

Republican, so I urge my colleagues to vote no on tonight's cloture motion.

#### OFFSETTING TAX CUTS

Mr. DASCHLE. Mr. President, I wish to call attention, as other colleagues have done today, to the work just accomplished by the Ways and Means and Energy and Commerce Committees in the House of Representatives. Unfortunately, the legislation these committees produced is every bit as disastrous as we anticipated it would be, and I am concerned not only about the quality of the bill they passed but the process they used to consider this legislation.

The plan they passed heaps tremendous additional costs on seniors across this country. And, in particular, it squeezes dry rural America. I have no doubt whatsoever that it will close hospitals and clinics in many parts of this country including South Dakota, and I believe that it decimates medical research and innovation, all in the name of saving the trust fund.

Yet, as we have attempted to explain over the course of this debate, what was done in the Ways and Means and Commerce Committees over the last several days has nothing to do with saving the trust fund. The actuaries in Health and Human Services have reconfirmed just as late as last week that we only need \$89 billion to save the trust fund. Yet, over half of the savings in the Republican plan comes from part B of the Medicare program, which has nothing to do with the trust fund. Of the \$270 billion reduction in Medicare spending, over half of the savings comes from part B.

The new costs that are going to be imposed on seniors, cuts in benefits, increases in premiums, increases in deductibles, have absolutely nothing to do with the trust fund. The Republicans decided to cut \$270 billion from Medicare before they even saw the trustees' report. In fact, Republicans actually repealed the law, passed in 1993, that dedicated new revenue to help shore up the trust fund.

That is why actuaries in the Health Care Financing Administration say that even with \$270 billion in cuts that the Republicans call for, the trust fund is solvent only to the year 2006, the same solvency date as one gets from cutting \$89 billion from Medicare. That is amazing to me. Despite the fact that the HCFA actuaries confirm that the \$89 billion in Medicare cuts that Democrats have advocated in our Medicare alternative accomplishes exactly the same thing in terms of trust fund solvency as the \$270 billion, Republicans are still determined to cut huge amounts from Medicare.

And so, Mr. President, we have a very clear choice—\$89 billion in Medicare cuts, presented by the Democrats as a way to address Medicare solvency with real long-term improvements in the infrastructure of the program, following the recommendations of the Health and Human Services actuaries, versus \$270

billion in cuts, which achieves exactly the same level of solvency. This choice certainly raises a question about what the additional \$181 billion in Medicare cuts contained in the Republican plan will truly be used for.

I think it is as clear as the charts that have been shown on the floor this afternoon. We know what the additional \$181 billion is going to be used for. We know that we have to come up with \$245 billion in offsets for the Republican tax cut. That is really at the heart of this whole debate.

Republicans are meeting this afternoon here in the Senate to come up with a package of tax cuts, largely dedicated to those who do not need tax relief, in an effort to complete this reconciliation package.

We know they need \$245 billion to offset this tax cut, and there is no secret as to where that money is going to come from. It will come from Medicare. It will come from Medicaid. It will come from increases in the cost to working families who will lose benefits from the cut in the earned-income tax credit. It will come from the education budget, and it will come from agriculture. The American people need to understand where the money for the Republican tax cut is coming from.

What is so tragic is that money for the tax cut is coming from people who cannot afford to give it in the first place—impoverished families who have a spouse in a nursing home who will have to sell their farms, sell their homes, sell their businesses in order to ensure that that family member can stay in the nursing home where he or she has been residing. That is just plain wrong. That kind of transfer is not in our best interest and we have got to defeat it when we have the opportunity to do so in the weeks ahead.

The process by which Republicans are trying to pass this bill is as problematic as the substance of the legislation. I want to address that issue for just a moment. As we have made clear over the last several weeks, there have been no hearings, there has been no consultation or real effort to reach out to Democrats to try to accommodate our concerns, no analysis provided, no explanation of how seniors, hospitals, or families are affected, and no legislative language until after the committee vote was taken.

That fact has not been widely reported. There have been votes taken in committee, but no legislative language. Generally when we go through a markup, we take the bills page by page and attempt, as best we can, to modify the legislation through the amendment process in order to accommodate the concerns raised by Senators. None of that happened because nobody had legislative language or sufficient detail to be able to determine how best to amend the bill. In other words, we have had no hearings, no analysis, no explanation, and no legislative language before a vote was taken on major legislation to radically alter important pro-

grams upon which seniors and families depend.

