bombs of fire and starting fires up to 3 miles away.

I do not know what is happening down at 1600 Pennsylvania Avenue, but they have to come to their senses and realize that some things are emergencies. The big fire in Colorado was started by somebody who worked for the Forest Service. The big fire in Arizona, from the information we have now, a firefighter started that fire. It is too bad, but they were started. They are emergencies no matter how they were started. It is like the fire burning some 30 miles from Las Vegas, it was started by lightning, but they are emergencies, and they should be declared emergencies, and they should be placed on the supplemental. It does not count against any of the numbers we have. They are truly emergencies.

We are going to offer this again before the day is out. We want to go forward with that bill. The managers of that bill, the Senator from California and the Senator from Texas, have done a remarkably good job. This is a fine bill. I think it is remarkable they have been able to do the job they have done. They have both tremendous interest in the military, and they have both been speaking about the needs they have in their respective States and the country.

The military construction bill goes beyond what we do in this country. We have military construction we pay for that is outside this country. So I hope my friend from Arizona will do what he can. He has tremendous sway with the White House, and that is where the bottleneck is, and it should stop.

In the meantime, let us move forward. We are only asking for a little over an hour on this bill to complete it.

The only other thing, before my friend from Florida begins, is we are expecting a very important unanimous consent agreement on antiterrorism, and when that comes, if the Senator will allow me to interrupt, we will make sure his remarks do not appear interrupted in the RECORD.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. What is the parliamentary position of the Senate?

The PRESIDING OFFICER. The Senate is considering a motion to proceed on S. 812.

Mr. GRAHAM. Mr. President, I am going to talk about one of the issues which will be a central part of the next several days' debate on American health care. The specific bill before us upon which we are seeking permission to proceed relates to generic drugs and eliminating some of the legalisms which have grown up around our generic drug law and have made it difficult for competitive products to come to market, even after the brand name drug has run the full course of its patent. That will be a debate for another day, hopefully as early as today.

I am going to talk about an issue that will come up somewhat later in this debate and that is adding a prescription drug benefit to Medicare.

Some would say: Look, this issue has been around for a long time. Why should we continue to spend time debating a matter which has thus far been unable to find enough support in the Congress to become law? Why is this issue important enough for us to spend time on it?

The answer is: Freda Moss. That is why this is an important issue.

In Tampa, FL, Freda Moss, an 80-year-old American, along with her 84-year-old husband Coleman, is watching this, and so are thousands like Freda and Coleman. They are also watching us.

Freda is watching and waiting to see if we can improve her life and the lives of 39 million Americans by adding a prescription drug benefit to the Medicare Program. The story of Freda and Coleman is typical of many older Americans. They live on Social Security with an income of $1,038 a month. They are both eligible for Medicare. They have no prescription drug coverage.

While Coleman has remained healthy and has relatively low prescription drug costs, unfortunately, Freda suffers from diabetes, heart disease, and hypertension. Freda is on a list of prescription drugs that include Plavix, Mavik, Amaryl, and Zocor. In 1 year alone, Freda's prescription drug costs were nearly $7,800—62 percent of that couple's total income. It is for people like Freda that we need to add a prescription drug benefit to Medicare.

As more and more Americans discover the effectiveness of prescription drugs in promoting longer and healthier lives, they have become an indispensable part of our health care system. In 1980, prescription drugs accounted for less than 5 percent of national spending on health care. In 1980, less than 5 percent. Twenty years later, in 2000, prescription drug costs accounted for nearly 10 percent of national spending on health care. It is estimated in the year 2010 prescription drugs will reach 14 percent of total health care costs.

Last year, 20 percent of the increase in the total cost of health care came from increases in the cost of prescription drugs. Even though they were only 10 percent of all costs, they were 20 percent of the increase in cost.

