

dream: save, invest, and hope that your kids can have a better opportunity than you had. That is the American dream. And the estate tax, or the death tax, just cuts that right to the quick and says: We want half of everything you earned during your lifetime. And, by the way, if you have to sell your business to pay us the money, that is tough. We want to spend it back in Washington.

This is a perverse tax policy. The good thing about the version of the repeal that Senator GRAMM and I have proposed is that it does not let anybody off the hook in terms of paying taxes to Uncle Sam. They already paid the taxes on the income. What we say is when Brad Eifert inherits his father's business, the Boone County Lumber Company, he does not pay a tax when his dad dies—that is perverse—but if he ever sells the Boone County Lumber Company, then he pays a capital gains tax, and he pays it based on what his dad paid for the original company.

So Uncle Sam is going to get the full take. We will get all the money we need here to spend in Washington, but it is when he decides to sell the business; that is the taxable event. Death should not be a taxable event.

So I hope my colleagues will join Senator GRAMM and me later today when we have an opportunity to finally repeal this perverse tax and replace it with a capital gains tax. We are not letting anybody off the hook. We are substituting one tax for the other, but we are substituting a tax that is fair because it says if you make a decision, knowing the tax consequences, to sell the asset, you pay Uncle Sam. If you don't, you don't. But that is your decision. It replaces a tax on the event of death which is more perverse and unfair.

The U.S. Government should not have that as a policy for the people of the United States of America. I urge my colleagues to reject the alternatives. There is only one real repeal, and that is the Gramm-Kyl repeal of the death tax.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE PRIME MINISTER OF AUSTRALIA

The PRESIDING OFFICER. Pursuant to the order of the Senate, the following Senators are appointed to escort the Prime Minister of Australia into the House Chamber: The Senator from South Dakota (Mr. DASCHLE), the

Senator from Florida (Mr. NELSON), the Senator from Mississippi (Mr. LOTT), the Senator from Oklahoma (Mr. NICKLES), the Senator from Texas (Mrs. HUTCHISON), the Senator from Idaho (Mr. CRAIG), and the Senator from Indiana (Mr. LUGAR).

Without objection, in accordance with the previous notice, the Senate will now stand in recess for the purpose of attending a joint meeting with the House of Representatives to hear the very distinguished Prime Minister of Australia, John Howard.

Thereupon, the Senate, at 10:46 a.m., took a recess and the Senate, preceded by its Secretary, Jeri Thomson, proceeded to the Hall of the House of Representatives to hear an address delivered by the Honorable John Howard, Prime Minister of Australia.

(For the address delivered by the Prime Minister of Australia, see today's proceedings of the House of Representatives.)

At 12:30 p.m., the Senate, having returned to its Chamber, reassembled and was called to order by the Presiding Officer (Mrs. CLINTON).

DEATH TAX ELIMINATION ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 8, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 8) to amend the Internal Revenue Code of 1986 to phaseout the estate gift taxes over a 10-year period, and for other purposes.

Pending:

Conrad amendment No. 3831, in the nature of a substitute.

AMENDMENT NO. 3831

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, what is the issue before the Senate?

The PRESIDING OFFICER. The Conrad amendment No. 3831.

AMENDMENT NO. 3832 TO AMENDMENT NO. 3831

Mr. REID. Madam President, on behalf of Senator DORGAN, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. DORGAN, for himself, Mr. DURBIN, Mrs. CARNAHAN, and Mr. CORZINE, proposes an amendment numbered 3832 to amendment No. 3831.

Mr. REID. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to make permanent the estate tax in effect on December 31, 2009, to increase the exclusion amount to \$4,000,000 in 2009, and to provide a full family-owned business interest deduction in 2003)

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—

(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking “2007, 2008, and 2009” and inserting “2007 and thereafter”.

(B) The table contained in section 2010(c) of such Code is amended by striking “2009” and inserting “2009 and thereafter”.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking “this Act” and all that follows through “2010.” in subsection (a) and inserting “this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.”, and

(ii) by striking “, estates, gifts, and transfers” in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking “\$3,500,000” and inserting “\$4,000,000”.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking “GENERAL RULE.” and all that follows through “For purposes” and inserting “ALLOWANCE OF DEDUCTION.—For purposes”.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

The PRESIDING OFFICER. Who yields time? If no one yields time, time shall be charged equally to both sides.

Mr. REID. Madam President, I suggest the absence of a quorum and I ask unanimous consent that time be charged equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRAMM. Madam President, let me remind my colleagues where we are and what we are doing. Last year, we adopted a repeal of the death tax. Under that repeal, we phased up the exemption. We will soon start phasing down the rates, and in 2010 we will actually repeal the death tax. But because of a quirk in the rules of the Senate and the budget process, this death tax snaps back into full force in 2011.

Members of the Senate voted to repeal the death tax. They proclaimed they were repealing the death tax. We are here today to really finish that work by simply taking the provisions of law that are in place and in 2010—a

year when according to the Congressional Budget Office March estimate we will have a surplus of over \$300 billion—we would eliminate the death tax forever rather than having the death tax come back from the grave to prey on working families. That is the provision we are here to debate.

We have had offered an amendment which is really not about protecting family farmers. It is not about protecting small businesses. It is about protecting politicians. It is an amendment that makes a nominal change in existing law that still allows the death tax to continue but it claims to give an unlimited exemption to small businesses and to small farmers under a section of law called section 2057. This is a provision that was proposed last year by the opponents of the death tax repeal as an alternative when we voted on repealing the death tax. It is in law today but at a lower level of protection.

The point I want to make is, section 2057—which this amendment claims would be expanded to shelter more value in small business and family farms—and all the other special exemptions put together have been used by only 33 taxpayers in the time they have been in effect. In other words, these provisions that supposedly shelter and give small business and family farms special protection are so convoluted, so burdensome, so inefficient that only 33 taxpayers in the years since these provisions have been in effect have found it possible to use this section 2057 to gain the promised relief.

So the reality is, if this amendment were adopted, it would provide assistance to 33 known taxpayers but it would provide a figleaf to 40 Senators by allowing them to vote against the repeal of the death tax once and for all.

My colleague and cosponsor on this bill is a distinguished attorney, and I want to give him an opportunity to talk about this provision in some detail, but let me basically sum up the arguments we have heard thus far and that we are certainly going to hear today.

The first argument we are going to hear is that repealing the death tax is going to cost money, is going to drive up the deficit, and is going to increase debt. I remind my colleagues that under the latest estimates we have, the death tax collects less than 1 percent of the revenues that we collect in the Federal Government.

Yesterday, I made reference to two studies, one by our own Joint Economic Committee titled "The Economics of the Estate Tax," and the other by the Institute for Policy Innovation titled "The Case For Burying the Estate Tax." Both of these studies make a very strong case that by forcing small business and family farmers who are trying to protect their families from the death tax to pay these big insurance policies, to hire all these lawyers, to hire all these accountants, and by forcing people to sell off businesses

and farms prematurely to try to plan for this tax, we have lowered the efficiency of the economy. The study by our Joint Economic Committee concludes that the level of capital in America is \$50 billion lower than it would be without the death tax. The study by the Institute for Policy Innovation concludes that by disrupting economic activity and lowering efficiency, this tax actually collects no net new revenue.

Our colleagues say, and we are going to hear it throughout the day in the debate, that, well, we would make it permanent but we cannot afford it; we cannot afford to make it permanent.

I remind my colleagues that the amendment I will offer, which is the permanent repeal amendment that passed the House, does not go into effect until 2010. As I noted earlier, in 2010 we are projected to have a surplus of some \$300 billion. What those who oppose permanent repeal of the death tax are really saying is they want to spend that money.

There is an interesting paradox here. Despite all the talk we had yesterday and will likely hear again today that we simply cannot afford to make the repeal of the death tax permanent and we have to force families to sell off the family business and sell off the family farm and give government 55 cents out of every dollar people have accumulated in their working lifetime in aftertax dollars, that we have to do that because we need the money, I find it interesting that in five different instances over the last 9 months where this Senate has voted to spend more money than we would lose in revenues next year if we made the repeal of the death tax permanent. We spent \$14 billion on nonemergency items in the emergency supplemental appropriation that the President did not ask for and that over the next 2 years is some four times as much as repealing the death tax would save families if they got to keep the money.

The farm bill next year costs seven times as much as letting people keep the family farm or keep their small business.

The energy bill was more expensive than the cost of letting people keep their family farms.

The trade bill added new entitlements that cost more over the next 3 years than letting people keep what they have accumulated over a lifetime.

Railroad retirement costs 15 times as much next year.

The stimulus package that was adopted, the parts that were not asked for by the President, cost more than making the repeal of the death tax permanent next year.

Finally, the budget reported on a straight party line vote out of the Budget Committee adds new spending—not requested by the President, not defense related, not related to our security needs in fighting terrorism—of \$105.8 billion.

In short, on five different occasions in the last 9 months we have voted on

the floor of the Senate or in the Budget Committee to add new spending that, when it is added up, is some 15 times more expensive than repealing the death tax permanently, and yet our colleagues who voted for each and every one of these increases in spending now say, well, we could afford to spend all of this money but we cannot afford to stop forcing families to sell off their farms and their businesses and the accumulated value of the life work of their parents.

That represents misplaced priorities. We have colleagues who could name 100 taxes that ought to be increased, who could name 40 tax reductions that should be taken back, but they cannot name a single Government program that we could live without or we could reduce.

At its root, this issue boils down to one simple choice. We will hear many arguments today, but it comes down to a simple choice. The people who do not want to make the repeal of the death tax permanent believe it is worth forcing people, at the death of their parents, to sell off their life's work to give over half of it to the Government, even though it is all aftertax income. They have already paid taxes on it once.

The opponents of making the death tax repeal permanent believe it is worth forcing businesses to liquidate farms, to shut down, equipment to be sold, jobs to be destroyed, because they believe that having that money in Washington so they can spend it is worth it. Those who want to make the death tax repeal permanent do not believe that. Those who want to make the repeal of the death tax permanent believe we would be better off as a nation—we would be richer, freer, happier, and the world would be fairer—if, when families work and save and sacrifice and pay taxes on every dollar they earn in their lifetime and they build up a business, farm, or estate, that their death should not be a taxable event.

We will hear a discussion today that says, OK, we are willing to do this for some. We know it is bad for some people, but we want to pick and choose as to who has to pay this death tax. The position of those who want to repeal the death tax permanently is a position that we believe the tax is immoral. We believe it is wrong. We think, whether somebody's estate is worth \$700,000, or whether they built a business that has 200 employees and that has tools and capital and land and trucks and equipment worth \$10 million, we believe, if they built a business worth \$10 million, that destroying that business to bring \$5.5 million of that to Washington so we can spend it does not represent a good choice in public policy. After all, it is their money. They built it. They accumulated it. They sweated and saved and sacrificed for it.

That ultimately is the issue. We believe it is wrong to tax death. We believe it is wrong when people build up assets and build a business for government to then destroy it.

I showed data yesterday indicating more than 70 percent of small businesses that are founded by a family member do not survive into the second generation; 87 percent do not survive into the third generation. According to the NFIB, the No. 1 reason is the death tax.

It is time to fix this provision of the Tax Code. We are going to have an opportunity to do that. There will only be one real amendment. There are two amendments that give political cover. There is one amendment I will offer that is exactly the same language the House passed, and if we adopt it, it will go to the President and he will sign it into law. That is the issue. There is one real repeal, as my colleague from Arizona says.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Just so we know where we are, I know there was time during the quorum attributed to both sides. How much time remains on both sides?

The PRESIDING OFFICER. Forty-one minutes remain in opposition and 56½ minutes remain for the proponents.

Mr. KYL. Madam President, let me make two quick points. The first has to do with the question of who pays the estate tax or the death tax. We know it is not the person who died. We know it is the people who have the estate and who are required, therefore, to, in many cases, actually sell a business in order to generate the cash to pay the tax.

Who are the estate tax filers and what occupations do they hold? I am going to quote from official Internal Revenue Service reports. In the last analysis of the IRS of people's occupation and sex in filing estate tax returns, published in the Statistics of Income Bulletin, summer of 1999, pages 72 to 76, the IRS reports:

For males, the largest group of filers at 27.7 percent were administrators, upper management and business owners. The second largest group at 12.3 percent were schoolteachers, librarians, and guidance counselors. For females, the largest group of estate tax filers at 14.1 percent were educators. The next largest group at 9.6 percent were in clerical and administrator support occupations.

A significant number of the total of estate tax filers were scientists, sales people, entertainers, airline pilots, military officers, and mechanics. That is according to the IRS.

There is a vision of some fat cat sitting on a yacht someplace that we are going to stick and get a lot of money from to run the Federal Government. We know the Federal Government's collections of estate taxes are only 1 percent, slightly more than 1 percent of total revenue collections. Who is that money coming from? The largest group of women were educators. The next largest were clerical and administrator support people. They are airline pilots, scientists, salespeople, military officers, mechanics. I can understand

the category of entertainers. But, remember, those entertainers pay a lot of income tax, too. And the second largest group of males is schoolteachers, librarians, and guidance counselors.

Do we want to punish these people because they have been lucky enough to have been born into a family in which their father or mother was able to accumulate some kind of an estate? This is perverse tax policy.

As I said this morning, the primary problem is that the businesses that have the value are not easily liquidated to generate the money to pay the tax. It is not as if when someone dies there is a lot of money in a shoe box and Uncle Sam taps you, as the heir, on the shoulder and says, I would like half of that, 50 percent. That is not what happens.

Ordinarily what happens is there is a business. We talked this morning about the Boone County Lumber Company in Columbia, MO. They have a lot of money tied up in lumber that they bought that they hope to sell—in trucks, in forklifts, in warehouses, and so on. That is equipment that enables 30 people to have a job. When the owner of that business dies, his family is going to have to make a decision. They do not have the money to pay half of the value of that business to Uncle Sam. The salaries that people take out are \$48,000, \$60,000, some approaching \$100,000, and in some cases more than that, but most are the salaries of any other small business. And bear in mind, half the small businesses in this country are women owned. These salaries do not generate a whole lot of capital by which you can pay an estate tax. The only way you can get the money to pay the estate tax is by selling the business on which the estate tax is based. The estate tax doesn't say, How much money did you have left over at the time of death? The estate tax says, What is the value of the company or the business or the farm that you are running? The value of that business is based on the value of the equipment and the land, and so on, most of which are probably going to be financed and therefore probably already heavily leveraged. But that value determines what has to be paid to Uncle Sam—half of it. That is why the estate tax is particularly perverse, especially because you have to do the liquidation right after the time of death.

There is an effort by our colleague from North Dakota, who has laid down a second-degree amendment here—to "improve on the existing law" would be the way I think he would characterize it. He does this by providing that the exemption we provide in the law, that goes to \$3.5 million, would go to \$4 million, as I understand it; and for small businesses and farms it would become an unlimited exemption.

Certainly the sentiment behind that is laudable. The problem is it simply will not work. How do we know that? Because we know it currently does not work. The law currently provides

methods for small business people and family farms to get an exemption from the estate tax. The exemption today is \$1 million. It is going to go up in the future. The Senator from North Dakota would make it an unlimited exemption. But the problem is even unlimited exemptions are worth exactly nothing if you cannot qualify. In other words, there is a door you have to get through. There is a gate you have to get through. You have to stay on the other side of that or none of this matters, and that is the problem with the amendment of the Senator from North Dakota.

In the business, people referred to it as QFOBI, and I am going to do that for the purposes of brevity here, but it is technically the family-owned business exclusion. That is the provision of the existing law. There are actually two different sections under which people who have a small business or farm and who want to be exempted for part of the estate tax will try to qualify. But as I said, if you can't qualify under this provision, it doesn't matter how big the exemption is, you are out of luck. The problem with this QFOBI is it is much too difficult and too complex for most people to be able to qualify. I will give you an idea.

For the calendar year 2000, 108,322 estate tax returns will be filed. Of course, only 1,470 made the QFOBI election; in other words, about 1 percent of the total.

By the way, that number is actually a little higher than in some previous years. In 1999, for example, the total number of estate tax returns for which the exemption was requested was 173. In 1998, that number was 889. My colleague from Texas pointed out that only 32 people have ever qualified for a combination of both. But even take the larger number we have for the tax year 2000; that is 1,470, and that represents about 1 percent of the total of the estate tax returns filed.

If the percentage of people filing estate tax returns is as low as our Democratic colleagues for the most part say it is—and although I will contest it, let's assume for the moment they are right—it is maybe about 2 percent of all taxpayers; and if of that 2 percent only 1 percent of them qualify for this small business or farm exemption, then the amendment of the Senator from North Dakota helps a grand total of two one-hundredths of 1 percent of people filing tax returns—two one-hundredths of 1 percent. The fact is, it doesn't even help that many people because QFOBI is recognized as very treacherous for somebody to get involved in.

A representative of the American Bar Association testified before the Ways and Means Committee that the provision was simply too complicated to be effective. A professor of law at Temple noted that very few people would try to meet the qualification because of its complexity. The NFIB, which represents a lot of these people, testified

that qualifying for the family-owned exclusion currently is difficult, costly, and complex. Studies by numerous organizations and scholars routinely find that family businesses spend exorbitant amounts of revenue on lawyers, accountants, and financial planners in order to try to do this.

The reason I say even two one-hundredths of 1 percent is a high number is that the reality is, if you try to qualify for QFOBI, you are going to find yourself face to face with the friendly IRS.

The reason is the IRS will look at every one of these filings. They will contest a significant number of them. As a matter of fact, in the year 2000 there were 149 cases pending, which represents about 10 percent of the total number that were filed at that time—the total number of estate tax returns filed at that time. There are an equal number of cases in the administrative process. You first have to go through the administrative process, and then you will actually have your case taken to court.

What happens when the IRS challenges these? The IRS wins. As of the last time we have statistics, the IRS had won 67 percent of the cases.

So if you have the courage to try to qualify under this QFOBI election, understand you are going to have the IRS question the value. It is going to be an administrative appeal. At least 10 percent of the cases are going to be in court. And you are going to lose two-thirds of the time.

That is why the group of lawyers that works on these kinds of things, the section of the American Bar Association which handles estates and taxes, has recommended to their lawyers that they not try to help people qualify because it is too risky from a malpractice point of view. They have recommended that this particular section be repealed.

The bottom line is that it doesn't matter whether you have a \$1 million exemption or a \$3.5 million or a \$4 million exemption or an unlimited exemption for small businesses or family farms; if you cannot qualify in the first instance, it does you no good. From what we can find from IRS statistics, only two one-hundredths of 1 percent qualify. That doesn't take into account the challenges by the IRS.

Let me just make one last point, and then I think there are others who would like to speak.

I am not going to read to you the page after page of complex provisions. It is a nightmare to read and understand. I am a lawyer. I don't understand it. It takes a real expert to try to figure out how to make this work and, as I said, the ABA itself has recommended to its members that they approach this with extreme caution.

One of the problems with the people who qualify is this. Let's assume you are one of the lucky two one-hundredths of 1 percent who actually qualify and you have gotten through the IRS hurdles. What does this mean for

you now that you have qualified? Are you home free? Not exactly. There is a 10-year period of time in which the IRS can—and I love this term—"reach back" and collect the tax from you.

There is a lot that can happen that could cause that to occur. If you have trouble in your business, for example, and go bankrupt, that is tough; as far as the IRS is concerned, they can go back and collect the entire estate tax from you.

But here is what happens even if things go well. The IRS, if you qualify—believe me, this is the truth. It seems that it could not possibly be, but under the amendment of the Senator from North Dakota and the existing law, the IRS has a lien on your property, all of the estates that would be subject to the estate tax, for 10 years. And they have a first position, which means: Good luck if you want to try to get financing for anything. Every small business finances its inventory, its machinery. We do not go out and buy a house and pay cash for it. We get a loan from the bank or from Fannie Mae, FHA or someone, and we finance a home. That is the way small businesses finance their operations. But, good luck going to the bank when they know the IRS has a first lien for a period of 10 years and the bank only has a second position. That is a poor position to be in, and the bank will tell you one of two things—either: Sorry, we can't lend you the money or: We could lend you the money for 2 or 3 or more percent premium.

In other words, if you qualify for this provision, you are going to have to pay a lot more money if you can get financing in order to finance the continued operation of your business. Basically, it is a set up for failure. That is why most people do not even try to qualify for it. Many of those who try cannot qualify for it. It is an extraordinarily complex and ineffective provision. Therefore, with all due respect to my friend and colleague from North Dakota, his attempt to grant an unlimited exemption for small businesses and farms is fatally flawed. Very few, if any, of these small businesspeople or farmers are going to be able to qualify. As a result, the amendment is, in fact, a nullity, and does nothing to help the very people who all of us would like to help.

I will relinquish the floor at this point and hope as the debate on the amendment is concluded that I will have an opportunity to talk about the comments that the Senator makes, and also to point out again that the people who actually pay this tax are not the kind of people you might envision but they are schoolteachers, airline pilots, mechanics, librarians, guidance counselors, and the like, according to the IRS itself.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from North Dakota is recognized.

Mr. DORGAN. Madam President, inform me of the time remaining on both sides.

The PRESIDING OFFICER. The Senator from North Dakota controls 56½ minutes and the time in opposition is 25 minutes.

Mr. DORGAN. Madam President, my amendment is cosponsored by Senators DURBIN, CARNAHAN, CORZINE, and STABENOW.

Let me respond to some of the discussion we just heard. I have great respect for my friend from Arizona. I have listened to him with great interest in previous debates about repealing the estate tax. He believes passionately that we ought to get rid of the estate tax and makes the case for it. But I was reminded when I heard his discussion of my amendment of Mark Twain who was asked once if he would be willing to engage in a debate. He said: Of course, I would—as long as I can take the negative side. They said: We have not told you the subject of the debate. He said: It doesn't matter. The negative side will take no preparation. It is easy. It is inherently easy to oppose things.

The way the opposition renders this amendment is almost indescribable to me. I am the one offering the amendment. But the interesting discussion that incorrectly describes this amendment needs some correction.

Let me begin by talking about why we are here and what this debate is about. Then I will describe my amendment.

We are here because our country, a little more than a year ago, decided on a new kind of fiscal policy. Those who seemed to think they knew saw surpluses for years and years ahead—surpluses as far as the eye could see for the Federal budget. They said that because we have all of these surpluses that stack up in the future, let us cut taxes and let us do it right now. By the way, they said, let us cut the estate tax sequentially so in the year 2010 it will be completely repealed.

It is true that the goofy kind of proposal finally offered and passed into law takes the estate tax right up to the repeal in 2010, and then reinstates it in 2011. Historians will scratch their heads for some while when they evaluate what was done a year ago on estate tax.

Our colleagues who want to repeal the estate tax forever because they said we are going to have these large and continuing budget surpluses say, although they wanted to reinstate it in 2011, they now want to make that repeal permanent.

Of course, over a year later, things are different. We don't see surpluses as far as the eye can see.

Yesterday, the Senate had to consider an increase in the debt limit. Why? Because surpluses have turned to deficits. The country has an economy that is in some trouble. We now have deficits for some years into the future. Yet my friends on the other side of the aisle are coming to the Senate saying: Oh, by the way. Our urgent priority is to permanently repeal the estate tax.

Let us evaluate what these priorities are about.

Do we have a priority, for example, to try to help people at the bottom of the economic ladder in this country—people who are working for the minimum wage who haven't seen an increase for years and have seen the value of that minimum wage eroded? Do we have an obligation to them? Is that a priority? No. It is not a priority for some. They do not want that question on the floor of the Senate.

Do we have a priority to see if we can't do something about people who do not have health insurance—over 40 million people who tonight may find their child is sick, discover they do not have any money in their pocket or in their bank account to help take care of their child? Do we have a priority to deal with sick children and people who do not have the capability of providing health insurance for their children? No. That is not a priority for some.

How about schools? Are schools a priority?

I have spoken on the floor of the Senate many times about schools. I toured a school populated largely by American Indians. But it is a public school district. And a little girl in the third grade named Rosie Two Bears looked up at me and said: Mr. Senator, will you be able to build us a new school?

Do you know why they needed a new school? Because there are 150 kids and two toilets and one water fountain. They were holding classes in a basement room in a building that had been condemned long ago. Two or three times a week they had to evacuate that classroom because sewer gas was backing up in the classroom. Rosie Two Bears wanted to know if her Senator could build her a new school. Incredibly, the answer is we don't build new schools.

But the question is, Is education a priority for that young girl and others around the country? Not for some—that is not on the floor of the Senate.

This isn't about helping people at the bottom of the economic ladder. This is not helping to address the issue of health care costs, or lack of health care coverage, or lack of insurance for some American families—nearly 40 million of them. This is not about improving American schools. No. This issue is different than that. This issue is saying, let us permanently repeal the estate tax.

How narrow is this? Let me describe the amendment I am offering and that I offered last year which got 43 votes. Those who now speak loudly about the need to repeal the estate tax voted against my amendment last year.

My amendment said the following: It said, let us have a \$4 million exemption per estate—\$8 million for husband and wife. If you have fewer assets than \$8 million, you pay no estate tax under any circumstance.

My amendment also said, by the way, this issue that the other side continually says persuaded them to deal with

the estate tax—that is, the inability to pass a family farm or a small business from the parents to the kids—let us totally repeal the estate tax for the passage of a family farm or business. If it is family owned, the parents die, and the kids want to keep running it, I say don't interrupt the transfer of that business. Let us not have the kids inherit a business and a crippling estate tax. Let us allow them to inherit the business exempt from the estate tax, if they want to keep running it.

This says no estate tax at all. Repeal it for the transfer of a business from parents to children who want to keep running it.

It is very simple. We will do it in 2003. I offered that amendment last year.

Those who come to the floor of the Senate and say they are persuaded to propose a permanent repeal of the estate tax because they care so much about family businesses and the transfer of family assets to the kids who want to run the business are the ones who voted against my amendment. This amendment will provide that repeal next year. Their proposal would provide the repeal some 7 years later.

One wonders whether they care less about this issue and more about repealing the estate tax for the wealthiest Americans. Or do they really care about family businesses and family farms? If so, this is the amendment to support.

Let me talk a little bit about privilege and those at the upper end of the economic ladder.

I think it is terrific that in this country people do well. In fact, we have some innovative geniuses in this country who have done very well. One-half of the world's billionaires live here, and good for them.

But let me talk about the question of whether our priority at this point—given the kind of Federal budget deficits we have and the kind of economic problems we have—ought to be to bring to the floor of the Senate a billionaire tax relief package. Because that is what this is. This is all about, let's cut taxes for billionaires. And you can describe it however you want.

You can put all kinds of seasoning in it. You can stir it up, boil it; you can do whatever you want with it. Just strip it away, it is a tax cut for billionaires, when we have very big Federal deficits and when we have other priorities that some in this Chamber want to ignore.

Let me talk about some of these issues. Here shown on this chart are people who are going to benefit from the proposal on the floor of the Senate to permanently repeal the estate tax. That is why I want to amend it, so we don't repeal the estate tax for everybody.

The chief executive officers of our corporations in this country, in 1980, made 42 times the amount of money that the average worker made. Twenty years later, they made 531 times the

money the average worker made. That is who is going to benefit from what the minority is proposing here today.

In 1981, the average compensation of the 10 highest paid CEOs in a U.S. corporation was \$3.5 million. I come from a town of 300 people, a small high school class of nine. I happen to think \$3.5 million is a lot of money. So is \$3.5 million a year in compensation. That was 20 years ago. Do you know what it is today for the 10 highest paid CEOs in the country? It is \$155 million a year.

That is who benefits from this tax cut. That is what this debate is all about. They say that these folks pay too much in taxes, so they want an estate tax repeal even including the highest income earners in our country. And they will do that at the expense of all the other priorities that exist in this country.

I say, yes, let's repeal the estate tax for the passage of family-run businesses and farms. Let's provide an \$8 million threshold for families, below which you will pay no estate tax. But if you are fortunate enough to have tens and hundreds of millions and billions of dollars, I think it is important to understand a couple things.

One, most of that has never ever been taxed. Most of it comes from the growth appreciation on assets and has never been subject to a tax. And, yes, I think your descendants ought to get a fair part of that. But I also think this country ought to capture part of that and use it to invest in our kids, invest in education, invest in the solvency of Social Security, invest in the solvency of Medicare, to strengthen this country. That is what I think ought to happen.

Let's talk about compensation just for a minute. I mentioned some of the compensation that exists for individuals. I have a chart that shows the 1-year compensation in the year 2000. These are the people, incidentally, who are the beneficiaries of this proposal. And I guess I don't know of a time when I have heard people come to the floor of the Senate and say: I know we face a big budget deficit, I know our economy is in some trouble, I know we have other priorities—education, health care, and other things—but our priority is to provide a tax cut for the wealthiest Americans. These figures—\$290 million, \$225 million, \$157 million—these are individual compensation numbers in the year 2000 for people who ran America's corporations. These are the people who will ultimately benefit from repealing the estate tax.

