LICENSURE IN PERMITTED COUNTRY.—A registration condition is that the exporter involved agrees that a qualifying drug will be exported to an individual only if the Secretary has verified that—

''(1) the exporter is authorized under the law of the permitted country in which the exporter is located to dispense prescription drugs; and

''(2) the exporter employs persons that are licensed under the law of the permitted country in which the exporter is located to dispense prescription drugs in sufficient number to dispense safely the drugs exported by the exporter to individuals, and the exporter assigns to those persons responsibility for dispensing such drugs to individuals.

''(i) INDIVIDUALS; CONDITIONS FOR IMPORTATION.—

''(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

''(A) The drug is accompanied by a copy of a prescription for the drug, which prescription—

''(i) is valid under applicable Federal and State laws; and

''(ii) was issued by a practitioner who, under the law of a State of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

''(B) The drug is accompanied by a copy of the documentation that was required under the law or regulations of the permitted country in which the exporter is located, as a condition of dispensing the drug to the individual.

''(C) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

''(i) to indicate that the prescription, and the equivalent document in the permitted country in which the exporter is located, have been filled; and

''(ii) to prevent a duplicative filling by another pharmacist.

''(D) The individual has provided to the registered exporter a complete list of all drugs used by the individual for review by the individuals who dispense the drug.

''(E) The quantity of the drug does not exceed a 90-day supply.

''(F) The drug is not an ineligible subpart H drug. For purposes of this section, a prescription drug is an 'ineligible subpart H drug' if the drug was approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval), with restrictions under section 520 of such part to assure safe use, and the Secretary has published in the Federal Register a notice that the Secretary has determined that good cause exists to prohibit the drug from being imported pursuant to this subsection.

''(2) NOTICE REGARDING DRUG REFUSED ADMISSION.—If a registered exporter ships a drug to an individual pursuant to subsection (a)(2)(B) and the drug is refused admission to the United States, a written notice shall be sent to the individual and to the exporter that informs the individual and the exporter of such refusal and the reason for the refusal.

''(j) MAINTENANCE OF RECORDS AND SAMPLES.—

''(1) IN GENERAL.—A registration condition is that the importer or exporter involved shall—

''(A) maintain records required under this section for not less than 2 years; and

''(B) maintain samples of each lot of a qualifying drug required under this section for not more than 2 years.

''(2) PLACE OF RECORD MAINTENANCE.—The records described under paragraph (1) shall be maintained—

''(A) in the case of an importer, at the place of business of the importer at which the importer initially receives the qualifying drug after importation; or

''(B) in the case of an exporter, at the facility from which the exporter ships the qualifying drug to the United States.

''(k) DRUG RECALLS.—

''(1) MANUFACTURERS.—A person that manufactures a qualifying drug imported from a permitted country under this section shall promptly inform the Secretary—

''(A) if the drug is recalled or withdrawn from the market in a permitted country;

''(B) how the drug may be identified, including lot number; and

''(C) the reason for the recall or withdrawal.

''(2) SECRETARY.—With respect to each permitted country, the Secretary shall—

''(A) enter into an agreement with the government of the country to receive information about recalls and withdrawals of qualifying drugs in the country; or

''(B) monitor recalls and withdrawals of qualifying drugs in the country using any information that is available to the public in any media.

''(3) NOTICE.—The Secretary may notify, as appropriate, registered exporters, registered importers, wholesalers, pharmacies, or the public of a recall or withdrawal of a qualifying drug in a permitted country.

''(l) DRUG LABELING AND PACKAGING.—

''(1) IN GENERAL.—When a qualifying drug that is imported into the United States by an importer under subsection (a) is dispensed by a pharmacist to an individual, the pharmacist shall provide that the packaging and labeling of the drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and shall include with any other labeling provided to the individual the following:

''(A) The lot number assigned by the manufacturer.

''(B) The name and registration number of the importer.

''(C) If required under paragraph (2)(B)(vi)(III) of subsection (g), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug.

''(D) If the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(i) a prominent advisory that persons with allergies should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(ii) a list of the ingredients of the drug as would be required under section 502(e).

''(2) PACKAGING.—A qualifying drug that is packaged in a unit-of-use container (as those terms are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(A) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(B) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the pharmacist will provide the drug in packaging that is compliant at no additional cost.

''(m) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, this section does not authorize the importation into the United States of a qualifying drug donated or otherwise supplied for free or at nominal cost by the manufacturer of the drug to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country.

''(n) UNFAIR AND DISCRIMINATORY ACTS AND PRACTICES.—

''(1) IN GENERAL.—It is unlawful for a manufacturer, directly or indirectly (including by being a party to a licensing agreement or other agreement), to—

''(A) discriminate by charging a higher price for a prescription drug sold to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section than the price that is charged, inclusive of rebates or other incentives to the permitted country or other person, to another person that is in the same country and that does not export a qualifying drug into the United States under this section;

''(B) discriminate by charging a higher price for a prescription drug sold to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section than the price that is charged to another person in the United States that does not import a qualifying drug under this section, or that does not distribute, sell, or use such a drug;

''(C) discriminate by denying, restricting, or delaying supplies of a prescription drug to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(D) discriminate by publicly, privately, or otherwise refusing to do business with a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or with a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(E) knowingly fail to submit a notice under subsection (g)(2)(B)(i), knowingly fail to submit such a notice on or before the date specified in subsection (g)(2)(B)(v) or as otherwise required under paragraphs (3), (4), and (5) of section 10004(e) of the Pharmaceutical Market Access and Drug Safety Act of 2009, knowingly submit such a notice that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such a notice;

''(F) knowingly fail to submit an application required under subsection (g)(2)(F), knowingly fail to submit such an application on or before the date specified in subsection (g)(2)(F)(iii), knowingly submit such an application that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such an application;

''(G) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States

and the drug for distribution in a permitted country;

''(H) refuse to allow an inspection authorized under this section of an establishment that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country;

''(I) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country to good manufacturing practice under this Act;

''(J) become a party to a licensing agreement or other agreement related to a qualifying drug that fails to provide for compliance with all requirements of this section with respect to such drug;

''(K) enter into a contract that restricts, prohibits, or delays the importation of a qualifying drug under this section;

''(L) engage in any other action to restrict, prohibit, or delay the importation of a qualifying drug under this section; or

''(M) engage in any other action that the Federal Trade Commission determines to discriminate against a person that engages or attempts to engage in the importation of a qualifying drug under this section.

''(2) REFERRAL OF POTENTIAL VIOLATIONS.—The Secretary shall promptly refer to the Federal Trade Commission each potential violation of subparagraph (E), (F), (G), (H), or (I) of paragraph (1) that becomes known to the Secretary.

''(3) AFFIRMATIVE DEFENSE.—

''(A) DISCRIMINATION.—It shall be an affirmative defense to a charge that a manufacturer has discriminated under subparagraph (A), (B), (C), (D), or (M) of paragraph (1) that the higher price charged for a prescription drug sold to a person, the denial, restriction, or delay of supplies of a prescription drug to a person, the refusal to do business with a person, or other discriminatory activity against a person, is not based, in whole or in part, on—

''(i) the person exporting or importing a qualifying drug into the United States under this section; or

''(ii) the person distributing, selling, or using a qualifying drug imported into the United States under this section.

''(B) DRUG DIFFERENCES.—It shall be an affirmative defense to a charge that a manufacturer has caused there to be a difference described in subparagraph (G) of paragraph (1) that—

''(i) the difference was required by the country in which the drug is distributed;

''(ii) the Secretary has determined that the difference was necessary to improve the safety or effectiveness of the drug;

''(iii) the person manufacturing the drug for distribution in the United States has given notice to the Secretary under subsection (g)(2)(B)(i) that the drug for distribution in the United States is not different from a drug for distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries; or

''(iv) the difference was not caused, in whole or in part, for the purpose of restricting importation of the drug into the United States under this section.

''(4) EFFECT OF SUBSECTION.—

''(A) SALES IN OTHER COUNTRIES.—This subsection applies only to the sale or distribution of a prescription drug in a country if the manufacturer of the drug chooses to sell or distribute the drug in the country. Nothing in this subsection shall be construed to compel the manufacturer of a drug to distribute or sell the drug in a country.

''(B) DISCOUNTS TO INSURERS, HEALTH PLANS, PHARMACY BENEFIT MANAGERS, AND COVERED ENTITIES.—Nothing in this subsection shall be construed to—

''(i) prevent or restrict a manufacturer of a prescription drug from providing discounts to an insurer, health plan, pharmacy benefit manager in the United States, or covered entity in the drug discount program under section 340B of the Public Health Service Act (42 U.S.C. 256b) in return for inclusion of the drug on a formulary;

''(ii) require that such discounts be made available to other purchasers of the prescription drug; or

''(iii) prevent or restrict any other measures taken by an insurer, health plan, or pharmacy benefit manager to encourage consumption of such prescription drug.

''(C) CHARITABLE CONTRIBUTIONS.—Nothing in this subsection shall be construed to—

''(i) prevent a manufacturer from donating a prescription drug, or supplying a prescription drug at nominal cost, to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country; or

''(ii) apply to such donations or supplying of a prescription drug.

''(5) ENFORCEMENT.—

''(A) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this subsection shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

''(B) ACTIONS BY THE COMMISSION.—The Federal Trade Commission—

''(i) shall enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section; and

''(ii) may seek monetary relief threefold the damages sustained, in addition to any other remedy available to the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

''(6) ACTIONS BY STATES.—

''(A) IN GENERAL.—

''(i) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State have been adversely affected by any manufacturer that violates paragraph (1), the attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction to—

''(I) enjoin that practice;

''(II) enforce compliance with this subsection;

''(III) obtain damages, restitution, or other compensation on behalf of residents of the State and persons doing business in the State, including threefold the damages; or

''(IV) obtain such other relief as the court may consider to be appropriate.

''(ii) NOTICE.—

''(I) IN GENERAL.—Before filing an action under clause (i), the attorney general of the State involved shall provide to the Federal Trade Commission—

''(aa) written notice of that action; and

''(bb) a copy of the complaint for that action.

''(II) EXEMPTION.—Subclause (I) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

''(B) INTERVENTION.—

''(i) IN GENERAL.—On receiving notice under subparagraph (A)(ii), the Federal Trade Commission shall have the right to intervene in the action that is the subject of the notice.

''(ii) EFFECT OF INTERVENTION.—If the Federal Trade Commission intervenes in an action under subparagraph (A), it shall have the right—

''(I) to be heard with respect to any matter that arises in that action; and

''(II) to file a petition for appeal.

''(C) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this subsection shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

''(i) conduct investigations;

''(ii) administer oaths or affirmations; or

''(iii) compel the attendance of witnesses or the production of documentary and other evidence.

''(D) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Federal Trade Commission for a violation of paragraph (1), a State may not, during the pendency of that action, institute an action under subparagraph (A) for the same violation against any defendant named in the complaint in that action.

''(E) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(F) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(G) MEASUREMENT OF DAMAGES.—In any action under this paragraph to enforce a cause of action under this subsection in which there has been a determination that a defendant has violated a provision of this subsection, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

''(H) EXCLUSION ON DUPLICATIVE RELIEF.—The district court shall exclude from the amount of monetary relief awarded in an action under this paragraph brought by the attorney general of a State any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

''(7) EFFECT ON ANTITRUST LAWS.—Nothing in this subsection shall be construed to modify, impair, or supersede the operation of the antitrust laws. For the purpose of this subsection, the term 'antitrust laws' has the meaning given it in the first section of the Clayton Act, except that it includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

''(8) MANUFACTURER.—In this subsection, the term 'manufacturer' means any entity, including any affiliate or licensee of that entity, that is engaged in—

''(A) the production, preparation, propagation, compounding, conversion, or processing of a prescription drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

''(B) the packaging, repackaging, labeling, relabeling, or distribution of a prescription drug.''.

(b) PROHIBITED ACTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301 (21 U.S.C. 331), by striking paragraph (aa) and inserting the following:

''(aa)(1) The sale or trade by a pharmacist, or by a business organization of which the pharmacist is a part, of a qualifying drug that under section 804(a)(2)(A) was imported by the pharmacist, other than—

''(A) a sale at retail made pursuant to dispensing the drug to a customer of the pharmacist or organization; or

''(B) a sale or trade of the drug to a pharmacy or a wholesaler registered to import drugs under section 804.

''(2) The sale or trade by an individual of a qualifying drug that under section 804(a)(2)(B) was imported by the individual.

''(3) The making of a materially false, fictitious, or fraudulent statement or representation, or a material omission, in a notice under clause (i) of section 804(g)(2)(B) or in an application required under section 804(g)(2)(F), or the failure to submit such a notice or application.

''(4) The importation of a drug in violation of a registration condition or other requirement under section 804, the falsification of any record required to be maintained, or provided to the Secretary, under such section, or the violation of any registration condition or other requirement under such section.''; and

(2) in section 303(a) (21 U.S.C. 333(a)), by striking paragraph (6) and inserting the following:

''(6) Notwithstanding subsection (a), any person that knowingly violates section 301(i)(2) or (3) or section 301(aa)(4) shall be imprisoned not more than 10 years, or fined in accordance with title 18, United States Code, or both.''.

(c) AMENDMENT OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by striking subsection (g) and inserting the following:

''(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that is not shipped by a registered exporter under section 804, and that is refused admission under subsection (a), the Secretary shall notify the individual that—

''(1) the drug has been refused admission because the drug was not a lawful import under section 804;

''(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

''(3) the individual may under section 804 lawfully import certain prescription drugs from exporters registered with the Secretary under section 804; and

''(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration or through a toll-free telephone number required under section 804.''.

(2) ESTABLISHMENT REGISTRATION.—Section 510(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) is amended in paragraph (1) by inserting after ''import into the United States'' the following: '', including a drug that is, or may be, imported or offered for import into the United States under section 804,''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 90 days after the date of enactment of this Act.

(d) EXHAUSTION.—

(1) IN GENERAL.—Section 271 of title 35, United States Code, is amended—

(A) by redesignating subsections (h) and (i) as (i) and (j), respectively; and

(B) by inserting after subsection (g) the following:

''(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 of the Federal Food, Drug, and Cosmetic Act that was first sold abroad by or under authority of the owner or licensee of such patent.''.

(2) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (1) shall be construed to affect the ability of a patent owner or licensee to enforce their patent, subject to such amendment.

(e) EFFECT OF SECTION 804.—

(1) IN GENERAL.—Section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall permit the importation of qualifying drugs (as defined in such section 804) into the United States without regard to the status of the issuance of implementing regulations—

(A) from exporters registered under such section 804 on the date that is 90 days after the date of enactment of this Act; and

(B) from permitted countries, as defined in such section 804, by importers registered under such section 804 on the date that is 1 year after the date of enactment of this Act.

(2) REVIEW OF REGISTRATION BY CERTAIN EXPORTERS.—

(A) REVIEW PRIORITY.—In the review of registrations submitted under subsection (b) of such section 804, registrations submitted by entities in Canada that are significant exporters of prescription drugs to individuals in the United States as of the date of enactment of this Act will have priority during the 90 day period that begins on such date of enactment.

