

I said it on December 7, and I say it today: "Here we go again."

Four months ago, we considered the Pryor language in this chamber. That time, it was an amendment to the partial birth abortion ban bill the President just vetoed. We agreed then, by a vote of this body, that the Judiciary Committee should hold hearings on the issue.

On December 13, I sent a letter to Senators PRYOR, BROWN, and CHAFEE, and I made a commitment to hold a hearing on February 27 and a markup by the end of March.

In fact, the committee did hold the hearing on February 27, as I promised. I agreed to hold a markup the week of March 25, but had to delay that because of lengthy committee consideration of the immigration bills. I rescheduled the markup at the first opportunity. In fact, it was to have been today, but as my colleague may have heard, we did not get a quorum.

I still intend to press forward expeditiously for consideration of this issue in the committee. It will be on the agenda for the next markup and that is my commitment.

I find it ironic that proponents of this amendment are using the same timetable as I. There is no disagreement here. The process is moving forward.

In sum, I have lived up to my word.

As a matter of fact, I have bent over backwards to accommodate the interests of this body in a full and fair examination of the issue.

We had 10 witnesses at the February 27 hearing, 5 on each side. It was a good session, one during which I believe we all learned a lot.

I plan to go ahead with the markup. We will try to work out a resolution. I hope we will be able to. I don't think that the Brown amendment today meets that test.

The GATT/pharmaceutical patent issue is unquestionably one of the most complicated we have seen, as it involves the confluence of patent law, trade policy and food and drug law and regulations.

Its resolution has potentially enormous consequences, both on the future of biomedical research in this country and on the ability of consumers to have access to the most safe, effective, and low cost drugs possible.

The proponents of this amendment argued today, as they have in the past, that this is a case of Congress making a simple mistake and that now we should act to fix this mistake by adopting this technical mistake.

This is the type of argument that is often made when this body acts through unanimous consent.

I wonder how many times we have debated a purported technical corrections bill for 3 hours—as we did on December 7—then split almost down the middle on a 49–48 vote that cut across party lines.

There is no foundation for the argument that this is a simple perfecting

amendment that would achieve a result which is clearly intended by Congress.

Again today we heard the now familiar litany on the issue of intent. We heard about Ambassador Kantor, FDA Deputy Commissioner Bill Schultz, and all the other Administration representatives who attend the school of revisionist history on this issue.

What has become apparent to me during this debate, a fact which has not been revealed today by any of my colleagues, is that the argument on intent has been rejected by the Court of Appeals for the Federal Circuit, which could find no definitive evidence of intent.

In the November, 1995 Royce decision, the Federal Circuit stated:

The parties have not pointed to, and we have not discovered, any legislative history on the intent of Congress, at the time of passage of the URAA, regarding the interplay between the URAA and the Hatch-Waxman Act.

Perhaps some day my colleagues can explain why it is that the Federal Circuit, a neutral judicial tribunal, is having so much trouble finding any evidence on the question of intent, a question that seems to lie at the center of this debate.

Perhaps some day my colleagues can explain why, in their quest to "level the playing field," they have created a special benefit for one industry. I challenge them to identify any industry that has attempted, let alone succeeded, to use the GATT transition rules to reach the market prior to expiration of the newly extended patents. It just hasn't happened, and it probably will not unless anyone can identify acts that would not have been infringing before we enacted the URAA that continued and became infringing after the URAA was enacted.

It is curious to me that a lawyer for the generic drug industry would argue to the Supreme Court that "the most obvious intended beneficiary of this statutory licensing system was the generic drug industry . . . . In fact, since the adoption of TRIPS and the URAA, no industry other than the generic drug industry has emerged as being potentially affected by the equitable remuneration system."

I will not prolong my remarks today. I look forward to exploring these and other issues in much greater detail at the markup.

In closing, I want to reiterate my strong opposition to the amendment, and my disappointment that we are considering it here today prior to the Judiciary Committee's scheduled markup.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I request to be able to use the 15 minutes that I am allotted under the former UC that was decided by the Senate.

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

#### MINIMUM WAGE AND SOCIAL SECURITY

Mr. DORGAN. Mr. President, I intend to yield some of that time to the Senator from South Carolina.

Mr. President, everyone has a right to characterize or mischaracterize the activities of the Senate. A colleague of mine during the previous debate on the motion to strike came to the floor and in that debate characterized the series of things that had happened earlier this week—or rather mischaracterized them—and described the certain circumstances as highly partisan, just politics, and so on.

I felt it necessary that I correct the RECORD and not allow this moment to pass without responding. I want everyone to understand that there are times here in the Chamber when amendments are offered that it is not convenient for people, amendments are offered that just are uncomfortable for people. But the way the system works here is sometimes you do not have an opportunity to offer an amendment except in the certain circumstance, and then you must offer it, or you are never going to have a chance to have the Senate consider it.