But we do know how some of the decisions about this legislation were made. It has been widely reported that the AMA lined up outside the Speaker's office just yesterday and made a decision to cut a deal with the Speaker, and as a result they walked away with the assurance that they would not have to contribute to the Medicare reductions to the extent seniors and other providers would have to.

In other words, doctors now, because they were able to cut their own deal with the Speaker, are not going to be required to contribute to this process to the degree that it was originally proposed. Yet, we also know that the Republicans are holding fast to their determination to cut Medicare by \$270 billion. So someone else, seniors or other providers, will have to be hit even harder to make up the additional revenue.

I thought it was all the more revealing when the board chair of the AMA on the 27th of September made reference to these deals and indicated—and I quote—"The bright lights of public scrutiny can only hurt, not help, delicate discussions." The translation is, "Bright lights and public scrutiny are counterproductive to good deals." We are not going to cut a deal if there is public scrutiny and bright lights.

That is not the way this democracy should work. Backroom deals may help doctors, backroom deals may spare them sacrifice; but backroom deals away from the light of day can only hurt seniors and cannot do anything to give us the opportunity that we should have had in the first place through hearings, through a legislative process, through a markup with legislative language, to carefully consider important legislation.

Seniors and their families were not invited into the Speaker's backroom. Rural hospitals were not invited into the Speaker's backroom. We really still do not know what kind of a deal was cut. That is all the more reason many of us are very concerned about backroom deals. We still, a couple days after the fact, do not know exactly what kind of a deal was cut with the physicians.

We are also very concerned about budget gimmicks like lockboxes that supposedly lock in savings from a certain program so they are dedicated only for certain purposes. This is a budget gimmick. We all know all program cuts and all tax decreases come from the same budget. We know in the end they will be able to transfer cuts in benefits to cuts in taxes. Medicare savings will still go to tax breaks for those who do not need it.

We also know that the Republican budget expenditure limit target is a gimmick that will cut more and more in subsequent years from Medicare, and take more and more out of the pockets of seniors.

Seniors know that this legislation means double deductibles, increases in

premiums, increases in the eligibility age for Medicare and the elimination of important senior protections that have long been part of this program.

Mr. President, this legislation presents seniors with a series of bad choices—and bad choices are no choices at all. And these bad choices are created in the name of benefits and tax breaks to those who do not need them. We can do better than this. We can do better than backroom deals. We need to open up this legislative process, allow the light of day to shine on our decisionmaking, allow the details of this bill to be examined and carefully considered as it must ultimately be, if this legislation is going to become law. We can do better. And I hope we begin sooner rather than later.

I yield the floor and I note the absence of—I withhold for just a moment.

RECESS UNTIL 7:30 P.M.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate stand in recess until 7:30 this evening, and that when the Senate reconvenes, the time between 7:30 and 8:30 be equally divided in the usual form.

There being no objection, at 6:38 p.m., the Senate recessed until 7:29 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BENNETT).

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Utah, suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BOND. Mr. President, I rise to address the vote for cloture on the Dole-Helms amendment to the Sanctions Act.

I will be voting for cloture because I wish to see this process move along. This bill has been pending all year, and it is time we addressed it and moved on. In voting for cloture, however, I want to make clear that I do not support this legislation. I think it is a mistake, and I do not believe it will achieve the intended results.

First, this bill will impose trade sanctions on many of our closest allies and trading partners throughout the world. That is not going to help the people of Cuba in any way, but it is going to hurt American companies doing business around the world.

Second, the bill creates an unprecedented right of action for legal claims of former property owners in Cuba. Not only will that impose a severe burden on our court system, it will do so without, in anyway helping the people who need it most—families and small property owners who lost their homes and businesses to the Castro regime. This new right of action will also put us into conflict with some companies

headquartered in some of our closest allies who are now operating plants in Cuba.

As a result of both of these problems, the United States will find itself under immediate attack in the World Trade Organization.

This legislation will only add to the already overwhelming misery of the Cuban people. I don't want to do that, and I know none of my colleagues do either. Certainly, we all want to see an end to the Castro regime—a cold war relic whose time has passed. I believe, however, that Castro's days are numbered. Communism has fallen around the world, and it will fall in Cuba as well. We should let it fall of its own weight, and then be there to assist the Cuban people in developing and nurturing a new democratic successor. This bill will not achieve that goal—in fact, it will move in the other direction. I urge Senators to oppose it.