As there has been in the last few years, there will be a lot of debate over the next few days about the many measures that will be introduced to conquer the problems in the prescription drug market. While many of these proposals are important and even useful to seniors, the ultimate goal must be a prescription drug benefit for older Americans. For many years we have come to the Senate floor to talk about how important this is. Others, beyond Freda, have been used as an example of the urgency of action, but every year we have gone home we have spoken to our constituents about how committed we were, how hard we worked to accomplish the objective of passing a prescription drug benefit but that we had failed.

Now is the time to overcome failure with victory. We can pass this year—we must pass this year—a benefit for our older citizens who are looking to us for the protection of their health care.

I appeal to all of you who have heard stories such as that of Freda Moss to join me in providing a prescription drug benefit for Medicare.

Why doesn't Medicare, established in 1965 and which covers 39 million people, provide a prescription drug benefit? Virtually every other health care plan, the kind of plan that the Presiding Officer, myself, and other 98 colleagues have, provides a prescription drug benefit as part of a total health care program. Why doesn't Medicare?

The answer is basically history and inertial. In 1965, when the Medicare Program was founded, prescription drugs were a very small part of health care. Few drugs were used by the very ill. Can you believe this? In the year Medicare was established, in 1965, the average spending for prescription drugs by older Americans was $65. That is not $65 a week or $65 a month. That is $65 a year was the average amount expended by older Americans on prescription drugs when Medicare was established.

What is the number today? According to the Congressional Budget Office, spending over the 37 years, from 1965 to today, has risen to an average of $2,149. That is a 35-times increase in the cost, on an annual basis, of prescription drugs for older Americans.

If the Medicare Program were to be designed today, in 2002, there would be no question that lawmakers would include a prescription drug benefit. Why? Not only because every other health care plan, the plans that most people have gotten accustomed to during their working lives, have long included a prescription drug benefit, but also because prescription drugs today are an integral part of a modern health care program.

Medications are used not only to halt the effects of a disease, but in many cases can even reverse the negative consequences of disease. After 37 years, it is unfair to ask our Nation's older citizens, one of the most vulnerable populations in our society, to continue to go without the Medicare Program offering coverage for the necessity of modern health care, prescription drugs. Everyone in this Chamber receives this benefit as a Federal employee. We should demand nothing less for our older citizens.

How do we solve the problem? I suggest there are a set of principles that we should look to as we shape a response to this problem of the missing

benefit of prescription drugs for older Americans.

The first principle is modernization of the Medicare Program. We will hear, have heard, and until this debate is concluded will continue to hear, about reform in the Medicare system. There are lots of things we ought to do to reform the Medicare system. Many of those things that are referred to as reform are not unimportant but they tend to deal with the mechanics of the Medicare Program. We should ratchet up or down a deductible. We should change an amount of coinsurance that is required—alterations such as that.

In my judgment, the most fundamental reform that we can make to the Medicare Program is precisely what we are recommending today, and that is to add a prescription drug benefit. Why is this the most fundamental reform? Medicare today is, as it was in 1965, a ''sickness'' system. If you get sick enough to have to go to the doctor, or even sicker and have to go to the hospital, Medicare will come forward and pay a significant part of your bill. On average, about 77 percent of the cost of physicians' assistance or hospitalization will be paid by the Medicare Program. What Medicare does not pay for is very much prevention, those things that we know will help keep you well and avoid the necessity of having to go to the doctor or the hospital.

It doesn't pay a dime towards the prescription drugs that you will purchase at your local pharmacy or by mail order, which for almost every one of those prevention methodologies is an absolute fundamental aspect.

For example, suppose you have developed an ulcer. The treatment for that in the past was pretty straightforward. You had an operation and the ulcer was dealt with surgically. Today, ulcer surgery is virtually like the dinosaur, an animal of the past.

We have had the good fortune of having in our office for the last several months Dr. Howard Forman. He is a professor of medicine at Yale Medical School. He says that a simple 6-week course of drug therapy today can avoid the $20,000 cost of hospitalization for ulcer surgery. Even drugs such as Timolol, a generic heart drug, is estimated to save $4,000 to $7,500 per year per patient in select heart attack victims.