We have a lot of folks out there in this country who are working hard, trying to do the best job they can. Look, they are never going to pay an estate tax. They are not going to have \$8 million, as provided under my amendment. But their proposal today is to say \$8 million isn't enough of a threshold; we need to be able to exempt those who have \$20 billion, those who have \$2 billion, those who have \$500 million in assets, so none of those assets can ever be used to help America's

children, to invest in America's schools, to strengthen Social Security, to strengthen Medicare, and to do the other things we also know are necessary.

So my amendment, as indicated, is very simple. It was described in a tortured way by my colleague from Arizona. He said: Well, you know, if you try to exempt family businesses and family farms, you run into this web of complexity. A web of complexity, he calls it. So the result is, we have to exempt from the estate tax billionaires in order to solve the issue of family farms and family businesses? I don't think so. I think if you go into any store in the county, they call that a bait and switch.

You come out to the floor of the Senate and say: Look, our mission is very simple. Our mission is in support of family farms and small businesses. That is what we are trying to do, to get rid of the crippling estate tax that exists on the transfer of a business or a farm from the parents to the kids. I say, if that is your mission, then I am with you.

Let's repeal the estate tax for the transfer of that property. The kids want to run the business? It is fine with me. I don't think we ought to shut the business down. I don't think we ought to load the business with an estate tax debt. I think the parents ought to be able to move that business to the kids upon the death of the parents with no estate tax obligation at all. And that is what my amendment does.

No amount of arm waving in this Chamber can obscure the fact that we have an exemption that is workable. It has only been in existence since 1997, I might say. It was described as QFOBI, which is an acronym. We use too many acronyms in this town. The fact is, if you have spent the last couple of years of your career talking about protecting small businesses and family farms, and its passage to the kids, then don't vote against this amendment and say to folks back home: Oh, by the way, it was too complicated.

This amendment I offer does two things. It provides an \$8 million unified credit threshold for a husband and wife, below which there is no estate tax. It is repealed for everybody below \$8 million in assets, husband and wife. And second, and most important to me, is that family businesses, regardless of size, if transferred to the kids—and if those kids continue to run those family businesses—will be exempt from the estate tax; and, no, not in 2010, but in 2003.

You see, the problem with the proposal offered by the other side, first of all, is they propose a complete repeal, but it just kind of dribbles along, as with most of their proposal; they just dribble it out over a period of time. If it is worthy to say, let's not interrupt the transfer of a family business, so the kids can continue to operate it without an estate tax obligation—let's do it next year. If you don't want to do it

next year, then vote against our amendment, but don't you go home and say you stood for family businesses and family farms. Don't you dare do that, because voting against this amendment, just as many of you did last year—we got 43 votes in favor—voting against it is to say to folks back home: No, I want you to wait 7 or 8 years for the relief that was offered permanently in this amendment for family businesses and family farms.

Ms. STABENOW. Will my friend from North Dakota yield?

Mr. DORGAN. I am happy to yield.

Ms. STABENOW. I thank the Senator.

I rise to thank my colleague for this amendment. And I join him. I am very proud to be a cosponsor of this amendment. I appreciate very much what he is doing.

It seems to me, as we have looked at this issue to find the right balance, that this amendment is in fact the right balance. It says that we will say to our family farmers and family-owned businesses—of whom we have many in Michigan—that we want to make sure, after you have worked hard and your family has been able to develop a good business or family farm, that if you want to pass that along to your children, you will be able to do that and that it not be jeopardized in any way. That makes perfect sense to me. I support repeal for family-owned enterprises.

I think it also says that we are going to set a limit, we are going to set priorities for the country, so when we are talking about a billionaire versus having the resources for seniors or families to be able to afford prescription drug coverage—which is also a tax, I would argue a significant tax, on our seniors and our families—or whether it is looking at the priority of educating our children, we are going to have a balance, and those who are the top billionaires in this country ought to contribute to national defense and the war on terrorism and education and health care, and so on.

So I wonder. I would just ask my friend from North Dakota a question. It is my understanding that our amendment would in fact exempt 99.5 percent of all of those who might pay the estate tax. Is that correct?

Mr. DORGAN. The Senator from Michigan is correct. Well over 99.5 percent will no longer have to pay an estate tax. But even that is not enough for those who insist on complete repeal. Those who insist on complete repeal are saying—during a tough time, where we have Federal budget deficits and other priorities that we can't fund—they are saying: This is our priority. The top of the heap. Those at the very top, the billionaires, the \$100 million per year executives, that is our priority. We believe that our priority is to exempt those estates from an obligation.

The Senator from Michigan is right. Over 99.5 percent of estates will not be subject to an estate tax.

When the Senator from Arizona was present, he said this issue called QFOBI, which is the method by which you value the assets of family-owned businesses, is totally unworkable. The Center on Budget and Policy Priorities says that businesses can easily qualify for this special status as long as the family owns and operates the business and intends to continue to do so.

Let's say you have a \$200 million family business, a big one. In my judgment, if it is family owned, it goes to the lineal descendants. If they want to continue to operate it, no tax. We repeal the estate tax for that transfer. If, however, there are not lineal descendants who want to operate it—one lives in California and one in Florida, one in Texas—and they want to sell the assets, they have the same \$8 million exemption that we would provide in this amendment.

The Senator from Michigan is correct. This affects very few estates. They are only the largest estates, and that is what we are fighting about.

We have people here saying: That is our priority, tax exemption, tax relief for the highest income earners in our country at a time when we have so many other priorities.

Ms. STABENOW. If I might again say to the Senator from North Dakota, I thank him on behalf of Michigan family farmers and small family-owned businesses, as well as large family-owned businesses, for putting forward what I believe is, in fact, just the right balance. We say to our family-owned enterprises, we want you, if you have worked hard all your life, to be able to pass on that business, that farm to your family. We want to make sure you are not paying the inheritance tax. But at the same time we say to middle-class families and seniors and everybody else in the country that we are going to make sure your priorities, those that affect the majority of Americans, will be funded before we, in fact, give a tax cut again to the top half a percent of the public, the top billionaires of the country.

It is the right balance. It is the right set of priorities. I thank my friend. I appreciate the opportunity to join with him in his amendment.

How much time remains on my side?

The PRESIDING OFFICER. The Senator has 35½ minutes.

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

Mr. GRAMM. Madam President, how much time do we have?

The PRESIDING OFFICER. The Senator has 25 minutes.

Mr. GRAMM. Let me take 5 minutes of it. Then I will yield to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Madam President, facts are persistent things. The good thing about fiction is you can always have it the way you want it. If you make it up, it can always be good, if you are for it. It can always be bad, if you are against it. But facts are persistent things.

In 1997, recognizing that we had confiscatory taxes on small businesses and family farms upon death but not being willing to repeal the death tax, which our Democrat colleagues are not willing to do—the only vote we are going to have today that would repeal the death tax or would change the death tax, the only one that would go to the President to be signed today is the one I will offer—wanting to get credit for helping without helping, we adopted a provision called 2057. That is the closely held family business exemption.

Our colleague says: We will expand it so it will cover every small business, every family farm.

It has been in effect for 5 years. How many farmers and ranchers do you think have qualified for this protection in 5 years? In 5 years that this provision of law has been in effect, only 33 farm and ranch families have qualified.

This bill that is being offered as an alternative to the real repeal of the death tax is not about 33 families. It is about protecting 40 Senators by giving them a fig leaf when they vote against repeal of the death tax.

The plain truth is in 5 years of being in effect, this provision has afforded relief to 33 farmers and ranchers. And why? It is 17 pages of single-spaced requirements. It gives the government a lien against your property for 10 years. It sets up requirements like ownership of assets for at least 8 years, when if you are growing chickens, they don't live 8 years.

The bottom line is, this is absolutely unworkable and meaningless except for fewer taxpayers than we are going to have Senators vote against repeal of the death tax.

I go back and make my point: Our colleagues know this is an issue that Americans care about. They desperately want to spend the money we are collecting by making people sell their farms, sell their businesses upon the death of the founder in order to give the government 55 cents out of every dollar they have accumulated in their lifetime. But rather than repeal the tax so that this absolute tragedy and theft could stop, this outrage could end, they are offering basically a proposal that has proven to be unworkable.

When it gets down to the bottom line, the question before us is a very simple one: Do you think it is worth making people sell their business, sell their farm, sell off the product of their life's work to give government 55 cents out of every dollar they have accumulated, even though every dollar they have accumulated they have paid taxes on, so that Government can spend that money? Or do you think it would be better to let people keep the money and eliminate the situation where death is a taxable event? That is the question before us.

There is only one real repeal. I have been around the track before. I have seen it. I know what is going to happen here. We are going to have a bunch of

people who are going to vote to sustain this point of order so that even though we have a majority who want to repeal the death tax, we won't be able to do it today. But they are going to vote for these proposals where only 33 farmers and ranchers in 5 years have qualified, and they are not outside the 10-year window. They may not end up qualifying.

They are going to go back home and say: Look, I wasn't against repealing the death tax. I just was against their repeal of the death tax.

There is only one real repeal, and that is the one that passed the House.

I yield 5 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Madam President, I thank my colleague, the Senator from Texas, Mr. GRAMM, and my colleague from Arizona, Senator KYL, for their tremendous effort in working on eliminating the death tax.

I rise in opposition to the Dorgan amendment and in support of the Gramm amendment which is the provision that was passed out of the House of Representatives last week. Fundamentally, if we want to help farmers and ranchers, if we want to help small businesspeople, we need to kill the death tax. It is a sham to put in qualifiers and provisions so that such a small number of small businesspeople can qualify instead of eliminating the tax altogether.

What we need to do is to kill the death tax. This unfair tax has been a concern of mine for some time. I have previously introduced my own legislation to eliminate the death tax. I was pleased to support the repeal of the death tax as part of last year's tax relief package. But those cuts simply do not go far enough.

One of the tenets of a fair tax system is that income is taxed only once. I know this argument has been made a number of times by my colleagues. These small businesspeople, farmers and ranchers, families are subjected to a tax that is initiated at the time of tragedy in the family, an event when somebody passes away. This is money on which the taxpayer has already paid taxes. Income should be taxed when it is first earned or realized. It should not be repeatedly taxed by the government.

The death tax simply violates this tenet. The way I see it, it comes down to one question: Should death be a taxable event? I emphatically believe the answer is no.

People who work hard and save throughout their lifetime should be able to expect that the products of their labor will go on to help their family, not go on to fund some politician's pet project.

This issue of the death tax really hits home for me. Family farms and small businesses are two of the groups most affected by the estate tax. I grew up on my family's ranch in Colorado, and I owned a small business before I came

to Washington. So I truly understand the concerns of those who live in fear of the impact that this tax will have on their legacy to their children.

The estate tax has resulted in the loss of family farms and family businesses across the Nation. Many people work their entire lives to build a business that they can pass on to their children. When these hard-working businessmen and farmers pass away, their families are often forced to sell off the business to pay the estate tax.

I see this as an affront to those who try to pass on the fruits of their life's work to their children. America was founded on entrepreneurship and hard work, and a high death tax serves to stifle both.

The people affected by this tax are not necessarily wealthy. Many small businesspeople are cash poor but asset rich. For example, the owner of a small restaurant might have \$800,000 of assets but not much cash on hand. Her children will still have to pay an excessive tax on the assets.

The produce wholesaler, who has invested all of his revenue in trucks and storage, might have more than \$700,000 in assets. That does not make him a cash-wealthy man. Yet he is still subject to this so-called "tax on the wealthy." In too many situations the heirs must dismantle or sell a family business simply to pay the taxes. This isn't right.

The death tax also impacts employment and the economy. When a family-owned farm or a small business closes, the workers lose their jobs. Conversely, leaving resources in the economy can create jobs. In fact, in a 1995 Gallup Poll, 60 percent of business owners reported that they would add more jobs over the coming year if the death tax were eliminated.

Additionally, the estate tax is a disincentive for Americans to save their earnings. The government has created a number of tax breaks and other incentives for those who save their money: 401(k)s and IRAs—to name a few. Yet the estate tax sends a contradictory message. Basically, it says, "If you don't spend all your savings by the time you die, the government will penalize you." This tax is no small penalty, either. We are talking about some very high tax rates.

The death tax also represents an unjust double taxation. The savings were taxed initially when they were earned. Then, when the saver passes away, the government comes along and takes a second cut. There is no good reason for the current system—other than the government's desire to make a profit.

The current death tax law has a greater effect on the lower end of the scale than the higher. Wealthy people can afford lawyers and planners to help them plan their estate. Those at the lower end of the estate tax scale are often unable to afford sophisticated estate planning. So the current law also makes the tax somewhat regressive, which is not fair. This is particularly

true given the uncertainty of the tax due to phase in and sunset dates.

Planning and compliance with the estate tax can consume substantial resources. The National Association of Manufacturers has reported that more than 40 percent of its members have spent at least \$100,000 on death tax planning. For three out of five members the annual compliance costs are more than \$25,000. This is money that could have been better spent to expand the business and create new jobs—rather than dealing with the death tax.

The estate tax only raises 1 percent of Federal revenue, yet it costs farms, businesses, and jobs. No American family should lose their farm or business because of the Federal government. I support full permanent repeal of the Federal estate tax.

I urge my colleagues to end this unfair system and join me in supporting permanent repeal of the death tax.

Mr. DORGAN. Madam President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Madam President, I am happy to stand as a cosponsor of the amendment by Senator DORGAN and Senator CARNAHAN of Missouri. People who are following this debate in our Chamber and by C-SPAN must wonder what we are doing today. We are talking about tax cuts, tax breaks, tax relief.

Can you think of a more popular issue or subject for us to entertain on the floor of the U.S. Senate? Forget for a moment that we are in deficit, that we are taking billions of dollars out of the Social Security trust fund because of our last tax decision and events that have intervened. Forget that for a moment and just concentrate on tax relief for America.

If you would go out on the street corner in Springfield, IL, or in Chicago, which I represent, or in Texas or in North Dakota, and say to the first five people walking by: If Congress is going to consider tax relief and tax cuts, what do you think they ought to concentrate on? I guarantee you not a single soul will come up to you and say: What they ought to concentrate on are the multimillionaires who may pass away and owe some money to the Federal Government; that is the thing that keeps my family up at night. We are worried about that possibility—that someone who is worth millions of dollars may end up paying some money to the Government.

No. Most people would say: I will tell you what bothers me, Senator. I cannot figure out how to pay for my kids' college education expenses. Why don't you make that deductible? That would help my family and would help our country. That makes sense, doesn't it?

If you went into the store on the corner and said to the businessperson at the store: What do you think is a good tax relief measure for Congress to consider? They might say: I am not sure

how you do it, but can you help me pay for health insurance for my wife, myself, and my employees? It is killing me, going up 25, 30 percent a year. There is another interesting idea for tax relief.

Then you go to the other corner and stop by a senior citizen gathering and say: Do you have any ideas for something we can do by way of tax relief? They will probably say: Senator, can you do something about the high cost of prescription drugs in this country? We cannot afford to fill the prescriptions the doctors give us.

There you have it—three proposals you are likely to find in any city or town in America to deal with real American family problems, such as paying for a college education, paying for health insurance, affording prescription drugs. You might ask yourself, of all the possibilities, why is Congress focusing instead on tax relief for the wealthiest people in the country and ignoring the tax relief that the average person in America would like to see us enact? The reason is because the special interest groups have been at work.

First, they hired the pollster who decided to stop calling it "estate" tax and start calling it a "death" tax. People think that is terrible that you are going to tax someone for dying. Well, look at the Senate floor here. Look at the other side. The poster says: "repeal the death tax." So they caught on. From now on it is no longer the estate tax, it is the death tax.

And then they said you have to convince everybody in America that this is a tax they have to worry about. Forget for a moment that it is only a handful of people who ever pay the Federal estate tax. I went to O'Hare Airport a few months ago when we were in the middle of an earlier debate on this issue. This is a true story. The baggage handler for United Airlines who took my bags at the sidewalk said to me: Senator, would you do something about this death tax? I almost said to him: Sir, there is no way in your lifetime, even if you win the lottery, that you are likely to ever pay the Federal estate tax. What you ought to think about is getting your kids through college, health insurance, prescription drugs for your mom and dad. Those are the things that will affect your life.

They have done very well here. They have convinced the average person in the street that the Government is standing by the funeral home waiting to slap a lien on the car of the widow. It just is not true.

Let me tell you something else they are arguing. They are arguing that this is a tax that is destroying farmers and small businesspeople, that they are taking away a farm that has been in a family for generations because of the estate tax.

I wrote a letter to the Illinois Farm Bureau and the Farmers Union last year and said: Can you give me one example of a farm in the State of Illi-

nois—just one example—of a farm family who lost their farm because of the Federal estate tax? No; none, zero; not one example. Senator DORGAN and I came together with Senator CARNAHAN and said: Let's go after real estate tax reform that solves any problems we can envision. I salute Senator DORGAN for his leadership because he said: Why don't we just flat out exempt any farm, any business that is going to be transferred from one family member to the next? Let's just say they will not pay any estate tax. That puts it into the argument that this is confiscating businesses and farms.

The amendment is very simple. It is very straightforward. Guess what. It takes effect next year. It is immediate. So all of those who vote against the Dorgan amendment are saying, postpone this and for 7 years, leave businesses and farms in the lurch, if there is one, when it comes to estate tax liability.

Senator DORGAN put together this amendment, which I cosponsored, which says farms and businesses which pass to lineal heirs—children—are not going to pay any estate tax. That is as clear as it can be, and it goes into effect immediately.

Then he says: Let us increase the exemption for other estates from what will be about \$1 million to \$4 million for individuals, \$8 million for married people. What would that cover?

Let's assume you bought a home that has dramatically appreciated in value. I have seen it in Illinois, Washington, California, you name it, and you have an estate that is left over that has a value of over \$1 million. The Dorgan-Durbin-Carnahan amendment will exempt your estate from paying any Federal taxes, \$4 million for an individual, \$8 million for a couple.

Yet the Republicans have said that is not nearly enough. Madam President, you know who they are protecting? It is not a farmer. It is not a businessperson. It is not a person who has really done pretty well in life. It is the superrich.

The Senator from Texas called the estate tax an absolute tragedy and theft—theft. The Senator from Colorado then said: Why should death be a taxable event? Let me ask a question: Why should work be a taxable event? People who get up every morning and struggle in the workplace at their job pay income taxes. We pay taxes on sales, on income, and other items in our society so we will have enough money to make sure the Department of Defense can defend America, so there are hospitals, highways, and schools that add to the quality of life of our country.

I will tell my colleagues what we are going to do: If the Republicans have their way and eliminate the estate tax for the superrich in America, they are going to put a greater burden on taxing work in America. They will push more

of that burden right down to the working person, the average working family. That is not fair. It is totally unfair.

If this Senate is going to address real tax reform, we should at least be fair in the way we address it and not make certain that the wealthiest people in this country are always the first to benefit from tax relief. This debate ignores the average person, the average family, and the average business and farm in America.

This debate is about protecting the superrich who have their voices on the floor of the Senate and in the hallways right outside all lined up. They come here in their Gucci loafers and their fine tailored suits, and they put in these amendments to protect the superrich.

Meanwhile, day in and day out, the average person, the average family in America works hard and worries about paying the bills. Why in the world are we doing this?

To call this an absolute tragedy and theft is to ignore the fact that eliminating the estate tax on the wealthiest people in America will create a theft on our Treasury, it will create a theft on the working families of this country.

Do my colleagues want to know what the highest tax priority ought to be in our country? The highest tax priority ought to be on working families, and we are not doing that today. We are ignoring working families. We are trying our best to preserve the very best for the wealthiest of our country.

I am happy to support this amendment. I also want to indicate, we took a little survey since 1990 of all the times the estate tax issue has come to the floor of the Senate. It goes on for hundreds and hundreds of occasions.

We have a chance today with the Dorgan amendment to do something that finally puts this to rest. We do it in a sensible way. We do not raid the Treasury and we do not say 10 years from now we are going to jeopardize the Social Security trust funds so we can give a favor to the wealthiest people in this country.

It is interesting, when this debate got underway, some of the wealthiest people said: Stop, I don't need your tax relief; I am doing just fine, thank you. That does not dissuade those on the Republican side of the aisle from pushing this idea and saying: If we are going to give any kind of break in America, it should go to those well off.

I have been reading what has been going on in terms of corporate CEOs who are waltzing away with millions of dollars from these corporations even when the corporations are failing. These are people worth tens of millions, hundreds of millions of dollars, the very people the repeal of the estate tax is designed to protect. Do you have a lot of sympathy in your heart for some of these CEOs who have falsified their business records, who have been guilty of the worst corporate irrespon-

sibility? My sympathy goes with the working families, and my support goes for this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Madam President, I yield 5 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, I thank my good friend from Texas. I say to my colleague from Illinois, if the wealthiest people say not to bother repealing the death tax, it is probably because it does not bother them. A lot of the wealthiest people do not really worry about the death tax. If you have enough money, it does not matter what you would pay. Most of them can spend hundreds of thousands and millions of dollars to avoid the death tax.

By and large, the people who are paying the death tax are not the very wealthy. They are hard-working people, many of them educators, as my colleague from Arizona has pointed out. But there are an awful lot of farmers and small businesses.

I have spent a good deal of my time in my service in the Senate listening to farmers and owners of small businesses. In fact, that is where I get most of my ideas. That is where we got the idea to strengthen the regulatory relief for small businesses and to provide the assistance we give to farmers to open up markets abroad.

We have talked about regulatory relief, and we have provided a number of areas of tax relief, but one of the issues that is the top priority for the farmers and the small businesses in my State is getting rid of the death tax. These are not the wealthiest people. These are people who fear that what they have worked hard to save, to put away, to leave to their children, is going to be taken away by the tax collector.

This morning we had a news conference. We were joined by Brad Eiffert of Columbia, MO. He owns Boone County Lumber Company. He and his brother work in a business that their father started. They have a very successful business with 30 employees. They have worked hard, and they have a great deal of equipment used in their business.

They want to continue the business after their father passes on, but they have found that, because of the investment in the equipment, they will have to pay a tremendous estate tax. So now each year they take out of that business almost \$60,000 for insurance premiums to pay the tax man. This is money that could be going to the employees, it could be going to buy new equipment, or it could be going to build the business in many ways. They really want to get rid of the death tax.

Farmers I have talked with have told me that they have spent over \$100,000 in lawyers fees and accountants fees trying to figure out how to get around the tax. The lawyers get the money,

the accountants get the money, and they hope that the Federal Treasury will not get the money. They have to spend a lot of money, that they should be putting back in their farm, to figure out how to avoid this tax.

So what they avoid does not come to the Treasury, but there is a heavy planning cost on how to get away from paying the estate tax that is paid by small businesses and farmers.

Before us we have an amendment which says we are going to expand section 2057 of the Internal Revenue Code, the Qualified Family-Owned Business Interest exclusion, QFOBI, I guess is what it is called. My colleagues propose to make it bigger, better, longer, and stronger, but in 2000 only 1.3 percent of family-owned businesses applied for this 2057 exemption.

There are people saying we are going to allow you to save small businesses and farms from the estate tax through this provision, but the provision does not work. In short, a flat tire cannot be made to roll simply by making it bigger. This 2057 exclusion is too complicated to provide widespread relief to estates harmed by the death tax.

As my colleague from Arizona has pointed out, it is so complex that the American Bar Association urges its tax lawyers not even to try it because it is so filled with traps and so many Catch-22s that they can get sued for malpractice if they try to use it.

In order to qualify, the business must constitute at least 50 percent of the estate's value. The decedent must have owned and been actively involved in the family business for at least 5 of the 8 years leading up to his or her death. Following the death of the owner, the heirs must continue to participate in the business for at least 10 years.

But once the business is transferred, the estate tax deferred by receiving this designation hangs over the business for at least 10 years, and the IRS has a first position lien on the property. So the small business cannot borrow money without going to a loan with a secondary position, if they can even get one. Moreover, such loans cost them more.

If the business goes bankrupt and they cannot continue it, then the IRS goes back and gets the entire estate tax. One hundred percent could become due with interest. Not surprisingly, there are not many people who are willing to play this kind of Russian roulette.

If this amendment were to become law, I can only imagine the insurance premiums that would be required.

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

Mr. BOND. We need to kill the estate tax and keep it dead and not let it spring back. That is what farmers and small businesses in my State want.

The PRESIDING OFFICER (Mr. REED). Who yields time?

Mr. DORGAN. Mr. President, I yield 10 minutes to the Senator from Missouri.

Mrs. CARNAHAN. Mr. President, I am pleased to offer this amendment along with my good friends, Senators DURBIN and DORGAN. Our amendment will, as of January 2003, permanently exempt all small businesses and family-owned farms from the estate tax.

Let me repeat that because I do not want there to be any confusion. The Dorgan-Durbin-Carnahan amendment will eliminate the estate tax burden on all small businesses and family-owned farms effective January 2003.

The estate tax is having an impact that was never intended when it was first enacted. Those in line to inherit family-owned businesses and farms are having to sell them to pay the estate tax. That is not right. Parents who work hard for their whole lives building up a business want to pass the fruits of their labor on to their children. The same is true of farmers. We want family farms to be passed through the generations. We want children to be able to farm the land farmed by their parents and possibly their grandparents before them.

The amendment that Senator DORGAN, Senator DURBIN, and I are offering today would allow just that. It would ensure no family-owned business would ever have to be sold to cover estate taxes. So perhaps one is asking: What is the difference between our amendment and Senator GRAMM's amendment? Well, there are big ones. First, Senator GRAMM's amendment does nothing for family-owned enterprises until 2011. Under the Gramm amendment, they will have to continue to pay estate taxes for the next 7 years.

Our amendment would end estate taxes on family-owned farms and businesses beginning next year. We have heard today concerns that the exclusion for family businesses is complex. I am more than willing to work with my colleagues to improve the family business exclusion, and I welcome their support for our proposal to truly protect family farms and businesses.

Our amendment would also relieve family-owned enterprises from the burden of estate planning. Since there would be no estate tax, there would be no need for estate planning. Under Senator GRAMM's amendment, the full estate tax will remain in effect until 2010. So family-owned enterprises would still have to pay a lawyer and an accountant to prepare for the possibility that they may be subject to the tax.

The other key difference is that Senator GRAMM's amendment would permanently eliminate the estate tax for multibillionaires. I do not believe this is good policy. The Gramm amendment would cost approximately \$740 billion over 10 years and trillions of dollars in the decades after that.

Ironically, the amendment would go into effect at the time the baby boomers will start to retire. So as the number of people drawing on Social Security and Medicare starts to increase dramatically, the Gramm amendment would be draining the funds necessary

to support these programs. At a time when we are running budget deficits and Social Security and Medicare funds are being used to pay for other programs, it is not wise to take any action that would threaten the solvency of these programs.

Who would the Gramm amendment benefit? The tax cut passed last year, which I supported, eliminating the tax on estates of less than \$3.5 million, and our amendment would extend this provision permanently. By 2009, estates worth less than \$4 million would owe no estate tax. There are very few American families who have to worry about having estates of more than \$4 million. I only wish there were more of my constituents who had this problem.

In reality, the very wealthiest Americans would benefit from the Gramm amendment, but the programs that middle Americans rely on for their retirement security would be harmed, as would our ability to provide a much-needed prescription drug benefit for seniors.

So the choice is clear. If we want to make sure that parents will be able to pass their businesses and farms down to their children and we want to provide this relief right now, not in 2011, and we want to do this in a way that does not threaten the long-term solvency of Social Security and Medicare, we should vote for the Dorgan-Durbin-Carnahan amendment and against the Gramm amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DORGAN. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from North Dakota has 19½ minutes. The Senator from Texas has 6 minutes 20 seconds.

Mr. DORGAN. Mr. President, let me make a couple of additional observations, and I suspect the Senator from Texas will wish to conclude his comments after which I will conclude mine.

The Senator from Texas said a while ago that facts are stubborn, and that is true. Facts are also sticky. They tend to hang around a fair amount.

Let me describe a few facts about this debate, and this issue. Despite all of the tap dancing around this issue, our amendment would say to farms and businesses in this country that if you are passed to the kids who will keep running it following the death of the parents, we will repeal the estate tax for that transfer effective next year.

My colleagues have said we would like to repeal it as well, and repeal a lot more for that matter, but we will do that 7 years from now. We will start 7 years from now with our complete repeal.

If it is, in fact, a priority, why would they not do it effective January 1 of next year?

In addition, we have heard some discussion about the fact that this family-owned business exclusion does not work. The fact is, it has been used a

fair amount. It is fairly new, but it is interesting to me that the proposal by the Senator from Texas and others last year to repeal the estate tax also repealed in their legislation the family-owned business deduction in 2004. They are the ones who decided that they were going to repeal the family-owned business deduction in 2004.

What they also came up with last year, I suspect we will not hear anyone defend because it is almost the sort of thing that you are going to put in material for comedians.

They came up with a tax plan that says, We will gradually repeal the estate tax from now until the year 2010, at which point it is repealed. In 2011, we will reinstate it. They are saying to the American people, by the way, if anyone has a notion of planning your death, make sure you die in 2010 because that is the only year in the next 10 or so years when there is a complete repeal of the estate tax.