Mr. PELL. I would like to speak for 2 minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mr. PELL. Thank you.

As I have stated on previous occasions, my usual practice is to always vote for cloture as a matter of principle. Indeed, in my more than 34 years in the Senate, I have cast over 330 votes in favor of cloture and have only voted otherwise very rarely.

The vote tonight is one of those rare occasions, because I feel so strongly about the issue at hand. I believe the best American policy in Cuba will be one of openness and regular relations. My several visits to that island over the years have only fortified my belief that the Communist regime there will wither under the light of expanded contact with the United States.

Having in other periods of life lived under communism, I know that when exposed to freedom and the market economy it dies of its own ineptitude.

The bill before us has just the opposite effect, and extended debate is warranted to make the case against it. So I shall be casting my vote, with some reluctance, against cloture.

Mr. President, I ask unanimous consent that material I have here be printed in the RECORD.

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

U.S. DEPARTMENT OF STATE,  
Washington, DC.

LEGAL CONSIDERATIONS REGARDING TITLE III  
OF THE LIBERTAD BILL

The U.S. Government has long condemned as a violation of international law the confiscation by the Cuban Government of properties taken from U.S. nationals without compensation, and has taken steps to ensure future satisfaction of those claims consistent with international law. Congress recognized the key role of international law in this respect. Title V of the International Claims Settlement Act of 1949, as amended, pursuant to which the Foreign Claims Settlement Commission (FCSC) certified the claims against Cuba of 5,911 U.S. nationals, accordingly applies to claims "arising out of violations of international law."

The State Department, however, opposes the creation of a civil remedy of the type included in Title III of the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995" (the "LIBERTAD bill") currently under consideration by the Congress. The LIBERTAD bill would be very difficult to defend under international law, harm U.S. businesses exposed to copy-cat legislation in other countries, create friction with our allies, fail to provide an effective remedy for U.S. claimants and seriously damage the interests of FCSC certified claimants. It would do so by making U.S. law applicable to, and U.S. courts forums in which to adjudicate claims for, properties located in Cuba as to which there is no United States connection other than the current nationality of the owner of a claim to the property. Specifically, the LIBERTAD bill would create a civil damages remedy against those who, in the language of the bill, "traffic" in property of a U.S. national. The bill defines so-called "trafficking" as including, among other things, the sale, purchase, possession, use, or ownership of property the claim to which is owned by a person who is now a U.S. national.

The civil remedy created by the LIBERTAD bill would represent an unprecedented extra-territorial application of U.S. law that flies in the face of important U.S. interests. Under international law and established state practice, there are widely-accepted limits on the jurisdictional authority of a state to "prescribe," i.e., to make its law applicable to the conduct of persons, as well as to the interests of persons in things. In certain circumstances a state may apply its law to extra-territorial conduct and property interests. For example, a state may do so in limited circumstances when the conduct has or is intended to have a "substantial effect" within its territory. The Senate version of the bill appears to imply that so-called "trafficking" in confiscated property has a "substantial effect" within the United States. Some have explicitly defended the LIBERTAD bill on this ground.

Asserting jurisdiction over property located in a foreign country and expropriated in violation of international law would not readily meet the international law requirement of prescription because it is difficult to imagine how subsequent "trafficking" in such property has a "substantial effect" within the territory of the United States. It is well established that under international law "trafficking" in these confiscated properties cannot affect Cuba's legal obligation to compensate U.S. claimants for their losses. The actual effects of an illegal expropriation of property are experienced at the time of the taking itself, not at any subsequent point. An argument that subsequent use or transfer of expropriated property may interfere with the prospects for the return of the property would be hard to characterize as a "substantial effect" under international law. Under international law, the obligation with respect to the property is owed by the expropriating state, which may satisfy that obligation through the payment of appropriate compensation in lieu of restitution.

As a general rule, even when conduct has a "substantial effect" in the territory of a state, international law also requires a state to apply its laws to extra-territorial conduct only when doing so would be reasonable in view of certain customary factors. Very serious questions would arise in defending the reasonableness under international law of many lawsuits permitted by Title III of the LIBERTAD bill. The customary factors for judging the reasonableness of extra-territorial assertions of jurisdiction measure primarily connections between the regulating