(B) PERIOD FOR REVIEW.—During such 90-day period, the reference in subsection (b)(2)(A) of such section 804 to 90 days (relating to approval or disapproval of registrations) is, as applied to such entities, deemed to be 30 days.

(C) LIMITATION.—That an exporter in Canada exports, or has exported, prescription drugs to individuals in the United States on or before the date that is 90 days after the date of enactment of this Act shall not serve as a basis, in whole or in part, for disapproving a registration under such section 804 from the exporter.

(D) FIRST YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') may limit the number of registered exporters under such section 804 to not less than 50, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(E) SECOND YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 100, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(F) FURTHER LIMIT ON NUMBER OF EXPORTERS.—During any 1-year period beginning on a date that is 2 or more years after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 25 more than the number of such exporters during the previous 1-year period, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(3) LIMITS ON NUMBER OF IMPORTERS.—

(A) FIRST YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 100 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs imported into the United States.

(B) SECOND YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 2 years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 200 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs into the United States.

(C) FURTHER LIMIT ON NUMBER OF IMPORTERS.—During any 1-year period beginning on a date that is 3 or more years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 50 more (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups) than the number of such importers during the previous 1-year period, so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs to the United States.

(4) NOTICES FOR DRUGS FOR IMPORT FROM CANADA.—The notice with respect to a qualifying drug introduced for commercial distribution in Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 30 days after the date of enactment of this Act if—

(A) the U.S. label drug (as defined in such section 804) for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period most recently completed before the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(5) NOTICE FOR DRUGS FOR IMPORT FROM OTHER COUNTRIES.—The notice with respect to a qualifying drug introduced for commercial distribution in a permitted country other than Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 180 days after the date of enactment of this Act if—

(A) the U.S. label drug for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period that is first completed on the date that is 120 days after the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(6) NOTICE FOR OTHER DRUGS FOR IMPORT.—

(A) GUIDANCE ON SUBMISSION DATES.—The Secretary shall by guidance establish a series of submission dates for the notices under subsection (g)(2)(B)(i) of such section 804

with respect to qualifying drugs introduced for commercial distribution as of the date of enactment of this Act and that are not required to be submitted under paragraph (4) or (5).

(B) CONSISTENT AND EFFICIENT USE OF RESOURCES.—The Secretary shall establish the dates described under subparagraph (A) so that such notices described under subparagraph (A) are submitted and reviewed at a rate that allows consistent and efficient use of the resources and staff available to the Secretary for such reviews. The Secretary may condition the requirement to submit such a notice, and the review of such a notice, on the submission by a registered exporter or a registered importer to the Secretary of a notice that such exporter or importer intends to import such qualifying drug to the United States under such section 804.

(C) PRIORITY FOR DRUGS WITH HIGHER SALES.—The Secretary shall establish the dates described under subparagraph (A) so that the Secretary reviews the notices described under such subparagraph with respect to qualifying drugs with higher dollar volume of sales in the United States before the notices with respect to drugs with lower sales in the United States.

(7) NOTICES FOR DRUGS APPROVED AFTER EFFECTIVE DATE.—The notice required under subsection (g)(2)(B)(i) of such section 804 for a qualifying drug first introduced for commercial distribution in a permitted country (as defined in such section 804) after the date of enactment of this Act shall be submitted to and reviewed by the Secretary as provided under subsection (g)(2)(B) of such section 804, without regard to paragraph (4), (5), or (6).

(8) REPORT.—Beginning with the first full fiscal year after the date of enactment of this Act, not later than 90 days after the end of each fiscal year during which the Secretary reviews a notice referred to in paragraph (4), (5), or (6), the Secretary shall submit a report to Congress concerning the progress of the Food and Drug Administration in reviewing the notices referred to in paragraphs (4), (5), and (6).

(9) USER FEES.—

(A) EXPORTERS.—When establishing an aggregate total of fees to be collected from exporters under subsection (f)(2) of such section 804, the Secretary shall, under subsection (f)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered exporters during the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365.

(B) IMPORTERS.—When establishing an aggregate total of fees to be collected from importers under subsection (e)(2) of such section 804, the Secretary shall, under subsection (e)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered importers during—

(i) the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365; and

(ii) the second fiscal year in which this title is in effect to be $3,000,000,000.

(C) SECOND YEAR ADJUSTMENT.—

(i) REPORTS.—Not later than February 20 of the second fiscal year in which this title is in effect, registered importers shall report to the Secretary the total price and the total volume of drugs imported to the United States by the importer during the 4-month period from October 1 through January 31 of such fiscal year.

(ii) REESTIMATE.—Notwithstanding subsection (e)(3)(C)(ii) of such section 804 or subparagraph (B), the Secretary shall reestimate the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during the second fiscal year in which this title is in effect. Such reestimate shall be equal to—

(I) the total price of qualifying drugs imported by each importer as reported under clause (i); multiplied by

(II) 3.

(iii) ADJUSTMENT.—The Secretary shall adjust the fee due on April 1 of the second fiscal year in which this title is in effect, from each importer so that the aggregate total of fees collected under subsection (e)(2) for such fiscal year does not exceed the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during such fiscal year as reestimated under clause (ii).

(D) FAILURE TO PAY FEES.—Notwithstanding any other provision of this section, the Secretary may prohibit a registered importer or exporter that is required to pay user fees under subsection (e) or (f) of such section 804 and that fails to pay such fees within 30 days after the date on which it is due, from importing or offering for importation a qualifying drug under such section 804 until such fee is paid.

(E) ANNUAL REPORT.—

(i) FOOD AND DRUG ADMINISTRATION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e), (f), or (g)(2)(B)(iv) of such section 804, the Secretary shall prepare and submit to the House of Representatives and the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected for the fiscal year for which the report is made and credited to the Food and Drug Administration.

(ii) CUSTOMS AND BORDER PROTECTION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e) or (f) of such section 804, the Secretary of Homeland Security, in consultation with the Secretary of the Treasury, shall prepare and submit to the House of Representatives and the Senate a report on the use, by the Bureau of Customs and Border Protection, of the fees, if any, transferred by the Secretary to the Bureau of Customs and Border Protection for the fiscal year for which the report is made.

(10) SPECIAL RULE REGARDING IMPORTATION BY INDIVIDUALS.—

(A) IN GENERAL.—Notwithstanding any provision of this title (or an amendment made by this title), the Secretary shall expedite the designation of any additional permitted countries from which an individual may import a qualifying drug into the United States under such section 804 if any action implemented by the Government of Canada has the effect of limiting or prohibiting the importation of qualifying drugs into the United States from Canada.

(B) TIMING AND CRITERIA.—The Secretary shall designate such additional permitted countries under subparagraph (A)—

(i) not later than 6 months after the date of the action by the Government of Canada described under such subparagraph; and

(ii) using the criteria described under subsection (a)(4)(D)(i)(II) of such section 804.

(f) IMPLEMENTATION OF SECTION 804.—

(1) INTERIM RULE.—The Secretary may promulgate an interim rule for implementing section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) of this section.

(2) NO NOTICE OF PROPOSED RULEMAKING.—The interim rule described under paragraph (1) may be developed and promulgated by the Secretary without providing general notice of proposed rulemaking.

(3) FINAL RULE.—Not later than 1 year after the date on which the Secretary promulgates an interim rule under paragraph (1), the Secretary shall, in accordance with procedures under section 553 of title 5, United States Code, promulgate a final rule for implementing such section 804, which may incorporate by reference provisions of the interim rule provided for under paragraph (1), to the extent that such provisions are not modified.

(g) CONSUMER EDUCATION.—The Secretary shall carry out activities that educate consumers—

(1) with regard to the availability of qualifying drugs for import for personal use from an exporter registered with and approved by the Food and Drug Administration under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by this section, including information on how to verify whether an exporter is registered and approved by use of the Internet website of the Food and Drug Administration and the toll-free telephone number required by this title;

(2) that drugs that consumers attempt to import from an exporter that is not registered with and approved by the Food and Drug Administration can be seized by the United States Customs Service and destroyed, and that such drugs may be counterfeit, unapproved, unsafe, or ineffective;

(3) with regard to the suspension and termination of any registration of a registered importer or exporter under such section 804; and

(4) with regard to the availability at domestic retail pharmacies of qualifying drugs imported under such section 804 by domestic wholesalers and pharmacies registered with and approved by the Food and Drug Administration.

(h) EFFECT ON ADMINISTRATION PRACTICES.—Notwithstanding any provision of this title (and the amendments made by this title), the practices and policies of the Food and Drug Administration and Bureau of Customs and Border Protection, in effect on January 1, 2004, with respect to the importation of prescription drugs into the United States by an individual, on the person of such individual, for personal use, shall remain in effect.

(i) REPORT TO CONGRESS.—The Federal Trade Commission shall, on an annual basis, submit to Congress a report that describes any action taken during the period for which the report is being prepared to enforce the provisions of section 804(n) of the Federal Food, Drug, and Cosmetic Act (as added by this title), including any pending investigations or civil actions under such section.

SEC. 10005. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION INTO UNITED STATES.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 10004, is further amended by adding at the end the following section:

"SEC. 805. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION.

''(a) IN GENERAL.—The Secretary of Homeland Security shall deliver to the Secretary a shipment of drugs that is imported or offered for import into the United States if—

''(1) the shipment has a declared value of less than $10,000; and

''(2)(A) the shipping container for such drugs does not bear the markings required under section 804(d)(2); or

''(B) the Secretary has requested delivery of such shipment of drugs.

''(b) NO BOND OR EXPORT.—Section 801(b) does not authorize the delivery to the owner or consignee of drugs delivered to the Secretary under subsection (a) pursuant to the execution of a bond, and such drugs may not be exported.

''(c) DESTRUCTION OF VIOLATIVE SHIPMENT.—The Secretary shall destroy a shipment of drugs delivered by the Secretary of Homeland Security to the Secretary under subsection (a) if—

''(1) in the case of drugs that are imported or offered for import from a registered exporter under section 804, the drugs are in violation of any standard described in section 804(g)(5); or

''(2) in the case of drugs that are not imported or offered for import from a registered exporter under section 804, the drugs are in violation of a standard referred to in section 801(a) or 801(d)(1).

''(d) CERTAIN PROCEDURES.—

''(1) IN GENERAL.—The delivery and destruction of drugs under this section may be carried out without notice to the importer, owner, or consignee of the drugs except as required by section 801(g) or section 804(i)(2). The issuance of receipts for the drugs, and recordkeeping activities regarding the drugs, may be carried out on a summary basis.

''(2) OBJECTIVE OF PROCEDURES.—Procedures promulgated under paragraph (1) shall be designed toward the objective of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this section, a substantial majority of shipments of drugs subject to described in subsection (c) are identified and destroyed.

''(e) EVIDENCE EXCEPTION.—Drugs may not be destroyed under subsection (c) to the extent that the Attorney General of the United States determines that the drugs should be preserved as evidence or potential evidence with respect to an offense against the United States.

''(f) RULE OF CONSTRUCTION.—This section may not be construed as having any legal effect on applicable law with respect to a shipment of drugs that is imported or offered for import into the United States and has a declared value equal to or greater than $10,000.''.

(b) PROCEDURES.—Procedures for carrying out section 805 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall be established not later than 90 days after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 90 days after the date of enactment of this Act.

SEC. 10006. WHOLESALE DISTRIBUTION OF DRUGS; STATEMENTS REGARDING PRIOR SALE, PURCHASE, OR TRADE.

(a) STRIKING OF EXEMPTIONS; APPLICABILITY TO REGISTERED EXPORTERS.—Section 503(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(e)) is amended—

(1) in paragraph (1)—

(A) by striking ''and who is not the manufacturer or an authorized distributor of record of such drug'';

(B) by striking ''to an authorized distributor of record or''; and

(C) by striking subparagraph (B) and inserting the following:

''(B) The fact that a drug subject to subsection (b) is exported from the United States does not with respect to such drug exempt any person that is engaged in the business of the wholesale distribution of the drug from providing the statement described in subparagraph (A) to the person that receives the drug pursuant to the export of the drug.

''(C)(i) The Secretary shall by regulation establish requirements that supersede subparagraph (A) (referred to in this subparagraph as 'alternative requirements') to identify the chain of custody of a drug subject to subsection (b) from the manufacturer of the drug throughout the wholesale distribution of the drug to a pharmacist who intends to sell the drug at retail if the Secretary determines that the alternative requirements, which may include standardized anti-counterfeiting or track-and-trace technologies, will identify such chain of custody or the identity of the discrete package of the drug from which the drug is dispensed with equal or greater certainty to the requirements of subparagraph (A), and that the alternative requirements are economically and technically feasible.

''(ii) When the Secretary promulgates a final rule to establish such alternative requirements, the final rule in addition shall, with respect to the registration condition established in clause (i) of section 804(c)(3)(B), establish a condition equivalent to the alternative requirements, and such equivalent condition may be met in lieu of the registration condition established in such clause (i).'';

(2) in paragraph (2)(A), by adding at the end the following: ''The preceding sentence may not be construed as having any applicability with respect to a registered exporter under section 804.''; and

(3) in paragraph (3), by striking ''and subsection (d)—'' in the matter preceding subparagraph (A) and all that follows through ''the term 'wholesale distribution' means'' in subparagraph (B) and inserting the following: ''and subsection (d), the term 'wholesale distribution' means''.

(b) CONFORMING AMENDMENT.—Section 503(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(d)) is amended by adding at the end the following:

''(4) Each manufacturer of a drug subject to subsection (b) shall maintain at its corporate offices a current list of the authorized distributors of record of such drug.

''(5) For purposes of this subsection, the term 'authorized distributors of record' means those distributors with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on January 1, 2012.

(2) DRUGS IMPORTED BY REGISTERED IMPORTERS UNDER SECTION 804.—Notwithstanding paragraph (1), the amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on the date that is 90 days after the date of enactment of this Act with respect to qualifying drugs imported under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by section 10004.

(3) EFFECT WITH RESPECT TO REGISTERED EXPORTERS.—The amendment made by subsection (a)(2) shall take effect on the date that is 90 days after the date of enactment of this Act.

(4) ALTERNATIVE REQUIREMENTS.—The Secretary shall issue regulations to establish the alternative requirements, referred to in the amendment made by subsection (a)(1), that take effect not later than January 1, 2012.

(5) INTERMEDIATE REQUIREMENTS.—The Secretary shall by regulation require the use of standardized anti-counterfeiting or track-and-trace technologies on prescription drugs at the case and pallet level effective not later than 1 year after the date of enactment of this Act.