We had a circumstance earlier this week where a bill was brought to the floor of the Senate. Senator KENNEDY, I, and some others were intending to offer an amendment. Senator KENNEDY was going to offer an amendment on the minimum wage, which I support. That is inconvenient for some people. They do not want to debate the minimum wage. Some in this Chamber say we do not want to deal with the minimum wage issue. Some of us do. Some of us think when you have gone 6 years without a change in the minimum wage that at least those on the lower rung of the ladder have lost one-half dollar of their purchasing power from the minimum wage, and maybe people in this Chamber ought to care a little about that. I know there are no high-paid lobbyists out beyond this Chamber saying, "Yes, we care about the people at the bottom of the economic ladder." If we are working on issues that dealt with the people at the top of the ladder, you can bet the halls would be full of high-paid lobbyists. But not for the minimum wage.

Some of us insist that these are issues that we ought to be debating.

Is it partisan? No. It is public policy.

The second issue which I introduced as an amendment on Monday dealt with the Social Security issue. It is mischaracterized as totally partisan, irrelevant, and a troublemaking amendment.

Let me describe what this issue is. Let me go back to 1983. In 1983 this Congress passed the Social Security Reform Act. I know that because I helped write it. I was a member of the Ways and Means Committee in the U.S. House. If anybody wants to go back to the record of the markup, you will find that I offered the amendment in 1983 during the markup that said let us not

use the Social Security revenues we are going to begin to save to meet our needs when the baby boomers retire. Let us not use them as other operating revenues. Let us truly save them. So let us create a firewall. Let us prevent people from misusing, or taking, the Social Security trust funds and using them for other purposes. In 1983 I offered that amendment. It was defeated in the Ways and Means Committee.

I have tried since repeatedly. The Senator from South Carolina has tried, and in some cases successfully. The fact is we have a law that prevents the Social Security funds from being misused for other purposes, and the law is ignored.

My intention was to bring to the floor on Monday an amendment that I offered that angered some people, an amendment that said, if we are going to consider a constitutional amendment to balance the budget which the majority leader said he will require us to do under reconsideration, a procedure that will allow no amendments and no debate—if we are going to do that—I said let us have the Senate vote on a sense-of-the-Senate amendment to create a firewall between the Social Security trust funds and other revenues because, if we do not do that, what will happen is \$600 to \$800 billion of Social Security trust funds will be misused. That is not trivial, and is not partisan. It is policy.

I understand that for some it is a nuisance. For some it is inconvenient. For some it is troublesome to have to deal with this.

So the result was people got in a pique and decide to put the Senate into a recess so one person or another cannot speak. It is not the way this place works.

We will vote on that sense-of-the-Senate resolution. We did not on Monday. But we will vote on it. We have the right to offer it, and we have the right to insist on a vote on it.

The same will be true with minimum wage, and the same will be true with several other issues that we think are important matters of policy. This is not about individuals on the Senate floor.

The PRESIDING OFFICER. If the Senator will suspend for a moment, will those Members in the Senate who are having discussions please retire to the Cloakroom, and members of staff as well?

The Senator from North Dakota.

Mr. DORGAN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 10 minutes and 20 seconds.

Mr. DORGAN. Let me finish, and then I will yield to the Senator from South Carolina under the 15 minutes.

My only point is this: I respect any Member who stands up and ascribes motives to others, but if they are motives that, in my judgment, do not comport with what we are trying to do, then I think we have a right to say that is not the case.

With respect to Social Security, Social Security is going to have problems beginning in the year 2018. That is the point at which the surplus discontinues accumulating. From 2019 down to 2029 or so we run out of surplus. The fact is in order to accumulate that surplus, we must set the surplus trust funds aside.

That is what the Senator from South Carolina and I have been trying to do for a long while. I encourage those who wonder about motives to go back to 1983 and the Ways and Means records and see who was making those motions 13 years ago on this very issue, and then call them political today, if you will. But you are wrong.

The Senator from South Carolina has been on this floor many times and I have been on the Senate floor and the House floor many times in the last 13 years on this subject, and I will continue to do so. It might be inconvenient to have offered the sense-of-the-Senate resolution last Monday, but we will vote on it at some point. I said then I would agree to a 20-minute time limit; it does not matter to me. I just want this Senate to go on record on those issues. Maybe that is partisan in the minds of some. To me it is a very important public policy.

Mr. President, I yield the remaining time to the Senator from South Carolina [Mr. HOLLINGS].

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleague from North Dakota. We have been working in the vineyards together in trying to end the practice of applying Social Security surpluses toward the deficit. Everyone is interested in balancing the budget. But what happens in all of these budgets, both the Republican and the administration budgets, is that they use Social Security trust funds to obscure the size of the deficit.