I don't know what pencils they used. I don't know what assistance they had or consulting advice they received when in a closed and dark room someplace they decided to repeal the estate tax gradually over 10 years and then bring it back in the 11th year. And, by the way, in doing so, we will in 3 years—

Mr. KYL. I say to the Senator from North Dakota—

The PRESIDING OFFICER. The Senator from North Dakota has the floor.

Mr. KYL. The Senator from North Dakota suggested this was done in a dark room.

The PRESIDING OFFICER. Does the Senator yield?

Mr. DORGAN. Let me say by unanimous consent, the room was not dark. The room was not dark.

In addition to creating this comedic approach to tax relief, they decided in 2004 they will repeal the family-owned business deduction. Those who say they are on the floor of the Senate to help family businesses and family farms are the very ones who stuck in their bill last year a repeal of the family-owned business deduction in 2004. You can make one of two points, but not all at the same time. You can say, as they say incorrectly, that the family-owned business deduction does not work. If that is the case, they probably should have repealed immediately. But they are saying it does not work so we will let it continue not to work and repeal it later. I suppose this is also great material for comedy but a pretty poor excuse, in my judgment, for sound tax policy.

Strip away all of the leaves and ask the question, What are the issues? Simply, they are these:

I propose an \$8 million unified estate tax exemption for a husband and wife. If you do not have assets equalling \$8 million, do not worry, you will never have an estate tax obligation. That is No. 1.

No. 2, I propose a total repeal of the estate tax in 2003 for the passage of a

family business or a farm to the kids who want to continue to run it. If the parents die, and the kids want to run that operation, I say good for them. The last thing in the world we want to do is interrupt that with an estate tax obligation. It is repealed for such businesses, regardless of size. We do that January 1, 2003.

The proposal to repeal the entire estate tax means we are fighting over what is left, No. 1; and, No. 2, we are fighting over when we will give relief to family-owned businesses and family-owned farms.

Last year, they decided to take away in 2004 the family-owned business deduction. Now they are saying they are fighting to help family businesses.

A strange fight, I would say: Try to take away their deduction; you did, in fact, in law, in 2004; and now you want to stage this so they get relief 7 years from today. If it is important, how about relief immediately? How about saying if it is important for businesses and farms to stand up and do it now? That is what my amendment does.

This is bait and switch. We all understand bait and switch and have seen it in stores from time to time. This is bait and switch in legislation.

I will speak at the end about priorities because we have people saying this is the most important thing for us. Yes, we have a big deficit. Yes, we have economic trouble. But our most important priority at this point is providing a repeal of the estate tax for the largest estates in the country? I am talking about estates worth \$500 million, \$1 billion, \$2 billion, \$20 billion. That is the biggest priority? That is the highest priority we have in this country? We have Social Security issues, Medicare issues, education issues, a whole series of things we ought to attend to, but the highest priority is providing a repeal of the estate tax for the top estates in the country?

I think not. One of the priority ought to be to do what I do in this amendment: Have a thoughtful exemption, \$8 million, husband and wife, below which there will be no estate tax obligation any longer, under any circumstance, and allow almost immediately, on January 1 of next year, the passage or transfer of a family business or family farm to the descendants who want to run the business or farm without an estate tax obligation. That is my amendment.

Do not vote against this amendment and go home and say, by the way, I am the champion of the business and farm that is family owned. This is the way to champion their interests if you want to repeal the estate tax obligation of the transfers, effective January 1.

How much time remains?

The PRESIDING OFFICER. The Senator from North Dakota has 11 minutes.

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

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask unanimous consent that the quorum call I am about to ask for not be charged against either side.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent that upon the disposition of the Dorgan amendment, which should be in the next 15 or 20 minutes, the Conrad amendment be set aside and that Senator GRAMM or his designee be recognized to offer his first-degree amendment, as provided under the parameters of the agreement governing H.R. 8; that upon the conclusion of the debate with respect to the Gramm or designee amendment, the amendment be set aside, and the Senate resume consideration of the Conrad amendment No. 3831, and there be 5 minutes of debate equally divided and controlled in the usual form; that upon the use of time, the Senate vote in relation to the amendment; that upon disposition of the Conrad amendment, the Senate resume consideration of the Gramm amendment, and there be 5 minutes of debate equally divided and controlled in the usual form; that upon the use of time, the Senate proceed to vote in relation to the amendment without further intervening action or debate; and provided further that no other second-degree amendment be in order.

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

Mr. REID. Mr. President, for the information of Members, we are going to have a vote very shortly. Then we will have an approximately 2-hour debate on the Gramm amendment. Then we will have two votes following that. That should end the debate on this matter, I hope, for the day—and for the year, maybe.

I have nothing more to say at this time. I think this is how debate should take place. I have been very satisfied, and I think everyone should be, with the tenor of the debate. The issue has been, and will for the next 2 hours, put at issue, and I wish we had more debates such as this in the Senate. This is very high class.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. GRAMM. How much time do we have remaining?

The PRESIDING OFFICER. The Senator from Texas has 6 minutes 20 seconds.

Mr. GRAMM. And Senator DORGAN?

The PRESIDING OFFICER. The Senator from North Dakota has 11½ minutes.

Mr. GRAMM. I am going to yield 3 minutes 20 seconds to my colleague from Arizona, and then I would like Senator DORGAN to use his time and then I will conclude.

Mr. KYL. Mr. President, I agree with the Senator from Nevada, except for some recent comments made by the Senator from North Dakota when he talked about a comedic approach and a bait-and-switch approach and asked the question: Why would we repeal the death tax and then reinstate it? The Senator knows full well why that was done. We did not do it. Those on his side of the aisle were responsible for that.

The American people need to understand the reason is that, under the rule under which the Tax Reform Act of 1991 was taken up, we could only act for a 10-year period after which our actions were sunsetted. We didn't want that. We wanted to make the death tax repeal permanent, but it was not possible because of opposition from the other side. That is the answer to the question posed by the Senator from North Dakota.

When he asked us, why did you repeal the death tax and then allow it to be reinstated, the answer is: We did not; you did. Now you have a chance to fix it.

We all have a chance now to repeal the death tax permanently. This is the time for people to stand up. Do we really want it repealed? Do we want it repealed permanently? Or were we just kidding when this was done last year?

A lot of Democrats and a lot of Republicans voted, not in a dark room but in this Chamber, a year ago to repeal the death tax. They wanted it repealed permanently. Only because of a parliamentary rule was that not possible. Now it is possible. This is our chance, and the only real repeal is the Gramm-Kyl repeal.

The amendment of the Senator from North Dakota that we will be voting on in just a moment is fatally flawed because, while it makes an unlimited exemption, you have to walk through a gate—in order to get that unlimited exemption—that is closed. Very few, if any, small businesses or farms will be able to qualify. How do we know this? Because the Senator from North Dakota uses the very same qualifying language that is in the existing law.

From the IRS itself we have the numbers of people who qualify out of the over 100,000 estate tax filers. Only a little over 1,000 qualified, even in the year with the largest number. In the first year in 1999, it was 173 people. In that year, 173 estates would get this wonderful relief proposed by the Senator from North Dakota. In 1998, it was 899 people. In the biggest year, 1,400 people would qualify. Of those, IRS is winning two-thirds of the cases with respect to the valuation of the assets.

This is an amendment which has great promise and zero production. As the Senator from Missouri said, you can't make a flat tire roll just by making it bigger. The Dorgan amendment

should be defeated because it cannot provide relief to anybody.

Mr. President, I ask unanimous consent to have printed in the RECORD a paper on interest deductions.

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

QUALIFIED FAMILY-OWNED BUSINESS INTEREST DEDUCTION

Under section 2057, certain "qualified heirs" may make an election to deduct the value of certain family-owned business interest from the gross estate. Currently this deduction is \$1.3 million. That means if the fair market value of the estate is \$10 million, subject to a 50 percent death tax, the QFOBI would reduce the taxable portion of the estate to \$8.7 million subject to the same 50 percent tax.

There is a period of up to 12 years in which the IRS can disqualify a QFOBI and impose estate tax plus accrued interest, from the date of death until the recapture event becomes due and owing immediately.

In general, QFOBI's problems can be simply stated. It is unfair (and impractical) for Congress to draw an artificial line as to who will or will not be subject to the death tax.

In other words, QFOBI attempts to draw a line so that some small businesses and farms qualify for a complete exemption from the death tax but others will not be able to avail themselves of any death tax relief. In many cases, those businesses that can spend the most money on death tax planning will be more likely to choose this exemption (that is, in truth, simply a giant loophole).

SUMMARY OF QFOBI

1. To qualify (and stay qualified) for this deduction is difficult.

The decedent was a citizen or resident of the United States at the date of death.

The business interests are includible in the gross estate.

The business interests must have passed to or been acquired by a qualified heir from the decedent.

The adjusted value of the qualified family-owned business interests must exceed 50% of the value of the adjusted gross estate (considered the most complicated requirement of Section 2057 in comments by Professors Roger A. McEwen and Neil E. Hart)

The business interest must be in a trade or business that has its principal place of business in the United States.

The business interest was owned by the decedent during 5 of the 8 years before the decedent's death.

For 5 of the 8 years before the decedent's death, there was material participation by the decedent in the business.

2. To qualify for the deduction, the "business interest" must be either an interest as a proprietor in an entity which:

At least 50 percent of the entity is owned by the decedent or members of the decedent's family;

At least 70 percent of the entity is owned by members of two families, and at least 30 percent is owned by the decedent or members of the decedent's family; or

At least 90 percent of the entity is owned by members of three families, and at least 30 percent is owned by the decedent or members of the decedent's family.

However, there are additional limitations to the general rules regarding a "qualified family-owned business interest":

(QFOBI) shall not include the following:

Any interest in a trade or business if its principal place of business is located outside the United States.

Any interest in an entity if the stock or debt of the entity (or a controlled group of

which the entity is a member) was readily tradable on an established securities market or secondary market at any time within 3 years of the date of the decedent's death.

Any interest in a trade or business (excluding banks and domestic building and loan associations) if more than 35 percent of its adjusted ordinary gross income for the taxable year that includes the date of the decedent's death would qualify as personal holding company income if such trade or business was a corporation.

The portion of an interest in a trade or business that is attributable to:

Cash and/or marketable securities in excess of the reasonably expected day-to-day working capital needs, and

Any other assets (other than assets held in the active conduct of a bank or domestic building and loan) that produce or are held for the production of personal holding company income and most types of foreign personal holding company income.

3. To be a "qualified heir":

A person is a "qualified heir" of property if he or she is a member of the decedent's family and acquired or received the interest from the decedent.

The qualified heir must continue to materially participate in the family business for next 10 years.

4. To "materially participate"

The existence of material participation is a factual determination (in other words open to aggressive challenges by IRS and almost certain litigation), and the types of activities and financial risks that will support a finding of material participation will vary with the mode of ownership. No single factor is determinative of the presence of material participation, but physical work and participation in management decisions are the principal factors to be considered. Passively collecting rents, salaries, draws, dividends, or other income from the trade or business does not constitute material participation. Neither does merely advancing capital and reviewing business plans and financial reports each business year.

5. Forfeiture of QFOBI status and 10-year Recapture Period:

Section 2057 imposes an additional estate tax when there is a taxable event. A taxable event occurs if, within 10 years of the decedent's death and before the qualified heir's death, one of the following events occurs:

The qualified heir disposes of any portion of his or her interest in the qualified family-owned business, other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h);

The qualified heir ceases to meet material participation requirements (i.e., if neither the qualified heir nor any member of his or her family has materially participated in the trade or business for at least 10 year period;

The principal place of business of the qualified family-owned business ceases to be located in the United States (This includes bankruptcy or foreclosure!!!);

The qualified heir loses United States citizenship and neither a qualified trust was created nor was a security arrangement made.

As under section 2032A, the 10-year recapture period may be extended for a period of up to 2 years if the qualified heir does not begin to use the property for a period of up to 2 years after the decedent's death.

6. Criticisms of QFOBI

Currently, we have a \$1 million exemption that can not be combined with the \$1.3 million QFOBI deduction. Confronted with all of QFOBI's complexities and pitfalls, taxpayers simply choose to submit themselves to it in order to obtain an additional \$300,000 deduction. Less than three percent of eligible small businesses have used it (don't have

cite.) IRS Economist Jacob Mikow documents in a letter that for filing year 2000 a total of 108,322 estate tax returns were filed. A mere, 1,470 of those returns made the QFOBI election.

Tax lien. For 10 years the IRS has a first position lien on all of the business/farm assets, which means when the family applies for an operating loan so it can "materially participate", the bank has to take a second position. A second position is considered an "at risk" loan and the family then has to pay 2 to 3 points higher on their operating loan every year for 10 years. This is probably the biggest impediment to facilitating liquidity during the consideration.

QFOBI does not exempt "generation skipping tax" (GST). So a decedent can utilize QFOBI to leave his family business/farm to his grandson (subject to all of the QFOBI constraints and limitations) and not pay the death taxes, but the decedent's estate would still have to pay GST tax of 50 percent. Effectively this prevents taxpayers from utilizing QFOBI to turn over the family business/farm to any one but their sons and daughters, who may not be the best suited for the job.

Ownership requirement is the last 5 out of 8 years prior to death. There is not an exception for normal course of business turn over, such as estates with heavy crops or livestock or inventory values. This severely complicates farm planning. For example, the life expectancy of a chicken is probably less than 8 years much less the life expectancy of a potato crop—So there is no ability to lose a chicken and to replace a chicken and to be able to substitute the ownership period.

Sales in the ordinary course of business create a recapture event as there is not a safe harbor on the sale of a crop-inventory or of livestock during the 10 material participation requirement. So if you sold a widget or a chicken or an ear of corn you would owe not only income tax but estate tax.

50 percent ownership requirement has a lookback period which includes gifts to spouses—so if you balanced an estate to get both unified credits you could lose the QFOBI.

Recapture provision for over 10 years can disproportionately hurt those businesses and farms that suffer during an economic downturn. For example, in year one, the business might be doing well, but seven years later must file for bankruptcy protection, despite the fact that it plans to reorganize and continue operations in the future. In that event, the QFOBI would terminate and the death tax, plus interest accrued for the past seven years would be due and owing immediately. That fact alone might prevent the company from successfully recovering from bankruptcy.

Cost, expense and uncertainty of setting up an QFOBI is very high and never ending. The tax code is complicated enough and we should work to reduce its complexity, not pursue winners and loser type death tax reform.

ABA and many other non partisan institutions have urged repeal of this provision and cautioned against its use, suggesting that it may border on the line of legal malpractice.

Look at how hard it had been for the opponents of repeal to devise workable QFOBI legislation. No bills have been introduced and we only today saw their proposal to try to convince the American people that we can fix the unfixable.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. GRAMM. Mr. President, let me repeat those facts very briefly because facts are persistent things. In 1999,

104,000 American families filed a death tax return, with 45,000 of them ended up paying a death tax. Only 889 qualified for the exemption that would be expanded by this amendment.

In the last 5 years, of the people who would have qualified for this and all the other exemptions, only 33 of them have been farmers and ranchers.

So as I said earlier, this amendment provides a political figleaf for Senators who are going to vote against a permanent repeal of the death tax and who are using this to cover themselves. It is going to provide political protection for more Senators than it is going to provide tax relief for farmers and ranchers in America. Some 40 Senators will get the figleaf of protection. Some 33 farmers and ranchers in 5 years have gotten relief from all of these provisions.

I think this is a clear choice. The Senator complains that the tax cut is temporary. Why? Because we did not have 60 votes; because the Democrats opposed the President's tax cut in overwhelming numbers. They had the ability to filibuster. The only way we could get the tax cut adopted was to use a procedure that required that the tax cut expire after 10 years. Now the Senator from North Dakota is attacking us for a provision that exists because the Democrats would have filibustered the tax cut.

When we voted, I assumed we meant to repeal the death tax. People said they did. Now we have come down to doing it. There is only one real repeal. That is the amendment I am going to offer with Senator KYL. We are going to raise a budget point of order against this amendment. It will require 60 votes to overcome it. The same point of order will be raised against our amendment. I urge those who voted for the tax cut to vote to sustain this point of order so we can have a real repeal, something for which they voted.

Second, I urge people who did not vote for the tax cut to look at the absurdity of having a situation where 11 years from now this death tax is going to come out of the grave and prey on family businesses and force people to sell off the life work of their family to give the Government a 55-percent tax on everything they have accumulated in their lives.

The National Federation of Independent Business is faxing me a letter right now opposing this amendment, saying it does not solve the problem. I will have that letter printed in the RECORD. I have the letter before me. I ask unanimous consent it be printed in the RECORD.

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

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
Washington, DC, June 12, 2002.

NFIB RELEASES STATEMENT ON DORGAN
DEATH-TAX AMENDMENT

NFIB Senior Vice President Dan Danner today released the following statement

about an amendment offered by U.S. Senator Byron Dorgan (N.D.) that would not provide a full and permanent death-tax repeal:

"Senator Dorgan's amendment does not meet the one requirement that NFIB members have demanded on this issue: a full repeal of this onerous tax. The only proposal on the table that will permanently and fully fix this problem is the Gramm-Kyl amendment."

"Senator Dorgan's approach operates on a false assumption—that small-business owners can easily plan for the death tax. History has proven that exemptions, half-measures and carve outs just do not help real-world small businesses. The existing 'small business' exemption that was enacted in 1997 has only helped 3 percent of those it was intended to help. Senator Dorgan's amendment, which is based on this same idea, will only bring us back to the same roadblocks again."

The PRESIDING OFFICER. The time of the Senator has expired.

MR. KYL. Mr. President, if I can have the attention of the Senator from North Dakota, I ask unanimous consent to have printed in the RECORD a compilation of provisions of the so-called QFOBI tax provision that illustrate how that is calculated and administered.

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

SECTION 2057—QUALIFIED FAMILY-OWNED BUSINESS INTERESTS DEDUCTIONS

(Prepared by Sirote & Permutt, May 9, 2002)

I. ESTATES TO WHICH SECTION 2057 APPLIES

Section 2057 applies to an estate if:

1. The decedent, at the time of death, was a citizen or resident of the United States;
2. The executor makes an election and files an agreement consenting to the imposition of recapture tax;
3. The sum of the QFOBIs passing to qualified heirs, plus the amount of includible gifts of QFOBIs exceed 50 percent of the decedent's adjusted gross estate. In other words, the following numerator divided by the following denominator must exceed $\frac{1}{2}$.

a. Numerator.

(i) Aggregate the value of all QFOBIs that are included in the decedent's gross estate and that are acquired by a "qualified heir" from, or passed to a "qualified heir" from, the decedent.

(a) A "qualified heir" is a "member of the decedent's family" and also includes any employee who has been active in the trade or business to which the family owned business interests relates for ten (10) years prior to decedent's death. (Note that this definition does not require that the employee be employed by the family business itself.)

(b) A "member of the decedent's family" includes (a) an ancestor of the decedent, (b) the spouse of the decedent, (c) lineal descendants of the decedent, the decedent's spouse, or the decedent's parents, or (d) the spouse of any descendant described in (c).

(ii) Add "adjusted taxable gifts" and annual exclusion gifts of QFOBIs given to family members, if such interests are continuously held by the family member (other than the decedent's spouse) between the date of the gift and the date of decedent's death.

(a) "Adjusted taxable gifts" are taxable gifts made by the decedent after 1976 that are includible in the decedent's gross estate.

(iii) Subtract the amount of gifts of QFOBIs included in the decedent's estate.

(iv) Subtract the cash or marketable securities that exceed the reasonably expected day-to-day working capital needs of the business.

(v) Subtract any personal holding company-type assets owned by the business.

(vi) Subtract any of the indebtedness of the decedent on property that is included in the decedent's gross estate, except

(a) qualified acquisition indebtedness for personal residences;

(b) debt if the proceeds were used to pay education or medical expenses of the decedent, the decedent's spouse, or the decedent's dependents; and

(c) debt up to \$10,000 used for any purpose.

b. Denominator.

(i) Determine the value of the decedent's gross estate without regard to Section 2057.

(ii) Subtract any indebtedness of decedent on property that is included in the decedent's gross estate.

(iii) Add the amount of adjusted taxable gifts and annual exclusion gifts of QFOBIs given to family members if such interests are continuously held by the family member from the date of the gift to the date of death.

(iv) Subtract gifts of QFOBIs included in the decedent's gross estate.

(v) Add other gifts not included in c above and made by the decedent to the decedent's spouse within 10 years of decedent's death.

(vi) Add the amount of other gifts not included under c or e above made by the decedent within 3 years of death. In other words, add gifts covered by the annual gift tax exclusion and any other non-taxable gifts made by decedent within 3 years of death.

(vii) Subtract the amount of gifts otherwise includible in the decedent's gross estate.

c. The numerator divided by the denominator must exceed $\frac{1}{2}$ in order for Section 2057 to apply.

4. Material Participation Exists

a. The decedent of a "member of the decedent's family" must have owned the qualified business interests and have "materially participated" in the operation of the business to which such interests relate for 5 of the 8 years prior to decedent's death.

b. "Material participation" is determined on a factual case-by-case basis that examines the type of activities in which that person was involved, the financial risks associated with these activities, and the mode of ownership of the property itself.

c. A "member of the decedent's family" includes (a) an ancestor of the decedent, (b) the spouse of the decedent, (c) lineal descendants of the decedent, the decedent's spouse, or the decedent's parents, or (d) the spouse of any descendant in (c).

d. If the decedent becomes disabled or starts receiving social security benefits, the 8 year period is the 8 years immediately preceding the date of disability or the date of the receipt of the first social security check.

II. ADDITIONAL TAX IMPOSED IF DECEDENTS HEIRS CEASE TO MATERIALLY PARTICIPATE IN THE QUALIFIED FAMILY-OWNED BUSINESS OR DISPOSE OF THEIR INTEREST THEREIN

1. Section 2057 imposes an additional estate tax if, within 10 years after the date of the decedent's death, any one of certain recapture events occurs, as follows: (1) an heir receiving a QFOBI does not continue to materially participate in the business for 5 or more years of any 8 year period in the 10 years following the decedent's death; (2) the qualified heir disposes of his or her interest to anyone other than other than members of his or her family or through a qualified conservation contribution; (3) the qualified heir loses United States citizenship and does not hold his or her interest through a domestic trust having at least one United States trustee, or (4) the principal place of business ceases to be located in the United States. With respect to a qualified heir, "material participation" will be met if the qualified

heir is a surviving spouse, minor child, student or disabled heir who actively manages the business. Furthermore, a qualified heir will not be treated as disposing of an interest by reason of ceasing to be engaged in a trade or business so long as the QFOBI interest is used in a trade or business by any member of the qualified heir's family.

2. This additional estate tax is equal to the applicable percentage of the adjusted tax difference attribute to the QFOBI, plus interest at the underpayment rate for the period beginning when the estate tax liability was originally due and ending on the date the additional estate tax is due. The adjusted tax difference attributable to the QFOBI is calculated as the difference between the estate tax which would have been due but for the election to deduct the family owned business interest under 2057 and the actual estate tax paid. The applicable percentage is determined with reference to the year in which the recapture event occurred, as follows:

Applicable Percentage

Number of years after date of death:

1 through 6	100
7	80
8	60
9	40
10	20

a. The additional estate tax is a personal liability of each qualified heir to the extent of the portion of additional tax that is imposed with respect to his or her interest in the QFOBI.

b. For example, Brother and Sister each inherited 50 percent of the qualified family-owned business from their mother. Their mother's estate saved \$400,000 in estate tax using 2057. Brother did not materially participate in the business, but Sister did, thereby meeting the material participation test to qualify under 2057. During year 8, Sister sold her interest in the business to someone other than a member of her family, causing a recapture event to occur. Of the \$400,000 tax savings, 60 percent or \$240,000 must be recaptured with interest. Brother and Sister each owes half of the additional estate tax due.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, we are now told that this circumstance of having an estate tax repeal, engineered by my colleague from Texas and others last year, that steps up a repeal over 10 years, repeals the estate tax, then brings it back into force in 2011, is something that the Democrats made them do.

It reminds me of Flip Wilson; remember that? "The Devil made me do it."

The reason we have this comical circumstance of a bill last year, proposed by my colleagues over there, that intends to repeal on a graduated basis the estate tax to a final repeal in 2010, and then bring it back into force in 2011, is not because someone on this side of the aisle made them do it. It is because their numbers didn't add up and they knew they didn't add up. That is why it exists.

After that bill was passed, people were asking the question: What kind of a Congress passes a piece of legislation that says, oh, by the way, there is only 1 year in which you can die in the next decade or so and be exempt from the estate tax; that is, 2010? If it is 2009, you are taxable. If it is 2011, you are taxable. Now we hear this old, "The

devil made us do it." That doesn't quite fit.

C. Northcote Parkinson wrote Parkinson's law that I studied when I was in graduate school. It is a fascinating set of laws.

He said at one point that in every organization there is at least one person who is invariably 100 percent wrong. He said someone like that can be valuable because then you will always know who will give you the wrong advice.

I am not going to suggest anything about my colleagues with that except to say this: There are occasions on the floor of the Senate when the advice we receive is just flat wrong.

This question of trying to help businesses and farms that are owned by families to be passed on to the descendants—to the kids—to be able to continue operating them is an interesting one.

The only way we are going to immediately repeal the estate tax on passage of a family farm or business to the kids upon the parents' death is if we pass the amendment I offered today. That is the only circumstance in which that is going to happen, on January 1, 2003.

My colleague from Texas will offer his proposal which will make it happen over the next 7 years, but not now.

It is interesting. My colleague from Illinois talked about who the beneficiaries are. After all, we say no husband and wife with assets of less than \$8 million will ever pay an estate tax. That is in my amendment. And no family business passed on to kids will pay an estate tax at all if the kids continue to run it. That is in my amendment. The question is, Who will benefit by defeating my amendment and embracing the proposal by my colleagues from Texas and Arizona? Who will benefit?

My colleague from Texas has no doubt heard me from time to time refer to Bob Wills and the Texas Playboys, the famous Texas band in the 1930s. In the lyrics in their song, the little guy picks the cotton and the big guy gets the honey; the little honeybee sucks the blossom and the big bee gets the honey.

This is about honey and money. And it is about the way it always works somehow on the floor of the Senate.

Guess who benefits. It is not in most cases folks at the bottom of the economic ladder, or even in the middle of the economic ladder, who are the beneficiaries. It somehow always seems to me that the proposals here—especially this type of proposal—offer the circumstance where we say, Let us provide a tax cut for the wealthiest Americans.

What are our priorities? Are our priorities education, strengthening America's schools, investing in Social Security? Are our priorities strengthening Medicare? Are they providing a tax cut for middle-income taxpayers. Are our priorities providing a tax cut and deduction for being able to send your kid to college or providing health care benefits for you and your workers and

your business? Are those our priorities? No.

My colleagues say that is not a priority of ours. Those priorities must take a backseat to the priority of providing estate tax relief for the very wealthiest in America.

This isn't about being opposed to those who are wealthy. In my proposal in this amendment, there is a very substantial estate tax exemption of \$8 million. If you are trying to pass a family business or farm on to the kids who are going to run it, you are not going to pay an estate tax. That repeal is effective next January 1.

My colleagues say: No. We support this issue of helping farms and businesses, but we support helping them 7 years from now. We have used that as the pole-vaulting contest to get to the point where we can repeal the estate tax, but it is not so important to us that we believe on January 1 of next year businesses and farms passed on to the kids ought to have the estate tax repealed.

It is not that important to them. It is important to me. And I believe very much that we ought to pass this amendment. We voted on this amendment last year. Times have changed, as you know. Things are quite different. My amendment last year got 43 votes.

Last year, just prior to this time, we were on the floor of the Senate, and we had estimated budget surpluses as far as the eye could see. We had people on the floor of the Senate saying: We will have budget surpluses year after year. Let us provide very large tax cuts.

Some of us said: Maybe we ought not do that. Maybe we ought to be a bit conservative. What if something happens?

Guess what happened. In a matter of 7 or 8 months we ran into a recession, and then we had a war. The result is that our economy faltered. These big surpluses turned into big deficits.

But it didn't mean a thing to those who are marching towards estate tax repeal. They are back here on the floor of the Senate as if nothing happened. It is just as if they have missed the last year and our priority remains to try to lift the burden of taxes from those who are at the top end of the income ladder in this country. If you have \$1 billion, our priority remains that we believe in tax cuts for you, and we are here to fight for you.

Is there anybody here who is willing to fight for the people at the bottom of the economic ladder? Is anybody proposing a tax cut this afternoon for middle-income taxpayers trying to send their kids to school? I don't think so. That is not the priority.

That is why I hope we will pass our amendment. This amendment says, yes, let us provide dramatic increases in the exemption for the estate tax, and let us exempt the tax in the transfer of the family farms and businesses to the kids who want to run them; but let us not give up the opportunity for a couple hundred billion dollars in the

second 10 years that might be used to help America's kids and schools, help strengthen Social Security, help strengthen Medicare, and do the things that will also make this a better country.