(6) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, the Secretary shall, not later than 18 months after the date of enactment of this Act, require that the packaging of any prescription drug incorporates—

(i) a standardized numerical identifier unique to each package of such drug, applied at the point of manufacturing and repackaging (in which case the numerical identifier shall be linked to the numerical identifier applied at the point of manufacturing); and

(ii)(I) overt optically variable counterfeit-resistant technologies that—

(aa) are visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

(bb) are similar to that used by the Bureau of Engraving and Printing to secure United States currency;

(cc) are manufactured and distributed in a highly secure, tightly controlled environment; and

(dd) incorporate additional layers of nonvisible convert security features up to and including forensic capability, as described in subparagraph (B); or

(II) technologies that have a function of security comparable to that described in subclause (I), as determined by the Secretary.

(B) STANDARDS FOR PACKAGING.—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to this paragraph, the manufacturers of such drugs shall incorporate the technologies described in subparagraph (A) into at least 1 additional element of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

SEC. 10007. INTERNET SALES OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503B the following:

''SEC. 503C. INTERNET SALES OF PRESCRIPTION DRUGS.

''(a) REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.—

''(1) IN GENERAL.—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

''(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

''(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

''(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

''(i) are not intended to be accessed by purchasers or prospective purchasers; or

''(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

''(2) REQUIREMENTS.—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

''(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

''(i) The name of such person.

''(ii) Each State in which the person is authorized by law to dispense prescription drugs.

''(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business

that does not mail or ship prescription drugs to purchasers.

''(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

''(v) If the person provides for medical consultations through the site for purposes of providing prescriptions, the name of each individual who provides such consultations; each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

''(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words 'licensing and contact information'.

''(b) INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

''(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

''(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

''(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

''(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

''(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

''(2) EXCEPTIONS.—Paragraph (1) does not apply to—

''(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

''(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

''(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

''(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

''(3) QUALIFYING MEDICAL RELATIONSHIP.—

''(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

''(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

''(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

''(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

''(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

''(4) RULES OF CONSTRUCTION.—

''(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (e)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

''(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

''(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

''(c) ACTIONS BY STATES.—

''(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

''(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

''(A) to intervene in such action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

''(5) ACTIONS BY OTHER STATE OFFICIALS.—

''(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

''(B) In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

''(d) EFFECT OF SECTION.—This section shall not apply to a person that is a registered exporter under section 804.

''(e) GENERAL DEFINITIONS.—For purposes of this section:

''(1) The term 'practitioner' means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

''(2) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(3) The term 'qualifying medical relationship', with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

''(f) INTERNET-RELATED DEFINITIONS.—

''(1) IN GENERAL.—For purposes of this section:

''(A) The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(B) The term 'link', with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

''(i) to move from viewing one portion of a page on such site to another portion of the page;

''(ii) to move from viewing one page on such site to another page on such site; or

''(iii) to move from viewing a page on one Internet site to a page on another Internet site.

''(C) The term 'page', with respect to the Internet, means a document or other file accessed at an Internet site.

''(D)(i) The terms 'site' and 'address', with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

''(ii) The term 'domain name' means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as '.com', '.edu', '.gov', '.net', or '.org'.

''(iii) The term 'Internet Protocol numbers' includes any successor protocol for determining a specific location on the Internet.

''(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

''(g) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person's selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.

''(h) NO EFFECT ON OTHER REQUIREMENTS; COORDINATION.—The requirements of this section are in addition to, and do not supersede, any requirements under the Controlled Substances Act or the Controlled Substances

Import and Export Act (or any regulation promulgated under either such Act) regarding Internet pharmacies and controlled substances. In promulgating regulations to carry out this section, the Secretary shall coordinate with the Attorney General to ensure that such regulations do not duplicate or conflict with the requirements described in the previous sentence, and that such regulations and requirements coordinate to the extent practicable.''.

(b) INCLUSION AS PROHIBITED ACT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

''(l) The dispensing or selling of a prescription drug in violation of section 503C.''.

(c) INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.—In carrying out section 503C of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF FEDERAL AND STATE LAWS ON DISPENSING OF DRUGS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of Federal or State laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there is authorized to be appropriated $100,000 for each of the first 3 fiscal years in which this section is in effect.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect 90 days after the date of enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

SEC. 10008. PROHIBITING PAYMENTS TO UNREGISTERED FOREIGN PHARMACIES.

(a) IN GENERAL.—Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end the following:

''(h) RESTRICTED TRANSACTIONS.—

''(1) IN GENERAL.—The introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system is prohibited.

''(2) PAYMENT SYSTEM.—

''(A) IN GENERAL.—The term 'payment system' means a system used by a person described in subparagraph (B) to effect a credit transaction, electronic fund transfer, or money transmitting service that may be used in connection with, or to facilitate, a restricted transaction, and includes—

''(i) a credit card system;

''(ii) an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service; and

''(iii) any other system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic fund transfers, or money transmitting services.

''(B) PERSONS DESCRIBED.—A person referred to in subparagraph (A) is—

''(i) a creditor;

''(ii) a credit card issuer;

''(iii) a financial institution;

''(iv) an operator of a terminal at which an electronic fund transfer may be initiated;

''(v) a money transmitting business; or

''(vi) a participant in an international, national, regional, or local network used to effect a credit transaction, electronic fund transfer, or money transmitting service.

''(3) RESTRICTED TRANSACTION.—The term 'restricted transaction' means a transaction or transmittal, on behalf of an individual who places an unlawful drug importation request to any person engaged in the operation of an unregistered foreign pharmacy, of—

''(A) credit, or the proceeds of credit, extended to or on behalf of the individual for the purpose of the unlawful drug importation request (including credit extended through the use of a credit card);

''(B) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the individual for the purpose of the unlawful drug importation request;

''(C) a check, draft, or similar instrument which is drawn by or on behalf of the individual for the purpose of the unlawful drug importation request and is drawn on or payable at or through any financial institution; or

''(D) the proceeds of any other form of financial transaction (identified by the Board by regulation) that involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the individual for the purpose of the unlawful drug importation request.

''(4) UNLAWFUL DRUG IMPORTATION REQUEST.—The term 'unlawful drug importation request' means the request, or transmittal of a request, made to an unregistered foreign pharmacy for a prescription drug by mail (including a private carrier), facsimile, phone, or electronic mail, or by a means that involves the use, in whole or in part, of the Internet.

''(5) UNREGISTERED FOREIGN PHARMACY.—The term 'unregistered foreign pharmacy' means a person in a country other than the United States that is not a registered exporter under section 804.

''(6) OTHER DEFINITIONS.—

''(A) CREDIT; CREDITOR; CREDIT CARD.—The terms 'credit', 'creditor', and 'credit card' have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(B) ACCESS DEVICE; ELECTRONIC FUND TRANSFER.—The terms 'access device' and 'electronic fund transfer'—

''(i) have the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a); and

''(ii) the term 'electronic fund transfer' also includes any fund transfer covered under Article 4A of the Uniform Commercial Code, as in effect in any State.

''(C) FINANCIAL INSTITUTION.—The term 'financial institution'—

''(i) has the meaning given the term in section 903 of the Electronic Transfer Fund Act (15 U.S.C. 1693a); and

''(ii) includes a financial institution (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)).

''(D) MONEY TRANSMITTING BUSINESS; MONEY TRANSMITTING SERVICE.—The terms 'money transmitting business' and 'money transmitting service' have the meaning given the terms in section 5330(d) of title 31, United States Code.

''(E) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(7) POLICIES AND PROCEDURES REQUIRED TO PREVENT RESTRICTED TRANSACTIONS.—

''(A) REGULATIONS.—The Board shall promulgate regulations requiring—

''(i) an operator of a credit card system;

''(ii) an operator of an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service;

''(iii) an operator of any other payment system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic transfers or money transmitting services where at least one party to the transaction or transfer is an individual; and

''(iv) any other person described in paragraph (2)(B) and specified by the Board in such regulations,

to establish policies and procedures that are reasonably designed to prevent the introduction of a restricted transaction into a payment system or the completion of a restricted transaction using a payment system

''(B) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In promulgating regulations under subparagraph (A), the Board shall—

''(i) identify types of policies and procedures, including nonexclusive examples, that shall be considered to be reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; and

''(ii) to the extent practicable, permit any payment system, or person described in paragraph (2)(B), as applicable, to choose among alternative means of preventing the introduction or completion of restricted transactions.

''(C) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTION.—

''(i) IN GENERAL.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, and any participant in such payment system that prevents or otherwise refuses to honor transactions in an effort to implement the policies and procedures required under this subsection or to otherwise comply with this subsection shall not be liable to any party for such action.

''(ii) COMPLIANCE.—A person described in paragraph (2)(B) meets the requirements of this subsection if the person relies on and complies with the policies and procedures of a payment system of which the person is a member or in which the person is a participant, and such policies and procedures of the payment system comply with the requirements of the regulations promulgated under subparagraph (A).

''(D) ENFORCEMENT.—

''(i) IN GENERAL.—This subsection, and the regulations promulgated under this subsection, shall be enforced exclusively by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)).

''(ii) FACTORS TO BE CONSIDERED.—In considering any enforcement action under this

subsection against a payment system or person described in paragraph (2)(B), the Federal functional regulators and the Federal Trade Commission shall consider the following factors:

''(I) The extent to which the payment system or person knowingly permits restricted transactions.

''(II) The history of the payment system or person in connection with permitting restricted transactions.

''(III) The extent to which the payment system or person has established and is maintaining policies and procedures in compliance with regulations prescribed under this subsection.

''(8) TRANSACTIONS PERMITTED.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, is authorized to engage in transactions with foreign pharmacies in connection with investigating violations or potential violations of any rule or requirement adopted by the payment system or person in connection with complying with paragraph (7). A payment system, or such a person, and its agents and employees shall not be found to be in violation of, or liable under, any Federal, State or other law by virtue of engaging in any such transaction.

''(9) RELATION TO STATE LAWS.—No requirement, prohibition, or liability may be imposed on a payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, under the laws of any state with respect to any payment transaction by an individual because the payment transaction involves a payment to a foreign pharmacy.

''(10) TIMING OF REQUIREMENTS.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, must adopt policies and procedures reasonably designed to comply with any regulations required under paragraph (7) within 60 days after such regulations are issued in final form.

''(11) COMPLIANCE.—A payment system, and any person described in paragraph (2)(B), shall not be deemed to be in violation of paragraph (1)—

''(A)(i) if an alleged violation of paragraph (1) occurs prior to the mandatory compliance date of the regulations issued under paragraph (7); and

''(ii) such entity has adopted or relied on policies and procedures that are reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; or

''(B)(i) if an alleged violation of paragraph (1) occurs after the mandatory compliance date of such regulations; and

''(ii) such entity is in compliance with such regulations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day that is 90 days after the date of enactment of this Act.

(c) IMPLEMENTATION.—The Board of Governors of the Federal Reserve System shall promulgate regulations as required by subsection (h)(7) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333), as added by subsection (a), not later than 90 days after the date of enactment of this Act.

SEC. 10009. IMPORTATION EXEMPTION UNDER CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.

Section 1006(a)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 956(a)(2)) is amended by striking ''not import the controlled substance into the United States in an amount that exceeds 50 dosage units of the controlled substance.'' and inserting ''import into the United States not more than 10 dosage units combined of all such controlled substances.''.

SEC. 10010. SEVERABILITY.

If any provision of this title, an amendment by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not affected thereby.

SEC. 10011. SENSE OF THE SENATE REGARDING REPORTING.

(a) IN GENERAL.—It is the sense of the Senate that, beginning 180 days after the date of enactment of this Act, and every 180 days thereafter, the Secretary of Health and Human Services should report to Congress on the status of the progress of the provisions of this title (and the amendments made by this title) to permit the importation from certain approved countries of safe and affordable prescription drugs approved by the Food and Drug Administration.

(b) CONTENTS.—Any report submitted under subsection (a) should include a description of the steps being taken by such Secretary to ensure that the implementation of this title (and the amendments made by this title) results in—

(1) the effective oversight of drugs, pharmacies, manufacturers, and registration of importers and exporters in accordance with this title (and such amendments);

(2) a safe prescription drug supply for American consumers; and

(3) cost savings to American consumers.

ORDERS FOR SUNDAY, DECEMBER 13, 2009

Mr. BEGICH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1:30 p.m., Sunday, December 13; 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 the conference report accompanying H.R. 3288, the consolidated appropriations bill, as provided for under the previous order; and that following any leader remarks, the time until 2 p.m. be equally divided and controlled between the two leaders or their designees.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

PROGRAM

Mr. BEGICH. Mr. President, at 2 p.m., the Senate will proceed to a rollcall vote on the adoption of the conference report to accompany H.R. 3288, the consolidated appropriations bill.

ORDER FOR ADJOURNMENT

Mr. BEGICH. Finally, Mr. President, I ask unanimous consent that following the remarks of Senator THUNE and Senator ENZI, the Senate adjourn under the previous order.

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

The Senator from South Dakota.

OMNIBUS APPROPRIATIONS AND HEALTH CARE REFORM

Mr. THUNE. Mr. President, I want to address the issue of health care reform, of course, which is the main reason Congress is here this weekend and was here last weekend, and in all likelihood will be here next weekend. But I also think it is important we put these things into an overall context and take a look at the bill we are voting on right now.

We are going to have a vote on final passage tomorrow. We had a cloture vote this morning on a spending bill, and the spending bill—which represents six, I think, appropriations bills that did not get done earlier this year—represents a package of spending that overall increases by 12 percent over last year.

That is an interesting number, given the fact that the Consumer Price Index—which is the sort of, if you will, conduit to which a lot of these decisions that are made around here is tied; in other words, the CPI is what we view to be inflation; and sometimes we say we mark up bills at inflation or inflation plus this or inflation plus that—where the CPI was, ending on October 1 of this year, about two-tenths of 1 percent but in the negative column.

So you have a CPI that is actually negative, an inflation index that is actually negative for most Americans. This, again, is representative of the totality of our economy and what things cost, and that is a lot of times how appropriations bills are measured.

So you have a CPI, Consumer Price Index, that is running in the negative, and yet you have appropriations bills—this one representing, again, as I said earlier, six appropriations bills, individual appropriations bills that did not get done earlier—packaged into one big spending bill that is a 12-percent increase over the previous year.

How can we go to the American people and justify year-over-year spending increases that are 12 percent, when they are having to balance their budgets and tighten their belts and live in an economy where some people are losing their jobs? But certainly everybody is trying, struggling to survive out there. That is true for small businesses. That is true for families. That is true for pretty much everybody, it seems, except the Congress.

Here in Washington, DC, we seem not to be listening to what is happening in America. We are marking up spending bills at 12 percent over last year's level, at a time when the CPI is actually running in the negative—when you have negative cost-of-living increase. Yet we are marking up appropriations bills that represent a 12-percent increase over last year's spending level?

Put that on top of a stimulus bill that passed earlier this year that, with interest, is a $1 trillion spending bill. So you have a $1 trillion spending bill with interest passed earlier this year, much of which went to the very same

Federal agencies that are going to benefit from this 12-percent increase over last year in annual appropriations. So you have a $1 trillion stimulus bill, you look at appropriations bills—again, this being representative of most of the bills this year—that year-over-year increase at 12 percent, at a time when most Americans are having to tighten their belts.