Drugs to lower cholesterol and to control hypertension can ward off possible stroke or heart attack—medical conditions that not only reduce the quality of life but are very costly for treatment through the traditional Medicare Program.

Modern medicine has been significantly altered by prescription drugs, notably by improving the quality of people's lives, reducing long recovery periods, and sometimes even negating the need for surgeries altogether, as in the instance of ulcers. This is why our seniors need a universal, affordable, accessible, and comprehensive drug benefit.

The second principle behind the addition of a prescription drug benefit is to provide beneficiaries with a real and meaningful benefit. An important part of assuring that a prescription drug program will be around for our children and grandchildren is to attract a broad variety of beneficiaries.

Mr. President, you know as I do that a fundamental principle of any insurance plan is to get a broad base of people participating, knowing that some of those people will suffer whatever it is they are insuring against—like their house burning down or their car being involved in an accident—and other people will be fortunate enough to avoid those instances. It is having enough people in the pool who can all share the cost that then allows us to rebuild the home that has been destroyed by fire.

Because this program is voluntary, and because it is critical that it attract a broad base of participation, it must have a reasonable price and a benefit package that will make it attractive to those older Americans who are relatively well today and who do not have large prescription drug bills. By attracting both seniors with high needs and those who simply need modest coverage and would like to be assured that should they suffer a heart attack or some other disabling condition they will be able to access the catastrophic coverage, that is the coverage that will give them full protection for prescription drugs beyond a certain point. This program will be solid. This program will be actuarially sound for our and future generations.

Any prescription drug plan must offer seniors coverage that begins from the first prescription bill; that is, no deductible standing in the way of getting benefits. Seniors should understand that if they are receiving a benefit, the benefit should be consistent, and seniors should actually receive it without any gaps in coverage. That is a so-called doughnut profit where you have coverage for a certain proportion of your drug expenditures and then all of a sudden you are 100-percent responsible until you reach the catastrophic level.

In order to make this program easy for seniors, it should operate in a way as similar as possible to the coverage that seniors had during their working life.

A third principle is that seniors should have choice. America as a nation thrives on choice. Choice is an important part of health decisions. Choice is an important part of creating a competitive environment that will assist in controlling costs. Our seniors deserve a choice in who delivers their prescription drugs, which is why we must assure that each region of the country has multiple providers of prescription drug benefits.

This will encourage competition, helping to keep costs down to beneficiaries as well as to the Medicare Program and ultimately to the American taxpayer. The choice of who you select to deliver your drugs should be made by seniors beginning with the position as to which firm you wish to be your representative. The phrase is a pharmacy benefit manager, or a BPM, and then which specific drugstore you want to go to have your prescriptions filled or should you choose to use a mail order form of description. Those ought to be choice decisions made by the individual senior American who we will treat with respect and dignity.

Fourth, we need to use a delivery system on which seniors can rely. American seniors deserve a delivery system for prescription drug benefits that is based on something tried and true, consistent with what seniors feel comfortable with, and modeled on what has already worked. We should not convert our 39 million older Americans into some giant new social health policy on how to deliver a product as critical and as basic as prescription drugs when there are already models on how to deliver prescription drugs with which seniors are familiar and which are working well.

Medical beneficiaries should not be led into being guinea pigs for social experimentation. If we are going to spend billions of taxpayer dollars on a prescription drug program, it should not be handled with untried and untested delivery models. We are responsible to the American taxpayers to invest in what we know will work. We should look at what the private sector does for guidance in developing a delivery system for a drug benefit and evaluate what is already effective for beneficiaries so they can help us better understand what will work for seniors.

The fifth principle is to provide an affordable program for beneficiaries. The majority of seniors in America live on fixed incomes. They need to know the cost of those things in order to be able to budget. This is why seniors need a prescription drug benefit that is affordable with a low premium and low copayments that are easy to calculate. They need to be assured against wild variations from month to month, or year to year. The program must also make financial sense to beneficiaries. Seniors should not have to wait until an emergency arises before the benefit is worthwhile.