I hope my colleagues will understand that the only way to address this issue of family farms and businesses that we have heard so much about is this amendment.

One final point: My colleagues have talked about the family-owned business deduction not working. It is interesting to me. In fact, they revealed it in law last year. They said, let us repeal the family-owned business deduction. That was their bill last year. They did it in 2004, which is a complete contradiction. If it didn't work, why wouldn't you repeal it immediately? If it does work, why do you repeal it in 2004? It does work, and they know it. They simply allege that it doesn't work so they can try to defeat this amendment and provide relief for the people with the highest incomes at a time when this country is in debt and is going deeper in debt. Their proposal doesn't have as a priority to help on the other things that are important—health care, Social Security, education, and much more. We will get to those things by casting some sensible votes this afternoon on this amendment.

Support this amendment, oppose the Gramm amendment, and do the right thing.

I yield the remainder of the time.

The PRESIDING OFFICER. All time has expired.

Mr. GRAMM. Mr. President, as provided for in the unanimous consent agreement, I make a point of order under section 311 of the Budget Act against the pending Dorgan amendment.

Mr. DORGAN. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for the purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no."

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

The yeas and nays resulted—yeas 44, nays 54, as follows:

[Rollcall Vote No. 149 Leg.]

YEAS—44

Akaka	Biden	Breaux
Bayh	Boxer	Byrd

Cantwell
Carnahan
Collins
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Edwards
Feinstein
Graham

Harkin
Hollings
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
McCain

Mikulski
Nelson (FL)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Snowe
Specter
Stabenow
Torricelli
Wellstone

NAYS—54

Allard
Allen
Baucus
Bennett
Bingaman
Bond
Brownback
Bunning
Burns
Campbell
Carper
Chafee
Cleland
Clinton
Cochran
Craig
DeWine
Domenici

Ensign
Enzi
Feingold
Fitzgerald
Frist
Gramm
Grassley
Gregg
Hagel
Hatch
Hutchinson
Hutchison
Inhofe
Kyl
Lincoln
Lott
Lugar
McConnell

Miller
Murkowski
Murray
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner
Wyden

NOT VOTING—2

Crapo

Helms

The PRESIDING OFFICER. On this vote, the yeas are 44, the nays are 54. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The majority leader is recognized.

Mr. DASCHLE. Mr. President, I appreciate the work that is being done. In the interest of all colleagues, let me simply make sure that people understand that we have a debate on another amendment. Under the unanimous consent agreement, the debate can last up to 2 hours. It would be my expectation, after completion of the debate on the next amendment, the Gramm amendment, we will then vote on the Conrad amendment and the Gramm amendment back to back. It is then my hope that we can have a vote on a point of order that will take place either immediately or shortly thereafter.

In the meantime, we are still discussing the matter of stem cell research and cloning and a unanimous consent request there, as well as a hope that I have that we can move to terrorism insurance legislation. I just indicated to Senator LOTT that it would be my desire to move to the terrorism insurance legislation immediately following either the debate on stem cell or the debate on the estate tax legislation.

So it is my intention to ask unanimous consent to move forward on both of those issues. It is my understanding that some of my colleagues wish to have a little additional time. So before I propound a request on either one of those issues, we will certainly be happy to accommodate the request of our colleagues. But I want people to be on notice that it is our intention to file a unanimous consent request on terrorism insurance, as well as on the stem cell cloning debate. That is with

an understanding that Senator LOTT just noted. I had been told there was some interest in filing cloture on the motion to proceed on defense. Senator LOTT has indicated to me that is not the case. So I will not propound these requests with that understanding.

I yield the floor.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. LOTT. Mr. President, I have been working with the interested Senators on this issue of cloning, trying to see if we can get a unanimous consent agreement. We are continuing to do that.

With regard to the terrorism insurance bill, if we don't get an agreement on cloning, it is my hope that we can get an agreement to proceed with the terrorism issue. There are a couple of points that need to be clarified, and we are discussing those now. We will, hopefully, get an agreement on one, or perhaps both, of those issues. We will continue to work on that.

Mr. DASCHLE. Mr. President, I may have misspoke. I indicated there are going to be two votes at the end of two hours. That will complete the debate on the estate tax issue: the completion of the debate on the amendment now to be offered by Senator GRAMM, and then the vote on the amendment offered by Senator CONRAD. We will determine what the course of business will be subject to the discussions underway on both terrorism insurance and the stem cell cloning debate as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

AMENDMENT NO. 3833

Mr. GRAMM. Mr. President, I send an amendment to the desk on behalf of myself, Senator KYL, Senator BROWNBACK, Senator NICKLES, and Senator HUTCHISON.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM], for himself, Mr. KYL, Mr. BROWNBACK, Mr. NICKLES, and Mrs. HUTCHISON, proposes an amendment numbered 3833.

Mr. GRAMM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To permanently repeal the death tax)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Permanent Death Tax Repeal Act of 2002".

SEC. 2. ESTATE TAX REPEAL MADE PERMANENT.

(a) IN GENERAL.—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(1) in subsection (a) by striking "shall not apply—" and all that follows and inserting "(other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.", and

(2) in subsection (b) by striking “, estates, gifts, and transfers”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect as if included in section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

Mr. GRAMM. Mr. President, I have sent to the desk the real repeal of the death tax. This amendment is identical to the language that was adopted in the House of Representatives last week.

Current law phases in the elimination of the death tax and then, due to the limitations of the Budget Act, the death tax rises up out of the grave in 2011 and starts destroying family businesses, family farms, and family dreams in 2011. What our amendment does is makes the repeal of the death tax permanent.

I want to touch on a couple of issues, and then I want to yield to some of my colleagues who want to speak.

I remind my colleagues that when we passed the tax bill, we had 58 votes. It would have taken 60 votes to have made the tax cut permanent by waiving the provisions of the Budget Act. We only had 58 votes. We have this anomaly that the death tax rises out of the grave because we only had 58 people who supported the tax cut.

I believe everybody who voted for that tax cut was committed to the principle that we were repealing the death tax. Today we have an opportunity—the first real opportunity—to achieve that goal.

I remind my colleagues that in the year that the repeal would go into effect, which would be 2011, we are projected by the latest Congressional Budget Office estimate to have a \$450 billion surplus. Our Democrat colleagues say they would like to make it permanent, but we cannot afford it. I remind my colleagues, when it would go into effect, under current estimates, we would have a \$450 billion surplus. What they are really saying is they want to spend the money rather than letting people keep their farm, keep their business, keep their dream.

We have heard throughout this debate Member after Member get up and say that this repeal will take money away from the Treasury and that they are very worried about the debt and the deficit. Not once, twice, three, four, or five times, but six times in the last 9 months we have increased spending many times more than would be required to pay for the repeal of the death tax.

In nonrequested, nonemergency funding in the emergency appropriations bill, items the President did not ask for, we spent four times as much as it would take to fund the repeal of the death tax next year.

In total, in the last 9 months, the same people who are saying we cannot afford to make this repeal permanent have voted for 15 times more spending next year than the cost of repealing the death tax. These are the same colleagues who have 100 different taxes

that ought to be increased, 41 different tax cuts that ought to be taken back, but they do not have one single idea about how we could control spending.

In reality, this is a very simple debate. When you cut through to the bottom line, it is a debate about priorities. Those who are opposed to making the tax cut permanent are basically saying: We are willing to force people to sell their business and sell their farm, tax a family at the moment of death and take away the life work of their parents so that Government can spend more money. That is what this is about.

Are you willing to take away somebody's farm, somebody's business, somebody's dream so Government can go on spending as usual? I am not. This is a clear-cut issue, and it is a question of right and wrong. It is not right for people to work a lifetime, pay taxes on every dollar they earn, scrimp, save, sacrifice, plow that money into a business, plow it into a farm, work 12 or 14 hours a day, and then when they die their children have to sell their life's work to pay a tax on income that has already been taxed. It is fundamentally wrong. This is a moral issue, not just a tax issue or an economic issue.

I urge my colleagues to vote to make the death tax repeal permanent. If the people who voted for the tax cut and if the people who voted for the sense-of-the-Senate resolution earlier this year are saying we ought to make the death tax repeal permanent voted for this amendment, we would succeed.

I urge my colleagues to take away this tax on farms, ranches, businesses, and dreams by making the repeal of the death tax permanent.

I yield 5 minutes to the Senator from Texas, Mrs. HUTCHISON.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Texas is recognized.

Mrs. HUTCHISON. I thank the Chair.

Mr. President, I thank the senior Senator from Texas for sponsoring this amendment. The Senate has passed the death tax repeal. We are trying to make it permanent. In fact, it was a year ago this month that we passed the bill that would provide urgently needed tax relief for Americans, but now we want to finish this job and make it permanent so people can plan for their futures.

Why is it important to permanently repeal this tax? Because it punishes people for saving. Everyone pays taxes on the money they earn, but then we all have a choice: We can spend the money or we can save it. Some may choose to take a vacation or buy a new car. There is nothing wrong with that. That is their choice. It is their money. But others will invest it for retirement, plow it into their family farm or ranch, or invest it in the family business, creating new jobs and keeping our economy going.

All of these people want to pass their savings to their children. In the end, they have put off enjoying the money

they worked hard to earn in order to build a more secure future for their children.

There is an old saying that the key to wealth is not how much you earn but how much you do not spend. These people chose savings over consumption. This is something we should encourage and support, but with the death tax, when they die, the Government takes up to 55 percent of what they saved. This is wrong, and Americans know it.

Three out of four voters would like to see the estate tax eliminated. This overwhelming support exists because the American people understand this tax is unfair, inefficient, and bad policy. More important, the people of our country seek the American dream of improving their lives and the lives of their children, and they know this tax works against that.

People who want to keep the death tax argue that it only affects a small percentage of the population, but they miss the point. It is not a matter of how many are affected but whether it is right or wrong, and the death tax is clearly wrong.

I told a story a few years ago about the family of David Langford of San Antonio. It is not a story; it is true. Mr. Langford's mother passed away in 1993 and, as a result, he faced a tax liability of more than \$400,000 because two of the ranches that had been in their family for over five generations had, of course, increased in value.

They had been in the family for over 100 years.

One happens to be in the hill country of Texas, which Texans know is one of the most beautiful parts of our State and the prices have gone out of sight.

In order to pay the taxes and keep the ranches for his family, Mr. Langford had to sell his mother's house, his own house, and many personal assets, as well as move into a small condominium and borrow \$190,000. But that was not the end. The Langfords spent 5 years trying to reach an agreement with the IRS that would bring down the fair market value of the properties. They settled with the IRS for \$415,000. The Langfords had spent \$70,000 in attorney's fees associated with dealing with the IRS.

So in 2001, to cover the costs, Mr. Langford had to sell the condo and one of the farms in McMullen County, a ranch that had been in his family for five generations.

Now the Langfords wonder if they will be able to pass the Kendall County property, the other farm which has been in the family for seven generations, to his children. He jokes that if he dies in 2010 his family can keep the ranch, but they will not be able to keep it if he lives past 2010.

This is not a joke. This is a situation families across America will face. We must eliminate the death tax so that regular people, such as David Langford, can pass on their treasures from their families to their children. I think his family has more than paid their fair

share to the U.S. Government, having to sell a farm that had been in the family for over 100 years.

Then there is Debbie Gillan, who struggled to keep her family's ranch after her uncle and father passed away, and now she wants to try to keep it for her two sons.

Afton Pumps employs 60 people in Houston, TX. It is a small family-owned business, but it does not generate enough cash to cover the potential death tax liability to make it to the next generation. In fact, it is said that less than 50 percent of family businesses can survive the second generation, and less than 20 percent the third generation.

I ask the Senator from Texas if I could have an additional 2 minutes?

Mr. GRAMM. I yield the Senator an additional 2 minutes.

The PRESIDING OFFICER. The Senator has an additional 2 minutes.

Mrs. HUTCHISON. If we are going to eliminate these family-owned businesses, it does not affect only the family, it also affects the people who work at places such as Afton Pumps because if they have to sell to pay for death taxes or they have to sell the property, there is a good chance those jobs are going to be eliminated, assuming they can sell it at all.

In fact, one of the really sad things is the death tax is really a tax on asset-heavy, low-producing properties because many times these heavy assets have to be sold. They have to be sold at fire sale prices so the true value is not gained from the property, and then one has to come up with the money to pay the inheritance tax. It really is not a fair tax. It affects a lot of regular people, people in a situation where something was purchased at very low cost, but they have built it or their families have built it. They have a right to keep it. It was earned with the hard labor of their family, and they should be able to pass it to their children.

I think this tax really came into being as extra income in time of war, but it was never repealed because the Government got hungry for more and more social programs. This is not a fair tax and we need to eliminate it so the people of our country can plan for their children's futures, so they will not have to do crazy things to try to protect property or businesses or assets that have been in their families for generations. This is not the American way.

I yield the floor.

Mr. REED. Mr. President, I yield myself 10 minutes of the opposition time.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized for 10 minutes.

Mr. REED. Mr. President, this is a very auspicious moment in our history, not just this debate in the Senate but the fact that we are in the midst of a war with extraordinary demands, fiscal demands as well as demands of patriotism, on the country.

Yesterday we raised the debt limit. We are in a situation where there are

efforts to fund worthy programs that are supported on both sides. First, of course, is national security, homeland defense, but also an educational proposal that the President championed. Yet at this time, we are considering the total repeal of the estate tax.

A great deal of the discussion is rhetorical. I think it is useful to point out some of the facts with respect to the estate tax. First, no estate less than \$1 million is taxed at all today, which excludes the vast majority of Americans. In fact, if most Americans are asked what they are worried about at the end of their days, it is not the estate tax. It is paying for long-term care. It is affording a nursing home without having to sell their home or dig deeply into their savings. That is what most Americans worry about. They are not worried about the estate tax. Ninety-eight percent of estates pay no estate taxes at all.

In 1999, fewer than 49,000 out of 2.3 million estates—that is only 2.1 percent—paid any estate taxes whatsoever. This percentage is projected to drop as the exemption rises from \$650,000 in 1999 to \$3.5 million in the year 2009. Now, the estate tax repeal will benefit some Americans, very few Americans, and the wealthiest Americans. Estates larger than \$5 million paid half of all estate taxes, and if we look at the 467 largest estates, worth at least \$20 million, they paid nearly one-quarter of the estate taxes paid. So this is a benefit that will not be fairly shared by all Americans. It will be significantly shared by very wealthy Americans.

Now it should be pointed out, too, that no estate tax is paid if a spouse survives. That spouse does not have to pay estate taxes. Currently, as I indicated, an individual can pass along up to \$1 million without estate taxes, and that increases to \$3.5 million in the year 2009, and a couple can pass along twice that amount because of the spousal rules.

Furthermore, only a small fraction of taxable estates consisting primarily of family-owned small businesses or farm assets pay estate taxes. This is a topic that receives a lot of rhetorical attention, but the reality is this: In 1999, only 1.4 percent of taxable estates were farm estates, and only 1.1 percent were small businesses. There are already special provisions that are provided for these farms and for these small businesses, such as allowing additional sums to be bequeathed tax free and also deferring payments on taxes for up to 14 years.

Farm estates in 1999 pay only 0.7 percent of all Federal estate taxes collected, and so this is not a crisis of sweeping proportions that is engulfing every farm in America—only very few farms, very wealthy estates. Even among these family-owned farms and small businesses that might actually pay estate taxes, there is scant evidence the tax has a real impact on their operations; that, in fact, they

have to sell the farm to pay the taxes or sell the small business to pay the taxes.

One thing that is important to note, a great deal of an estate is made up of unrealized capital gains. The deceased bought property 50 years ago very inexpensively. Today that property is worth a great deal. Under the current system, the heirs get that property with a stepped-up basis and so if they choose to sell the property after they have paid the estate tax or after they have been exempt from the estate tax, they really pay no capital gains whatsoever because significant portions of the property are unrealized capital gains on which no capital gains tax has ever been assessed against the property.

There is another argument that is made by proponents, and that argument is the fact that repealing of capital gains will stimulate economic growth in America, will increase savings, will increase our overall growth. A new report from the Joint Economic Committee and the Democratic staff points out that these claims are exaggerated at best.

Repeal would affect very few families and have very little impact on total capital accumulation in the United States. The tax is very small itself, relative to family net worth. The gross value of taxable estates comprised only 0.3 percent of the total net worth of the household sector, and the estate tax itself claimed less than 0.06 percent. That is what the estate tax claims in terms of the household sector of America. Repeal would have a small, uncertain effect on individuals' private saving. There is no real indication that saving will increase. In fact, it is likely or possible that consumption could increase as people took estimated estate tax payments and decided they were not due any longer under the proposed regime, they would be spent.

It is unclear whether this proposal will increase national saving. Without increased national saving, we will not have the kind of economic growth we want.

This repeal, if enacted, will dramatically and definitely affect the revenues going not just to the Federal Government but to State governments. The Joint Committee on Taxation estimates permanent repeal would cost, in 2012 alone, \$56 billion. Others suggest that estimate is rather conservative. There would also be comparable losses at the State level. At a time when we are seeing a deficit situation in the United States, that deficit will be compounded by the loss of the estate tax. It will result in a decrease in public and national saving. As a result, we will not be stimulating the kind of growth we want, for many reasons, including the fact that the purported savings from compliance costs might not be realized either, since most estates, most investors, most people with property will continue, regardless of the estate tax, to plan for the disposition of their assets and engage legal

counsel. The notion that we will save and streamline the cost of providing for the future is not substantiated by the reality of what people do every day.

Now, can we afford to repeal the estate tax? I don't think we can, particularly in a situation where we are seeing the cost likely in the second decade to balloon to \$750 billion.

We are considering in the next few weeks legislation both sides support. First, a pharmaceutical benefit for seniors. Will that cost billions of dollars? Yes, it will. Where will that money come from? Right now, it is coming from the Social Security fund and Federal debt if we propose it and pass it. This will make our proposals much more difficult to enact and fund. It is easier to enact than to fund a pharmaceutical benefit. The Department of Defense is proposing a missile defense system supported by both sides. They are reluctant to tell us what the life cycle cost will be over 20 years. Why? Because those costs are likely to be in the hundreds of billions of dollars. Where do we get that money? We are in a deficit now. We will be in a worse situation if we pass the permanent repeal of the estate tax.

We have to recognize that each day we wake up, we encounter a new threat to our national security. Two days ago, the FBI announced they seized a terrorist who was plotting to detonate a radioactive device in the United States, causing us to ask fundamental questions: Are all of our university laboratories with isotopes fully protected? Are all of our reactors, academic and utility reactors, fully protected against theft? That is not an inconsequential cost, but it is a cost we cannot avoid. If we pass this, we will be in a more difficult position to meet those responsibilities.

I urge we reject this approach and adopt the approach suggested by Senator CONRAD that raises the exemption level, making it quite clear and obvious we are not going to penalize those smaller estates, we are not going to penalize the proverbial and somewhat, in many cases, elusive family farms that are threatened by this estate tax. I hope we can do that. I hope we reject this proposal and adopt the Conrad proposal.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. 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. DODD. Mr. President, I rise in opposition to the Gramm amendment, total repeal of the estate tax.

Just yesterday, the Senate responded to the President's request to increase

the debt ceiling by \$450 billion dollars. We are no longer retiring debt and reducing our indebtedness, we are increasing it. The surplus is gone. The President's own budget advisors project deficits for the foreseeable future. And yet, the President is calling on the Congress to permanently repeal a particular tax.

The cost of repealing the estate tax is not inconsiderable. The cost is \$99 billion over the next 10 years. In the decade after, the repeal would cost \$740 billion. How are we going to pay for this? How is this massive new cost going to be paid for? Are we going to run deeper deficits? Are we going to take it out of the Social Security trust fund? And if so is it wise to drain this fund at the precise time that the baby boom generation is expected to reach retirement age?

There is a war in case anyone has not noticed. It is going to cost money to wage it. And yet we are told that we must repeal the estate tax for the good of the country.

Every day we are getting reports that there will be cut backs on essential services. In places like DC, South Dakota, and many other States children's school days have been shortened. Summer school classes are being cancelled and after school programs are being cancelled. And yet there are those that think that the most important thing we can do as a country, an absolute priority that should prevail over all other priorities, is permanently repealing a tax that is paid by billionaires and multimillionaires.

At a time when we are trying to combat terrorism and we are struggling to educate our children and provide senior citizens with security in their retirement, when we are trying to maintain budget discipline that is so vitally important to our countries long term economic growth. People want to give, they do not want to take from their country at a time like this.

Rarely do Members of the Senate find themselves so short of anything to say. I find myself dumbfounded by this suggestion that we totally repeal the estate tax. At other times I might have understood the motivation. Just a year ago, we were talking about close to \$6 trillion in surplus over the next 10 years, and if this proposal were brought before the Senate I might have disagreed or objected to it, but perhaps a case could be made with \$6 trillion of surplus, the days of a national debt behind us, annual deficits no longer a debate, no longer an issue. With \$6 trillion of accumulated surplus, there might be room within that surplus for \$740 billion of tax expenditures.

In light of everything that has occurred in the last year, I am truly dumbfounded that we would suggest today that this would even be a close vote. That we would be talking about removing from the wealth of our Nation over the next 20 years close to \$800 billion to satisfy a tiny fraction—I mean a tiny fraction—of the American

public in light of everything else that has occurred, is truly dumbfounding.

My State, the State that Senator LIEBERMAN and I represent, is often referred to as one of the most affluent States in America on a per capita income basis. One might think in this particular case that I was probably the recipient of a large volume of mail or e-mails, conversations, asking me to vote for the total repeal of an estate tax.

In light of the fact that the people who will benefit the most, the largest number of people as a percentage of the people, would come from the State I represent—I represent 3.5 million people in the State of Connecticut. Out of 3.5 million people whom I represent in the State of Connecticut, 980 people would actually have gross estates that would subject them to the estate tax as it is presently written. My colleagues are certainly aware, I hope the American public is, that we have essentially reformed the estate tax in this country to the point that it only now touches a very tiny percentage of the American public.

So here in one of the most affluent States in the United States on a per capita basis—the State I represent—with a population of 3.5 million people—there are only 980 estates that have gross incomes that would subject them to this tax.

When you factor in the exemptions—for spouses, who do not pay estate tax, for family-owned farms and businesses—the number in Connecticut comes down to 73—73. You start out with 980, but if you take in the exemptions that we have written in we are talking about 73 estates, in the wealthiest State in the Union. And the pricetag, over 20 years, is almost \$800 billion.

Maybe people find the word “dumbfounding” to be a little harsh, but I do not know what other word you could use than that one, when you consider how much wealth they are going to remove when we need so much. Here we are, a year after the accumulation of great surpluses, already talking about a deficit this year in the neighborhood of \$100 to \$120 billion, maybe more before we are done.

Right now no one argues with those numbers. That is this year. The President has already announced there will be deficits in every year of his Presidency over the next 3. In fact, many suggest that deficits will now continue for at least 10 years.

So here we are back where we were at the beginning of the 1990s, building up that national debt with annual deficits. In the midst of all of that, 9-11, where we must now respond, as has been said so often by every Member of this Chamber, by the President and others, the world has changed for us fundamentally. It will never be the same again because of what happened on that date.

We are taking steps now, investing resources to make our country stronger, to see to it that we have better protections here at home and abroad. It is an expensive undertaking to do so. In the midst of this expensive undertaking—while simultaneously we also want to invest in the educational needs of our Nation, provide for prescription drug benefits, do what we can to make sure Social Security and Medicare will be there when people need them, invest in the transportation infrastructure which is critically important, a farm bill which we were told was absolutely essential, you go down the list of the things we know we need to invest in to make this country strong and viable—along comes a proposal that will take 3,500 estates in this country and allow them to get a tax break at the expense of everyone else in America. And the cost is roughly \$99 billion in the first 10 years or so, and after that, according to the estimates I have seen, \$740 billion. Add the two and the price tag is in the \$800 billion range. I find it interesting that moments ago we had an opportunity to pass an amendment that would have provided relief to small family farms and businesses for a price tag that is substantially less than a full repeal, and yet many of the Senators who argue that they would like to provide estate tax relief to families and businesses voted no on the amendment.

I do not know how we can go home to our constituencies at a time like this, when we are worried about whether or not we are going to have an intelligence agency, a domestic policing operation, and a reorganization of Government. We are debating in these very hours how we are going to do that, knowing full well it will cost us dearly to do that right—seeing that we have defense structures, seeing that first responders have what they need, God forbid we have another tragedy like we did on September 11. And in the face of all that, I have to explain why it is we are going to provide a total repeal of a proposal—offered by Teddy Roosevelt, by the way. This was not an idea that came out of Franklin Roosevelt, it came out of his cousin, Theodore Roosevelt, the great Republican Progressive President, who argued an estate tax was not only a viable and intelligent revenue source but also had some social benefits.

I don't think it ought to go without mention that some of the wealthiest people in this country are arguing strongly against the Gramm amendment, strongly against the total repeal. People such as Warren Buffett, one of the brightest financial minds in this country, argued strongly against this. John Kluge, who built one of the great fortunes in this country, who was a wonderful genius, argued against this particular proposal. You go down the list. The Gates family argued against this proposal.

I have received five letters—five, out of 3.5 million people in my state, some

of the most affluent constituents who are represented in this body at all—saying we ought to totally repeal the estate tax. Even the wealthiest people in this country, who would be the beneficiaries of this, are asking us not to do this. This is fiscally unwise. It is going to cost us dearly.

I was elected to this body 21 years ago. I remember what it was like in the early 1980s. I remember what David Stockman said after he left office. David Stockman, for those who have forgotten who he was, was the Director of the Office of Management and Budget under Ronald Reagan. He argued for significant tax cuts in the early 1980s. They passed, of course. We all know what economic havoc was caused during the 1980s when we had mounting deficits and a national debt that almost quadrupled in the space of 10 years. David Stockman, to his credit, wrote a book called "The Triumph Of Politics." I don't have it with me today, but I urge the younger generation to read it. Remember the admonition, if you want to avoid repeating mistakes, read a little bit about previous mistakes, study history. David Stockman recites chapter and verse about the mistakes made with a proposal we couldn't afford.

Pat Moynihan, then-chairman of the Finance Committee, argued for years that what was done was basically to manufacture a deficit. I suspect this is more about doing that than it is about providing tax relief; more about manufacturing a deficit, regardless of the consequences of that. Then, when people pay higher interest rates on their home mortgage rates, student loan rates, car payment rates, and everything else you can think of where an interest rate is involved, then that is considered irrelevant. If we can build up enough of a deficit, then we will not be able to invest in education, in health care. Forget about arguing whether or not we ought to do it, we will not be able to afford to do it.

I suspect that may be the motivation here and not providing a tax break for 980 of my constituents under the best of circumstances. I am told there are actually 73 estates, when you get through with all the exemptions, 73 estates that would actually be affected by this proposal.

I join with those who urge our colleagues today that, if we are reorganizing our Government differently to respond to what has happened here in the last year, if we have seen our surplus evaporate because of events that have occurred, investments we have had to make, if we must think differently about everything else we are doing, should we not pause and think differently about this? We should take steps to protect the family farms and small businesses from an estate tax that overreached, but just a few moments ago an amendment that would have done that was defeated. But what we are talking about now are just a handful of estates that would be asked

to make contributions to our estate tax revenues. I urge Members to pause and think carefully here before committing our country to this kind of financial obligation, which we will spend years trying to recover from, in my view.

In the 1990s, of course, when we came up with a balanced budget proposal, there were those who predicted dire consequences. We saw a nation eliminate the national debt, eliminate the deficits. A lot of people can claim responsibility for participating in that result: certainly the private sector, the technology sector particularly; certainly Alan Greenspan, the Federal Reserve Chairman who managed the Federal Reserve Bank with such brilliance; certainly President Clinton for being the Chief Executive Officer of the country and promoting a balanced budget approach that carried the thinnest of margins in both this Chamber and the other.

Nonetheless, we found ourselves with a financial footing that people only dreamed about a decade earlier. What a great gift was given to this new administration. In fact, the President himself talked about it when he gave his State of the Union Message. In his first State of the Union Message, he spoke about why we are going to be doing the things we can do, it was because we had accumulated a sufficient surplus in this country. What a wonderful legacy it was going to be to invest in the things we needed to do.

Now, because the recession lasted longer, because of 9-11, obviously, because of an unwise tax cut last year that went into place, we now find ourselves in a situation where we are going to have deficits every year of this administration's duration, and we are going to compound that by taking \$840 billion off the table over the next 20 years at a time when we could be investing that money to make this a stronger and better country—just to take care of a small handful of people.

What I would like to know is why are we not here talking about a tax cut that would say to working families, if you are sending your kid to college you ought to get some breaks on doing that, to make it easier for you to invest in your son's or daughter's educational future? Why aren't we talking about some relief there? Why aren't we talking about some relief from the FICA taxes for people? Here we are down here spending 6 hours debating whether or not 3,500 estates nationally, are going to get total repeal of an estate tax.

I think it is unwise. I don't think it is warranted at all.