We hear that. We also hear that TARP is now going to be used as a slush fund, so to speak, to pay for all kinds of other government spending. In other words, they have decided—at least, I think the administration has—to use the TARP fund as sort of a ''pay for'' for lots of things they want to do.

Most of us know that the TARP fund was created specifically to stabilize our financial markets, to prevent what we thought at the time was going to be an imminent financial collapse. That purpose has been served. I have a bill that would end TARP at the end of this year on December 31. If it is not allowed to expire at the end of this year, when it is set to expire—if it is not allowed to expire, if it is extended and it goes well into next year—it can be used, as I said, for all these other things that politicians have designs on doing.

So my legislation would end it at December 31 of this year, as was intended, and make sure any funds that are paid back in from loans that have been made or assets that have been acquired actually go back to the Treasury to pay down the Federal debt. Because that is what, in fact, TARP was intended to do. Once the job was accomplished, it was not to become a ''grab bag'' and ''found money'' for Congress to use for all these other things.

You have the TARP fund now morphing and evolving into this sort of political slush fund to be used for all these other spending priorities. You have the stimulus, this $1 trillion stimulus bill, out there. You have this appropriations bill with a 12-percent year-over-year increase over last year's level. On top of all that, we pile on a $2.5 trillion expansion of the Federal Government in Washington to pay for a new entitlement program with the health care reform bill that has been, is being debated in the Senate in the last week and in the week to come.

So at some point you have to say—and I think the American people look at us and say—enough already. I think that is what they are saying. I think the reason we are seeing these public opinion polls that are turning a thumbs-down on this massive expansion of the Federal Government here in Washington to fund health care is because the American public is becoming increasingly uncomfortable with the idea that the Federal Government continues to run the credit card up.

The stimulus money was all borrowed money. The TARP money is borrowed money. The appropriations bills, for the most part, this year are—or for a large part, at least—borrowed money. Mr. President, 43 cents out of every dollar the Congress spent in the last year—the fiscal year ending September 30—was borrowed money.

We continue to borrow and borrow and pass on the debt to future generations. We cannot continue to do that and expect to have a future that enjoys the same level of prosperity and the same level of economic growth and vitality we have experienced in the past. You cannot continue to pile up these massive amounts of debt. The Federal debt is going to double in 5 years, it is going to triple in 10, if we continue on the current path. Right now, I do not see anything that is going to put any brakes on this.

The capacity and the appetite and the willingness and the inclination of Washington, DC, and politicians here to continue to spend and spend seems to be unlimited. At some point, we have to put the brakes on. We have people who have a foot on the pedal. The Democratic majority in the House of Representatives, the Democratic majority here in the Senate, the White House, all have their feet on the accelerator. Somebody has to put on the brake. That is what we are trying to do.

That is why I think it is important we end TARP before it gets misused and spent for all these other things and why it is important we rein in these appropriations bills. We are doing everything we can to stop this appropriations bill from being passed at a 12-percent increase over last year's level. And we are doing everything we can, I would say, to stop this massive expansion—$2.5 trillion expansion—of the Federal Government to fund the new health care entitlement, at a time when we have all these other debt problems and deficits, as far as the eye can see.

So I wanted to, in shifting gears, paint that as sort of the context against which this whole health care debate is occurring. But I want to shift, if I could, to some of the more recent developments with regard to the debate over health care.

I think there are a couple things that, to me, are game changers in terms of the debate. One of those, of course, is the study that came out yesterday from the CMS, or the Centers for Medicare & Medicaid Services, the Actuary who points out the health care reform bill that is currently before the Senate will not drive health care costs down but will, in fact, increase health care costs by $234 billion, and that today, about one-sixth of every dollar we spend is on health care; that 10 years from now, in 2019, that will be almost 21 percent—that is what the CMS Actuary said—that the total amount we spend on health care in this country—which today is about 17 percent—10 years from now will be almost 21 percent. So the amount spent on health care as a percentage of our gross domestic product goes dramatically up, not down. And $234 billion is what the CMS Actuary said health care costs would go up by in the next 10 years.

Of course, we had previously the CBO essentially saying the same thing. The Congressional Budget Office—for those who live outside of Washington, DC—is sort of the nonpartisan estimator, if you will, of what a lot of these Federal programs are going to cost.

The Congressional Budget Office said that under the bill put forward by the Senate majority here, the Democratic leadership in the Senate, you would actually increase health care spending by $160 billion over the next 10 years, again bending the health care cost curve up, not down. So now you have the experts—the Congressional Budget Office, the Centers for Medicare & Medicaid Services Actuary—all saying health care costs are going to go up, not down, and significantly up.

You have the small business organizations out there saying—the National Federation of Independent Business, the Chamber of Commerce, the National Association of Wholesalers and Distributors, and I might add there is another group that has been formed called the Small Business Coalition for Affordable Healthcare, which represents 50 different business organizations—this health care reform bill will increase the cost of doing business in this country and will drive up health care costs. So they have come out in opposition to it, as have all the other business organizations I mentioned, for the same reason. They realize health care reform ought to be about getting their costs down and improving their ability to create jobs. By the way, three-quarters of the jobs created in our economy are created by small business.

So what are we going to do to small businesses? Pile on a bunch of new taxes to pay for this expansion, this $2.5 trillion expansion of the Federal Government in the form of this new health care entitlement. All for what? So they can see their health care costs continue to go up. You pile on the new taxes, you cut Medicare to all the providers out there. And I want to draw them into this too because not only have the small businesses said this is going to drive health care costs up—and they have come out opposed to it—not only has the Congressional Budget Office said that, not only the Centers for Medicare & Medicaid Services Actuary said that, you have academics saying that, but now you also have the providers saying that.

Hospitals and physicians groups are coming out and saying this latest proposal by the Democratic majority to expand Medicare will put hospitals out of business. Because hospitals get underreimbursed by Medicare, and so do physicians. So what do they do? They shift costs over to the private payers, which is everybody else in this country, and everybody else sees their premiums go up. It shrinks the number of private payers, expands the number of government payers, and for these

hospitals in places such as South Dakota—I see my colleague from Wyoming on the floor—that are very dependent on Medicare, they are going to see less and less reimbursement coming into their facilities, which does not cover their costs, and very soon you will have a lot of hospitals, particularly in rural areas, going out of business. That has been stated. The chairman of the Senate Budget Committee, Senator CONRAD from North Dakota, came out and said that basically this latest proposal would bankrupt a lot of hospitals in his State. I think that is true for a lot of States and particularly in rural States such as mine and the Senator from Wyoming.

We have small businesses saying: We can't sustain these increases. We think this is a really bad deal. We have the experts, the analysts, the Congressional Budget Office, and the Center for Medicare and Medicaid Services saying this increases costs for health care in this country. And now we have the American people weighing in and saying: We think this is a bad deal. We think it is going to increase our health care costs. The CNN poll that came out 2 days ago said 61 percent of Americans oppose the health care reform bill that is pending right now in the Senate. Other polls show similar results. So we have a very sizable majority of the American people who have now weighed in saying this is a bad deal because it cuts Medicare, it raises taxes, and at the end of the day, it raises premiums.

So who is for this? Who thinks this is a good thing? Well, apparently a number of Democrats here in the Senate, but that is an increasingly shrinking universe of people.

The American people have said it is a bad deal. The experts say it is a bad deal. Small businesses say it is a bad deal. Providers say it is a bad deal. What is left?

Well, I am hoping there are a couple of courageous Democrats who are going to step forward, agree with the American people, and say: We are listening to the American people. We are listening to the experts. We are listening to small businesses that create two-thirds or three-quarters of the jobs in our economy. And we agree we are going to stop this train wreck from happening, sit down, start over, do this right, work with Republicans, and write a bill that actually does constrain costs, that drives the cost curve down and provides access for more Americans. I hope there are a few Democrats out there who will do that because I think on our side we have all concluded, based on what we hear from the American people, what we hear from the experts, what we hear from the business community, what we hear from the provider community, the hospitals and the physicians, that this is a really bad deal. At the end of the day, after all of this new spending, after all the new taxes, after all the Medicare cuts, what are we left with?

What everybody says they want out of health care reform is lower costs. Our colleagues on the other side come down here repeatedly and say we have to do something about the cost of health care. People in this country are struggling with health care costs, absolutely. We could not agree more. What they will do with this bill if it passes is make matters worse, not better, by increasing costs for most Americans.

I wish to show my colleagues exactly what I mean. If you are a family of four—and this is, again, according to the Congressional Budget Office, which looked at this and analyzed these bills and said: If you are in the small group market or large group market, you are going to see year-over-year increases in health care costs, which is somewhere between 5 and 6 percent, which is what we are seeing today—and by the way, that is twice the rate of inflation historically—but a 5- to 6-percent increase in health care premiums. If you are in the individual marketplace, you are going to see your premiums go up anywhere from 10 to 13 percent beyond that. So if you are in the individual market, it gets much worse. But if you are in the small group or large group market, here is what it says: If you are in a family of four today and you are receiving your insurance through your employer and they are getting their insurance through a large group market, you are paying about $13,000 a year. In 2016, 7 years from now, you are going to be paying over $20,000 a year for health insurance coverage.

So your health insurance coverage is going to go up under this bill, not down, according to the Congressional Budget Office. It is going to go up at a rate that is double the rate of inflation. Again, this is for people who get their insurance in the large and small group markets. The yellow line represents the large group market, the red line represents the small group markets, but the result is the same. It is an upward trajectory. It is a spike up in the cost of health insurance for people who get their coverage for health insurance in one of those two markets. Again, as I said before, if you are in the individual marketplace, you could spike this thing like this because their costs are going to be 10 to 13 percent above and beyond what you are seeing here in the large group market. That is according to the Congressional Budget Office.

So 90 percent of Americans, according to the Congressional Budget Office, are going to see their health insurance premiums stay the same, and by ''stay the same,'' I mean go up by twice the rate of inflation—in other words, locking in the status quo—or worse yet, if you are in the individual marketplace, it will be going up 10 to 13 percent.

So all of this talk about lowering the cost of health care and not settling for the status quo may sound good, it is great rhetoric, but it is absolutely factually inaccurate.

So our colleagues who come down here day after day talking about how this health care reform bill is going to drive down the cost of health care are not listening. They are not listening to the American people. They are not listening to the experts. They are not listening to the small business community. They are not listening to the provider community.

I have to say that even the academic community has weighed in on this particular issue as well.

I wish to read for my colleagues something that was said recently by the dean of the Harvard Medical School:

> Speeches and news reports could lead you to believe the proposed congressional legislation would tackle the problems of cost, access, and quality, but that's not true. The overall effort will fail to qualify as reform. I find near unanimity of opinion that whatever its shape, the final legislation that will emerge from Congress will markedly accelerate national health care spending rather than restrain it. This will make an eventual solution even more difficult.

That from the dean of the Harvard Medical School.

So I hope that before this debate concludes—the push is to get it done by the end of the year. I am not sure why. It seems to me, at least, that this is not something we want to hurry. We are talking about reordering or restructuring one-sixth of the American economy. As I said, today it represents 17 percent of our GDP. We spend about $2.5 trillion a year on health care. We ought to get this right. There is an intent on the other side to jam this through sometime next week. Well, I hope we can put the brakes on this. I hope there are a couple of courageous Democrats—at least one but two would be better, maybe even more—who will step forward and say: We are going to listen to the American people. We are going to listen to the providers out there, the hospitals and physicians. We are going to listen to the experts. We are going to listen to the small business community that creates the jobs. And we are not going to blindly follow the leader and take this country over the cliff when it comes to health care delivery and when it comes to our economy.

There is one final point I will make about that because I thought this was a remarkable finding by the CMS in their study. They essentially said that the savings that are proposed in Medicare—the new Federal spending that relies on Medicare cuts which are unlikely to be sustainable on a permanent basis—we all, over here, agree with that. The appetite for the Congress, the willingness for the Congress to cut reimbursements to hospitals and to nursing homes and to home health agencies and to hospices, I find very suspect.

So at the end of the day, if you cannot sustain those—and let's say, for example, for a minute that you can. Let's say these Medicare cuts take effect. If they take effect, and if the Democrats have their way and they expand Medicare, we are going to put more and

more people onto a sinking ship because we have a program that is going to be bankrupt in 2017, we are told by the actuaries. We are going to cut $1 trillion out of it over the next 10 years when it is fully implemented, and we are going to put more people onto it. So if those cuts occur, we are going to have more and more hospitals going out of business because they flat aren't going to be able to make ends meet. That is the other thing, by the way, the CMS Actuary found in their study.

But they said they don't believe we can sustain these Medicare cuts on a permanent basis. Meaning what? Meaning that the cost of this program, $2.5 trillion over 10 years, is going to fall on the backs of future generations because it will be borrowed. It will be added to the debt, which is growing at $1 trillion a year, as I said earlier.

We are going to have a vote, if you can believe that, here in the very near future to actually raise the debt ceiling by $2 trillion over and above what it is today, which is $12 trillion. This debt situation is probably the most serious crisis and challenge facing this country going forward. It just seems as though there is an endless, limitless appetite for spending and borrowing around here, and at some point the chicken is going to come home to roost and the bills will have to be paid. You can't continue to sustain this level of borrowing.

These Medicare cuts are unsustainable, which is what the CMS Actuary says. That means a lot of the cost of this new program is going to be financed partly by tax increases, which, as I said, are harmful to small businesses, but secondly by more and more borrowing and more and more debt. More and more future generations, younger Americans, will be faced with a massive inheritance of Federal debt because we weren't willing to make the hard choices to be able to live within our means.

So I hope when it is all said and done, there will be some people who will step forward, have the courage not to blindly follow the leader but to say with the American people, with the experts, with the small business community, with the provider community, with even some of the academic community, that this does nothing to constrain or lower health care costs. The emperor has no clothes. If they do that, we can sit down together.

We are not here for a minute to suggest we shouldn't have health care reform. All we are here to suggest is that it ought to be done the right way, it ought to be done on a bipartisan basis, and it ought to be done in a way that actually bends the cost curve down rather than raises it and that does not cost us $2.5 trillion of cuts to Medicare, which is going to impact a lot of seniors, increase taxes, which is going to crush small businesses, or debt, which is going to punish future generations.

That is what this debate is about. It is a consequential debate for America's future. The stakes are very high. I hope the American people will be engaged in it, and I hope we will be able to find some bipartisan support for defeating this really bad idea and moving to something that actually will make a difference, that will restrain costs, and that will provide health insurance reform that is meaningful reform and that doesn't bankrupt us, doesn't bankrupt hospitals, doesn't bankrupt future generations, doesn't cost us jobs by putting new taxes on small businesses, and actually bends the cost curve down.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from South Dakota for his enthusiasm and passion and ability to explain things. The passion we have seen throughout the day from the Republicans who have spoken is a reflection of the passion we are hearing in our telephone calls and in our e-mails and in our letters. Our volume is much higher than the 61 percent the CNN poll says. Of course, we wouldn't expect the CNN poll to necessarily reflect our constituents. That enthusiasm across America, that passion, that concern should be reflected in this Chamber.