We know that when seniors do not have coverage, they do not fill their prescriptions, a practice we hope to eliminate with this legislation. The gap in coverage means no coverage for many elderly who might be caught in this doughnut of noncoverage. It means that not only will they be unable to buy their prescriptions during that period, but it might discourage them from engaging in the preventive practices of asking the very legitimate question: What is the good of my starting on an expensive drug that will help control my hypertension if 4 months from now I am going to be in a position where I will no longer have any coverage and assistance to buy the drug that I can take home, so I will never

start and get the benefits of that preventive treatment?

Cost will be a factor in order to maximize enrollment. We have been advised by a number of organizations that represent the interests of older Americans, such as AARP, that a premium in the range of $25 a month is a premium which will be able to attract broad participation by older Americans. In order for this program to be solid, we need to have that broad participation.

Sixth, this must be a fiscally prudent program. We have a responsibility as lawmakers to pass the budget and to maintain fiscal discipline. We must exercise this judgment when we look at all spending. And the case of prescription drugs should be no different.

That being said, we must look at prescription drug coverage in the context of other benefit programs. As I mentioned earlier, Medicare currently covers 77 percent of the total expenses of those services which are Medicare covered. If you go to the hospital to have an appendectomy or if you go to your local doctor for an outpatient procedure, on average, Medicare will pay 77 percent of the cost.

Prescription drugs are as important to seniors as the services which are currently covered under Medicare. If we were to cover 77 percent of drug expenses, as we do for current Medicare services, we would be spending over $1 trillion in the next 10 years to provide this benefit.

If we look at the drug coverage that those of us in this Chamber receive through the Federal Employees Health Benefits Program, if our seniors were to get the same level of Federal support for their prescription drugs as we, as Senators, get for ours through the same Federal Treasury, it would cost between $750 and $800 billion over 10 years to provide that coverage.

These numbers provide a context. Clearly, we will have to find a balance between giving seniors what they need and what the budget will allow, and what type of benefit will have the most use for Medicare beneficiaries.

I would like to briefly outline some of the details of the plan that will be introduced later this week on behalf of myself, Senator MILLER, Senator KENNEDY, Senator CLELAND, and a number of other colleagues. That plan would begin by asking the seniors, in a dignified way: Do you want to participate at all? It is your choice. This is a voluntary program.

If seniors say, Yes, I do want to participate, here is what they will get. First, they will get a bill for $25 a month. That is the cost of the premium to be a participant in this plan. Once they have made that $25 payment, then they will become eligible to participate. They will be eligible from the first dollar they expend after they join the plan; that is, there is no deductible.

Once they begin to acquire their prescription drugs, they will find a system very similar to what they used during their active years. They will make a copayment for each prescription they receive. We are suggesting that copayment should be $10 for each generic prescription and $40 for each brand name, medically necessary prescription.

Once you had expended $4,000 out of your pocket for prescription drugs, you would reach the level of catastrophic, and beyond that $4,000 from your pocket there would be no further copayments required.

Seniors with incomes below 135 percent of poverty would pay no premiums. Beneficiaries with incomes between 135 and 150 percent of poverty would pay reduced premiums.

Our plan uses the exact delivery model that America's private insurance companies utilize. It is also the same model the Federal Employees Health Benefits Plan utilizes which covers virtually, if not totally, all of our colleagues in this Chamber.

Every Federal employee health benefit plan uses pharmacy benefit managers, or PBMs, as the method of delivering and managing prescription drug benefits. PBMs are private, commercial companies that negotiate directly with pharmaceutical companies to achieve low prices. They are held accountable. Part of their fee to provide this service is based on their demonstrated capacity to contain costs and to provide quality care and service.