I will end where I started. I am dumbfounded that this Chamber would even consider this proposal in light of the challenges, the risk, and the dangers we face as a nation—that we would make this kind of a judgment at a time when we are going to need all the resources we can provide for the well-being of our own people.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, while the Senator from Connecticut is here, let me respond to the concern, or his expression that he is dumbfounded that we would even be considering this amendment.

We passed this repeal already. I know the Senator from Connecticut didn't vote for it but a majority of us did—Democrats and Republicans. It passed in the House of Representatives, and the President signed it. This is not something extraordinarily odd that we are doing. This has already passed.

The problem, as the Senator knows, is that under the rule in which it was considered, everything we did in the tax reform bill sunsets at the end of 10 years. As a result, the repeal of the estate tax comes in 10 years. The question for those of us who helped pass this legislation—the majority in the House and Senate, and the President—is, Did we really mean to repeal the estate tax?

What I understand the Senator to be saying when he says he is dumbfounded is that at a time when he says we need the money, we would be making permanent that which we intended to make permanent but wouldn't make it permanent before.

I suppose it is a legitimate question, if he is saying we should revisit what we did before. I take it that is what he means. He just voted, as did the Senator from Rhode Island, who spoke earlier, for an amendment that costs more than the Gramm-Kyl amendment. The Dorgan amendment, according to the Joint Tax Committee's calculation, costs \$110 billion in the 10 years, which is substantially higher than the Gramm-Kyl legislation.

I am a little confused about the point with respect to fiscal demand. There are fiscal demands. The ones mentioned by the Senator from Rhode Island—drug benefits, missile defense, and so on—are all in the Bush budget. Those are things we are paying for; they are provided for in the budget.

The budget was established on the basis that we had repealed the estate tax. The question was, Would it be made permanent? It is not as if great circumstances have changed. We do have the war on terror, that is true. I don't think any of us is going to deny that if we need to fund the war on terror, we will. We have already passed a supplemental appropriations bill to do exactly that.

It is odd to argue that the 1 percent of Federal revenues that are collected by the estate tax are critical to the functioning of the U.S. Government in light of the trillions of dollars that we spend—that somehow or other we can't get along without this so-called estate tax.

That is the real question. I think Senator GRAMM was right earlier when he said what it really boils down to is a philosophical debate between those who do not want to allow people to

keep their own money but believe the Federal Government needs that money, on the one hand, and those of us who believe this is an unfair tax and the Federal Government can get along without the money.

There is another point. I have made it before. Most of us appreciate the fact that when we cut taxes, in the long run it actually improves the fiscal picture for the Government because more taxes are generated by a more vital economy. I cited yesterday the economists who made the case that reducing taxes will allow more job creation, more capital formation, and a better economy. In fact, there would be about \$40 billion of growth in the economy if we were able to repeal the tax today.

The other point made was that very few estates pay the tax, that it is only for the rich.

This morning I read—and I will just briefly reiterate—who it is who pays the tax. Estates don't pay the tax, people pay the tax. Who are these people? This isn't the opinion of the Senator from Arizona, this is the IRS. They have the statistics on who actually pays.

In the most recent report entitled "Statistics Of Income Bulletins, Summer of 1999"—pages 72-76, if you want to look it up—here is what the IRS says. Here is who pays. It is divided between males and females. The largest group of filers of estate tax—27.7 percent—were men, administrators, upper management, and business owners. You could assume that. But the second biggest group—12.3 percent of filers—were schoolteachers, librarians, and guidance counselors. These are these filthy rich people from whom we have to take money—school guidance counselors, schoolteachers, and librarians.

How about the female estate tax filers? The largest number—14.3 percent—were educators.

If I were a member of the teachers union, I would be down here supporting the Gramm-Kyl amendment to make repeal of the death tax permanent because the largest group of women who file estate taxes are educators. These are the people who actually pay the estate tax. The first person who accumulated the wealth is dead. He hasn't paid the estate tax. His heirs paid the estate tax. Who are these people? Among women, the second largest group, of 9.6 percent, are in clerical and administrative support occupations.

When you put it all together, here is what the IRS says: A significant number of estate tax filers were scientists. We really ought to penalize those scientists. They do not do us any good. Salespeople, airline pilots, military officers, and mechanics. The last category I can understand—entertainers. Of course, we get a lot of money from entertainers. And we should. I don't know why they should be penalized any more than anyone else.

Scientists, sales people, airline pilots, military officers, mechanics, teachers, guidance counselors, and li-

brarians are the people who pay the estate tax.

Maybe their dad was fortunate in life to be able to work hard, save money, and accumulate some wealth. But their dad's dream probably was that they would have a better opportunity in life than he did. He probably sacrificed a lot to be able to leave them some money.

These are the people we are penalizing. We are not penalizing, by and large, some fat cat out on a yacht somewhere. According to the IRS, we are penalizing schoolteachers, airline pilots, and guidance counselors. That is whom we are penalizing.

The Senator from Rhode Island made a point on which I really want to focus. He was absolutely half right. Unrealized capital gains, the appreciation in value of an asset which is not taxed as income, because you don't sell the property and, therefore, have to file an income tax return—you bought some stock, and over the years you keep it, and it gains in value, significantly unrealized capital gains. Until you sell it, you don't pay any tax.

Under the current law, a billionaire got rich by investing in some stock. He never sold any of it. It acquired great value. He dies. His wife inherits that. The way it works today is, because there is an exemption for spouses, she pays no estate tax on it. The next day, she sells it. Do you know what her capital gains tax is? Zero. Do you know why? Under current law, there is what we call a step-up in basis. That property acquires an original basis as if it were the day of death rather than 20 years ago when the dead person bought the asset. When it is sold, there is no gain because the value begins with this much higher value—the stepped-up basis. If you sell it the next day, there is essentially a 1-day gain on it. In other words, there is virtually no capital gains tax. That is the current law.

That is what opponents are defending. That is why I say the Senator from Rhode Island was right. This is wrong. But does the proposal of the Senator from North Dakota, which we will vote on next, do anything about that? No. Does the existing law, if we don't make it permanent, do anything about that? No. It is the Gramm-Kyl amendment that fixes that problem.

This is what isn't understood by many of our colleagues. We don't simply repeal the death tax. We substitute for the death tax the capital gains tax. And we eliminate the step-up in basis, except for an amount which would be equivalent to the exemption today, which is about \$5.6 million. Nobody would pay a capital gains tax who would also be exempt from the estate tax.

But except for that amount of stepped-up basis, there is no step-up in basis. If the person who died and bought the stock years ago bought it for, let us say, \$1,000, that is the original basis. Let us say it is now worth \$1 billion. All right. Subtract \$1,000 from

\$1 billion, and that is the gain. That is on what they pay the capital gains tax. This is the proper way to tax unrealized capital gains. That is why our proposal really does not cost that much more, if you calculate it properly, than the existing law.

When you eliminate the death tax and replace it with a capital gains tax, you have substituted good tax policy for the current bad tax policy.

Death should not be a taxable event. We do not plan on that. We do not like that. It is not something that we cause to happen. It is like having your house burn down and collecting an insurance payment. We don't treat that as ordinary income because we realize you did not want your house to burn down. Even though you got an insurance payment for it, you should not have to pay that tax on that as ordinary income.

It should be the same with what your father leaves you when he dies. You should not pay a death tax on that. What you should do is, when you sell that property, pay a capital gains tax on it, going back to its original value. That is how you tax unrealized capital gains.

Now, just two final points.

The Senator from Connecticut said only a small percentage of people are affected. That is not really true. There is truly a very large percentage of people affected, even though the number of people who actually pay the estate tax is relatively small.

Let's take the average small business. I don't know what the size of the average small business is, but let's say it employs 50 people, just to use a number. Let's say you have an average family of four, plus other indirect beneficiaries, and so on. So instead of saying one person pays the estate tax, it affects all of the members of the family, and it affects all of the people in the business. There are twice as many people adversely affected as to who actually pays the tax. And in addition to the tax collected by the Government, an almost equal amount of money is paid by people to lawyers and accountants and for insurance to try to minimize their estate tax liability. So it is actually twice as much as people believe it is.

I wonder. The bill that we considered before this bill had to do with hate crimes. Proponents of changing the hate crimes law acknowledged it affected a very few number of people. But the effect on them was significant, they said, and it was unfair that they would be treated as they were treated and, therefore, we needed to do something about this. In other words, this is a minority of people who are treated unfairly, and we need to have the Federal Government step in and do something about that.

So, on the one hand, my colleagues on the Democratic side of the aisle are very concerned about a very small number of people, but when we bring to the floor the question of the death tax and its unfairness: Oh, we don't need to

worry about that; that only affects a few people. Well, when something is unfair, and seriously wrong, it doesn't matter how many people it affects; we need to do something about it.

The interesting thing to me is that 60 percent—this is a Gallup poll, and there are some polls that go up to 80 percent—at least 60 percent of the American people agree the death tax should be repealed—not reduced, not have the exclusions made larger, but should be repealed. And the interesting thing to me about that number is two-thirds of those people believe it should be repealed even though it will never have any affect on them.

In other words, they recognize it is not a large percentage of people who are adversely affected by the death tax directly, but they recognize it is unfair.

To me, that says more about the American people than just about anything I can think of, when they say: Even though you have more wealth than I do, it is not fair for the Government to take half of it from your kids when you die. Therefore, even though it doesn't help me any, I am going to stand up for your right to be treated fairly. And I support the permanent repeal of the death tax.

To me, that is a very good indication of the fact that the American people have a sense of fairness. And even though they are not directly benefitted by something, they are willing to support the elimination of that unfairness.

Final point. The suggestion we have already taken care of the small businesses and family farmers and, therefore, we don't need to permanently repeal the death tax. We have been through that in debate earlier today. We have not taken care of the small businesses and family farmers. Unfortunately, as I said, something like two one-hundredths of 1 percent of taxpayers have ever qualified for the exclusion that would take care of them under this provision. And even then, the IRS is going to come after you. And the IRS wins two-thirds of the cases that are brought. It is not a fact that small businesses and farms have been taken care of and excluded from the impact of the estate tax.

So who pays? Average Americans because the wealthier person, remember, died. And the question is, Is it fair to make them pay?

Do we need the money? The things that have been discussed are in the budget. We can always find more things to spend money on. The question is, Should you leave money in the hands of Americans who can build our economy, create jobs and wealth, or should we make the decisions for them by spending the money here in the Government?

I think it boils down to that, and when we have this vote, we are going to be asking one simple question: For those who voted for the bill last year to repeal the estate tax, did they mean it or not? If they meant what they said,

they will vote for the Gramm-Kyl amendment, which is the real repeal. It makes the repeal of 1 year into a permanent repeal. That is what the American taxpayers and American people thought we did. It is what we intended to do. And today it is what we can do.

I urge my colleagues to support the Gramm-Kyl amendment.

I now yield 5 minutes to my colleague from the State of Arkansas.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I compliment my colleague from Arizona for his outstanding leadership on this issue. And he has been the leader on this.

I was struck by one statement the Senator from Arizona made in which he said the American people, according to all the polls—and we all know this—overwhelmingly support the elimination of the death tax, even though most of them realize they will never be impacted by it. It does say a lot about the American people. It also says an awful lot about the unfairness of this tax; that is, the underlying tax.

That is the basic issue at stake in the debate we are having. Is this the way we want to tax or not? It is not about whether or not we are going to lose money for the Federal Treasury or not. We may or may not. It is not about whether we can reduce the number of people impacted by this unfair tax by expanding exclusions and lowering rates.

It is fundamentally about, Is this the right kind of tax to impose on the American people? The American people realize and recognize it is unfair for a person, a small businessperson, a farmer, for any American to work decade after decade, saving and investing, making decisions that reward their family, building something for the future, building something for future generations—someone, a businessman, a farmer, an individual paying property taxes, paying sales taxes, paying income taxes, year after year, and decade after decade—and then, at the point of death, at the event of death, you see the Federal Government reach into the grave and take half of everything that person worked for. I think the American people, rightly, have concluded that is unfair.

As the Senator from Arizona also pointed out, the decision about the unfairness and about the need to eliminate this tax was already made. It was made by this body. It was made by the House. It was made by the President over a year ago—a year ago June 7. The decision was: It is unfair. Let's repeal it. Let's eliminate it.

Because of arcane Senate rules, it could not be permanently eliminated. We could not do that last year. But we can do that now. The decision then that it was the right thing to do to eliminate it—that was made last year—we need now to say we really meant that.

It has already been very rightly pointed out that this is not a tax that

affects only a few. It is not just a few fat cats we are talking about. We are talking about literally millions of Americans.

According to the Treasury Department, more than 120,000 individuals filed death tax returns in the year 2000 alone. But that does not tell near the story because not only are there employees and family members who are impacted, but it is also the case that about twice as many people sell their businesses or sell their property early, before they die, so the death tax is not going to be a burden on their family. So instead of 120,000 individuals, you literally have doubled that, and suddenly you are talking about half a million people, plus their families and their employees who are impacted. This is not a tax that just touches a few people.

In addition, even more Americans are forced to pay this tax, not to the Federal Government, but to lawyers, to accountants, and to life insurance agents. Privately held businesses get involved in estate planning because if they don't, all they have worked for will be eliminated. To ignore the death tax statute is suicide for a family business.

Frankly, while the death tax is a terribly ineffective way to redistribute wealth, it is a very effective way to create and maintain an industry geared at avoidance.

This tax generates very little real income for the Federal Treasury. My colleague has already pointed out that the Gramm-Kyl amendment, because of the way it handles untaxed capital gains and the way it changes the step-up provisions in current law, any impact upon Federal revenues will be far more minimal than that which has been estimated.

In addition, the death tax is a very inefficient way of gaining Federal revenue, for 65 cents of every dollar gained is paid out in collection enforcement costs. Other studies have found not only are thousands of dollars going to attorneys and accountants and financial agents, but the average minority-owned business will spend nearly \$28,000 a year on life insurance premiums to prepare for the death tax, and \$9,000 on death tax planning.

Frankly, the 1.5 percent of Federal income that currently is generated by the death tax is so small that it would, to a great extent, offset the cost of administering and collecting and enforcing the tax.

Beyond all of that, I return to the point with which I began. There are the practicalities that it generates little income, and a whole avoidance industry has developed because of the estate tax.

The PRESIDING OFFICER. The Senator has used his 5 minutes.

Mr. KYL. I yield the Senator 1 additional minute.

The PRESIDING OFFICER. The Senator is recognized.

Mr. HUTCHINSON. Beyond the practicalities, the underlying issue is,

is it fair? Is it right? A bigger exemption does not solve the basic unfairness. A greater exclusion, lowering rates, none of that really deals with the underlying issue. It is an unfair tax. It taxes success. It taxes accomplishment. It taxes that which is the American dream. For that reason, we need to get rid of it.

We don't need a mirage for the American people. We need it to be real. We can make it real by supporting the Gramm-Kyl amendment.

I thank my colleague for the time and the opportunity to speak in favor of his amendment.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator is recognized.

Mrs. CLINTON. Mr. President, I have a great deal of respect for my colleagues who are arguing this point with extraordinary vigor and zeal. I have no doubt they absolutely believe that the wealth tax is wrong and should be abolished.

We ought to take a step back and put this debate into a bit of a reality check again, since there has been a lot said on the floor which may be good argument points, good advocacy positions, but is not necessarily connected to the reality that we face today as we are about to vote on this decision.

I don't usually come to the floor and quote the Wall Street Journal, but I will today because if one were to look for a source that probably views this issue more favorably to the position of my colleagues, they probably couldn't find a publication that would be more inclined to support it. Certainly the editorial pages have done so, and there are columnists and others who make the argument.

I will enter into the RECORD a column that was written by one of the Wall Street Journal's leading writers, a gentleman by the name of Alan Murray, no friend of taxation, who wrote an article, dated May 28, 2002, entitled "Senate Needs Reality Check Before Refunding Estate Tax."

If one reads this, they will get a better context than the sort of disembodied one that occurs on the floor of the Senate where abstractions and generalities can be made for the sake of argument without really looking at what it is we are being asked to vote on.

Mr. Murray starts by saying:

Marie Antoinette had nothing over the U.S. Senate. In its rush to permanently eliminate the estate tax, the nation's "deliberative body" has apparently forgotten to deliberate on the surging social trends of our time.

Mr. Murray goes on to make the following point:

The last two decades have led to a concentration of wealth and income among the fortunate few in this country that hasn't been seen since the gilded age.

When was the estate tax first proposed and who proposed it? President

Theodore Roosevelt, himself a product of the gilded age, who understood intuitively that our country, founded on principles of equality, could not afford to see vast disparities in wealth occur. Therefore, President Roosevelt, a Republican, proposed the estate tax, because he recognized the threat that greater and greater accumulation of wealth that separated the few from the many posed to our Nation.

Mr. Murray goes on to say that "the 10 most highly compensated corporate chief executives earned a total of \$3.5 million in 1981," 21 years ago. You take the 10 top CEOs in America. Were they doing a good job in 1981? They were doing a good job. But now 21 years later, the 10 most highly compensated CEOs in our country make \$155 million, almost 45 times the 1981 figure. Are they doing a job 45 times better than they did 20 years ago? The argument would be hard to make.

Secondly, we are currently in a situation where our market, the engine of economic growth, has been shaken by revelations about the behavior and conduct among these same highly paid corporate executives. We know, just to take one example, Mr. Skilling, the former CEO of Enron, would benefit to the tune of \$55 million if the estate tax were repealed. How would that be paid for because the money is not fungible? If you do away with the estate tax, then you will have to eliminate or cut something. There are a lot of things that probably could be looked at to be cut. How about the Social Security tax payments of Americans? It would take 30,000 Americans earning \$30,000 a year, paying their taxes, to make up for the \$55 million that Mr. Skilling would benefit. I don't think that passes the fairness test. I don't think that is really the kind of choice we should be making in this body.

Third, as Mr. Murray points out, every single day we are told our Nation is at war. I believe that. I represent New York. We were attacked when America was attacked. I have spent more time than I ever wish to recall working and being with the victims of that horrific attack.

In the past, whenever our country has been at war, we have been called upon to sacrifice. Particularly, the affluent have been called upon to sacrifice because, as Theodore Roosevelt pointed out, you are so fortunate to live in America; there is not a place better devised in the entire history of the world to be successful, to become rich. And the rich, God bless all of us, they actually take more advantage of our system than anybody else. They are really lucky, fortunate, blessed to be in this country.

The inheritance tax was created to finance the wars of the 19th century. The notion of repealing it, when we are under constant threat, when we have to spend billions of dollars to protect ourselves in ways we never had to think about before, strikes me as bizarre. We have voted on the floor of the Senate

for billions of dollars to protect our borders, our ports, our airports, our food, to be prepared against bioterrorism. I went to the White House this morning for the President's signing of the bioterrorism bill. It costs money to get the vaccines and do everything we need to do to protect ourselves and our children.

The idea that, instead of calling upon the most fortunate among us, we would at this point in our Nation's history, rather than reform, repeal the estate tax flies in the face of what we have historically done. Why aren't we on the floor of the Senate asking that we close the loophole for the corporations that take advantage of the good times of being in our Nation and move their headquarters offshore so they don't have to pay any taxes? Unlike everybody else who works for a living, they want to avoid taxation. Yet they are more than happy to take advantage of our country's protection, security, and markets.

What is wrong with this picture? Well, I agreed with Mr. Murray that we have to look at this and inject some reality into it. I have not even gotten to the budget deficit. Last year we had a budget surplus, and I listened to the debate and, honest to goodness, you can take transcripts from 1981 and put them right next to transcripts from 2002; it is the same rhetoric: slash the taxes and you will see more revenues coming in. That is what we were told in 1981. And in 12 years we quadrupled the debt of our Nation. Last year we were told again to slash taxes and we will have even greater surpluses. Now we are back into deficits, we are spending the Social Security surplus, and we are spending the Medicare trust fund surplus.

It is pretty hard to explain how we are in debt and in deficit and we want to make it even worse, which of course shifts the burden not on the rich but on everybody else. If we were going to be talking about repealing taxes, there are taxes that affect far more Americans and really have an impact on the kind of lives that Americans lead. We could make the expanded childcare tax credit permanent. We could make the new 10-percent tax bracket permanent. We could pass the college tuition tax deductibility, which would be a huge benefit for most Americans—particularly middle-income Americans.

Instead, we are debating the wealth tax. It is hard to understand why we are having this debate, except, with all due respect, my colleagues believe it is absolutely the most important issue we can be discussing at this time.

Now, to be sure, the uncertainty posed by the tax cuts that were passed last year is a problem. But the reason they were passed in the form that they were passed is because the numbers would not work any other way and we were hoping to defy the laws of arithmetic.

Many of us believe that raising the taxable limit is a good idea. We believe

that reform is significantly possible without repeal. Responsible, affordable reform could save money, as well as continue both the principle and reality of providing a check on the kind of estates that Theodore Roosevelt and his relative Franklin Roosevelt warned us about.

If one looks at all of the issues that we are confronting right now, I just hope we are going to take a deep breath and stop and say: Circumstances have changed since last spring. We don't have a surplus anymore. We are back into deficits. We are bleeding red ink. We have been attacked on our own shores. We have to fund our defense. We have to make sure our men and women in uniform, who are fighting for us in Afghanistan and elsewhere, are given every single piece of equipment and new technology that they deserve. We have to make sure our frontline soldiers, our police officers, our firefighters, the first responders, get the resources they need.

And then we have longer term issues. We have all kinds of infrastructure problems we have to deal with that an individual cannot pay for on his or her own. We have to make sure our bridges and tunnels are safe.

In a few weeks, we are going to debate what to do with nuclear waste. There is going to be a big issue about the safety of transporting it on our barges, along our waterways, on our railcars, and on our trucks. I am getting letters from rural parts of my State saying their bridges are not in good shape. So how can we do that?

In our cities, our sewer systems and our wastewater treatment systems are not up to the kind of standards they should for ordinary treatment of waste and the provision of clean water, and now we have to worry about terrorism. So there is a list of pressing needs that will make us safer and stronger in the future. Repealing the estate tax is not on that list.

Let me also say a few words about who it actually affects. I know my colleague from Connecticut was on the floor because he looked at the same statistics that are available to all of us. As he pointed out, he has 73 filers who were affected by the estate tax. We hear a lot about what happens to family farms, and I looked for any evidence I could find, and I know the Farm Bureau was asked to provide such evidence of any farm, anywhere, that had been lost because of estate taxes.

Neil Harl, an Iowa State University economist, conducted that search and is quoted in an article in the New York Times last year. He said it is a myth. Since most farms in New York are worth less than a million dollars, even under the current law they are not going to have to pay estate taxes; and when we reform it and raise the limits, they certainly are not going to do so.

I talked to one farmer and he said: I dream for the chance to have a farm worth enough that anybody would think I had to pay the estate tax.

There is a lot of mythology and ideology that is being discussed in terms of the repeal of the estate tax, but I guess it really does come down to what are our priorities. If our priority is eliminating billions of dollars of tax obligations from the very richest people, then this is the vote for us. But if it is to protect our Nation's fiscal condition and get back on a path of fiscal responsibility, get back to where we are paying down our debt, not increasing the debt limit as was voted for yesterday, getting out of deficits, putting the money back into the Social Security trust fund, making sure we are prepared for the retirement of the baby boomers, dealing with health care, prescription drug benefits, the needs that both underinsured and uninsured people face to ensure they have health care when they need it, paying for that prescription drug benefit we promised our seniors, making sure we continue to fund our education policy so that we have the qualified teachers in every classroom, we have the equipment and the resources that every schoolchild deserves to have, then this vote is not for us.

There are a lot of priorities at which we have to be looking. Repealing the estate tax would cost about \$100 billion this decade, but in the next decade when people like me are starting to retire, then we are looking at a cost of \$740 billion. It is hard to imagine from where the money to provide for Social Security and Medicare will come.

The Jeff Skillings of the world and the other corporate executives who have a lot of money to start with—much more than any limit on the estate tax that we could imagine—why, they would be laughing all the way to the bank.

I know a lot of Americans think they fall under the estate tax, and I give credit to the repealers who have turned Teddy Roosevelt on his head, have ignored the manifesto signed by several hundred of our wealthiest Americans, people such as William Gates, David Rockefeller, George Soros. They all said: Don't repeal it; reform it, but don't repeal it; it is bad for our country. I heard Warren Buffett, one of America's richest businessmen, say: It is bad for my family. I had to go out and earn my money the old-fashioned way. I do not want the kind of idle rich that has never been part of the American scene. That is something we did not want to have, and we turned away from it.

The truth is, we do not have a death tax in America. There is no such thing as a death tax. People do not pay taxes at death. We have an estate tax, which is really a wealth tax that is based on people having a certain level of assets.

Currently, it is \$1 million. Many of us want to increase it significantly. At the present time, it affects less than 2 percent of the estates in our country. If we raised it to \$3 million for an individual and \$6 million for a couple and then in 2009 took it to \$3.5 million for

an individual and \$7 million for a couple, we would have three-tenths of 1 percent of estates subjected to any tax.

I also support setting a maximum rate of 50 percent. Then we really would be aiming at the Gateses and the Sorosos and the Rockefellers and the people who have inherited a lot of wealth with an estate tax, and they still would have tens of millions of dollars.

Mr. President, I thank my colleagues for the opportunity to speak. I ask unanimous consent that the Wall Street Journal and New York Times articles to which I referred be printed in the RECORD.

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

[From the Wall Street Journal, May 28, 2002]

SENATE NEEDS REALITY CHECK BEFORE
REFUNDING ESTATE TAX

(By Alan Murray)

Marie Antoinette had nothing over the U.S. Senate. In its rush to permanently eliminate the estate tax, the nation's "deliberative body" has apparently forgotten to deliberate on the surging social trends of our time.

So let me provide a refresher course:

(1) The past two decades have led to a concentration of wealth and income among the fortunate few in this country that hasn't been seen since the gilded age. Kevin Phillips, whose new book "Wealth and Democracy" puts all this in a historical context that should chill the spines of senators preparing to vote "yes," notes that the top 10 most highly compensated corporate chief executives earned a total of \$3.5 million in 1981. That rose to \$155 million in 2001—almost 45 times the 1981 figure.

(2) The nation is now experiencing a crisis of confidence in these same highly paid corporate executives. Americans tolerated sky-high CEO pay because they thought it reflected the market value of talented managers—just as Michael Jordan's pay reflected his draw at the box office. But recently, the public has gotten graphic evidence that, in some cases at least, CEO compensation had more to do with greed, deception and even downright fraud. The proliferation of stock options, which accounts for most of the huge increase, was supposed to align the interests of corporate managers with those of the shareholders. It did, it seems, but in the wrong direction. Instead of working to make shareholders rich, some executives were manipulating their shareholders in order to make themselves rich.

(3) The nation is at war. And in this country, wars always have been times of sacrifice, particularly among the affluent. The inheritance tax was created to finance the wars of the 19th century. The notion of singling it out for elimination in the midst of the current effort goes against more than 150 years of American history.

Notice that I haven't mentioned the budget deficit. That's because on this score, at least, the Senate deserves some credit. They are talking about singling out the estate tax, at a cost of \$99 billion from 2002 to 2012, in order to avoid the whopping \$373 billion price tag of the House bill that would make all the provision in the president's tax cut permanent.

But in making this choice, the Senate should justify it. Why deepen the deficit to pay for permanent repeal of the estate tax, if you aren't willing to pay for permanent repeal of marriage tax relief (\$16 billion), a per-

manent extension of the new 10% tax bracket (\$79 billion), an expanded child tax credit (\$35 billion), or various forms of assistance to people trying to pay the high cost of higher education (\$5 billion)? All those tax cuts go to ordinary Americans struggling to raise families and educate their kids.

The Senate's answer? Let them eat cake.

This is not a partisan matter. If estate-tax repeal didn't have substantial support among Democratic Senators, it wouldn't have a chance, given the need for 60 votes to overcome a filibuster. There are already eight or nine Democrats, including Senate Finance Committee Chairman Max Baucus, who have indicated their support. Estate-tax lobbying groups are working fervently over the holiday to win a few more.

Also, this isn't an ideological matter. The House Republicans are the ideologues; they'll vote for any tax cut that comes down the pike. Senators, in their pragmatism, bear the burden of explaining why they have chosen this tax cut above all others.

To be sure, the estate tax cut enacted by Congress last year is, in its current form, an atrocity. It would repeal the tax for one year at the end of the decade, and then, to satisfy Senate budget rules, reinstate it in 2011. This would lead to some ghoulish estate planning, creating an incentive for heirs to keep dad alive until 2010, and then pull the plug by New Year's Eve.

But that is hardly a good argument for permanent repeal. Nor is the oft-heard refrain that this helps farmers and small-business people who want to keep their enterprises in the family. Those folks account for less than 10% of total estate-tax revenue, and could be accommodated with measures falling far short of total repeal.

The only good news here is that Senate Majority Leader Tom Daschle still has a good chance of holding enough of the Democrats to keep the measure from getting 60 votes. If he succeeds, he'll be accused, again, of obstructionism. But this time, he'll be saving Senators of both parties from excessive catering to big campaign contributors, and from putting themselves squarely on the wrong side of history.