I get a lot of mail and even phone calls from other States, and they say: How come my Senator isn't listening to me? How come he is not listening to all of my friends? Thank you for what you are doing on health care.

What we are doing on health care, of course, is asking that it be done step by step so that we can get the confidence of the American people, not do something grandiose that can't be well thought out because it is so big.

I spent time as the ranking member of the Health, Education, Labor, and Pensions Committee in an extensive markup on a bill that we had no input in writing. The other side says we had input into the amendments, and we did do some amendments and some were accepted. There were even some that were fairly significant that were accepted.

Of course, what was disappointing was that after the August recess—they didn't print it before the August recess because they didn't want people to know what was actually in it at that time. But following the August recess, when they finally printed it, we found out that provisions we had put in by agreement had been ripped out. Never have I had that happen in my 12 years in the U.S. Senate.

Then I was part of the Gang of 6—the Group of 6, my mother would prefer to call it because she told me never to join a gang. But over a period of at least 60 days, we spent a lot of time and effort from morning until night trying to get a health care bill that would work for America.

One of the things we discovered is that it is very extensive. Nobody can comprehend how big health care is in America. We talked about it being 16 percent of the whole economy. Well, does that register with you? We talk about the trillions that are involved. I don't understand trillions. We spend billions around here, but trillions is a whole other level. I don't even think the kids who work on billions understand trillions. When we say 1 trillion, a lot of people say: Well, that is just 1. Well, it is a thousand billion, and a billion is a thousand million. So it is a lot of money.

But when we were doing this in this Gang of 6, what we did was kind of divide the issues up into 13 different parts—you might call them steps.

We started working through those. Sometimes we would have to leave one because we had basic questions we needed to ask about those sections so we would have a big enough understanding to be able to draft legislation for it. Basic questions. Basic questions. We only made it through slightly more than half the 13 areas before we were faced with a phony deadline. They said September 15 is the drop-dead date for this group to finish work. If you don't have it done by then, we will put something together anyway.

If you are still getting basic questions answered, don't you think you ought to work on it a little longer and have a few more people in? One of the groups we had in were the Governors. We were going to have a vast expansion of Medicaid—not quite as vast as is in here, and what is in this new bill that we have not yet seen, even though we are quite a ways into this, but a vast expansion of Medicaid. Medicaid works through the States and the States have to pick up part of the costs—actually, they pick up a lot of the costs. As we have expanded Medicaid and expanded the rolls on Medicaid, we have put a greater burden not only on the Federal Government, though it is on the Federal Government, too, but also on the State governments. The State governments don't get to vote on it at all.

The Senator from Tennessee, Mr. ALEXANDER, who used to be a college president and was also a Secretary of Education, pointed out a number of times that when Governors are faced with this budget crunch on Medicaid, what do they do? Virtually the only place they can cut is universities and colleges. That is why there has been this dramatic increase in college tuition—because of what Medicaid has done to the States.

Now we are talking about another drastic increase in the number of people in Medicaid. We thought it would be a good idea if we got the Governors on the phone—we hoped the Governors task force on Medicaid would meet with us, and I think they might have, but we were trying to rush it into a short period of time, so we did conference calls. They wanted to know how it was going to affect their States. We knew how many billions it was going to cost as a whole for those States, but we didn't have a breakdown individually. CBO and the Joint Tax

Commission don't do breakdowns by States. But we had some people on staff—Democratic staff—who thought they could break that down, and they did. They presented us with these numbers, and I called my Governor and said: I know this is going to be a problem, and I will see what I can do about it, but it is a lot of money. Of course, if I am talking about how much it was for Wyoming, it would not sound nearly as much as for New York, but it is the same kind of percentages, we just have less population.

Another surprising thing that happened to us was it looked like Nevada and New York would be hit real hard. The next day we got numbers and—we had the same CBO and Joint Tax score. That didn't change a bit. There was one set of numbers. But the evaluation, the next day, looked a lot better for Nevada and New York. It didn't bring it down enough, so there was a special provision that has been put in the bill—it was not done in the Gang of 6—that made it much nicer for Nevada and New York. We said: Wait a minute, why are you doing that for Nevada and New York? Some of the influential people around here from Nevada and New York said this economy is in a real downturn, and we are being hit harder than anybody else. I said: Well, that is a nice gesture, but this part of the bill isn't going into effect for 4 years. How do we know that in 4 years Nevada and New York are the ones that are going to be hard hit? We ought to have provisions for whoever is hard hit.

Those are the kinds of things we were trying to take care of in committee with inadequate numbers. As we worked through—well, the President wanted to do a speech to the Nation, a joint session speech. They do those over on the House side, and the House and Senate show up for it. It was on health care. Following that health care speech, the next morning we went to the Gang of 6 meeting. I kept notes on what the President said. I had about 12 areas we had tried to draft legislation on that he had pretty specific suggestions on. I had to say: This is something we didn't do. We didn't do this yet. We talked about that for a whole day. Immigration was one of the big ones. Medical malpractice was another. That has been a huge concern to the medical community.

I have several things I need to say on this health care bill. I know we are talking in the 30 hours following the appropriations bill. I have things to say about the appropriations bill too. I usually don't talk for very long down here, but I have some of that pent-up passion from all the calls and things I have gotten. So I will talk about both spending and health care.

I will start with the spending because we just voted for a bill that costs $446.8 billion, and Senators didn't have any opportunity to debate the critical issues within that bill. Of the six bills, three—Financial Services, Labor-HHS, and State and Foreign Ops—were airdropped into conference with no opportunity for debate on this floor. So we had no opportunity for consideration. The Transportation bill, the HUD bill, received a 23-percent increase over last year. The State and Foreign Ops bill received a 33-percent increase over last year. Collectively, the six appropriations bills account for a 12-percent increase in Federal spending over last year.

Our national deficit for the past fiscal year stands at $1.4 trillion. I don't see that going down at all. Our current unemployment level is at 10 percent, despite the administration's insistence earlier in the year that Congress pass a $1 trillion-plus stimulus package. The Senate is currently in the middle of a debate on a health care reform bill that has a 10-year implementation cost of $2.5 trillion. Sometime in the next month, we will be forced to raise the Nation's debt ceiling for the second time this year to a level that exceeds the current ceiling of $12.1 trillion.

The bill makes a number of significant policy changes with respect to the fairness doctrine. This omnibus does not include the fiscal year 2008 ban on Federal funds being used to enforce or implement the so-called fairness doctrine. The bill makes changes to several longstanding policy provisions contained in the Financial Services bill and specifically the District of Columbia section dealing with abortion, medical marijuana, needle exchanges, domestic partners, and the DC Opportunity Scholarships.

The bill also contains 5,224 earmarks that total $3.8 billion.

Well, let me go into the definition of an earmark. According to the champion of it for many years, Senator MCCAIN, it is not an earmark if you take a specific project to the committee of jurisdiction, where they can debate it and decide whether it is a valid project and how it might fit in with other formulas and things they are already working on. If the committee that actually works that issue approves it, it is not an earmark. But, of course, it has to be put in, in the authorization process, not dropped in by airmail when the conference committee is meeting at the end of the bill. It is considered an earmark when it is just sent to conference, nobody got to debate it and vote on it, and it was shoved into the bill. There are ways special projects can be done and approved by several votes. Normally, it would be the committee of authorization and then the Appropriations Committee and then the floor of the Senate; and that same process would have already been done on the House side because they start all funding bills. So that is probably six or seven votes on an item before it can actually get passed, if it goes through the regular procedure.

Of course, it is easier to have somebody to champion it and quietly slip it in without any votes, except a final vote. The final vote is what we are doing right now. It is on the whole package. You cannot pick out a section or an earmark and have a vote on that. Besides that, with 5,224 earmarks, that would take a long time. But it totals $3.8 billion. That is still a lot of money. It has been denigrated since we went into the trillion-dollar category, but $3.8 billion is still a lot of money.

How is this playing out around the country? I found a blog I hadn't seen before. It kind of speaks to what we are doing in appropriations right now. This is uglytruthstudios.com. It begins:

> Don't tell me where your priorities are. Show me where you spend your money and I will tell you what they are.

That is James W. Frick, who is not the author of this. The author then goes on to say:

> I was mad when I decided to start this blog and podcast. I was mad about the current state of our congressional spending. I know, I know, a lot of folks are upset about the government and what they spend. My anger starts with the simple fact that they cannot complete the spending process. They haven't been able to complete the process, not even one time, since 1999.

You can see that this is directed against both sides of the aisle.

> Folks, you are right to be mad about the out of control spending of the Federal Government, but we all must start with a hard look at how the money is being spent before we can take an honest look at what it's being spent on.
>
> Take for instance the topic of Healthcare. You will be hard pressed to find a single soul in this country that doesn't think the system needs to be re-evaluated.
>
> For the last eight plus months we have heard on the morning news, the Sunday talk shows, from congressional leaders, the President of the United States, and even concerned citizens about the impending healthcare crisis.
>
> Primetime television has been interrupted for Presidential addresses. The President addressed a joint session of Congress, he held town meetings, he held focus group meetings, he met with members of industry.
>
> Congress itself has begged and pleaded for people to not get too excited about their plans, to work with them on putting reform in place. This was a crisis. A crisis that needed to be addressed immediately, the citizens of the United States of America needed to get behind the effort they were putting forth.
>
> The media was dominated with the urgency to get something done. Television showed outraged Americans at town hall meetings. Congress exchanged ideas and both sides pointed the finger at the other side trying to show that their side was most in tune with what our country needed. They were on top of this situation.
>
> Well they have ''sort of'' been tending to the business of our nation's healthcare. The ugly truth though is this: in their rush to be in the media on the Healthcare crisis, Congress has not yet completed the Labor, HHS and Education Appropriation for the 2010 Federal Fiscal year. The House completed their version of the bill on July 27. The Senate has not yet passed a version of the bill.
>
> The Senate in all their talk about getting Healthcare done has yet to even take the bill up on the floor for a vote.

Well, that part isn't true anymore. It has been finally taken up. It was supposed to be October 1, but we are tardy in that.

Now, mind you, tomorrow night you will probably have your football game, family dinner or general quiet evening interrupted by the Senate working through the weekend.

That is where we are now.

A vote of monumental importance during prime time television, but not on the job that they should have been doing; no, no, this is a vote on what they want to do.

For simple reference sake this is the equivalent of taking out a trillion plus dollar loan, making commitments associated to the loan, and never spending a second asking yourself the following questions: Is this in the budget? Can we afford it? Hell have we even thought about what we are willing to spend on it? Have we decided yet what we are spending on healthcare this year?

Healthcare was not a big enough problem this year for the United States Senate to complete the normal course of business by appropriating the spending for Fiscal Year 2010. However, it apparently is a big enough to deal to forward spend a conservative average of over $85 billion a year. It is not a big enough deal to spend the $160 Plus Billion this year that includes Labor and Education as well.

The House of Representatives despite passing their appropriation in July has not accounted for the spending in their passage of a conservatively estimated $1.2 trillion Healthcare Plan. I am sure they would argue that they have, their actual spending doesn't start for a few years. I would argue that you had better start thinking about doubling spending in 5 years now.

That is a slap in the face to hard working Americans. In my book we all have roles to play. If you got elected to Congress or in this specific case, the Senate, you were placed in a position of public trusteeship. You were elected to spend the people's money and make sure we are a solvent nation. I bet that they just got so caught up in solving the problem that they forgot to handle the process of budgeting and spending. But wait, they continue to spend, and they make forward commitments with our money that never come in on budget.

You will find that I am not a big call to action guy. I am actually kicking myself for not stopping my normal job and getting started railing on this problem before now. I have watched in great horror over the last 10 years as both parties have ignored the process of spending, and funded our government with our tax dollars through one size fits all process. A one size fits all process that generally is traded on our hard earned tax dollars, votes exchanged for passage.

It is time for the nonsense to stop. Keep watching them. I have heard and firmly believe that you can track someone's intentions by how they plan and spend their money. No matter what the claimed intentions may be, people normally put their money where their mouth is. Congress is putting our money where their mouth is. If Healthcare isn't important enough to finish the appropriations process on, then don't take the time to spend more money on it.

Remember—It's all about the money stupid.

Mr. President, we are finally getting to the spending. We have been spending all year, but we are finally getting to some of these pieces. It still leaves the defense piece undone. We are continuing last year's appropriations up to the current time.

I have some things I have gleaned from different places. I particularly thank the Wall Street Journal for their articles and editorials that inform America. I think if I were picking one source of information, that is the one I would pick. I read the Washington Post, the Washington Times, the Wall Street Journal, and I get clips from every newspaper in Wyoming. I get a couple of those newspapers complete. I read a lot of news, but from a national perspective and one that is actually paying attention to what we are doing here, my favorite is the Wall Street Journal.

Earlier in the week, I quoted from a cost article I had found in the Wall Street Journal. I was chastised for using them as a source and then was countered by a Senator using Wikipedia. You can go into Wikipedia and do your own editing. I am not sure if that is a good source. I would prefer to rely on the Wall Street Journal.

There is not any article or opinion that cannot be quibbled with, and that is just like the amendments we have here. What I prefer to think is when an amendment or an article or a speech is given, we ought to be looking for the idea, the grain of truth, the juice of it that should be used, and we are not doing that right now. We are just doing amendments there and amendments here. We are defeating the amendments here. And it kind of bothers me that we have all these amendments from this side because, first of all, our amendments were voted down, all except two, when we went through the Health, Education, Labor, and Pensions Committee process to get the bill out of committee and when we went to the Finance Committee, the same thing happened. I think we had two amendments that were taken as well over a whole week of amendments. The two bills were taken to a closed door back here and were massaged into a new bill. Some pieces of those two bills can be found there, but not all of it and not in the same form. We had no input to that at all. No input at all. Now it is on the Senate floor, and we have the chance to do amendments.

I contend the Democrats are filibustering their own bill because every time we put up an amendment, they put up an amendment. If you wrote the bill, that bill ought to be good enough that you do not have to keep countering your own bill. We did not get to write the bill so we ought to be able to make at least some points about what ought to be changed by using our amendments.

Last week—one of the most fascinating things around here that I have seen—there was a Democratic amendment and then a Democratic side-by-side to it. Normally we get to present the side-by-sides. They are arguing within themselves. It is on a very important issue.

Getting back to the spending, I will mention that since taking office, Mr. Obama pushed through a $787 billion stimulus bill. Hardly any of that money has actually gone out. I would guess about 25 percent of it is all because there is health IT in there. It is $47 billion, and that is not going to go out for 4 years. I don't know how you put something in a stimulus bill where you are trying to get something done immediately and not release the money for 4 years. Granted, there is some work that needs to be done in that 4 years in order to make that money worth anything at all. It just fascinates me.