We would allow all seniors a choice of which PBM they wish to use by giving the seniors the opportunity to shop around for a plan that best meets their needs. PBMs would be accountable to the Medicare Program and to the taxpayers.

PBMs would be required to demonstrate their ability to keep drug costs down in order to be awarded a contract to seek to represent seniors. Further, once the PBM had the contract, they would not be paid for their services if they did not carry out their commitment to contain drug spending while, at the same time, providing a quality service to older Americans.

Our plan is estimated to cost less than $500 billion through the year 2010. We are suggesting that in that year, 2010, Congress should pause, Congress should review this plan that will now have been in effect for 7 years, and the Congress should decide what we have learned during this period, much as we are doing now as we reauthorize the welfare-to-work law. We are looking at what we have learned since 1996. And we are going to put that learning into the welfare-to-work law for the next period.

In my judgment, in light of the significance of this new program, it will be highly appropriate to examine how well the benefit is working and whether it is providing seniors with the benefits they need. Is it living up to those six principles I just outlined, which should be the cornerstone of an effective prescription drug program? We can learn from these first 7 years and apply those lessons to the future.

As I indicated earlier, this is not the only plan the Congress is considering. In fact, the House of Representatives has already passed a prescription drug plan. That will be awaiting our action in a conference committee, hopefully in the next few days, to begin the process of trying to arrive at an appropriate compromise. I would like to make a few comments about the House Republican plan which has passed and awaits that conference committee.

Providing a legitimate drug benefit that would actually help America's seniors is our goal on the Senate floor. In my judgment, the proposal passed by the House of Representatives almost 3 weeks ago fails to give Medicare beneficiaries what they need and deserve: an affordable, reliable, comprehensive, and accessible prescription drug benefit.

Unfortunately, the proposal that apparently is going to be offered by the Senate Republicans suffers from the same defects as that from the House Republicans. If a comparison is made between the House Republican plan, the Senate Republican plan, and the six principles I have just outlined, only one of the six criteria for a prescription drug benefit is met.

After many years, my colleagues on the other side of the aisle have finally come to recognize the basic need for a prescription drug benefit. The problems include the lack of a defined benefit. Seniors will not know, under either the House or Senate Republican plans, what they will get. Another problem is control is turned over to private insurance companies to determine what the senior will receive. And an additional problem is the money beneficiaries are expected to spend before they actually receive benefits.

The House Republican proposal fails to provide Medicare recipients with a stable, sustainable benefit. It would allow insurance companies to decide what type of coverage would be offered since the House legislation only requires that there be an ''actuarial equivalent'' of the basic benefits plan.

This means we have no idea what type of benefits would be offered to seniors. We do not really know what the premium is.

I have looked through all 426 pages of the House Republican bill, and I was unable to find a real hard number that guaranteed what seniors would pay every month as their premium responsibility. Although I have not looked through the Senate Republican bill, which was just offered yesterday, I suspect it is no different.

The House Republican bill could mean a $250 deductible or it could mean a deductible as high as $1,000. This means there would be a substantial delay between the time the senior signed up for the plan and when they would start getting any benefit. There is nothing reliable about this plan.

The bottom line is that America's seniors would be at risk for wild variations in the type of benefits they

would have from place to place in America and from year to year in the same place.

For the first time in the history of Medicare, seniors, for instance, in Florida would pay a different premium than seniors in Georgia or seniors in Massachusetts. In both Republican plans insurance companies make all the decisions, have all the choices—not the Medicare beneficiary. These companies would be lured with taxpayers' dollars into a market in which they do not wish to participate in order to create a complex delivery system that does not currently exist.

There is an organization that represents a number of large pharmaceutical companies which has been a principal advocate of the House Republican plan. I met some time ago with a number of representatives of that association. After they had given me the explanation of why they were supporting this plan that requires seniors to purchase private insurance with unstable and uncertain benefit structures, I then asked them this question: How do your employees, the people who work for your pharmaceutical company, including you as an executive, how do you get your prescription drug benefits?