[From the New York Times]

FOCUS ON FARMS MASKS ESTATES TAX
CONFUSION

(By David Cay Johnston)

WELLSBURG, IOWA.—Harlyn Riekena worried that his success would cost him when he died. Thirty-seven years ago he quit teaching to farm and over the years bought more and more of the rich black soil here in central Iowa. Now he and his wife, Karen, own 950 gently rolling acres planted in soybeans and corn.

The farmland alone is worth more than \$2.5 million, and so Mr. Riekena, 61, fretted that estate taxes would take a big chunk of his three grown daughters' inheritance.

That might seem a reasonable assumption, what with all the talk in Washington about the need to repeal the estate tax to save the family farm. "To keep farms in the family, we are going to get rid of the death tax," President Bush vowed a month ago; he and many others have made the point repeatedly.

But in fact the Riekenas will owe nothing in estate taxes. Almost no working farmers do, according to data from an Internal Revenue Service analysis of 1999 returns that has not yet been published.

Neil Harl, an Iowa State University economist whose tax advice has made him a household name among Midwest farmers, said he had searched far and wide but had never found a farm lost because of estate taxes. "It's a myth," he said.

Even one of the leading advocates for repeal of estate taxes, the American Farm Bu-

reau Federation, said it could not cite a single example of a farm lost because of estate taxes.

The estate tax does, of course, have a bite. But the reality of that bite is different from the mythology, in which family farmers have become icons for the campaign to abolish the tax. In fact, the overwhelming majority of beneficiaries are the heirs of people who made their fortunes through their businesses and investments in securities and real estate.

The effort to end the estate tax—which critics call the death tax—gained ground when the House of Representatives voted Wednesday to reduce the tax and then abolish it in 2011. The bill faces an uncertain fate in the Senate.

The estate tax is central in the debate over taxes, not only because the sums involved are huge but also because to both sides it is a touchstone of national values. To those seeking to abolish it, the estate tax is a penalty for success, an abomination that blocks the deeply human desire to leave a life's work as a legacy for the children. It is also a complicated burden that enriches the lawyers, accountants and life insurance companies that help people reduce their tax bills.

To its supporters, on the other hand, the estate tax is a symbol of American equality, a mechanism to democratize society and to encourage economic success based on merit rather than birthright.

Yet for all the passion in the debate, the estate tax does not always seem broadly understood.

While 17 percent of Americans in a recent Gallup survey think they will owe estate taxes, in fact only the richest 2 percent of Americans do. That amounted to 49,870 Americans in 1999. And nearly half the estate tax is paid by the 3,000 or so people who each year leave taxable estates of more than \$5 million.

In fact, the primary beneficiaries of the move to abolish the estate tax look less like the Riekenas and more like Frank A. Blethen, a Seattle newspaper publisher whose family owns eight newspapers worth perhaps a billion dollars.

"Being ever bloodthirsty, the I.R.S. will start with the highest value it can on my estate," said Mr. Blethen, the 55-year-old patriarch of the publishing family. The figures for his share will probably be several hundred million dollars, more than half of which would go to the government. Mr. Blethen is trying to avoid almost all those taxes through a plan also used by other wealthy families, but if he does not succeed his sons' interest in the business will be wiped out, he said.

Estate taxes are paid by few Americans because they are not assessed on the first \$1.35 million of net worth left by a couple. Amounts above this are taxed at rates that begin at 43 percent and rise to 55 percent on amounts greater than \$3 million. As the Riekenas and the Blethens have learned, there are many legal ways to reduce the value of one's wealth for estate tax purposes. So even for the largest estates, the tax averages 25 percent.

Family farmers are often cited as victims. As Senator Charles E. Grassley, an Iowa hog farmer and chairman of the Senate Finance Committee, put it, "The product of a life's work leaches away like seeds in poor soil."

Yet tax return data show that very few farmers pay estate taxes. Only 6,216 taxable estates in 1999 included any agricultural land and equipment, the I.R.S. report shows. The average value of these farm assets was \$440,000, only about a third of the amount that any married couple could leave untaxed to heirs. What is more, a farm couple can pass \$4.1 million untaxed, so long as the heirs continue farming for 10 years.

In Iowa, the average farm has a net worth of \$1.2 million. Loyd A. Brown, president of Hertz Farm Management in Iowa, which runs more than 400 farms in 10 states, said that while he didn't know of anyone who had lost a farm because of the estate tax, he thought Congress should either eliminate the tax or increase the amount that could be inherited untaxed.

Just 1,222 estates in 1999 had enough in farm assets to make the farm property alone subject to estate taxes. But these farm assets amounted to one-tenth of these estates, suggesting that the tax applies mostly to gentleman farmers and ranchers, rather than to working farmers like the Riekenas, whose fortunes are tied up in their farms.

As the Riekenas were surprised to discover, avoiding the estate tax was easy. Their lawyer developed a simple plan that involved making gifts to their daughters and buying life insurance to offset any estate taxes that might be due if the parents died before most of the farm had been turned over to their daughters.

There is a real cost, of course—payments to the lawyer and for the insurance. And in any case the paucity of affected farmers does not end the debate. Patricia A. Wolff, the Farm Bureau's chief lobbyist, said the organization made estate tax repeal its top priority because, while it has not surveyed its members, she was confident "the majority of farmers and ranchers believe that death taxes are wrong and that it is wrong to tax people twice on what they earn."

But Mr. Riekena and all two dozen other farmers interviewed across central Iowa—every one a Republican—said that while they favored increasing the amount that could be passed to heirs untaxed, they did not support the repeal proposed by President Bush and other leaders of his party. A few snickered or laughed when asked whether the estate tax should be repealed to save the family farm.

But Senator Grassley himself opposes the estate tax, in large part because he thinks that while a decision to keep or sell an asset is an appropriate trigger for a tax, death should not be.

He added another reason: "I do not think that the function of government is to redistribute wealth."

Indeed, that seems to be the fault line in the debate: should the government play Robin Hood with estates?

"If you worked hard and put your money away, you paid tax on it as you went along, so it's yours and you should be able to pass it on to your children without the government penalizing you," said R. Elaine Gunland, who grows grapes in Fresno, Calif., and whose family may owe estate taxes when she dies.

Mr. Blethen, the fourth-generation publisher of a newspaper started in 1896 with \$3,000, says he speaks for many others in supporting repeal of the tax in the name of preserving family businesses.

"I firmly believe that family-owned businesses are the heart and soul of the country," said Mr. Blethen, who has created a Web site called deathtax.com.

Mr. Blethen says the estate tax benefits publicly traded companies at the expense of family-owned businesses. The reason is that the public companies can often buy family businesses at a discount because the owners did not raise the cash to pay estate taxes and must sell quickly at fire sale prices.

Mr. Blethen said some of the seven smaller papers his family bought in Washington and Maine came from families that had not planned carefully for the estate tax and decided it was easier to cash out.

"If you like corporate culture, and think America needs more of it, then you love the estate tax," Mr. Blethen said. "I think this

march toward corporatism is not healthy and we lost innovation, jobs and charitable giving."

Mr. Blethen said the estate tax also discouraged major new investments in family businesses late in the life of the primary owner because such investments consumed cash that might be needed at any time to pay estate taxes.

He said the estate tax also "forces you into irresponsible gift making" to heirs. He felt compelled to give half the future growth of his fortune to his two sons when they were not yet kindergartners even though he had no way of telling whether the boys would turn out to be industrious, as they did, or scallawags.

Despite his fierce opposition to the estate tax, Mr. Blethen does not support President Bush's current plan to repeal the tax because it would also exempt from capital gains taxes the profits on assets passed to heirs when those assets are sold. "That's not fair," Mr. Blethen said.

He said Mr. Bush's proposal would have the perverse effect of encouraging the sale of family-owned businesses, because heirs would see death as their chance to sell tax-free and to diversify their portfolios, instead of continuing to bear the risks of holding a single enterprise.

Mr. Blethen thinks that rather than taxing an estate, taxes should apply when a business is sold. "You want to defer those capital gains and let them grow so large that the family will keep the business to avoid the capital gains taxes," he said.

The debate does not divide neatly among rich and poor. Since February more than 800 wealthy Americans have joined in a public appeal to keep the estate tax. They argue that repealing the tax would further enrich the wealthiest Americans and hurt struggling families. They also argue that financial success should be based on merit rather than on inheritance.

Warren E. Buffett, George Soros, Paul Newman and William H. Gates Sr., father of Microsoft's chairman, William H. Gates III, are among the most prominent in that group, which also includes many people with holdings of just a million dollars.

Mr. Buffett said the estate tax fosters economic growth by encouraging Americans to rise based on merit, not inheritance. "If you take the C.E.O.'s of the Fortune 500," he said in an interview, "and put in the eldest son of every one of those who ran the place in 1975, the American economy would not run as well as letting the Jack Welch, who started out with nothing, rise to the top of General Electric."

Back in central Iowa, Mr. Riekena had another reason. He said Washington was focused on the wrong issue when it came to saving family farms.

"For most farmers around here, the estate tax is not high in their minds," Mr. Riekena said. "What we need are better crop prices."

Mrs. CLINTON. Mr. President, rather than one day raising the debt limit without any plan to get us out of debt, except continuing to believe in the god of supply-side economics, which did not work so well 20 years ago, and instead of repealing the wealth tax without any plan for dealing with our problems, like a war and Social Security and other significant issues we confront, I hope we will opt for the more responsible way of reforming the estate tax and make it clear that the reality check in this body demonstrates clearly we cannot afford it. It would be the wrong decision, and we have other pri-

orities that we need to get about the business of addressing. I thank the Chair. I yield the floor.

THE PRESIDING OFFICER. Who yields time? The Senator from Arizona.

Mr. KYL. Mr. President, before yielding, I ask unanimous consent to have printed in the RECORD two editorials from the Wall Street Journal, dated June 10, 2002, and February 22, 2001, both of which demonstrate support for the permanent repeal of the death tax.

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

[From the Wall Street Journal, June 10, 2002]

THE DEATH TAX SENATORS

We are about to find out how many of the 12 Senate Democrats who voted for tax cuts last year really meant it. They'll get the chance to provide their sincerity when the Senate takes up a vote to make repeal of the death tax permanent, perhaps this month. Last Thursday, 41 of their Democratic counterparts in the House joined the 256-171 vote to make this punitive tax disappear forever.

Majority Leader Tom Daschle first tried to forestall a Senate vote, because he knows a clear majority favors passage there too. But he was forced to give in recently in return for some concessions on the energy bill. So now he's trying to hold off Senate passage with a filibuster that requires 60 votes before it can get to President Bush's desk. Supporters of permanent repeal figure they have at least 58 votes, and Mr. Daschle has been twisting arms to block what is the will of many even within his own party.

Almost every Republican voted for repeal the first time around, though Jim Jeffords has since sold his vote for dairy subsidies. Liberal Rhode Island Republican Lincoln Chafee, is also in doubt, as is John McCain, who voted against President Bush's original tax cut and moves further let by the month; maybe the Arizonan should consider truth-in-advertising and jump to Team Daschle.

The complete gang of 12 Democrats who voted for the tax cut last year is listed in the table nearby. Six are up for re-election this November, and to their credit three of those running have already said they'll vote for repeal. It's probably no coincidence that all three are running in conservative states carried by Mr. Bush in 2000 and all of them face more than token competition this year.

Two others running in November, New Jersey's Bob Torricelli and Louisiana's Mary Landrieu, have already flip-flopped and announced intentions to vote against permanent repeal. Their excuse is that things are different now that the country is facing budget deficits and wartime expenses. But it's far more likely that they've changed because their re-election opposition has since all but collapsed. Mr. Torricelli was especially fond of just about any tax cut in his taxophobic state, until Justice declined to indict him for accepting illegal gifts and he concluded the New Jersey GOP couldn't muster serious opposition.

One vote still in the balance is Missouri's Jean Carnahan. She faces a strong challenge this fall from Republican Jim Talent, who has made the death tax a central issue in his campaign. She's doing a remarkable dodge and weave, claiming to favor repeal for small businesses and farms but she is undecided on the repeal that passed the House. Sounds to us as if she's waiting for orders from Mr. Daschle; if he doesn't need her for his filibuster, he'll give her a pass to vote yes and remove the issue for November.

One virtue of this death-tax debate is that it reveals what's really at stake in this November's Senate races. If Mr. Daschle retains

his Democratic majority, further tax cutting is dead. But if Republicans pick up a mere one seat, for a 50-50 split, they'll be able to organize the Senate with the help of Vice President Cheney's vote and tax-cutting becomes possible again.

Mr. Daschle gave his Bush-state Democrats a tax-cut pass last year, but the perversity of Senate budget rules meant the tax cuts end after 10 years. This is crazy tax policy, since it increases uncertainty and would amount to the largest tax increase in history in 2010 if the law isn't changed.

It is absolutely insane in the case of the estate-tax repeal; the death tax declines slowly over the next seven years, disappears entirely in 2009, but then snaps back to its confiscatory 55% pre-Bush rate on January 1, 2010. So forget about rational estate planning. Far from the tax on the uber-rich that Dems claim it is, only 5,200 of the 116,500 tax returns filed in 1999 were for estates worth more than \$5 million. In any case, the main argument for repealing the death tax isn't economic, but moral. It's unjust for the government to double tax away, at death, the fruits of a life of work and thrift.

The death-tax repeal vote is also about truth in politics. A year ago these Senators voted to repeal the death tax, but only with a wink and an asterisk that it would all come back after 10 years. No wonder voters are cynical about politicians. The next death tax vote will separate the cynical from the sincere.

THE GANG OF 12

A dozen Democratic Senators voted last year for the temporary repeal of the death tax.

Against

John Breaux (La.)

*Mary Landrieu (La.)

*Robert Torricelli (N.J.)

For

*Max Baucus (Mont.)

*Max Cleland (Ga.)

Dianne Feinstein (Calif.)

*Tim Johnson (S.D.)

Herb Kohl (Wis.)

Blanche Lincoln (Ark.)

Ben Nelson (Neb.)

Zell Miller (Ga.)

Undecided

*Jean Carnahan (Mo.)

*Up for re-election this year

[From the Wall Street Journal, Feb. 22, 2001]

A TAX ON VIRTUE

Maybe you have to be a billionaire to appreciate the argument for keeping the estate tax.

A newspaper ad signed by Bill Gates Sr., George Soros, David Rockefeller and more than 200 other money-bags has just warned that repealing the estate tax "would have a devastating impact on public charities." We live in strange times indeed when the ethical case for keeping a tax rests upon a collection of fat cats talking about the things they will do to avoid paying it.

Of course, they don't really have an economic argument. Anyone who looks at the numbers knows that the death tax amounts to only about 1% of all federal revenues. But that figure doesn't begin to get at the actual and opportunity costs involved in collecting it. When the Joint Committee on Taxation looked into the issue two years back, it found these costs staggering: punishing savings, encouraging consumption and costing almost as much in compliance as it takes in.

What about the moral argument? Everyone knows about sin taxes—taxes on cigarettes, alcohol, etc. Well, a death tax is a tax on virtue. It's tax on those who've worked hard,

saved well and in most cases have already paid taxes on their wealth at least once and probably twice.

It is also responsible for a whole tax-avoidance industry, which takes in millions itself from the 200 well-heeled individuals in Sunday's ad. Put simply, if you really are rich enough you can have your cake and pass it along to your heirs too. But if you can't afford to pay the legions of estate lawyers, trust fund accountants and life insurance underwriters, your heirs will be forced to sell off what you've worked so hard to build up to pay off the IRS man waiting outside your funeral for his take.

So if the death tax really isn't all that significant for the government, why the opposition to getting rid of it? The answer is that the death tax was never about money. It is about envy and the corrosive philosophy it feeds. This is the philosophy Senator Tom Daschle invokes when he talks about Americans in terms of those whose tax cuts will let them buy a Lexus and those who supposedly will get no more than a muffler. The death tax is their favorite, the name of the game being to stoke the flames of resentment among the 98% of Americans who don't pay this tax against the 2% who do.

Their problem is that the public isn't buying. No matter how they are worded, polls show Americans instinctively understand there is something rotten about a government that would confiscate half of what you've worked hard to build up. This month a McLaughlin & Associates poll reported 88.5% of Americans saying the death tax is unfair, and nearly as many favoring its abolition. A Zogby/O'Leary report clocked in with 86% declaring the tax is unfair. A Portrait of America survey from last July even had 59% of Gore supporters wanting the tax killed. Given that the vast majority of Americans know that the death tax won't affect them personally, opposition to the tax is a pretty strong statement about ideas of fairness and morality.

Within the Bush Administration there are murmurs about giving up on abolishing the estate tax in the hopes of getting the President's other cuts through, and there have already been some defections in the GOP ranks. This would be a grave miscalculation. In his acceptance speech in Philadelphia in August, George W. Bush said that his own position was based on the "principle" that "every family, every farmer and small businessperson should be free to pass on their life's work to those they love." In the next breath Mr. Bush stated that "on principle" he also couldn't see why anyone "in America should have to pay more than a third of their income to the federal government."

These are good, sturdy principles for President Bush to stand on. In the election one of the defining differences between George Bush and Al Gore was that the former understood you don't make poor people better off by making rich people poorer. You help poor people by giving them a stake in the system that makes rich people wealthy. In the past only the wealthiest Americans have really been in a position to give their children and grandchildren advantages by transferring wealth. But a booming stock market and the growth of 401k plans means that American families of even modest incomes might leave a legacy for their children. Billionaires might not understand this, but ordinary Americans clearly do.

Within this context the death tax should be seen for what it really is: the flag of convenience for the Beltway's class warfare brigade. They know all too well that if they can't sell envy on an inheritance tax, they can't sell it at all. The real danger for the President is a halfway measure that would

deprive him of victory and foster a reputation as a tinkerer rather than a reformer. "The only way to eliminate the unfairness of the death tax," says Rep. Jennifer Dunn, sponsor of last year's legislation, "is to end it once and for all."

The PRESIDING OFFICER. Who yields time? The Senator from Oklahoma.

Mr. NICKLES. Mr. President, let me make a couple comments before the Senator from New York leaves. We passed legislation recently to help the victims of terrorism, including New York City and Oklahoma City, and we reduced their estate tax. I think we exempted estates basically under \$8 million and said if they have an estate over \$8 million, it would be 18 to 20 percent which, in my opinion, is what the maximum death tax should be.

I heard my colleague say there is not a taxable event on death. I happen to disagree. If someone dies, it is a taxable event under current code. Some of us are trying to say a taxable event should not be when somebody dies, but when the assets are sold and sold voluntarily, that means the people initiated a transaction and know what the tax will be.

Current law is when someone dies, it is a taxable event. They tax the estate up to 50 percent. My colleagues want to exempt estates of \$3 million or \$4 million, maybe \$7 million if it is a couple and they both die at the same time, but we want half of it after that. The Conrad amendment is not 50 percent, it is 55 percent, if you have a taxable estate between \$10 million and \$17 million.

Fifty-five percent is over half; 50 percent is half. That is a lot. Why should the Federal Government be entitled to take half of somebody's property if they happen to have an estate of \$20 million?

How is it right to say to New York City and Oklahoma City—your tax rates should be 20 percent for victims, but everybody else has to pay 50 percent? If somebody has three or four restaurants or they have a very large ranch or a nice successful real estate business they are building and growing and their kids want to continue it and we fail to pass the Gramm amendment, we are basically saying that a tax \$3 million is enough and maybe \$7 million if combined. We are asking the Federal Government to come in and take half. This family exclusion proposal, which was not adopted earlier, would not work.

I am embarrassed for my colleagues to say they believe in free enterprise but free enterprise up to an estate of \$3 million, and above that the Federal Government gets half; that the Federal Government should confiscate half the property because somebody passes away.

We are saying: No, let's not have a taxable event at death; rather, let's have a taxable event when the property is sold. And when the property is sold, you pay the 20 percent capital gains

tax. This eliminates lots of legal time and expenses trying to avoid this unnecessary tax.

Somebody said: What about the Rockefellers? They do not pay the taxes; they set up foundations. That is what Mr. Gates is doing. That is what the very wealthy people do. They do not pay this tax. The people who pay it are the people who have the farm, the ranch, the small business and somebody dies unexpectedly—I know because it happened to my dad—and Government comes in and says: We want half.

Unfortunately, if we adopt the Conrad amendment, the Government will continue taking half. I think it is unconscionable. We should reduce the rates, not just increase the exemption. This only applies to 1 or 2 percent. We should cut the rates to 20 percent, cut it to a voluntary transaction, cut it to a capital gain. Then we have solved the problem; we have eliminated the problem.

This is a terrible tax and it is unfair. We are making countless thousands of people not grow their business, not expand because they know they are going to be compiling problems for the future. Why build and expand if you are going to be giving half to the Government and maybe causing all kinds of litigation for your children? Why double, why build, why expand, why grow? I know many people who have worked hard to made enough to get along and live a comfortable life. This tax should not ruin these years of hard work.

We should change this tax, and do it by adopting the Gramm-Kyl-Nickles amendment. I encourage my colleagues to vote in favor of this amendment and oppose increasing the exemption and then sock it to them and have the Federal Government take half the estate if it happens to be over this deductible amount.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I rise today to support permanent repeal of the estate tax. Permanent repeal of the estate tax will help boost Montana's economy and will help boost America's economy, create jobs, and protect the heritage of our farmers and ranchers.

As chairman of the Senate Finance Committee, I was proud to help write last year's tax cut, which included a number of good changes to the estate tax, including increasing the unified tax credit and restructuring the rates.

Now it is time to go further. As the law currently stands, the estate tax will be fully repealed in 2010.

It will return to 2001 levels the next year, 2011. Let us use some common sense. Estate tax is a prime example of a tax that dampens efforts to create more jobs in Montana and across the country, and that is what this is all about, creating more jobs.

My State is a small business State, an agricultural State, a State of family-owned farms and ranches, a place

where main street businesses are still family owned. It is important to Montanans to be able to pass on their businesses, their farms, their ranches, to their sons and to their daughters.

I support the Gramm-Kyl amendment to eliminate the sunset of the estate tax, to permanently repeal the estate tax, to free up money to help families, family-owned businesses, farms, and ranches. Permanent repeal of the estate tax will allow families to better plan particularly for the continuity of their estates.

Our family-owned businesses, farms, and ranches are the backbone of my State. I do not know another State that is a more small business State than mine. It is also the backbone of America, I might add—small business.

Family-owned businesses are our country's heritage, and it is up to us to protect that heritage. Full, permanent repeal is the right thing to do for our farmers, for our ranchers, for hard-working small business owners. It is the right thing to do for the Nation, and most certainly permanent repeal is the right thing to do for Montana.

I urge the Senate to support permanent repeal of the estate tax for this generation and generations to come.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, on the two previous amendments, we have afforded the authors of the amendments the ability to close the debate. We would like to preserve that right for ourselves in this debate on our amendment. So what I would like to do is to ask those on the other side who want to come and speak to do it, so we can take our remaining time to use at the end to close out the debate.

There is no rule that says it has to be done that way, but when we closed out the debate on the Dorgan amendment, he had the last 11 minutes. When we concluded the debate on the amendment of the senior Senator from North Dakota, he closed out that debate. So if we could do it that way, we would like to do it. It seems reasonable to us. If anybody objects, obviously we can talk about an alternative.

Mr. GRASSLEY. Mr. President, as you know, for as long as I have been in Congress, my belief is that no American family should be forced to pay over half of their savings, their business, or their family farm in taxes when they die. No taxpayer should be visited by the undertaker and the tax collector at the same time.

With the President's support we have helped those families we care about, this Senate voted by a wide majority to help those families who are being crushed under the expensive responsibilities of estate tax planning and estate taxes. I have heard the concerns of the people in Iowa and the American people, and this Congress voted to repeal the "death tax."

Now, the Democrat leadership wants to take that all away. Once again they

want to take more than half of a family's assets because someone has died. The Democrat leaders just want to spend your money. Well, folks, that is not right. Death is not a taxable event.

We have the chance today to make death tax repeal permanent. We have heard from the brave men and women who fought World War II, they fought for democracy and then came home to help fuel the economy that created this wealth. They are dying by the thousands everyday, now they want the death tax to die forever. That means for the first time, American taxpayers, who are good Americans, who saved and invested in savings accounts and stocks and bonds will be treated equally with all other taxpayers. It means, that for the first time, American farm families and the owners of small businesses will not have to jump through hoops, hold their breath, and pray they did it right, subject to audit, in order to know they will not have to pay death tax.

Last year we repealed the death tax, effective for anyone dying after December 31, 2009. If not for budget constraints we would have repealed it sooner, but at least today we can vote to make the repeal permanent. We will be able to start a new decade with no death tax to burden the future generations. By repealing the death tax we will save thousands of family-owned businesses and in turn saving the jobs of hundreds of thousands of employees when family businesses are faced with death tax.

We have heard the American people, we have reformed and repealed the death tax. I urge all of my fellow Senators to repeal the sunset so death tax will be dead once and for all. Beware of all these Democratic amendments that try to once again make the law murky and complex. Keep it simple and fair—repeal the sunset. Make death tax repeal permanent.

Mr. SMITH of New Hampshire. Mr. President, the estate tax, better known as the "death tax," is an onerous tax that should be eliminated. A recent poll revealed that 77 percent of the voters believe that the tax is unfair.

This tax is slowly destroying family businesses by slowing growth. And it is unfair that families who have worked their entire lives to build a successful family farm or business should be penalized.

Individuals who look forward to leaving something behind for their children should not be punished by confiscatory, anti-family taxes.

In fact, after years or even generations, children are often forced to sell the family farm or business just to pay the tax. This is both unfair and unconscionable.

However, not only is it the children who must suffer the loss of the family business, but the workers and their children who suffer when they lose their job because the business they've been working at is liquidated to pay the death tax.

But it doesn't stop there. The local community, particularly small towns, suffer as well because their customers can no longer afford to buy their products after having lost their job.

The estate tax is outdated, it raises little money, and it imposes a large cost on the economy.

In 1999 the estate tax generated about \$24 billion. However, it is estimated that administrative costs to enforce the tax are over \$36 billion.

A recent analysis by the Heritage Foundation found that the U.S. economy would average nearly \$11 billion per year in additional output if this tax were abolished.

The National Association of Manufacturers states that 40 percent of it's members had spent more than \$100,000 on attorney and consultant fees related to death tax planning. In addition 3 out of 5 members pay at least \$25,000 a year to prepare for the death tax.

A 1998 study by the Joint Economic Committee found that if the death tax was repealed, as many as 240,000 jobs would be created and Americans would have an additional \$24.4 billion in disposable personal income.

A February 2000 study by the National Association of Women Entrepreneurs found that the death tax has a negative impact on female entrepreneurs.

According to the study, business owners found that female entrepreneurs spent, on average, nearly \$60,000 on death-tax planning.

So who pays the death tax?

We all do. We pay it through lower wages and fewer jobs. In high-unemployment regions or rural areas such as the North Country of New Hampshire and elsewhere, the death tax destroys badly needed jobs before they are created.

We pay it through the destruction of our communities. In hundreds of American towns, small family-owned businesses are struggling to survive against the competition provided by large corporate retailers.

Home Depot doesn't pay the death tax. The family-owned hardware store does. The death tax accelerates the transfer of wealth from the owners of small businesses to the owners of large, public corporations.

And we pay it through slower growth and less wealth. Study after study shows the death tax reduces savings, lowers investment, and restricts the capacity of the economy to grow. The death tax literally confiscates capital, the lifeblood of any economy. That means lower incomes and fewer opportunities for ourselves, as well as our children.

Death tax supporters argue we cannot afford to repeal this tax. All the evidence suggests just the opposite. We cannot afford to continue this destructive tax.

So who's left holding the bag, the middle-class.

This tax is unfair and it is anti-family. We must repeal this tax now. I

strongly urge passage of this legislation.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CONRAD. 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. CONRAD. Mr. President, I yield 4 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, first let me rise to disagree with my colleague, the chair of the Senate Finance Committee. In the State of Minnesota, in 1999, there were 636 families who paid the estate tax. If we pass the Conrad amendment, which says for a family we are targeting \$7 million, we will have exactly 36 families left in our State who will be paying this tax.

We had the Dorgan amendment that said if someone is going to be a family farmer or have a small business, and they are going to pass it on, and one is going to take over the farm and the small business, they are exempt. That is what it is all about when it comes to fairness.

Instead, what we have is a proposal that I yesterday labeled win/win or lose/lose, dependent upon one's values and priorities. If one believes they should bleed the economy over the next 20 years to the tune of a trillion dollars, and all of those benefits will go to multimillionaires and billionaires, and at the same time have to raid the Social Security trust fund—we just raised the debt ceiling \$450 billion, and some of my colleagues who voted against it are voting for eliminating this tax. So if they believe the benefits should go to the top of the top of the top, and in addition they want to bleed this economy to the tune of a trillion dollars over the next 20 years so we will not be able to live up to our Social Security obligations, we will take it out of the Social Security trust fund; we will not have the money for affordable prescription drug coverage; we will not make the investment in the health and skills and intellect and character of children; we will not invest in education; there will be nothing for affordable housing; we will not be able to do anything about deplorable conditions in nursing homes. If they believe this and believe there is nothing the Government can or should do, this is win/win.