We had a $787 billion stimulus bill that was not anticipated to go into effect right away; $33 billion expansion of SCHIP; a $410 billion Omnibus appropriations spending bill; and an $80 billion car company bailout. The President also pushed an $821 billion cap-and-trade bill through the House and is now urging Congress to pass a nearly $1 trillion health care bill.

The administration says it is now instructing agencies to either freeze spending or propose 5-percent cuts in their budget for next year. This will not add up to much unless agencies use the budget they had before the stimulus inflated their spending on their baseline in calculating their cuts. That is why we are talking about this bill right now, the minibus or omnibus that is pretty ominous, with all the spending in it, with every one of those bills having a huge increase over a year ago. That will get built into the baseline so next year there can be another huge increase. They compound dramatically.

If the Education Department uses its current stimulus-inflated budget of $141 billion instead of the $60 billion budget it had before the President moved into the White House, freezing its budget will do nothing to fix the fiscal mess that has been created. As I mentioned, there is this little thing of second-degreeing their own amendment.

The Democrats are having a little problem deciding on their message. On the one hand, the President said just this week that we have to ''spend our way out of this recession. On the other they keep telling us the deficit is too large and isn't 'sustainable.' In this tug of political spin, watch what they spend, not what they say. And that means watching this weekend's expected Senate vote,'' which we have had, ''on the 1,088-page $445 billion''—ominous—'' 'omnibus' package of spending bills to fund the government for fiscal 2010. The House passed a similar elephant earlier this week''—I don't know why they are referring to it that way; it is similar to a donkey—''allowing spending federal agency budgets to increase spending by some $48 billion, or about 12 percent from 2009. That increase—when inflation is negligible—is in addition to the $311 billion in stimulus already authorized or out the door for these programs. Adding this new stash means that federal agencies will have received nearly a 70 percent increase in the last 2 years.''

Has anybody gotten that kind of increase? ''Oh, and that's not all. The President and Congress also want to spend as much as $200 billion more

from the Troubled Asset Relief Program''—which is another stimulus, but it was done as a series of loans, so we are supposed to get the money back from that. What they are talking about doing is taking the money from that program and using it for some other programs. Anything that comes back is supposed to go to reduce the deficit. Lord knows that is big enough.

As I mentioned, there are 5,324 earmarks in this bill. That brings the total for the year to about 10,000 or about 23 for every congressional district. That is after a promise that the President would not sign any bill that had earmarks, but he has already done that once. Hopefully, he will not do it twice.

We have been talking about jobs this week. I even got invited to the White House to talk to the President about jobs. Of course, the message the Senator from Washington, Mrs. MURRAY, and I delivered to the President is, we ought to get the Workforce Investment Act done. That is a job training program that would train 900,000 people a year to higher skill levels to meet some of the skill levels we are missing in this country that we are having to export.

What has been the status on this bill? We have been working on this for 4 years—4 years. This country did not need jobs before. Now we need jobs, so maybe we are going to get something done on that.

She, I, and Senator Kennedy passed this bill through the Senate twice unanimously, but the House has never taken it up. I don't know how we are going to get jobs done if something that is that bipartisan—it passed the Senate both times with everybody voting for it. We cannot get more bipartisan than everybody voting for it. We are talking about bipartisan bills. That is really important.

Talking about jobs, one of the things I mentioned at the White House was that 2 days before this meeting, the EPA had put out the notice of the new regulation where they are going to take care of greenhouse gas emissions, CO_2 and seven other chemicals.

According to Kimberly A. Strassel:

In the high stakes game of chicken the Obama White House has been playing with Congress over who will regulate the Earth's climate.

Right now the Copenhagen meeting is going on—

The president's team just motored into a ditch. So much for threats.

The threat the White House has been leveling at Congress is the Environmental Protection Agency's ''endangerment finding,'' which EPA Administrator Lisa Jackson finally issued this week. The finding lays the groundwork for the EPA to regulate greenhouse gas emissions across the entire economy, on the grounds that global warming is hazardous to human health.

From the start, the Obama team has wielded the EPA action as a club, warning Congress that if it did not come up with cap-and-trade legislation the EPA would act on its own—and in a far more blunt fashion than Congress preferred. As one anonymous administration official menaced again this week: ''If [Congress doesn't] pass this legislation,'' the EPA is going to have to ''regulate in a command-and-control way, which will probably generate even more uncertainty.''

The thing about threats, though, is that at some point you have to act on them. The EPA has been sitting on its finding for months, much to the agitation of the environmental groups that have been upping the pressure for action.

President Obama, having failed to get climate legislation, didn't want to show up to the Copenhagen climate talks with big, fat nothing. So the EPA pulled the pin. In doing so, it exploded its own threat.

Far from alarm, the feeling sweeping through many quarters of the Democratic Congress is relief. Voters know cap-and-trade is Washington code for painful new energy taxes. With a recession on, the subject has become poisonous in congressional districts. Blue Dogs and swing-state senators watched in alarm as local Democrats in the recent Virginia and New Jersey elections were pounded on the issue, and lost their seats.

But now? Hurrah! It's the administration's problem! No one can say Washington isn't doing something; the EPA has it under control. The agency's move gives Congress a further excuse not to act.

''The Obama administration now owns this political hot potato,'' says one industry source. ''If I'm [Nebraska Senator] Ben Nelson or [North Dakota Senator] Kent Conrad, why would I ever want to take it back?''

All the more so, in Congress's view, because the EPA ''command and control'' threat may yet prove hollow. Now that the endangerment finding has become reality, the litigation is also about to become real. Green groups pioneered the art of environmental lawsuits. It turns out the business community took careful notes.

Industry groups are gearing up for a legal onslaught; and don't underestimate their prospects. The leaked emails from the Climatic Research Unit in England alone are a gold mine for those who want to challenge the science underlying the theory of man-made global warming.

But the EPA's legal vulnerabilities go beyond that. The agency derives its authority to regulate pollutants from the Clean Air Act. To use that law to regulate greenhouse gases, the EPA has to prove those gases are harmful to human health.

That is the endangerment finding. One is CO_2, and I am breathing that out right know.

Put another way, it must provide ''science'' showing that a slightly warmer earth will cause Americans injury or death. Given that most climate scientists admit that a warmer earth could provide ''net benefits'' to the West, this is a tall order.

Then there are the rules stemming from the finding. Not wanting to take on the political nightmare of regulating every American lawn mower, the EPA has produced a ''tailoring rule'' that it says allows it to focus solely on large greenhouse gas emitters. Yet the Clean Air Act—authored by Congress—clearly directs EPA to also regulate small emitters.

This is where the green groups come in. The Tailoring rule ''invites suits,'' says Sen. John Barrasso—

Who is the other Senator from Wyoming—

who has merged as a top Senate watchdog of EPA actions. Talk of business litigation aside, Mr. Barrasso sees ''most of the lawsuits coming from the environmental groups'' who want to force the EPA to regulate everything.

[The President] may emerge from Copenhagen with some sort of ''deal.'' But his real problem is getting Congress to act, and his EPA move may have just made that job harder.

I thank Kimberly Strassel for those words.

Staying on the topic of jobs:

House Democrats keep stepping on President Obama's applause lines about innovation and job creation. On Tuesday, Mr. Obama announced that ''we're proposing a complete elimination of capital gains taxes on small business investment'' for 1 year. Responding with rare dispatch, the House voted yesterday—

Actually, that would be the day before yesterday now. Some of these things I wrote and hoped I would give before now.

—the House voted yesterday to change the capital gains rate for venture capitalists who invest in technology start-ups. But rather than eliminating the tax, the House more than doubled it, moving the tax rate to 35 percent from 15 percent by reclassifying such gains as ordinary income.

Private equity fund managers and managers of real-estate and oil-and-gas partnerships would also get socked with a 133 percent tax-rate increase. Now, there's a way to encourage economic growth and new jobs. Knowing how popular tax increases are with unemployment at 10 percent, the House majority rushed the bill to the floor without a hearing or even a committee vote. Then they buried it in a package advertised as an extension of tax cuts for research and development.

And that is how it will come over here.

And, of course, there are some other problems in the United States with jobs. There are projections that show unemployment in construction will rise by about 1.3 million and that will be outweighed by the continued drop in manufacturing and mining jobs. Goods-producing employment as a whole is expected to show virtually no growth in total jobs, according to the report. By 2018, that sector will account for 12.9 percent of the jobs, down from 14.2 percent of the jobs. You know, in order to grow the economy, you either have to produce something or you have to sell something. So separately, the number of workers filing new jobless claims rose 17,000 to 474,000 last week, the Labor Department said, which is an unwelcome change after 5 weeks of declines.

Of course, accounting is one of my favorite things. I am the accountant in the Senate, and we have been doing some accounting on jobs that are saved. Clear back at the very beginning of the administration, when Secretary Geithner was appearing before the Finance Committee and the President was saying he will create or save 3 million jobs, I asked what is the definition of saving a job? After he explained a little bit on that, I said: Well, I think probably anybody who is employed, still employed would meet that criteria, so why don't you save or create 180 million jobs? But now we have had some measurements done on jobs that were saved, and this one particularly

stuck with me. There is a report on the stimulus for a shoe store in Kentucky, and since I used to be in the shoe business as well, that kind of stuck out. This is from the Washington Examiner—a ticker on stimulus jobs created—and what they said is a shoe store owner claimed to create nine jobs on an $889 contract, when in fact he supplied nine pairs of shoes to the Army Corps of Engineers. A lot of accounting problems around here, and talking about saving jobs without a good definition is only one of them.

Let's see. The government has taken over the banking industry, the car industry, trying to take over the health care industry, trying to take over the energy industry, none of which Washington knows much about, but one that hasn't had much said about it yet is student loans, and I am not sure exactly when that is coming to this body, but I did want to mention that the Department of Education right now is pressuring schools to move to a government-run student loan program in lieu of utilizing private lenders, who are more efficient and have traditionally offered better customer service. That is why people stay with them, is the better customer service, if the price is the same. However, it is also important to note that the proposed student loan takeover, which is H.R. 3221, would cause private lenders to cut an estimated 35,000 jobs across the country. That is according to a survey by the Federal Family Education Loan Program Industry Groups. With the unemployment rate lingering around 10 percent, it is nothing short of amazing that presumably vulnerable politicians continue to advocate big government programs that will result in private-sector job loss.

We will be saying more about that as it comes up. I am not sure when it is going to come up, but I did hear the Secretary of Education—and again, this is good government accounting—said it would provide another $80 billion for them to work with. Under the best of government accounting, it would be $40 billion, I believe. And even that is only because of the way it is accounted for.

Another problem we have now is with taxes, with the estate tax, and that is one that won't die because the Democrats are afraid to let the tax rate hit zero. For years, we have had people saying that the estate tax is not fair; that in this country you get taxed when you earn money, you get taxed when you buy something, you get taxed when you use something, you get taxed when you sell something, but the tax people are upset about is the tax you get after you are dead. We had a bill that already passed. The hated death tax is scheduled to expire, with the rate falling from 45 percent to zero for 2010. Then it will be restructured in 2011 at a rate of 55 percent.

This bizarre policy goes back to 2001, when the Democrats wouldn't let President Bush permanently kill the death tax. So the Republicans bet if the tax were eliminated for 1 year, it would never come back. Well, the moment of truth has arrived and the House Democrats recently voted to cancel that repeal and hold the rate permanently at 45 percent with a $3½ million exemption. So now the majority leader wants to do the same, and would suspend the health care debate and turn to that estate tax, but he would need 60 votes to do that, and I think that is because all the Republicans and many of the Democrats are saying no to that. BLANCHE LINCOLN and JON KYL, Arkansas and Arizona, have placed some proposals out there.

The correct way to tax a gain in the value of assets bequeathed to an heir with capital gains of 15 percent is when the assets are sold. There ought to be some actual action that derives some revenue for it; otherwise, people out our way are having to sell off ranches prematurely in order to have the money to pay off death taxes when the founder of the family passes away. A recent problem we have had with that is that the land values are going up. I suppose they have stagnated at the moment, but it is hard to tell. These ranchers were putting money in, trying to do estate planning so they could pay this with not having to sell off part of the farm, and were doing a pretty good job of that. Of course, they made some adjustments when we made adjustments and started giving them a decline. And there is going to be a lot more said on that yet.

We have this massive spending bill, this huge increase in spending, and I want to share with you some of the words of Douglas Holtz-Eakin, the former Director of the Congressional Budget Office, which we talk about here regularly and point out as being a nonpartisan office. He spoke recently at the Senate Committee on the Budget, or relatively recently—November 10. This is kind of what he said:

President Barack Obama took office promising to lead from the center and solve big problems. He has exerted enormous political energy attempting to reform the Nation's health-care system. But the biggest economic problem facing the Nation is not health care. It's the deficit. Recently, the White House signaled that it will get serious about reducing the deficit next year—after it locks into place the massive new health-care entitlements. This is a recipe for disaster, as it will create a new appetite for increased spending and yet another powerful interest group to oppose deficit-reduction measures.

Our fiscal situation has deteriorated rapidly in just the past few years. The Federal Government ran a 2009 deficit of $1.4 trillion—the highest since World War II—as spending reached nearly 25 percent of GDP and total revenues fell below 15 percent of GDP. Shortfalls like these have not been seen in more than 50 years.

Going forward, there is no relief in sight, as spending far outpaces revenues and the Federal budget is projected to be in enormous deficit every year. Our national debt is projected to stand at $17.1 trillion 10 years from now, or over $50,000 per American. And per American means every man, woman and child.

Continuing to quote:

By 2019, according to the Congressional Budget Office's analysis of the President's budget, the budget deficit will still be roughly $1 trillion, even though the economic situation will have improved and revenues will be above historical norms.

The planned deficits will have destructive consequences for both fairness and economic growth. They will force upon our children and grandchildren the bill for our overconsumption. Federal deficits will crowd out domestic investment and physical capital, human capital, and technologies that increase potential GDP and the standard of living. Financing deficits could crowd out exports and harm our international competitiveness, as we can already see happening with the large borrowing we are doing from competitors like China.

Yes, the President went to China recently; Secretary Geithner has been to China. They weren't over there trying to visit the Great Wall. They were over there trying to explain to China how we would be able to pay off our bonds. And last week, it was said that Standard & Poor's and Moody's were taking a look at the United Kingdom and the United States to see if there shouldn't be a downgrade in their rating. And so Mr. Holtz-Eakin says:

At what point, financial analysts ask, do rating agencies downgrade the United States? When do lenders price additional risk to Federal borrowing, leading to a damaging spike in interest rates? How quickly will international investors flee the dollar for a new reserve currency? And how will the resulting higher interest rates, diminished dollar, higher inflation, and economic distress manifest itself? Given the President's recent reception in China—friendly but fruitless—these answers may come sooner than any of us would like.

Mr. Obama and his advisers say they understand these concerns, but the administration's policy changes are the equivalent of steering the economy toward an iceberg. Perhaps the most vivid example of sending the wrong message to international capital markets are the health-care reform bills—one that passed the House earlier this month and another under consideration in the Senate. Whatever their good intentions, they have too many flaws to be defensible.