This minute, we owe \$502 billion to Social Security. Over the next 6 years, we will borrow another \$600 billion from that trust fund. So even if we succeed in enacting these so-called balanced budget plans, by 2002 we will have destroyed the Social Security program; we will owe Social Security over \$1 trillion. No one is going to raise taxes some \$1 trillion to make good on the Social Security trust fund.

The time to stop that nonsense is here and now. In order to do so, 98 Senators in this Chamber, as the Senator from North Dakota stated, voted for the Heinz-Hollings-Moynihan amendment on October 18, 1990. President George Bush, on November 5, 1990, signed section 13301 of the Budget Enforcement Act into law.

Republicans charge that offering the Dorgan amendment is delaying action on the immigration bill. But what is good for the goose is good for the gander. On yesterday afternoon, in the middle of the terrorism bill, the distinguished majority leader saw fit to come to the floor to talk about balancing the budget through spectrum

auctions. Fine. That is his privilege and no one disrespects it. But we should not cry foul when other members talk about Social Security and balancing the budget.

The truth of the matter is that we are in a Catch-22. This Senator has produced balanced budgets. I had a AAA credit rating as the South Carolina's Governor. I voted for a balanced budget in 1968-69. Since that time, as chairman of the Budget Committee, I have proposed freezes, Gramm-Rudman-Hollings, and, yes, tax increases to try and balance the budget. So this is not a casual political maneuver to get high ground in any political campaign. It is done in an attempt to get us to keep our word—to not use Social Security trust funds in calculating the deficit. We cannot keep it when the leadership, in considering the constitutional amendment to balance the budget, which this Senator has voted for already three times—

The PRESIDING OFFICER. If the Senator will suspend, let the Chair try to get order in the Senate. If those Members who are having discussions, please, could retire to the cloakroom. The Senator is entitled to be heard.

Mr. HOLLINGS. I thank the distinguished Chair.

I voted for a balanced budget. I wish to vote for a balanced budget amendment to the Constitution. But I will not vote to repeal the firewall that we have in the law for the Social Security trust fund. Let us have really truth in budgeting.

I commend the distinguished Senator from North Dakota in bringing his amendment up in this particular fashion. It is unfortunate that we had no other option. We are not trying to delay the immigration bill. I commend the Senator from Wyoming and the Senator from Massachusetts on their leadership on immigration. I am ready to vote for their bill. We are ready to agree to a time agreement. But we want to vote on this issue to really fix into the conscience of the body that when we say it is a trust fund, we mean to protect it and not dip into those surpluses. That is what the chairman of the Budget Committee on the House side said they did last evening. They dipped once again into our children's piggy bank.

That piggy bank is there to protect retirement. Senator THURMOND and I, we are going to get ours. In fact, we are getting ours now. But I can see some young folks around here; when their time comes, they are never going to be able to receive it. Why? Because we have got this nonsense about a unified budget.

Here is the budget law. If you can find the word unified in there, I'll jump off the Capitol dome. There is no such thing as a unified budget in the budget law, but the administration goes along with it; the Congress goes along with it. They violate the law. Let us join with the distinguished Senator from North Dakota and stop violating the law.

I yield back the remainder of my time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I am just going to take one moment and then yield the floor. We have a measure that is before us, and I see the Senator from Vermont, who has an amendment, who had spoken to us earlier today and is waiting to move towards that amendment.

We are going to, in just a few moments, ask unanimous consent to finalize the list of amendments. We have been able to work through many of them. So we are expecting probably some votes that will be continuing along until we are able to hopefully get this concluded. We can do that in a period of time, but I hope that our membership will not be coming to us at 7:15 asking for windows and other kinds of things, because we were able to really move this and follow the admonition of both the majority and minority leaders. So we are going to ask for a consent that we have received all the amendments in just a few moments. So if any of the Members are interested, this is really the last call.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

#### BALANCED BUDGETS AND SOCIAL SECURITY

Mr. SIMPSON. Mr. President, I just want to speak for a few moments on this issue of Social Security and balanced budgets. I have the greatest respect for Senator Fritz HOLLINGS and my colleague Senator Kent CONRAD, who sits there, and his friend and mine BYRON DORGAN. They are a very remarkable duo from North Dakota, and they have been working hard on this issue a good long while, and so has my old friend Senator HOLLINGS.

If we are going to debate this issue of Social Security, we are going to have to deal with reality. The reality has come to me and should come to everyone in this Chamber simply by studying the work of the entitlements commission, the Bipartisan Entitlements Commission, where Senator BOB KERREY and Senator JOHN DANFORTH of Missouri sat for a year and presented to 32 Americans, including many of us in this Chamber, what is going to happen to Social Security.