Do you know what the answer to the question was? Exactly the way that we are proposing in our legislation. They don't use this system of a private insurance policy for drug only for themselves or their own employees. They want 39 million American seniors to become the first farm of guinea pigs for this experimentation on how to deliver prescription drugs, when we know how to deliver prescription drugs, and in a system that seniors have already experienced during their working lives.

Money that could be used to enhance the benefit to seniors would instead go to marketing and administrative costs of the insurance company.

The Republican proposal allows insurance companies to determine beneficiaries, drugs, how many drugs they will get, what kind of drugs they will get, instead of doctors making the decision on our behalf as to whether we need Lipitor or Zocor for our cholesterol. Those decisions would increasingly be driven by the profits of the insurance companies. Seniors deserve the choices, not insurance companies.

The President must disagree with his party on this because just last week in Minneapolis he said:

> I support a prescription drug benefit for Medicare that allows seniors to choose the drug coverage that is best for them.

I support President Bush in my advocacy of seniors having the responsibility and the right to make the decision as to what is in their individual best interest.

The House Republican plan would put our Nation's seniors into an untried, untested delivery system that has never before been used. Is it fair to older Americans to be used as a social experiment for the insurance industry?

The delivery model presented in the House is, in my judgment, a recipe for potential failure, with a paltry benefit. Only those who need the most prescription drugs are likely to buy into the plan.

There is an example of this scheme. We are not talking totally theoretically about what is likely to occur under the House Republican plan. Several years ago, the legislature of Nevada adopted such a structure to be used for their prescription drug program. Their proposal was used where beneficiaries soon found that they were looking at very high premiums, high deductibles and copayments, which only lured the sickest seniors into the program. As a result, beneficiary claims exceeded premiums and copayments throughout the entire first year of Nevada's experiment.

The experiment had the State paying a premium of $85 a month per member for 7,500 beneficiaries. An independent actuary found that the State-operated program, working directly with PBMs, could have provided the same benefit for $53 a month. The extra money was paid to an insurance company which could have been used to serve 4,500 more seniors in Nevada.

The program has a waiting list of over 1,000 people, no doubt 1,000 of among the sickest people in Nevada who want to get on to this program.

One of the most important factors for seniors when deciding that they will sign up for a prescription drug benefit is cost: How much will it cost monthly? How much will they have to pay before benefits begin? How much value will there be in the benefit? The Republican plan fails to give seniors this value. The plan has a $250 deductible, meaning most seniors will have to wait for the benefit to begin, even as they are paying monthly premiums during this waiting period.

This predicament gets worse in the House plan after beneficiaries have spent the first $2,000. At that point, seniors, including low-income seniors, are forced into a gap in coverage. They suddenly, after the first $2,000, have to pay 100 percent of the cost of their drugs.

For a senior like 71-year-old Jeremiah O'Conner, a Ft. Lauderdale, FL, resident who survived cancer and now pays $1,279 per month for drugs to help with high cholesterol and a prostate problem, the Republican gap would begin in March of each year. He will have to float without coverage until at least May, still paying a monthly premium.

For a low-income senior who is 150 percent below the poverty level, which is now $13,300 for a single person, this would be more than 25 percent of their annual income that would have to be used to pay for their prescription drugs while they are caught in this gap of coverage.

The Republican plan will not help those seniors who are choosing between food and medicine. The doughnut will provide them with no nutrition. All they get is the empty hole.

For example, Ms. Olga Butler of Avon Park, FL, receives a monthly Social Security check of $672, which makes her barely over the income limit for Medicaid coverage. This means that 67-year-old Olga has to pay for her own medications, sometimes having to make that choice among food, rent, and prescription drugs.

Olga is on Lipitor and Clonidine for her hypertension and high cholesterol. She pays $95 a month for Lipitor and $22 per month for her Clonidine. These prescription drugs not only improve the quality of Olga's life, but they are helpful in warding off possible strokes or heart attacks for which she is at a high risk.