First and foremost, neither bends the health-cost curve downward. The CBO found the House bill fails to reduce the pace of health-care spending growth. An audit of the bill by Richard Foster, the chief actuary for the Centers for Medicare and Medicaid Services—

And that is the CMS, which is a division of Health and Human Services. So this is the chief actuary issuing this report.

—found that the pace of national health-care spending will increase by 2.1 percent over 10 years, or by about $750 billion. Senate Majority Leader Harry Reid's bill grows just as fast as the House version.

Yesterday, or the day before yesterday, we got a new actuarial report that addressed the Reid bill as opposed to the House bill, and we talked about that fairly extensively. I haven't seen any articles about it yet. But one summary comment on it is that, according to this Actuary of CMS—which is a part of the administration—the cost of health care under the Reid bill will increase by seven-tenths of 1 percent.

That doesn't sound like much, but it is seven-tenths of 1 percent more—more—than if we did nothing. That is not bending the cost curve down.

Mr. Holtz-Eakin goes on to say:

Second, each bill sets up a new entitlement program that grows at 8 percent annually as far the eye can see—faster than the economy will grow, faster than tax revenues will grow, and just as fast as the already-broken Medicare and Medicaid programs. They also create a second new entitlement program, a federally run, long-term-care insurance plan.

Finally, the bills are fiscally dishonest, using every budget gimmick and trick in the book: Leave out inconvenient spending, back-load spending to disguise the true scale, front-load tax revenues, let inflation push up tax revenues, promise spending cuts to doctors and hospitals that have no record of materializing, and so on.

If there really are savings to be found in Medicare, those savings should be directed toward deficit reduction and preserving Medicare, not to financing huge new entitlement programs. Getting long-term budgets under control is hard enough today. The job will be nearly impossible with a slew of new entitlements in place.

In short, any combination of what is moving through Congress is economically dangerous and invites the rapid acceleration of a debt crisis.

It is a dramatic statement to finance markets that the federal government does not understand that it must get its fiscal house in order. . . .

The time to worry about the deficit is not next year, but now. There is no time to waste.

Again, Mr. Holtz-Eakin is the former Director of the Congressional Budget Office and a fellow at the Manhattan Institute. This is adapted from testimony he gave to the Senate Committee on the Budget on November 10.

Since that time I have been talking about how we have maxed out our credit cards, but this is something known across the Nation.

I have to share something. I mentioned I get things from all the papers in Wyoming. This comes from the Lovell Chronicle. That is a place that is probably about 120 miles from Yellowstone Park. That is always how I describe our State, in terms of Yellowstone Park, because a lot of people know where that is.

Her name is Diane Badget and she writes a column regularly.

My dad used to play this silly game with us. We'd hear ''THUMP, THUMP'' coming from the kitchen. One of us would ask, ''Dad, what are you doing?'' He'd reply, ''Beating my head against the wall.'' At that point another of us would dutifully respond, ''Why?'' Then we'd wait a second for the expected reply: ''Cause it feels so good when I quit!''

Has the bickering in Washington sickened you to the point where you almost don't care what they do as long as they shut up? Be careful! That's what some are hoping for. They are disdainful of our feeble attempts to get them to listen to us. They hope that if we beat our heads against the wall long enough we'll realize how much better we'd feel if we'd just quit.

She goes on to talk a little about Copenhagen.

The plans for building safe, clean nuclear power plants to provide electricity evaporated when the promise of a secure place to store spent nuclear fuel suddenly ended. Yet this same administration has decried coal fired plants as ''ecological disasters'' and large-scale wind and solar energy as too expensive to build yet. Nothing has been done to utilize the vast reserves of resources in Alaska.

Okay, if we can't use coal plants, can't afford wind or sun, Alaska doesn't exist, and nuclear options just got flushed, what should we do? Oh, I know! Let's gather up half of the over-zealous geniuses who supported Obama's decision and put them on giant hamster wheels hooked to generators! Then we'll take the other half and utilize their hot air to turn turbines! It makes as much sense as anything in the Cap and Trade bill.

My grandkids can't pray in school, but other kids are provided with prayer mats. No wonder so many terrorists are found right here in the very country they have sworn to destroy. How many more radicals are walking among us, undetected?

She talks about:

The decision to try the 9/11 conspirators in our court system is a travesty. These murderers have already pleaded guilty in a military tribunal. They are not entitled by our Constitution to a trial. U.S. citizens are entitled to a trial before a jury of their peers.

But she does move on to healthcare as well.

Are you confused yet? Apparently Congress is. The health care plan that the Senate voted to send to the floor for debate is a perfect example. One side says that it will be deficit neutral, will ensure competition, will not affect Medicare and won't result in more taxes. The other side says it will cost too much, eliminate competition, slash Medicare and tax us out of our underwear.

Barbara Boxer (D. Ca) touted Medicare as a great example of how seniors are able to chose a ''public option''. Excuse me? When we turn 65 we are required to sign up for Medicare. How is that optional? I think at this point both sides of the aisle are trying to sell us snake oil, and somewhere in the middle is the truth.

Are you worried yet? Are your children and grandchildren going to enjoy the same freedoms and opportunities that we enjoyed? The future of my grandchildren should have been better than the life I had, and my life has been pretty doggone good. Instead, future generations are going to be paying, financially and personally, for the mistakes made right now by a president who presumes too much power and a system of checks and balances that no longer works.

We have been talking about having a bipartisan bill here. Maybe that would end the contradiction and furor that we are talking about here. I think a lot of people must have missed the speech OLYMPIA SNOWE made about durable social reform always being bipartisan. I want to share some comments on that. I know her speech wasn't noticed by the press corps.

With Majority Leader Harry Reid's announcement this week of a double-secret bargain that Democrats hope will squeeze ObamaCare through the Senate after nine whole days of debate so far in the world's greatest deliberative body—the Maine Republican's words seem more pertinent than ever.

Mrs. Snowe began by noting that this year's health debate is ''one of the most complex and intricate undertakings the Congress has ever confronted,'' and that she, too, has devoted much of her three-decade political career to promoting cheaper, better quality insurance. ''But it must be done in an effective, common-sense and bipartisan way,'' she cautioned.

Far from ''systematically working through the concerns, the issues and the alternatives,'' Mrs. Snowe added, Democrats have instead favored ''artificially generated haste'' and settled on a strategy ''to ram it, to jam it'' through Congress. The Senator detailed her good-faith participation in the ''group of six'' on the Senate Finance Committee, which met some 31 times over the spring and summer and reflected ''the kind of extensive, meticulous process that an issue of this magnitude requires.''

The negotiators tried to build a consensus, blending the best ideas from both parties. Or at least they did before the group of six, and Mrs. Snowe in particular, became a liberal political target for supposed obstructionism. Chairman Max Baucus then pushed their unfinished work to the Senate floor, where Mr. REID is now rushing to pass a bill in a race against its rising unpopularity and President Obama's falling approval ratings.

Mr. REID made his case with his usual intellectual nuance this week: ''Instead of joining us on the right side of history, all the Republicans can come up with is, 'Slow down, stop everything, let's start over.' If you think you've heard these same excuses before, you're right. When this country belatedly recognized the wrongs of slavery, there were those who dug in their heels and said, 'Slow down, it's too early, things aren't bad enough.' ''

Then, after equating opposition to Medicare cuts and tax increases with support for human bondage that it took a bloody civil war to end, Mr. Reid went on to draw analogies to women's suffrage, Social Security, civil rights and Medicare.

Mr. Reid would have done better listening to Mrs. Snowe about the ''history'' of major social legislation, which she also discussed in her November speech. Her main and telling point was that durable social reform in America has always been bipartisan, and not merely with one or two opposition party votes.

While Social Security passed when Democrats controlled both Congress and the White House, she said, 64 percent of Senate Republicans and 79 percent of the House GOP supported it. Civil rights passed with 82 percent of Republicans in the Senate and 80 percent in the House, while 41 percent and 51 percent, respectively, voted for Medicare. Mrs. Snowe could have added the 1996 welfare reform that President Clinton signed with the support of nearly all Republicans in Congress, 98 Democratic Representatives and 25 Democratic Senators.

''Policies that will affect more than 300 million people simply should not be decided by partisan, one-vote-margin strategies,'' Senator Snowe explained, and Congress should not be ''railroading solutions along partisan lines.''

On the debate that we have had, one of the points of contention, of course, has been Medicare. They talked on that side of the aisle about how good Medicare is. We talked on this side of the aisle about how Medicare is being harmed. I think what we are really giving people the impression of it is when we pass the bill, all of it will be free. That will not happen. But there was some contention that private insurance was less fair to people, Medicare was always fair. So I dug up some information on it. Investors Business Daily has done a little bit of research in that area. They found that:

Throughout the health care debate insurance companies have been cast as greedy villains that gleefully deny medical claims. But

when it comes to rejecting claims, they can't hold a candle to government.

They found the most claims are the ones denied by Medicare, not the private sector.

What has happened in the last couple of days, Medicare has been so popular that the leader has said he is going to include, now, a piece that will bring the age group to 55. We have been talking about how, under the present circumstances, with the money that is being stolen from Medicare, that it is going to go broke. The majority leader—and evidently it is just the majority leader because when we asked to see a copy of it yesterday in a little colloquy we had with the Senator from Illinois, Senator DURBIN, he said he had not seen it. So I think—I know they had been briefed on it probably in a general way the night before. But it was explained to us that if anybody knew what was actually in that, that then the CBO score that comes out of that, how much it will cost, would have to be shared with everybody.

I thought we were in the new era of transparency. That doesn't sound very transparent to me. Even Democrats didn't get to see it because, if they did, then all of us could see how much it is going to cost as soon as the Congressional Budget Office has declared that.

That bothers me. I think it kind of bothers America. What we are worried about is it is going to come to the floor all of a sudden and we are going to have to make decisions on it. Evidently it is being talked about a little bit on the other end of the building, because I saw that Speaker PELOSI stopped short of endorsing the full Senate compromise, saying she needed to see ''something in writing.'' But she said, ''There is certainly a great deal of appeal'' in expanding Medicare. But the Washington Post did a little editorial. This would have been on December 10. They called it ''Medicare Sausage? The emerging buy-in proposal could have costly unintended consequences.''

Incidentally our side has only seen this based on what the media has heard, and I don't know what kind of briefings the media has had on what this particular proposal has.

The Washington Post says: ''The emerging buy-in proposal could have costly unintended consequences,'' and begins by saying:

The only thing more unsettling than watching legislative sausage being made is watching it being made on the fly. The 11th-hour compromise on health care reform and the public option supposedly includes an expansion of Medicare to let people ages 55 to 64 buy into the program. This is an idea dating to at least the Clinton administration, and Senate Finance Committee Chairman Max Baucus originally proposed allowing the buy-in as a temporary measure before the new insurance exchanges get underway. However, the last minute introduction of this idea within the broader context of health reform raises numerous questions—not the least of which is whether this proposal is a far more dramatic step toward a single-payer system than the lawmakers on either side realize.

The details of how the buy-in would work are still sketchy and still being fleshed out, but the basic notion is uninsured individuals 55 to 64 who would be eligible to participate in the newly created insurance exchanges could choose instead the emergency coverage through Medicare. In theory, this would not add to Medicare costs because the coverage would have to be paid for—either out of pocket or with the subsidies that would be provided to those at lower income levels to purchase insurance on the exchanges. The notion is that, because Medicare pays lower rates to health-care providers than do private insurers, the coverage would tend to cost less than a private plan. The complication is understanding what effect the buy-in option would have on the new insurance exchanges and, more important, on the larger health-care system.

Currently, Medicare benefits are less generous in significant ways than the plans to be offered on the exchanges. For instance, there is no cap on out-of-pocket expenses.

Wasn't one of the promises that we were going to be sure that catastrophic was covered for everybody? One of the things I discovered early on in this process is that catastrophic is not covered in Medicare, not in the regular plan. You have to get the Medicare Advantage to get catastrophic or the more expensive Medigap policy. Of course, we are talking about taking a whole bunch of money out of the Medicare Advantage, which the companies say will either reduce benefits or eliminate it altogether.

I think this book was delivered to every office. I got one in my office. It is called ''Voodoo Anyone?'' It is ''How to understand economics without really trying.'' I do hope every Senator finds their copy of this book and takes a look at it because it talks about prices, how prices are set, what affects prices, what happens when you fix prices. Then it talks about health care and energy and education and crime and social and agriculture and labor and monopolies, and financial markets and government action.

I have never found a book that put it quite as succinctly or quite as understandably as this book does. We need to be paying some attention to the fixing prices part of it, for sure. He gives a nice example on this.

You're in a college town, and you realize that there is no good place to buy a decent bicycle. So you get some money together (loans, the parents, investors, whatever) and you open up Deals on Wheels. But business at first is slow. So you figure you'll bring in customers for a sale. You look at your books and you make some tough decisions. You paid $100 for a bike from the manufacturer, and you sell it for $110. But without customers, you realize you need to do something.

So you decide to sell the bicycles for $80 as a way to draw customers to Deals on Wheels. You know that you can't continue to sell your bikes at a loss, so you say it's a one-day sale only. And sure enough, the word gets out, and you've got more customers than you can handle. They can't fit in the store and spill out on the street.

Little did you know that a lawmaker passed by, saw the crowd and realized something good was going on. The politician goes back to Washington, D.C., and convinces his colleagues that an $80 bicycle is a great thing. ''Bicycles have so many benefits,'' intones the lawmaker. ''They can help you get healthy. And the more people who ride bikes, the less pollution there is. And, of course, more people riding bicycles will help the United States become less dependent on foreign oil.

To thunderous applause, the politician sits down and watches his bill that will cap the price of bicycles at $80 pass in a near unanimous vote. (The politician and all his colleagues have calculated a lot of votes will come their way in the next election as a result of this bill).

But for you, the bicycle dealer, the one-day sale has become a permanent condition. You can't find bicycles for less than $90, so you're going to be selling all bicycles at a loss.

Do you stay in business? You instead sell off the rest of your inventory and explore other employment opportunities.

I read that to lead up to what he has on Medicare. He says:

Remember the bicycle example? A price control on bicycles below the cost of production signaled to consumers to buy cheap bikes. But it also told producers that they couldn't make any money. When you have high demand and low supply, you get a shortage. And that's where the Medicare program stands today—waiting lists, fewer doctors who see Medicare patients and shorter hospital stays are all evidence of a shortage in the medical care for senior citizens.

There are several more pages on Medicare I won't cover. I encourage my colleagues to read it. It is a very small book, a very short book, but it makes a lot of excellent points.

Of course, the day before yesterday we got this report from the Actuary of CMS, which is part of Health and Human Services, which is a part of the administration. He said that Medicare would not be sustainable under the Reid bill.

Is there a way to fix Medicare? I think so. We have promoted over here several times that instead of taking these cuts to Medicare and expanding them into brandnew entitlements—an entitlement is something that goes on forever without congressional approval—we ought to lop off the Medicare piece and make sure we get it right.