There is no way to duck it. There is no way to finesse it. There is no way to demagog it. That is no way to go. Because if you are going to talk about something that is worth \$360 billion and leave it "off the table" in a fashion that no one in this body is supposed to touch it or say a word about Social Security while the senior citizens groups beat your head in and my head in and not allow us to even touch a system and keep telling us, and warning us, "Oh yes, it will need to be corrected" and, "Oh yes, we have a way to tell you

how to do that"—and their solutions always have to do with raising the payroll tax, ladies and gentlemen, and guess who pays the payroll tax? Not the senior citizens.

Now, if we are going to deal with this issue, then I am going to begin to come to the floor each and every time we come to this issue of Social Security and balanced budgets concepts and begin to get one singular thing across. Hear it. There is no Social Security trust fund, ladies and gentlemen. There is no Social Security trust fund. None. And the reason there is none is because, when Franklin Delano Roosevelt and the Congress put this package together, they said that if there is any surplus in the Social Security system it will be invested in the securities of the United States Government, secured by the full faith and credit of the United States. And every shred of this surplus—and it is big and it is going to get a lot bigger—every shred of it is invested in the securities of the United States Government in a series of IOU's.

You know that and I know that. But, better yet, the trustees know that. And who is this group of people telling us about this? They are called the trustees of the Social Security system, three of whom are in the President's Cabinet: Robert Rubin, Donna Shalala, and Robert Reich; one Republican, one Democrat, and the Commissioner of Social Security. And they are the stewards of Social Security. There are no other designated stewards of it.

In the trustees little booklet of their annual review which is about that thick, and I hope you will read it, it says that in the year 2029, without doing something for Social Security, it will go broke. It will be out of business. But, more important, in the year 2012, when the payments coming in will not cover the payments going out, you are going to start cashing in the bonds. And then you begin to use up the interest. And between the year 2012 and the year 2029, it is history.

So, every time we hear this old saw, I want to be right here too and tell the American people, just as the trustees would if they were here—I will speak for them—that there is no Social Security trust fund. It is a floating pile of IOU's. You know it and I know it. So, when we come here to this Chamber to talk about cooperation, coordination, subjugating our own obsessions or our own agenda's to the body work of this then let us talk about that fact every time.

I have been through this plenty of times in this Chamber. I do not keep score of how many times I may have come to the floor on any issue. But I can tell my colleagues I do know how many times some people have come to the floor on this singular issue—time after time after time; and fully knowing that there is no trust fund.

We were just involved in a bill, talking about a rather interesting issue called illegal immigration reform. Several years ago—and I have done this

too long, remember for 17 years—my dearest friend, Senator John Heinz, proposed an amendment on—guess what? Social Security. What was it that time? Listen to this one. I said to John Heinz, my old friend—and remember, we put together a package that said that the COLA would always be paid out, but if the inflation was ever 3 percent or less that we would not increase the COLA. If it was less than 3 percent we would not give a COLA on Social Security."

It was that year at 1.5 percent or something, or perhaps 2. And we came to the floor and Senator Heinz, who really was spectacular—in fact—if he were here today we would not be in the health care conundrum we are in. He was that good. He could have led us out of that.

I said, "John, you know it will pass. All you have to do is mention Social Security or a COLA and you know it will pass—or if you mention veterans, you know it will pass." We have all been there. We are all bright people. We know this.

So, there it was. An impasse. And finally he removed it from the immigration bill, placed it on another one, and so it is much like this one. We all know what this is. There is not a soul in this building, a soul in this city, a soul who follows this, like BOB KERREY and JACK DANFORTH did, who does not know that there is no Social Security trust fund—zero—zip—nothing. To hear it continued to be bandied about is an extraordinary adventure in fantasy.

Mr. HOLLINGS. Will the distinguished Senator yield?

Mr. SIMPSON. I will yield for a question.

Mr. HOLLINGS. With respect to Senator KERREY and Senator Danforth's recommendations, fine—I support their particular report. It is not a question of fixing Social Security. It is a question of not using the surpluses to obscure the size of the deficit and using them for Social Security.

I am sure the Senator was with me, on October 18, 1990. And I am sure he supports that law.

You and I act like there is some difference. There is no difference in our belief that changes will have to be made to protect the integrity of social security. But the law says thou shalt not use the Social Security moneys to obscure the size of the deficit? That is the law, 13301. The chairman of the Budget Committee is here, he is totally familiar with it. Isn't that correct?

Mr. SIMPSON. Mr. President, I do not think anybody would try to obscure anything—at least this Senator is not. The obfuscation and the obscuring is to tell the American people that there is a trust fund that we are using moneys from. There is not any trust fund there to be using. It is not there. It is a series of IOU's. So, when we say, "Oh, you are doing a terrible thing. You are hiding something or you are using the money that should have been there for us," that is simply not the case.