I said it yesterday. This is lose/lose for the people of Minnesota. This is lose/lose for probably 99.99 percent of the population. This is lose/lose for people who believe we should have tax fairness, that we should target these breaks to small businesses and family farmers. This is lose/lose for people

who believe there is a role Government can play when it comes to the improvement of people's lives and that we have an important challenge before us: Affordable prescription drugs, good education, investment in our schools, our children, making sure Social Security will be there for people. These are the priorities.

This proposal is very clear in what its ultimate goal is, which is above and beyond massive tax unfairness. It will so erode the revenue base and will prevent any initiative in these areas: Prescription drug coverage, education, health care coverage, affordable housing. By definition, it is fiscally irresponsible. So on both counts, it is a massive subsidy, an inverse relationship to need.

All together, 36 families in Minnesota will not be helped if we go forward with the Conrad proposal. If we had gone forward with the Dorgan proposal, every family in Minnesota but 36 families would be helped. This proposal is so skewed toward the top of the top of the top and at the same time undercuts our ability to make any of the investments we need to make to do better as a nation.

I hope my colleagues will vote against the Gramm proposal and will vote for the Conrad amendment.

I yield the floor.

Mrs. MURRAY. Mr. President, the estate tax is bad for businesses. It is bad for workers and new job creation. And it is bad for our communities who are watching their local, family-owned businesses get swallowed up by large corporations. Therefore, I wish I could have supported the estate tax repeal amendment debated today.

For the last 7 years, I have worked to address the problems with the estate tax. I introduced legislation in 1995 to reform the estate tax, and I voted for the 1997 tax bill that made it easier for family farms and small businesses to transfer their assets to the next generation. In 2000, I cosponsored legislation by Senator JON KYL and former Senator Bob Kerrey to repeal the estate tax. I voted for similar legislation later that year. I believe the Kyl-Kerrey bill made a critical contribution to the estate tax debate. It was a middle ground that essentially substituted an estate tax when an asset is transferred at death with a capital gains tax when an asset is sold. In my opinion, that is a fair approach.

For me, estate tax repeal is about protecting and creating jobs, strengthening locally owned businesses, and protecting the environment. When a business owner spends thousands of dollars each year on estate tax planning, that is less money the owner invests in employees and the business. When family businesses are sold, they are often purchased by large corporations, not by other locally owned businesses. When timber lots or farms are sold, there is a good chance that land will be eaten up by strip malls or other development, and not kept as open

space. For the reasons I just outlined, a vote for repeal would have been the easy road to travel today.

My constituents did not elect me to the Senate to take the easy road. They elected me to make tough decisions. As much as I believe the estate tax is a bad tax, I believe passionately that we have a responsibility to balance the government's books. Just as the estate tax hurts businesses and jobs, so does chronic deficit spending by the Federal Government.

During the last 2 days, some of my colleagues have argued for permanent estate tax repeal. Not one of them has told me how we will pay for it. Last year's tax cut blew open the budget while not making estate tax repeal a high priority. Our budget problems were made worse by the recession and September 11 terrorist attacks. Clearly, we are in a different place than we were 2 years ago.

The country deserves a debate on how we balance estate tax repeal—or other aspects of last year's tax law—with our other obligations. We must address our homeland security needs, whether it is strengthening airline and port security, improving operations at our borders, or making sure our troops in the field have the training and resources they need. Our constituents are also demanding action on issues that were important prior to September 11. Health care is a crucial issue for individuals and families, and to the businesses who support estate tax repeal. In addition, we cannot lose sight of long-term investments in education, job training and infrastructure. Given what is at stake, we do a disservice to the American people if we simply tell them they can have it all. We have to make choices, and last year the administration and Congress chose not to make estate tax repeal a priority.

While I could not support the estate tax repeal amendment offered by Senators GRAMM and KYL, neither could I support the amendments by my Democratic colleagues. While well intentioned, I believe the nation has moved beyond whether we should repeal the tax. To me, it is not a question of if, but when we repeal the tax and how we pay for it. The alternative amendments offered today would have taken us backwards.

Today is not the last time we will debate estate tax repeal. Between now and the next estate tax vote, I believe Congress and the administration need to reach agreement on a basic budget framework that makes room for estate tax repeal. Unless we repeal the estate tax in the context of a budget agreement, we will just be playing politics instead of making real progress.

Mr. FEINGOLD. Mr. President, I strongly support permanent estate tax reform. Though I do not support completely repealing the estate tax for all estates, I do believe that we should significantly expand the unified credit to exempt the great majority of estates from taxation, and we should do so on

a permanent basis. We should also include an indexing provision to ensure that the unified credit does not become obsolete and burdensome again, as happened over the past several decades.

But we should make these changes in a fiscally responsible manner. We should do so without adding to the already enormous budget deficits that were largely the result of the tax bill that was enacted last year.

Our budget position is poor, and it is getting worse. Last year, Congress passed a fiscally irresponsible tax cut that has shoved us back into the deficit ditch. Congress then added to our woes by passing an unfunded stimulus package filled with special interest tax breaks, a farm bill that unnecessarily benefits the largest and wealthiest producers, and just last week, following the action of the House of Representatives, the Senate passed a supplemental spending bill, also unfunded, and also apparently filled with special interest provisions of questionable value. Each of these actions will only further aggravate our budget problems.

Now, proponents of estate tax repeal are asking us to enact legislation that will add even more fuel to the deficit fires. Rather than offering a fiscally responsible measure, with provisions that offset the cost of repeal, the proponents are content to add to our budget deficits, and our already massive federal debt.

In effect, the proponents suggest that we should repeal the tax on the wealthiest estates, and let the Social Security trust funds pick up the tab.

I regret that this is also the case with some of the alternative proposals as well—proposals much closer to the kind of estate tax reform I support. The choices being presented to the Senate are not acceptable. As much as I would like to see a permanent solution to this question, I do not support raiding Social Security to achieve it.

When I was first elected in 1992, we faced an annual budget deficit of \$340 billion, and projected deficits of roughly the same size for many years to come. Thanks to the fiscal restraint we demonstrated in the 1990s, and especially to the deficit reduction package we enacted in 1993, we saw a virtuous cycle of lower budget deficits and increased economic growth. The result was that we eliminated the budget deficits and actually began paying down some of the federal debt that was racked up during the 1980s.

We need to return to the fiscal restraint that worked so well during the 1990s. And first and foremost, that means paying our bills. The estate tax repeal is not funded. It digs our deep budget hole even deeper, and we should reject it.

Mrs. BOXER. Mr. President, the estate tax needs to be reformed, but it should not be repealed. Repealing the estate tax would benefit only the extremely wealthy at an exorbitant cost to the American people. We can help small businesses and family farmers by

reforming the estate tax. That is the choice before us.

Let's start with a few facts. Ninety-eight of every 100 people who die face no estate tax whatsoever. Only the richest 2 percent of Americans do. Estates worth in excess of \$5 million paid about 51 percent of the estate tax in 1998. This tax does not oppress the children of multi-millionaires, they still inherit millions. But it does provide us with funds for investment in the public good. It is completely appropriate that the wealthiest estates contribute some portion in taxes to help create opportunities for others to reach their full potential.

Repealing the estate tax would make the rich richer at a heavy cost to the rest of us. Between 2013 through 2022, permanent repeal of the estate tax would cost us \$740 billion. That is \$740 billion we could use for homeland defense, investments in education and infrastructure, and to provide the funds to save Social Security and Medicare.

It is true that a few small businesses and family farms are subject to the estate tax. But of the 2.3 million people who died in 1998, just 1,418 of those had more than half of their estates in a family-owned business or farm. We can and should exempt many of these families from the estate tax through responsible reform.

Furthermore, while the estate tax affects a relatively small number of wealthy Americans, it can have a detrimental effect on small businesses and families who live in areas that have high property values, such as Silicon Valley. Under current law, the first \$675,000 of one's estate is exempted from Federal tax. In some parts of California, however, where median home prices exceed \$500,000, moderate-income individuals must content with taxes paid only by the wealthiest residents in other regions.

I strongly support helping these families by reforming instead of repealing the estate tax. The reform I supported and that Senator DORGAN introduced would make estates of up of \$4 million—and \$8 million for couples—exempt from the estate tax. And it would permanently repeal the estate tax for family-owned farms and businesses. That is real reform that benefits those who need the help, not another giveaway to the richest among us.

Instead of focusing our efforts on making the very wealthy wealthier, we should be working on helping hard-working Americans and investing in meeting their needs.

Mr. KENNEDY. Mr. President, in January 2001, the Congressional Budget Office projected an on-budget surplus of \$3 trillion over the decade. One year later, the projection is for a \$242 billion on-budget deficit. The largest single reason for that stunning change is not the cost of the war on terrorism nor the recession, it is the \$1.7 trillion cost of the President's tax cut. The administration's proposed budget this year would make the existing crisis far

worse, dramatically expanding the deficit to nearly \$1.5 trillion. The Social Security trust fund would be used to cover an on-budget shortfall every year through fiscal year 2012.

Just yesterday, at the urging of the administration, we voted to raise the debt limit by \$450 billion. That increase will only carry us until next spring. The Treasury Department has already said that we will have to raise the ceiling on government borrowing again early next year. Despite the overwhelming evidence, it seems that some of our colleagues across the aisle remain oblivious to the connection between the larger and larger tax cuts they espouse and the growing deficits that inevitably result.

Why, in this time of budgetary crisis—when the war on terrorism is making making new demands on our resources, and when the enormous cost of the retirement of the baby boom generation is looming just over the horizon—should we be considering another large tax cut for the wealthiest taxpayers? There is no good answer.

Permanent repeal of the estate tax is unaffordable. In the first year, full repeal will cost \$56 billion. Over the decade beginning in 2012, the estimated revenue loss to the Treasury is \$740 billion.

Permanent repeal of the estate tax is unfair. While it benefits only the wealthiest 2 percent of taxpayers, each year it will consume billions of dollars which are needed to finance Social Security and Medicare benefits for millions of retirees.

Permanent repeal of the estate tax is unnecessary. Currently, all estates under \$1 million are exempt from the estate tax. That exemption will rise to \$3.5 million under existing law. At that point, only the largest one-half of 1 percent of estates will be subject to the tax. Making that higher exemption level permanent will protect the vast majority of the family farms and family owned small businesses. Their estate tax will be zero.

Permanently repealing the estate tax, as our Republican colleagues proposed, would be the triumph of reckless ideology over fiscal prudence. It would jeopardize our ability to meet the Nation's most fundamental responsibilities in future years.

In the Bush administration's budget, in a section titled "The Threat to the Budget from the Impending Demographic Transition," it states: "In the years that follow [2008], the population over the age 62 will skyrocket, putting serious strains on the budget because of increased expenditures for Social Security and for the Government's health programs which serve the elderly—Medicare and increasingly Medicaid."

The resources which will be lost to the Treasury by repeal of the estate tax are essential to financially strengthening Social Security and Medicare. Dedicating the revenue from the estate tax to the Social Security and Medicare trust funds would go a

long way to securing those programs for future generations of senior citizens. Over the next 75 years, revenue generated by the current estate tax would be equivalent to nearly 40 percent of the shortfall in the Social Security Trust Fund. Those dollars should go where they are needed most—to preserve the promise of Social Security for future generations of retirees.

While the advocates of permanent estate tax repeal are reluctant to admit it, this vote is really about the financial future of Social Security and Medicare. Repeal would be a windfall for the wealthiest few at the expense of our ability to keep Social Security and Medicare strong for all seniors. Do we choose to commit hundreds of billions of dollars to cover the cost of estate tax repeal or to maintain Social Security and Medicare for future retirees?

In the year 2000, nearly 40 million Americans received Social Security retirement benefits. With the retirement of the baby boomers, that number will steadily grow. By 2010, it will exceed 50 million. In comparison, fewer than fifty thousand of the largest estates paid any estate tax in 2000. That was just 2 percent of decedents. With the increase of the estate tax exemption to \$3.5 million by 2009, the number of estates paying tax will be further reduced to about 10,000 a year. Just one-half of 1 percent of estates will be subject to the estate tax.

Which group needs our help more—the 50 million men and women counting on Social Security or the heirs of the 10,000 wealthy decedents with multi-million dollar estates? I believe the answer to that question should be clear to all.

Those who most passionately decry the "unfairness" of taxing multi-million dollar estates are strangely silent about the unfairness of jeopardizing the retirement benefits of low-wage workers or the unfairness of forcing elderly widows to choose between food and medicine. Which of these injustices should move the Senate to action?

Many bogus claims have been made to distract attention from the real fairness issue. Those advocating permanent repeal claim it is "double taxation." In fact, a major portion of the assets in these multi-million dollar estates are unrealized capital gains which are never taxed. Those favoring repeal assert the Federal Government takes more than half of all the assets in these estates. This too is incorrect. The Congressional Research Service analyzed the Federal estate tax burden on estates that were subject to taxation in 1999 and determined that the effective rate was just 12.4 percent. On the largest estates, those over \$20 million, the effective rate was 17.6 percent. These are certainly not unreasonable rates to ask the richest men and women in the Nation to pay.

There appears to be a consensus in the Chamber to permanently exempt estates up to \$3.5 million from taxation. That feature is common to all

the proposals. I support it. So, in essence the debate is whether the Federal Government should tax estates larger than \$3.5 million. Do those who have been given the most—the heirs to these fortunes—have a special obligation to help the less fortunate members of the American community? That is the real fairness question before the Senate today.

Mr. MCCAIN. Mr. President, I rise today to speak on H.R. 8, the Death Tax Elimination Act. I want to take this opportunity to explain my opposition to making permanent the repeal of the Federal estate tax.

Last year, the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16) repealed the Federal estate tax by 2010. It accomplished this by gradually raising the "unified credit" which is the amount of the estate exempt from taxation, from \$675,000 in 2001, to \$1 million in 2002; \$1.5 million in 2004; \$2 million in 2006; and \$3.5 million in 2009 and finally repealed the estate tax by 2010. However, the estate tax will be reinstated in 2011 as it exists under current law. The Death Tax Elimination Act removes the sunset on repeal and makes the repeal of the estate tax permanent from 2010 onwards with no cap whatsoever.

I am concerned that repeal of the estate tax would provide massive benefits solely to the wealthiest and highest income taxpayers in the country. A Treasury Department study found that almost no estate tax has been paid by lower and middle-income taxpayers. But taxes have been paid on the estates of people who were in the highest 20 percent of the income distribution at the time of their death. It found that 91 percent of all estate taxes are paid by the estates of people whose annual income exceeded \$190,000 around the time of their death.

During this time of increasing deficits, we should also be mindful of the very high cost of providing those benefits and our ability to pay for them. The Joint Committee on Taxation estimates that removing the 2010 sunset and making permanent the repeal of the estate tax would cost \$99 billion between 2003 and 2012. But more than half of this cost or \$56 billion would occur just in 2012. The long-term costs of permanent repeal are much larger. In the decade after 2012, permanent repeal would result in a revenue loss of \$740 billion assuming that the cost which the Joint Tax Committee estimates for 2012 will remain the same after 2012, when measured as a share of the economy.

Another concern I have is that repeal of the estate tax will cause a significant decline in charitable giving. I fear that eliminating the estate and gift tax would remove an enormous tax incentive for the wealthy to make charitable gifts. The research on the effect of the estate tax on charitable giving has consistently shown that levying estate taxes increases the amount of charitable bequests. A recent study found

that eliminating the estate tax would reduce charitable bequests by about 12 percent overall.

Taking these issues into account, instead of repeal of the estate tax, I support increasing the "unified credit" to allow up to \$5 million worth of assets to be exempt from taxation. I believe this cap is a reasonable amount. For example, according to data from the IRS, more than 93 percent of taxable estates in 1999 were valued at less than \$5 million. Farm and family-owned business assets accounted for less than three percent of the total value of these estates in 1999. In most estates that are taxable and include a business or farm, the business or farm does not even constitute the majority of the estate. In fact, the American Farm Bureau Federation has acknowledged that it could not cite a single example of a farm having to be sold to pay estate taxes. These facts belie the argument that we must repeal the estate tax to save family businesses and farms to assure that they do not have to be liquidated to pay estate taxes.

Responsible estate tax reform, instead of outright repeal, would ensure that small and family-owned businesses and family farms will not be taxed out of business in the event of the death of an owner or when passed along to the owner's children. Responsible reform would alleviate individuals and businesses from being forced to spend time and money on estate planning.

Even some of the Nation's wealthiest taxpayers such as Warren Buffett, Chairman of Berkshire Hathaway, and Bill Gates, Sr., father of the billionaire Microsoft founder, have gone on record as opposing the effort to repeal the estate tax. And in calling for the inheritance tax in his 1906 State of the Union Address, President Theodore Roosevelt said, "The man of great wealth owes a peculiar obligation to the State, because he derives special advantages from the mere existence of government."

We have no idea what our financial or economic situation will be ten years from now. We may be at war. We may be in the process of putting Social Security on a sound financial footing. We may want to have the flexibility to provide significant tax relief for lower and middle-income taxpayers. Other unforeseen issues may arise. The point is that we must think beyond the horizon. Making the repeal of the estate tax permanent fails to take these new circumstances into account.

We will need resources to deal with national security, general government funding, the coming baby boom retirement and the rising costs of Social Security and Medicare, and responsible tax reform that benefit lower- and middle-income taxpayers. But we must fund these priorities within our constrained budget situation. Reforming the estate tax rather than committing ourselves to full repeal is the more sustainable and responsible approach.

Mrs. FEINSTEIN. Mr. President, I rise to address the Gramm/Kyl amendment to H.R. 8, the estate tax repeal bill.

I want to first say that I am philosophically opposed to the estate tax, and have long expressed my belief that it is an unfair tax that we should ultimately do away with.

In addition to threatening owners of small businesses and family farms, the estate tax acts to stifle investment in businesses, and is a disincentive for those who want to save so that they can pass assets on to their children and grandchildren. However, to vote in favor of repeal today, under our current circumstances, runs counter to another of my deep philosophical beliefs: fiscal responsibility.

Last year I voted to support the President's tax cut package, which provides \$1.3 trillion in tax cuts over the next decade. My support for that bill was partially determined by the estate tax relief provisions included within it. When I voted in favor of that bill, we were projected to benefit from some \$5.6 trillion in budget surpluses over the coming decade, enabling us to provide significant relief to American taxpayers while also protecting the Social Security trust fund and programs in health, education, and numerous other areas.

Needless to say, that outlook has changed dramatically in the past twelve months. The economic slowdown, combined with major new expenses associated with providing for homeland security and fighting the war on terror, have put a major strain on the federal budget, requiring Congress to exercise a degree of fiscal responsibility not seen during the late 1990's.

Despite the threat of a budget deficit of over \$125 billion this year, and projected deficits stretching through the end of the decade, House Republicans have made clear their intent to push through a permanent extension of all of the tax cuts included in the President's bill last year. The first of those extensions, and the one that we are considering today, is a permanent repeal of the estate tax.

Yet there could not be a worse time to consider full repeal of the estate tax than right now. The latest estimates project full repeal of the estate tax will cost the federal government over \$740 billion between 2011 and 2020. Although it is my hope that we will be able to permanently extend the repeal at an appropriate time before it is set to expire in 2010, we are in no position today to do that and cope with major outlays for defense and homeland security, as well as threats to funding for Social Security and Medicare.

Earlier today, I voted in support of Senator DORGAN's amendment as a good compromise on this issue, and because it goes a long way toward addressing one of my major concern with estate tax: that it puts family-owned businesses and farms at risk of sale or closure simply because heirs are forced

to sell in order to pay the estate tax bill.

In addition to permanently extending an increased unified credit of \$4 million per individual and \$8 million per couple, Senator DORGAN's amendment provides relief to small business and family farm owners who suffer the most under current law by providing an unlimited exemption from the federal estate tax to small business owners and farmers. This would ensure that this tax no longer threatens anyone wishing to pass on a family-owned business to his or her heirs.

Under current law, the unified credit is set to increase to \$3.5 million by 2009, but the Qualified Family Owned Business Interest exemption will expire in 2004, removing what few safeguards are in place to protect those whose assets are tied up in family-owned farms or businesses.

I am particularly concerned about protecting these businesses because of the relatively high value of California farm land. The value of an orange grove in Ventura, CA may be as high as \$15,000 per acre due to local development pressures, compared with a price of \$1,500-2,000 per acre for corn-growing land in a mid-western state.

As a result, even a medium-sized California farm of 400 to 500 acres may be liable for a hefty estate tax bill, especially when the value of farm buildings and other capital investments are factored in.

The estate tax may make it impossible for a family farm to be passed down from generation to generation. No one should be forced to sell the family farm just to pay the estate tax.

Small business owners are equally at risk, and those who own and operate capital-intensive businesses must bear an exceptional burden. While the issue of small business liability under the estate tax has often been represented as affecting a tiny minority of Americans, in fact there may be many small business owners who sell or transfer their businesses in expectation of their heirs having to pay the tax.

Additionally, the sale of family-owned businesses, particularly to larger conglomerates, threatens the jobs of thousands of Americans who are employed by those businesses. Even those businesses that can cover their tax liability may have to take on a large debt burden that threatens their competitiveness and delays efforts to expand or grow the business.

The Dorgan amendment would have resolved this problem by uncapping the Qualified Family Owned Business Interest exemption entirely, but it also would have raised the individual exemption to \$4 million in 2010. By providing this much-needed relief, the amendment would have limited estate tax liability to a tiny fraction of wealthy Americans who have large holdings of marketable assets.

Regrettably, the Dorgan amendment did not pass, and we are faced with an unfortunate choice between full repeal

and the limited relief passed as a part of the President tax package last year.

I very much look forward to a time when the Senate can vote for full repeal of the estate tax with a clear conscience, knowing that a vote to repeal the estate tax is not a vote against fiscal responsibility. To vote for full repeal today would be to turn a blind eye to such responsibility, and to move forward guided only by the kind of irrational optimism that was so readily propounded only a year or two ago.

Mr. DASCHLE. One year ago, America had a projected budget surplus of 2.7 trillion dollars over the next 10 years.

The stock market was soaring.

The question before us was one that most leaders could only dream of: "What should we do with our prosperity?"

At that time, the debate was focused on tax cuts, how much, for whom, and could we also provide for America's unmet needs?

Nine months ago yesterday, more than 3,000 innocent men and women lost their lives to terrorism.

In the months since, an anthrax attack and recent disclosures have revealed holes in our homeland security. The collapse of Enron has raised questions about our system of corporate governance and we are soon to begin perhaps the most dramatic restructuring of government in half a century.

All of this has occurred against the backdrop of massive demographic changes that will transform the face of our nation for decades to come.

In 2008, the first of the Baby Boomers will begin retiring. By 2015, 50 million seniors will be drawing benefits from Social Security. Prescription drugs are becoming a more and more vital part of American health care, and we need to find a way for Medicare to help pay for them.

At the same time we're facing a senior boom, we're also facing a youth boom. School enrollments are already at record levels, and will continue to rise every year for the next 8 years.

So here is where we are: The surplus is gone.

The Treasury is borrowing money and spending Social Security funds to pay for the daily functions of government.

We have just passed a bill to allow America to take on even greater debt. The baby boomers are preparing to retire.

More children than ever are moving through our schools.

Investors have had their confidence in American business shaken.

We are in the midst of confronting new—and previously unimaginable threats to our nation.

We are at war.

The question facing America is no longer, "What should we do with our prosperity?" The question now is: "How do we protect our citizens, strengthen an ailing economy, prepare for the future, and win this war against terrorism?"

I believe history will judge this Congress by how well we answer that question.

And I believe every action we take should keep those four key goals in mind.

Today, we are debating, once again, what seems to be the Republican Party's only solution to all of these problems—more tax cuts.

Specifically, we are debating a permanent repeal of the estate tax, an idea that could not be more at odds with the priorities of the nation at this critical time.

It is bad public policy. It is unfair. It will undermine Social Security, depress American philanthropy, hurt state budgets, and make it more difficult to meet every other challenge we face.

And I want to be especially clear that there is a vast difference between fairly protecting family farms and small businesses on one hand, and blindly destroying our fiscal balance on the other.

Repealing the estate tax will cost \$99 billion over the next decade, and \$740 billion in the decade after that.

Most of that will come from the Social Security trust fund. If you look out over the next 75 years, the cost of repealing the estate tax will account for nearly 40 percent of the entire shortfall in the Social Security Trust Fund.

And who benefits? The wealthiest two percent of American estates. By 2009, it will be the wealthiest one half of one percent of all estates.

What we're talking about is diverting the Social Security contributions of millions of American workers to fund a massive tax cut for the most fortunate of the fortunate few.

And sometimes it's the fraudulent few.

Yesterday, Senator CONRAD had a chart here on the floor showing Jeffrey Skilling, a former CEO of Enron, stands to gain \$55 million from the repeal of the estate tax. That \$55 million will be composed of the Social Security contributions of 30,000 working Americans earning \$30,000 a year.

We've been hearing a number of arguments in favor of estate tax repeal from our Republican colleagues, so let me just take a minute and address a couple of the issues they raise.

They argue that the estate tax forces the sale of family farms and businesses. Some agriculture organizations have said that it is important to repeal the estate tax, but when asked if they could cite when asked if they could cite a single example of a farm lost because of estate taxes, they couldn't name one, not one.

As Neil Harl, an Iowa State University economist who has studied the issue extensively, said simply, "It's a myth."

And here's why: in Iowa, the average farm is worth \$1.2 million. In South Dakota it's just over \$500,000. Family farms simply do not fall victim to the estate tax.

The same goes for family businesses. In the few cases where family businesses are subject to the estate tax, it is usually because that business is just one part of a larger estate.

But just to make sure that family farms and small businesses aren't hurt, we're proposing an alternative that will exempt virtually every family farm and small business from the estate tax.

Family farms and small businesses define us as a nation. We've never seen it demonstrated that they are being broken up by the estate tax, but, just in case, we're going to see to it that they never will be.

Others have argued that the estate tax is un-American, that it is a penalty for success. The history of the estate tax shows the exact opposite is true.

Not only does the estate tax encourage economic success based on merit rather than birthright—it is a demonstration that those who have done well by this nation have a special obligation to contribute to its continued success—and its defense.

In his 1906 State of the Union, President Theodore Roosevelt, a Republican, proposed the estate tax to help finance the war debts of the 19th century, saying, "The man of great wealth owes a peculiar obligation to the State, because he derives special advantages from the mere existence of government."

To single out the estate tax for elimination in the midst of this current war goes against the intent, and the history, of this policy.

Those arguments may be false. But there are some powerful and disturbing truths about making the estate tax repeal permanent.

In the short term, it costs \$99 billion.

Just yesterday, we passed an increase in the debt limit in part so we could meet the new security demands we're facing in an increasingly uncertain and threatening world.

If giving a handful of multi-millionaires and billionaires another tax break requires a choice between more debt and less security—that should be a clear signal that the price is simply too high.

In the longer term, we will feel the full brunt of this repeal at exactly the time the baby boomers begin to retire. We know that, 10 years from now, we are going to need some fiscal flexibility to start paying the retirement benefits to the biggest retirement population that's ever passed through the system, and yet some want to succumb to fiscal irresponsibility at precisely the time we can least afford it.

We have all heard the old saying, "When you find yourself in a hole, stop digging."

Well, it is time for us to stop digging a deeper hole, and start getting serious about the problems we face.

Last March, a farmer named John Sumpton, from Frederick, SD, came to testify before the Senate Finance Committee.

"Mr Chairman," he said, "I am not an expert on tax law, but I know about family farmers. They are my friends and neighbors. They are not worried about estate taxes, because, for the most part, they don't have to pay them. They are worried, however, about the prices they receive for their crops and livestock, about good public schools for their kids, about local community services, paying for prescription drugs, and being able to pay their bills in retirement. And, of course, they are always worried about the weather."

He continued: "I fear we may not be able to do the things we want and need for our communities if we repeal the federal estate tax. To me, it doesn't seem responsible to eliminate the estate tax for everyone, including billionaires, when they don't need the help. A more targeted approach that helps families better address this issue now, while retaining more resources for other needed public investments to improve our future, seems a more practical and appropriate course of action."

John Sumpton is right.

And I hope the Senate will heed his sensible advice.

Mr. CONRAD. Mr. President, I yield 2 minutes to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I thank my colleague for yielding me this time.

As did a number of my colleagues in the Senate, I served as the Governor of my State before I was privileged to come to the Senate. As a Governor of my State, I was a supporter of tax cuts. We cut taxes for 7 years in a row. In fact, we eliminated the gift and inheritance tax altogether. While we cut taxes 7 years in a row, we also balanced the budget 8 years in a row. We also were able to slow the growth of debt in our State. We earned ourselves a AAA credit rating for the first time in Delaware history.