Yes, there are things that have been noted that would save money. But that money that is saved ought to go right back into Medicare so that those seniors who are so nervous across the country would understand we weren't cutting their programs.

They say: No, we are not cutting the program. We haven't cut a single guaranteed benefit.

We also haven't fooled a single senior out there. The only ones we have fooled have been the AARP. Of course, the AARP is going to make more money off of Medigap than they ever made off Medicare Advantage. They have to look at where the bread is buttered here.

Senator DODD said that he would like to know exactly which pages had cuts to Medicare on it. I have a sheet here that shows the exact page numbers in the bill and the CBO report.

I ask unanimous consent that the following be printed in the RECORD in this regard.

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

MEDICARE CUTS IN THE REID BILL

HOSPITALS SERVING SENIORS

$200 billion in cuts, page 663, through Medicare quality reporting programs; $1.5 billion in cuts, p. 687, Medicare payment adjustments for hospital-acquired conditions; $7.1 billion in cuts, p. 775, hospital readmissions reduction program; $20.6 billion, p. 842, Disproportionate Share Hospital (DSH) payment cuts; $105.5 billion, p. 974, Medicare market basket updates.

NURSING HOMES

$15 billion, p. 977, Medicare market basket updates.

HOSPICES

Nearly $8 billion, p. 987, Medicare market basket updates.

HOME HEALTH

More than $40 billion, p. 983, Medicare market basket updates.

MEDICARE ADVANTAGE

$118 billion, p. 869, Medicare Advantage payment adjustments; $1.9 billion, p. 908, application of coding intensity adjustment.

Mr. ENZI. Of course, the Democrats do recognize that there is a problem with Medicare going broke; otherwise, they wouldn't have to put a special commission in there. There is a special MedPAC commission. There already is a MedPAC, so there is going to be a MedPAC on steroids in there. That means it will have to report to us and we will have to take action on it or else they will be able to take action anyway. If we are not breaking the system, what do we need that for?

Actually, if we use the money that comes from Medicare only for Medicare, the commission would have a much easier job.

For one thing, we would be able to do the doc fix. The other side keeps referring to how the deficit will be reduced by this bill—$157 billion in the first 10 years and another number for the second 10 years. But that is only if you believe we will not fix any of these things that are major problems, such as the doctors.

We are not paying the doctors enough. Right now, 25 percent of the doctors won't take a new Medicare patient. The number varies between 45 percent and 50 percent who won't take a new Medicaid patient because we pay too little. We did the price fixing such as I described in that book. If you do price fixing, you can't afford to pay the doctors enough. The doctors know that. They are not going to work for nothing or less than nothing. Consequently, if you can't see a doctor, you don't have any kind of insurance. That is a basic guarantee of insurance, that you will get to see some medical person and they will do some kind of treatment if you need it. We are also hoping the doctor gets to make the decision on the treatment you have.

There is also a little medical commission in the bill, preventative commission, a task force that put out a report on mammograms and upset the whole country, with some justification. As those things are adopted for everybody, it takes away the right for the doctor to say: My patient is a little bit different. We are all a little bit different. Some of these commissions and task forces need to be looked at. Is America listening?

Last week, there was a vote in Kentucky. There were two people running for the legislature there. It was a highly Democratic district. The Republican talked about health care. That was his whole pitch. He did a warning on health care. He won in a heavily Democratic district.

This is being reported repeatedly across the country. I have some things where I could go into some of the poll numbers that are out there now. I know individuals are looking at those poll numbers and realizing the American people have figured it out. They really have. Congress hasn't figured it out, but the American people have figured it out.

I have to talk about one specific part of the bill. Senator HARKIN and I worked together on this bipartisan amendment. It wasn't one we invented; it is one we found from Safeway. Safeway has some programs they put into effect for their employees on a voluntary basis that cut the cost of health care for Safeways while increasing the benefits for the employees. That is not happening anywhere in America. You have seen the charts on how fast health care is expanding. Safeway was able to get about an 8-percent reduction the first year and has been able to hold it level since then.

Senator HARKIN and I asked: How did you do that? One of the ways was to give people incentives to do the right thing. Again, it was on a voluntary basis. We got the flexibility for these incentives put into the HELP Committee markup. It was approved. It was put in. It was bipartisan. It should have been approved and put in. It was also a good idea. There was this clinic that we call Safeway that had been the lab for it, that had tried it and it worked. It was to raise the limit people could have for doing these incentives from 20 percent to 30 percent and even up to 50 percent, if it worked. Without my approval, that was jerked out of the bill before it was actually printed.

I hope people take a look at the November 29 issue of Roll Call, where there is an editorial by Morton Kondracke, who explains how this all works and what a difference it could make and how terrible it is that it got pulled out.

It is interesting that some of the groups that were against it were ones such as the American Cancer Society, the American Heart Association, and the American Diabetes Association. They did it on the basis that it discriminates against people who want to stay fat and won't quit smoking. Incidentally, a smoker costs $1,200 a year to somebody else because it isn't included in their insurance that way.

Ways of improving the system—I will talk about that at another time. I can see everybody is fascinated by all of this. We will talk about lawsuits and health savings accounts.

The other side would like to eliminate health savings accounts. Actually, what they want to do is tell you what insurance you have to have. They want the government to tell you what the minimum acceptable insurance is. That is not bad enough. If you don't buy at least the minimum acceptable insurance, then you get fined. Under the House bill, you can go to jail. That is only if you don't pay your taxes as a result of the fine. That is done through the IRS. It is a huge expansion of the IRS at the same time.

Health savings accounts have been working in this country. In fact, they work for our employees in the Senate. The health savings account is where you buy a high-deductible policy and you have the right to put money tax free into a savings account that can only be used for health, with the theory that if you do have something happen to you, you can draw out of your health savings account to pay this deductible.

If you are young and healthy, it is a tremendous thing. One of the young ladies in my office said: Let's see, the amount I have to pay for regular insurance and the amount I have to pay for a health savings account are considerably different. If I took that difference and put that into a health savings account, it would still belong to me. It would roll over from year to year, and I would have that available tax free whenever I need it. She did that. Within 3 years, she had the entire deductible covered in there. She was smart enough to continue to put money in there, tax free money that will take care of her health care expenditures. Do you think she will be upset if we eliminate health savings accounts? Yes, I think so.

There is another thing Senate employees use; that is, flexible spending accounts. Even if you pick the ones without the high deductible, you have the right to figure out how much your medical expenses are going to be the next year and put those into a special account, a flexible savings account. Over the next year, you can use that money from the flexible savings account, which comes out of your paycheck, tax free for the medical needs you have.

People who know they are going to have medical needs find this to be useful. They find that they can tell—you have to do it by Monday—how much you think you are going to spend the next year. The downside of it is, if you don't spend it all, the extra goes back to the Federal Government. Even though it came out of your paycheck, it goes back to the Federal Government.

A lot of people would say this would be a good deal if we could roll that over. There are a lot of eyeglasses and dentists appointments that are done in December for people to be able to use

that flexible spending account. If it rolled over, they could continue to use it for what was really necessary.

That is being limited in the bill. That will be a detriment to people who have some catastrophic things happening to them. Cancer would be one of those things. If they know how much they are going to have to spend on MRIs and CAT scans and other kinds of tests over the coming year, in December they put that amount of money in there, and then they can have this little bit of a tax advantage for taking care of their health care costs.

That is much like big business provides in the much better plans than we have in the Senate.

To conclude, I would like to have a document printed in the RECORD by unanimous consent, which is titled: ''A Specific Plan of Action: Lowering Health Care Costs.''

I am inserting this on behalf of Senator MCCAIN because people keep claiming that when he ran for President, he said things differently than what is being said now, and with this as part of the RECORD, maybe we can get them to quit saying that. Because he did talk about waste, fraud, and abuse in Medicare and the need to contain it and physician payments and coordinated care and preventable medical errors. So I ask unanimous consent that document be printed in the RECORD.

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

A SPECIFIC PLAN OF ACTION: LOWERING HEALTH CARE COSTS

John McCain Proposes a Number of Initiatives That Can Lower Health Care Costs. If we act today, we can lower health care costs for families through common-sense initiatives. Within a decade, health spending will comprise twenty percent of our economy. This is taking an increasing toll on America's families and small businesses. Even Senators Clinton and Obama recognize the pressure skyrocketing health costs place on small business when they exempt small businesses from their employer mandate plans.

Cheaper Drugs: Lowering Drug Prices. John McCain will look to bring greater competition to our drug markets through safe re-importation of drugs and faster introduction of generic drugs.

Chronic Disease: Providing Quality, Cheaper Care for Chronic Disease. Chronic conditions account for three-quarters of the Nation's annual health care bill. By emphasizing prevention, early intervention, healthy habits, new treatment models, new public health infrastructure and the use of information technology, we can reduce health care costs. We should dedicate more federal research to caring and curing chronic disease.

Coordinated Care: Promoting Coordinated Care. Coordinated care—with providers collaborating to produce the best health care—offers better outcomes at lower cost. We should pay a single bill for high-quality disease care which will make every single provider accountable and responsive to the patients' needs.

Greater Access and Convenience: Expanding Access to Health Care. Families place a high value on quickly getting simple care. Government should promote greater access through walk-in clinics in retail outlets.

Information Technology: Greater Use of Information Technology To Reduce Costs. We should promote the rapid deployment of 21st century information sytems and technology that allows doctors to practice across state lines.

Medicaid and Medicare: Reforming the Payment System To Cut Costs. We must reform the payment systems in Medicaid and Medicare to compensate providers for diagnosis, prevention and care coordination. Medicaid and Medicare should not pay for preventable medical errors or mismanagement. Medicare should lead the way in health care reforms that improve quality and lower costs. We need to change the way providers are paid to move away from fragmented care and focus their attention on prevention and coordinated care, especially for those with chronic conditions. This is the most important step in effectively caring for an aging population. We must work in a bipartisan manner to reform the physical payment system, focus efforts on eliminating fraud and move Medicare into a new generation of coordinated, quality care.

Smoking. Promoting the Availability of Smoking Cessation Programs. Most smokers would love to quit but find it hard to do so. Working with business and insurance companies to promote availability, we can improve lives and reduce chronic disease through smoking cessation programs.

State Flexibility: Encouraging States To Lower Costs. States should have the flexibility to experiment with alternative forms of access, coordinated payments per episode covered under Medicaid, use of private insurance in Medicaid, alternative insurance policies and different licensing schemes for providers.

Tort Reform: Passing Medical Liability Reform. We must pass medical liability reform that eliminates lawsuits directed at doctors who follow clinical guidelines and adhere to safety protocols. Every patient should have access to legal remedies in cases of bad medical practice but that should not be an invitation to endless, frivolous lawsuits.

Transparency: Bringing Transparency to Health Care Costs. We must make public more information on treatment options and doctor records, and require transparency regarding medical outcomes, quality of care, costs and prices. We must also facilitate the development of national standards for measuring and recording treatments and outcomes.

CONFRONTING THE LONG-TERM CARE CHALLENGE

John McCain Will Develop a Strategy for Meeting the Challenge of a Population Needing Greater Long-Term Care. There have been a variety of state-based experiments such as Cash and Counseling or the Program of All-Inclusive Care for the Elderly (PACE) that are pioneering approaches for delivering care to people in a home setting. Seniors are given a monthly stipend which they can use to: hire workers and purchase care-related services and goods. They can get help managing their care by designating representatives, such as relatives or friends, to help make decisions. It also offers counseling and bookkeeping services to assist consumers in handling their programmatic responsibilities.

SETTING THE RECORD STRAIGHT: COVERING THOSE WITH PRE-EXISTING CONDITIONS

Myth: Some claim that under John McCain's plan, those with pre-existing conditions would be denied insurance.

Fact: John McCain supported the Health Insurance Portability and Accountability Act in 1996 that took the important step of providing some protection against exclusion of pre-existing conditions.

Fact: Nothing in John McCain's plan changes the fact that if you are employed and insured you will build protection against the cost of any pre-existing condition.

Fact: As President, John McCain would work with governors to find the solutions necessary to ensure those with pre-existing conditions are able to easily access care.

Mr. ENZI. I hope, on future appropriations—I hope when the President gets this bill, if it makes it through the process—and it appears as though it should easily do that—he will veto the bill and send it back because the 5,224 earmarks, amounting to $3.8 billion—instead of talking about 5 percent of what the Cabinet members expend, it might be more valuable to talk about $3.8 billion.

There are other things that need to be done. We do need to start being fiscally responsible. Of course, one of the questions is: Why haven't we been, in the past, fiscally responsible? That answer to that is, we did not have our credit cards maxed out before. We were able to print the money and nobody noticed. But now when we print the money, people do notice. So we have both the end of the year appropriations—the end of the year, incidentally, was the last day of September, and we are doing them now—and we have this health care crisis to solve. There is not anybody who does not want to come up with a solution to it. But we want to do it step by step and get the confidence of the American people.

The American people do not have confidence in what we are doing. I have several documents that would show what percentage of the people do not agree we are doing the right thing. That ought to get the attention in virtually every State because it is not just as a national whole, it is in every State. People have figured out what we are trying to do, and they do not think we are doing it right. We better get it right or people will be even more upset.

I yield floor.

ADJOURNMENT UNTIL 1:30 P.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 1:30 p.m. tomorrow.

Thereupon, the Senate, at 4:17 p.m., adjourned until Sunday, December 13, 2009, at 1:30 p.m.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S13067–S13124

Conference Reports:

Transportation, Housing and Urban Development, and Related Agencies Appropriations Act—Conference Report: Senate continued consideration of the conference report to accompany H.R. 3288, making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010. **Pages S13068–96**

During consideration of this measure today, Senate also took the following action:

By 60 yeas to 34 nays (Vote No. 373), 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 conference report. **Page S13073**

A unanimous-consent agreement was reached providing for further consideration of the conference report at approximately 1:30 p.m., on Sunday, December 13, 2009, as provided for under the order of Friday, December 11, 2009. **Page S13113**

Amendments Submitted: **Pages S13096–S13113**

Record Votes: One record vote was taken today. (Total—373) **Page S13073**

Adjournment: Senate convened at 9 a.m. and adjourned at 4:17 p.m., until 1:30 p.m. on Sunday, December 13, 2009. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S13113.)

Committee Meetings

(Committees not listed did not meet)

No committee meetings were held.

House of Representatives

Chamber Action

The House was not in session today. The House is scheduled to meet at 12:30 p.m. on Monday, December 14, 2009.

Committee Meetings

No committee meetings were held.

Joint Meetings

No joint committee meetings were held.

COMMITTEE MEETINGS FOR SUNDAY, DECEMBER 13, 2009

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

No committee meetings are scheduled.

Next Meeting of the **SENATE**

1:30 p.m., Sunday, December 13

Senate Chamber

Program for Sunday: Senate will continue consideration of the conference report to accompany H.R. 3288, Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, and after a period of debate, vote on adoption of the conference report at 2 p.m.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

12:30 p.m., Monday, December 14

House Chamber

Program for Monday: To be announced.

Congressional Record

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