Others have spoken to the equity and the fairness of eliminating altogether the estate tax. I will leave those arguments to those who have already spoken. I simply want us to keep this in mind. There is an old theory called a theory of holes. It goes something like this: When you find yourself in a hole, stop digging.

To have voted yesterday to raise the debt ceiling by another \$450 billion and then to turn around and cut taxes in a way that will only increase our indebtedness is a matter of concern to me and ought to be to all. Our Republican friends are right: We cannot simply be opposed to cutting taxes in ways that perhaps are unfair in this case and turn around and simply vote to increase spending.

I had a good long conversation with one of our Republican colleagues on the phone last night about this body and about our propensity to spend ever more money for defense, for homeland defense, more money for social programs, good social programs, and at

the same time, voting to cut taxes. It does not add up. I do not know how to stop it.

I want to put down a marker today and say it is something that is not a sustainable policy, and one I hope we will not continue.

Mr. CONRAD. I yield 3 minutes to the Senator from New Jersey.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from New Jersey.

Mr. CORZINE. Mr. President, I rise to speak strongly in opposition to the Gramm amendment. I am in the group of folks who believe we need reform, not repeal. There are some positive things we should do with respect to the estate tax. However, I find it terribly difficult knowing the meritocracy of America that I think provides opportunity to all, that we are voting to create something that is against the principles and buildup of aristocracy, contrary to at least the America I understand.

I believe that is why we have seen many people who have benefited so much from our society because they have been able to live in a free America where they had access and equal opportunity and a public educational system, infrastructure that worked positively for folks, that they feel very strongly there is a responsibility to give back by those who have been blessed with their lives.

Quite frankly, it is one of the things that helped in my own life. I think about the schoolteachers in the rural community in which I grew up who gave me the access to the American promise. I believe America is about meritocracy, not aristocracy. It is about community, and community-wide interests—not just the interest of the few.

We have heard the statistics about how narrow a slice of America benefits from this action. This is a period of sacrifice in America, when we are asking men and women to go overseas to protect us. We are asking others to sacrifice on our investments in education and our protections in the environment and all kinds of things that make sense in a choice situation, to go in a direction where the few are benefited to the exclusion of the many. This is very difficult.

I would be remiss if I did not bring it up in the context of something about which I deeply care; that is, protecting the integrity of our Social Security and Medicare systems. People will say there are other choices on spending. But we have a very clear choice where we provide for those who benefited the most from the American system to be able to use our Social Security funds and Medicare funds that we raise and directly expend it on something that, in a period of sacrifice, is hard to understand—why our priorities and why our choices are here.

This is a moral issue about priorities in this Nation, making sure we are funding special education.

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

Mr. REID. Mr. President, I ask unanimous consent the time for debate on this matter be extended 10 minutes equally divided.

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

Mr. CONRAD. Mr. President, I close debate on our side by pointing out that we are not making these decisions in a vacuum. We have to consider the fiscal condition of the country when we make any spending decision or any additional tax cuts.

The fact is, last year we were told we had trillions of dollars of surplus over the next 10 years. Now we see those surpluses are gone. They have evaporated. Instead, we are going to be running massive deficits—this year, a \$320 billion deficit.

The Senator from Oklahoma said it would be unconscionable to keep this tax. I think it would be unconscionable to drive this country into deeper deficit and deeper debt. That is precisely what the amendment of our colleagues on the other side does. It is very clear the cost of estate tax repeal explodes in the second decade. Not only does it cost \$100 billion in this decade, every penny of which is coming out of the Social Security trust fund, but in the second 10 years, it costs \$740 billion right at the time the baby boomers start to retire, right at the time there will be unprecedented demands on Social Security and Medicare and, God forbid, on the needs of the defense of this Nation.

This is the most irresponsible amendment offered on the floor of the Senate this year. It would gut the fiscal condition of this country when we know it is already teetering.

Instead of repeal, we ought to reform this tax. Yes, the estate tax bites at too low a level. So I recommend in my amendment we give an exemption of \$3 million for an individual, \$6 million for a couple, beginning next year. For 2009 and thereafter, the exemption increases to \$3.5 million for an individual, \$7 million for a couple. This saves hundreds of billions in the second decade and saves huge amounts of money in this decade, as well. By 2009, only .3 of 1 percent of estates face any estate tax liability under my amendment.

In this decade, there is a big difference between these two approaches, the cost of the Republican proposal is \$99.4 billion; the cost of my proposal is \$12.6 billion.

Under my proposal only .3 percent of estates in this country are subject to tax. Not only is it a question of affordability, it is also a question of fairness. Again, my colleague from Oklahoma says it is unconscionable to ask the wealthiest among us to contribute to the fiscal health of the Nation. I don't think it is unreasonable.

President Theodore Roosevelt, one of the greatest Republican Presidents, did

not think it was unreasonable. President Abraham Lincoln, one of the greatest Republican Presidents did not think it was unreasonable. I think it is unreasonable to say to the American people that we ought to give Mr. Skilling, who ran Enron, a \$55 million tax cut and finance it by asking 33,000 Americans, earning \$30,000 a year, to put all of their Social Security taxes into the pot so we can give Mr. Skilling a \$55 million tax cut.

I do not think that is fair. Not only do I not think it is fair, the American people do not think it is fair. In a poll released today by the Fair Estate Tax Coalition, they showed that 58 percent of the American people favor reform over repeal. Mr. President, 37 percent favor repeal, 58 percent favor reform.

It is very interesting; in this poll what they found, under Federal budget priorities, is the people of this country overwhelmingly say strengthening Medicare and Social Security is No. 1, 38 percent; increasing spending for education, 33 percent; giving seniors a prescription drug benefit, 29 percent; increasing funding for children's health, 18 percent; retiring the national debt, 16 percent; cutting taxes, 16 percent.

What tax cuts do they favor? And that is only 16 percent of the American people who say that is their priority; eliminating the estate tax is the bottom of the barrel. They prefer cutting taxes for moderate- to low-income Americans, eliminating the marriage penalty, a capital gains tax cut; dead last is eliminating the estate tax.

This is a fundamental question. Presidents Abraham Lincoln, Theodore Roosevelt, Woodrow Wilson, and Franklin Roosevelt supported inheritance taxes because without them this country would move further from democracy and closer to aristocracy.

This is a fundamental misunderstanding of the heritage of America. Meritocracy, not aristocracy; reform yes, repeal no.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Texas.

Mr. GRAMM. How much time do we have, Mr. President?

The PRESIDING OFFICER. Twenty minutes, twenty-five seconds.

Mr. GRAMM. Why don't I take 10 minutes, and I will give my colleagues 10 minutes.

Let me just begin by sort of straightening a little history out. The death tax started in America through a Stamp Act on wills when we had an undeclared war with France. It was repealed right after the tensions with France ended but was reimposed during the Civil War. Abraham Lincoln did not impose a death tax because he wanted to take away people's inheritance in America. He imposed it, along with a lot of other taxes before we had an income tax, to try to save the Union. It too was repealed when the war was over.

We reimposed the death tax during the Spanish-American War, and re-

pealed it when the war was over. Finally, it was imposed during World War I. We had a battle between the President and the Congress over the League Of Nations. It ended up not being repealed, and it still plagues us today. That is the history of the death tax.

Let me also say to my colleagues that this is an old issue and it is an old issue between the two great political parties. In 1981, when Ronald Reagan came to Washington, part of his tax cut was to raise the exemption—the amount of wealth in your business or your farm or your estate you could protect from taxes—from \$175,000 to \$600,000. The same arguments made by the same Democrats were made at that time. They said it was wrong to raise the exemption to \$600,000. Had they prevailed 20 years ago, the exemption would be \$175,000 today.

Ten years ago, Congressman GEPHARDT and Congressman WAXMAN proposed lowering the exemption—that is, the amount of your farm or your business or your estate that you could pass to your children without it being taxed—from \$600,000 to \$200,000.

Our colleagues basically admit this is a cancer on the economy—but they only want to take part of it out, not all of it out. The problem is, 10 years ago members of their party were trying to lower the deductible and raise the tax. We want to take the whole cancer out because we believe it will come back if we do not.

Finally, in 1997—which is not that long ago—32 Democrat Members of the Senate voted against raising the exemption to \$1 million.

We have had a lot of talk today about rich folks and who is rich and who is not rich. Sometimes it is awfully hard to tell. But I do want to use this figure. Iowa is a farm State. They have 80,000 farms. It is estimated that 30,000 of those farms today are valuable enough that if the owner of the farm died, their children would have to pay a death tax. That is almost 40 percent of the farms in Iowa.

Look, there are some people who are bothered by the fact that some people become successful in America and make money. I am not one of them. If someone became very rich, started a business in College Station, had 200 employees, had \$10 million worth of machines and plant and equipment and trucks, and they died—our Democrat colleagues say they are rich. But is America richer if we take \$5.5 million from them, make them sell the business, sell the trucks, sell the equipment, make their children do all that to give the Government \$5.5 million in taxes? Are we not better off leaving that \$5.5 million at work in College Station than we are destroying that business and bringing it to Washington?

Sure, the family is rich. But is America richer or poorer by destroying it? Can we build up one family by tearing down another? I do not think so.

I mentioned earlier in the debate—I want to mention it again—I have been

bequeathed only one thing in my life. My Great Uncle Bill, my grandmother's brother, died and left me in his will a cardboard suitcase. I am proud to say I still have it today. It had yellow sports clippings from the 1950s in it. If they had been baseball cards, I would be a rich man today.

If all my relatives I know of left me everything they own, I do not believe I would qualify to pay the estate tax.

So why do I feel so strongly about repealing the death tax? For the simplest of all reasons—it is wrong. It is wrong. It is not right, no matter whether somebody is Bill Gates or Dicky Flatt, who owns a print shop in Mexia, TX, and who never gets that blue ink off the end of his fingers. It is wrong, when they die, to make their children sell off their life's work to give Government 55 cents out of every dollar they have accumulated in their lives. They work, they save, they scrimp—Dicky Flatt gets up early in the morning, he works on Saturday. Everything he owns he plows back into that business. He sent his children to Texas A&M. They have come back into the business.

Dicky's daddy worked there, his momma worked there, he works there, his wife works there, his son works there, his son's daughter worked there, and they plow everything they can back into their business. I do not know what it is worth. But I know whom it belongs to. I know who built it.

How is it right, after they have done all that work, made all those sacrifices, scrimped and saved, lived far below the level they could live if they chose to spend their money—why is it right to take it away from them just because they earned it? That is what this issue is about. It is not about being rich versus being poor. It is about right versus wrong. It is wrong when people who pay taxes on every dollar they earn, who have plowed it back into their businesses or farms or estates, to destroy all that when they die.

Death should not be a taxable event. It is hard enough to face dying, without having to know that your children are going to lose what you have built.

Every day, people are spending billions of dollars to try to get around this tax. Talented people are retiring when they are 55 years old because they know the Government is going to take the fruits of their labor away from their children. People are selling off farms to try to plan their estates. They are shutting down businesses to divide up the assets ahead of time so they do not have to pay the taxes, and America is poorer for it.

We have heard a bunch of speeches from my colleagues. They believe what they believe. I believe what I believe. Who is to say who is right?

But I will say this. Over and over, we have heard people get up on the floor and say we can't afford this. I would just like to remind my colleagues that last Thursday—I hope I am not stretching their memory—last Thursday we

spent \$14 billion the President did not ask for, for nonemergency matters. That is four times as much, over the next 2 years, as repealing the death tax permanently would cost. So the same people who say we cannot afford to make the repeal of the death tax permanent, they could afford to spend four times that much last Thursday on unrequested programs, but they cannot afford it today.

When we passed the farm bill, they could afford to spend seven times as much as it would cost next year to repeal the death tax, but they can't afford it today.

On the energy bill, they could spend more than enough to pay for it, but they can't afford it today.

When we added all those riders to the trade bill, they could spend more than it would cost next year to repeal the death tax, but they can't afford it today.

When they wrote this budget, they asked for \$106 billion of new discretionary nondefense spending. We have heard all of this talk about the war and fighting the war. When they wrote this budget, they spent \$106 billion more than the President asked for. Yet today they cannot afford to make the death tax repeal permanent.

It is a matter of priorities. It is a matter of what you think is of a higher order.

What my Democrat colleagues, with very few exceptions, have said indirectly, without saying it just flat out, is the following: They are willing to force people to sell off their businesses and farms to give the Government the money because they want to spend it. They think that is more important than leaving those businesses and farms intact.

I believe they are wrong. I believe the American people believe they are wrong. I think this is something that we need to do. I commend it to my colleagues.

I yield the remainder of our time to my colleague from Arizona. I thank him for his leadership on this issue.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I compliment the Senator from Texas for sponsoring this amendment and for making the arguments which I believe will result in this body finally voting to making permanent what we voted for just a year ago.

I want to remind my colleagues that 48 Republicans and 12 Democrats—56 of us in all—voted to repeal the death tax. There were two other Republican Senators who were not here but would have voted to do that. That is 58 of us. It passed in the House of Representatives. The President signed it into law.

By now we all know, however, that because of the rules under which we operate, all of the tax relief we provided sunset at the end of 10 years.

It is for that reason only that we have to come back and revisit this today. The good news is we have a

chance today to make what we did before permanent.

I submit that unless Senators want to say to their constituents, "I was just kidding when I voted to repeal the death tax," that those who voted to repeal it before are going to have to vote to repeal it again, and this time to make it permanent, or else we will perpetuate this hoax.

I have heard a lot of talk about meritocracy and aristocracy. I would like to talk about the American dream.

I prefer to go back a couple of generations when immigrants came to this country. They brought the ethic of hard work and savings and investment. By the way, investment means job creation. We all know that. But they worked very hard because they wanted to be able to give their kids and their grandkids a better chance and more opportunity than they themselves had.

That is what this country is all about. That is why people have sacrificed a lot—as Senator GRAMM said, to be able to leave their kids something. That is the American dream.

When we talk about doing something for the rich, they are not listening to the debate. The rich man died. He is not rich anymore. He is not even alive anymore. He died. So who pays the death tax? His kids, usually. Who are they? Are they rich people?

I have said this before. Let me say it again. This is from the Internal Revenue Service. These are the official statistics of the IRS. They answer the question about who actually pays. They break it out by men and women. This, by the way, is their latest statistics, *Statistics of Income Bulletin*, Summer of 1999, pages 72–76.

The largest group are men: 27.7 percent were administrators, upper management, and business owners. That you would expect. That is only 27 percent.

Who is the next group? The second largest group of men, 12.3 percent, were schoolteachers, librarians, and guidance counselors—these filthy rich who deserve to be punished. Maybe their dad had accumulated a lot of wealth. These are not rich people. But their dad is maybe giving them an opportunity to invest some of that money, maybe, to start a small business of their own, or to do something more with it to create jobs and to help make this American dream come true.

How about women? As we know, the majority of small businesses in this country are owned by women. For females, the IRS statistics say that the largest group—14.1 percent—were educators and teachers. These are people who are paying the death tax. These are the women who are paying the death tax.

The next largest group—9.6—were in clerical and administrative support occupations.

If you want to analyze all of the occupations, a significant number of the estate tax filers were scientists, sales people, entertainers, airline pilots,

military officers, and mechanics. These are the estate tax filers.

These are the people we want to punish. It is not fair. These people deserve to be treated just as fairly as anybody else in this country.

Again, according to the Internal Revenue Service, in 1999, 116,500 estate tax returns were filed; 60,700 of those—in other words, more than half—were filed by estates with values of less than \$1 million. For estates valued between \$1 million and \$5 million, 50,600 were filed. That is just about all that is left. Above \$5 million, there were only 5,200 of those estates.

Even combined, the millionaires filing do not exceed the nonmillionaires filing.

The vast bulk of these, in other words, are by people who do not have these multibillion-dollar kinds of patina, or even multimillion-dollar kinds of patina that people would like to create.

What kind of people are they? What is their money? The Senator from New York talked about the salaries of all of these rich entrepreneurs. They are paying income taxes on those salaries, I might add. We are talking about the estate tax, the death tax—not income tax.

I talked this morning about Brad Eiffert who with his dad owns the Boone County Lumber Company in Columbus, MO. He doesn't make very much in salary every year. They do not have any cash to speak of because they put all of their money back into the Boone County Lumber Company. They go to the bank and borrow money to buy lumber which they sell. They buy trucks and forklifts.

They do the same thing we do. We don't go out and buy a house with cash. We go get a mortgage loan from the bank.

For much of what they own they have borrowed the money. But they make enough money to pay themselves a salary to live on—the dad and the son—and to hire 30 people whose salaries they pay. That is 30 more families that benefit. When the dad dies, Brad is concerned that he doesn't have the cash around to pay half of the value of the estate. It is not his income that gets taxed. It is the value of the entire business; that is, all of the lumber inventory, trucks, forklifts, the warehouse, and the whole thing.

Take that whole value and he says: I don't have that much money to pay half of that to Uncle Sam when my dad dies. Where am I going to get it? I can't borrow. I am fully leveraged. I have done the financing. I will have to sell the business to pay the tax.

That is what this is all about. That is why it is so unfair.

Job creation—well, those jobs are gone. I suppose if you sell it to somebody else and the idea is to prevent the accumulation of wealth, you usually sell it to a large corporation. So instead of a family business, you have some large conglomerate that may let

people go and consolidate, or whatever. So much for the American dream. So much for consolidation of wealth.

How would you say this money ought to be taxed, somehow or other? My colleague from Texas already pointed out that income tax has been paid on it.

But I don't think what our colleagues realize is, we don't just repeal the estate tax, we substitute another tax for that, the capital gains tax, but with a big difference. Most of us agree that death should not be a taxable event. You did not have any choice in the matter, of the timing of it, how it happened, when it happened, and so on. You do have a choice over when you sell something or don't sell it, and you know what the tax consequences are.

So when your dad dies, instead of the kids having to pay a tax on half of the value of his estate, and having to sell assets to do it, and so on, under our proposal the estate passes to the heirs. They take the property. They do not pay the tax on death day. But when they sell any of it, they pay a tax. They pay a tax on the capital gains, and it is calculated on the basis of dad's purchase price. So that is how you pick up the revenue.

Mr. President, 60 percent of the American people realize this is unfair, and three-fourths of them say they favor its repeal, even though they would not benefit at all. They understand the unfairness of the existing tax.

We now have an opportunity to make permanent what we passed before, which is the repeal of the estate tax, and to substitute for us the very fair capital gains tax on the original basis of the property. That is what we have the opportunity to do. The House of Representatives has passed this measure. If we pass it today, it goes to the President, and he can sign it. He has asked us to send it to him so he can sign it, to end this unfair tax and replace it with a fair tax.

I urge my colleagues to vote against the Conrad amendment, to vote for the Gramm-Kyl amendment, and to have a fair tax in the United States.

The PRESIDING OFFICER. Time has expired.

AMENDMENT NO. 3831

Under the previous order, there are 5 minutes of debate evenly divided before a vote with respect to the Conrad amendment.

The Senator from Texas.

Mr. GRAMM. Mr. President, I will speak first because I think Senator CONRAD deserves the right to close out on his amendment.

I think this issue has been pretty well debated. I agree with the Democratic floor leader, Senator REID; I think it has been a good debate.

The Conrad amendment does not repeal the death tax. It improves current law by speeding up the process and making a nominal change in it, but it still leaves the structure of the system in place where we have a tax on death.

I believe it is fundamentally wrong, and I am unwilling to get into a debate

about at what income level it is wrong. I have never accepted the thesis that what is right for one American is wrong for another American based on their income. Right is right and wrong is wrong where I come from.

I want to repeal the death tax. The Senator from North Dakota does not. That is what it all boils down to.

It has been said over and over, as many ways as you can say it, I still remain amazed that people who consistently vote for new spending never have money when it comes time to let people keep more of what they earn. But rather than reiterate all that, let me sum up and say we are going to have an opportunity, after we vote on Senator CONRAD's amendment, to repeal the death tax. There is only one real repeal, and that is the one I have offered with Senator KYL.

I urge my colleagues to vote against the Conrad amendment and to vote for the Gramm-Kyl amendment.

I believe we will get over 51 votes. As you know, because a point of order will be raised against the amendment, we will have to get 60. I don't know that we will get 60 votes today, but I believe we are taking a step toward repealing the death tax permanently. And I am confident that it will be repealed.

Mr. KOHL. Mr. President, I rise today to support the Conrad estate tax reform amendment and oppose the Gramm-Kyl estate tax repeal amendment. I want to compliment equally both sides in this debate, however. They have brought before the Senate a clear question about the direction of U.S. tax policy—a question that the Senate should address. Should the very richest families in this country be able to pass their entire fortunes onto the next generation tax free? In a time of re-emerging budget deficits, urgent homeland defense needs, and a slowly recovering economy, is a tax break exclusively for the very richest among us a good idea?

That is what this debate is about. Unfortunately, we have heard more about other issues than that very basic question of how we tax the rich and the not so rich in this country.

We have heard that the votes today are about repealing a tax on those who inherit that causes the break-up of family businesses or farms. It is not. The Conrad amendment raises the amount of an estate exempt from tax to \$3.5 million, \$7 million for a couple, by 2009. In Wisconsin, that will completely exempt all but 0.2 percent of estates from any taxes at all. So we are not arguing over estate taxes on the local dairy farm or the small business operating on Main Street. We all agree they should be totally exempt, and under all proposals we consider today, they are.

No, the question today is should we go further than exempting small businesses, medium-sized businesses, and most all farms—certainly all Wisconsin farms—from the estate tax? Should we enact a tax break for very richest fami-

lies in this country—less than 1 percent of all estates in this country? Or should we save the hundreds of billions of dollars that that tax break will cost—and use it to defend our country better, pass tax breaks that help the middle class working family, or simply pay down our huge debt? I can think of many uses for billions of dollars better than passing a tax break that will benefit those that inherit \$15 million but do nothing for those who inherit \$15,000, \$150,000, or even \$1 million.

The choice is clear. It is time to reform the estate tax and exempt 99 percent of all families from any worry of taxes after death. It is not time—and I am not sure it ever will be—to give a multi-billion dollar break to a very small number of very rich families.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, we should reform, not repeal, the estate tax because repeal is unaffordable, it is unfair, and it is unpopular.

First, on the question of affordability: The cost of eliminating the estate tax absolutely explodes in the second decade. It costs \$100 billion in this 10-year period. It costs \$740 billion in the second decade, right at the time the baby boomers retire, and when we know we already are in deep deficit and adding to the debt.

Just yesterday we added to the national debt by \$450 billion. Our friends on the other side of the aisle would dig that hole much deeper.

My proposal is far more affordable. Instead of \$99.4 billion in the next 10 years, \$12.6 billion.

The elimination of the tax is unfair.

One example: Mr. Skilling, the former head of Enron, would get a \$55 million tax cut, paid for by the Social Security taxes of 30,000 Americans earning \$30,000 a year. That is not fair.

On the question of popularity, overwhelmingly, the American people say: Reform, not repeal. By 58 percent to 37 percent, they favor reform over repeal.

That is what my amendment does. It takes the exemption to \$3 million for an individual and \$6 million for a couple next year. In 2009, it goes to \$3.5 million for an individual and \$7 million for a couple. They would pay nothing.

That is fair. It is affordable. And it is what the American people want.

I urge my colleagues to support the Conrad amendment.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. All time is yielded back.

The Senator from Texas.

Mr. GRAMM. Mr. President, under the unanimous consent agreement, I raise a 311 budget point of order against the Conrad amendment.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no."

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

The yeas and nays resulted—yeas 38, nays 60, as follows:

[Rollcall Vote No. 150 Leg.]

YEAS—38

Akaka	Dorgan	Levin
Bayh	Durbin	Lieberman
Biden	Edwards	Mikulski
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham	Reed
Breaux	Harkin	Reid
Byrd	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Conrad	Johnson	Schumer
Corzine	Kennedy	Stabenow
Daschle	Kerry	Torricelli
Dayton	Kohl	Wellstone
Dodd	Leahy	

NAYS—60

Allard	Enzi	Miller
Allen	Feingold	Murkowski
Baucus	Fitzgerald	Murray
Bennett	Frist	Nelson (NE)
Bond	Gramm	Nickles
Brownback	Grassley	Roberts
Bunning	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Cantwell	Hollings	Smith (NH)
Carnahan	Hutchinson	Smith (OR)
Carper	Hutchison	Snowe
Chafee	Inhofe	Specter
Cleland	Kyl	Stevens
Cochran	Landrieu	Thomas
Collins	Lincoln	Thompson
Craig	Lott	Thurmond
DeWine	Lugar	Voinovich
Domenici	McCain	Warner
Ensign	McConnell	Wyden

NOT VOTING—2

Crapo Helms

The PRESIDING OFFICER. On this vote, the yeas are 38, the nays are 60. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

The majority leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the previous agreement for 5 minutes to explain the amendment be vitiated.

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

Mr. DASCHLE. Mr. President, I ask unanimous consent that Senator CONRAD be recognized to make a point of order.

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

Mr. CONRAD. Mr. President, I raise a point of order that the pending amendment violates section 311(a)(2)(B) of the Congressional Budget Act of 1974.

Mr. GRAMM. I move to waive the point of order, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The majority leader.

Mr. DASCHLE. Mr. President, I announce to my colleagues this is the last vote of the day.

The PRESIDING OFFICER. The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

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

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 151 Leg.]

YEAS—54

Allard	Fitzgerald	Nelson (FL)
Allen	Frist	Nelson (NE)
Baucus	Gramm	Nickles
Bayh	Grassley	Roberts
Bennett	Gregg	Santorum
Bond	Hagel	Sessions
Brownback	Hatch	Shelby
Bunning	Hutchinson	Smith (NH)
Burns	Hutchison	Smith (OR)
Campbell	Inhofe	Snowe
Cleland	Kyl	Specter
Cochran	Landrieu	Stevens
Collins	Lincoln	Thomas
Craig	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	McConnell	Voinovich
Ensign	Miller	Warner
Enzi	Murkowski	Wyden

NAYS—44

Akaka	Dodd	Leahy
Biden	Dorgan	Levin
Bingaman	Durbin	Lieberman
Boxer	Edwards	McCain
Breaux	Feingold	Mikulski
Byrd	Feinstein	Murray
Cantwell	Graham	Reed
Carnahan	Harkin	Reid
Carper	Hollings	Rockefeller
Chafee	Inouye	Sarbanes
Clinton	Jeffords	Schumer
Conrad	Johnson	Stabenow
Corzine	Kennedy	Torricelli
Daschle	Kerry	Wellstone
Dayton	Kohl	

NOT VOTING—2

Crapo Helms

The PRESIDING OFFICER. On this question, the yeas are 54, the nays are 44. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected. The point of order is sustained. The amendment falls.

MEASURE RETURNED TO THE CALENDAR—H.R. 8

The PRESIDING OFFICER. Under the previous order, H.R. 8 is returned to the calendar.

Mr. WELLSTONE. Mr. President, today I opposed full repeal of the estate tax, but I supported a commonsense compromise to cap the estate tax ex-

emption at a reasonable level for all families, and eliminate the tax completely for family farmers and small business owners.

Full repeal of the estate tax is hugely expensive, it will cost nearly a trillion dollars over the next 20 years, it is grossly unfair because it benefits only the tiny number of Americans who pay the estate tax under current law. In fact, in 1999 only 636 Minnesotans paid any estate tax what so ever. Only 36 of those estates were valued at \$5 million or more. This is simply not a burden that falls on many families.

In contrast, many rely on Social Security. Over 740,000 Minnesotans currently receive Social Security. The vast majority of these are retired seniors, others are severely disabled. For many it is their only source of income. I find it outrageous that colleagues are proposing to use the Social Security surplus, which nearly a million Minnesotans rely upon, to give a massive tax break to the heirs of a handful of Americans.

Nationally, only 1.6 percent of all estates were made up with significant small business assets, and only 1.4 percent had significant farm assets. This means that virtually all the estate tax is paid by extremely wealthy people who do not own farms or small businesses. It also means that we could eliminate the estate tax for small businesses and farms and not engage in a massive raid on the Treasury.

Proponents of last year's massive tax cut portrayed the legislation as completely protecting small businesses and family farms from the estate tax. But as a cost saving gimmick, the law only does so for only one year.

Business owners were used as pawns last year, and they are again this year. Now they are frustrated trying to plan for their families' futures around this scheme and they shouldn't have to be.

I supported a commonsense compromise that would have capped the estate exemption at a reasonable level, \$8 million for a married couple, lifting the burden of the estate tax from 98 percent of estates, but maintaining the tax for large, wealthy estates.

In addition, the Dorgan amendment would have totally exempted family-owned small business and farm assets from the estate tax if the family of the current owner wishes to continue to operate the business or farm. Because this relief would have been permanent, business owners can plan their affairs with confidence and security. And this complete repeal for businesses and farms would be effective next year, unlike the republican proposal where family business owners would have to wait until 2010.

In an ideal world I would have written the Dorgan amendment differently. I would strengthen the family-owned business provision to ensure than only smaller business and farms, with 200 employees or less would qualify for this exemption. But I voted for the Dorgan