In order to qualify for the Republican prescription drug plan, Olga must pass an assets test in order to get low-income assistance—the first time such an asset test has been included in any Medicare Program. I know you know the answer to this question, but some of our colleagues may not know what an assets test is. This test means that Olga must deplete her savings which is less than $4,000. She must sell off her furniture and personal property, which is worth more than $2,000. And she must sell her car, if it is valued at more than $4,500. She must place herself in poverty in order to qualify for the low-income assistance under the inadequate House Republican proposal.

Mr. KENNEDY. Will the Senator yield for a question on that point?

Mr. GRAHAM. I am pleased to yield.

Mr. KENNEDY. So is the Senator suggesting that, on one hand, the Republican proposal is suggesting that it is addressing the needs of really the lowest income seniors? I think it is always useful to review the average income of our seniors, which is about $13,000 a year, and two-thirds of them have less than $25,000. So we are talking now about the lowest income. I guess it is 135 percent of poverty.

So, on the one hand, the Senator is suggesting that those individuals are going to be covered and then he is pointing out that the Republicans have included an assets test, which includes a burial plot that is above $1,500. If they have a little cash in their bank account, which they have saved over their lifetime, evidently, this says they have to spend all of that. You cannot have personal property such as a wedding ring. You would have to give that to the pawnbroker and spend that.

Besides those cruel aspects of the assets test, what does the Senator think this does in terms of demeaning our fellow citizens—to have them go in hat in hand in this country—the greatest country in the world—and have them have to go through and bring out their little sheet and represent the value of their personal goods at home and demonstrate what that bank account is.

We have other ways of making these assessments that can be done while treating people with a sense of dignity.

Does the Senator not agree with me that this is a particularly harsh proposal as well for our fellow citizens, particularly those who are extraordinarily needy and perhaps feeling a certain amount of despondency for the way life has treated them, and then the Republican proposal adds this additional dimension? Does the Senator not agree with me that it dehumanizes our fellow citizens and humiliates them in ways that are completely unacceptable?

Mr. GRAHAM. It is a testimony to exactly those attributes that we have had Medicare for 37 years and never, never has it been proposed that we add an assets test to people's ability to secure the basic necessities of health care that sustain life and the quality of life.

The Senator mentioned a number of items that would be lost, from a wedding ring to a burial plot. I think of particular significance is the fact that you can't own a car that has a value of more than $4,500. If you want to go down to the used car lot, you can see what that means in terms of an available vehicle.

Mr. KENNEDY. On this issue, may I ask the Senator a question?

Mr. GRAHAM. Yes.

Mr. KENNEDY. In part of the country, winters can be extremely cold. The northern tier States are colder still—up in the State of Maine, across the northern tier, in Montana, across Minnesota and Wisconsin. And the last thing we want for our seniors who are going down to the drugstore to get prescription drugs is to have their car break down. Or if they are in the southern part of the country, on those superhighways where traffic is moving with such rapidity and there is such a degree of intensity in terms of the conduct of traffic, you can imagine what happens to a senior whose car breaks down on those roads as well.

We are really flyspecking our fellow citizens. We are trying to set up a system that addresses the needy people in our society. Does the Senator not agree with me that we can do that with a sense of respect and dignity? When we are talking about this point of $4,500 for a car—which is to try to say that maybe if it is $2,000, we will be more understanding.

I must say that this is a humiliating aspect for our fellow senior citizens. I find it so difficult and so unwilling to accept.

I particularly appreciate the Senator's long explanation and detailed elaboration of the Senator's own bill. I pay great tribute to Senator GRAHAM and Senator MILLER in terms of the fashioning of this proposal. I am grateful to be able to join them. I think his careful review of the other proposal should make our colleagues think of whether that kind of a proposal is worth any degree of support.

Mr. GRAHAM. I have just one last comment about the automobile. As it is for most of us, an automobile is more than just a means of transportation; it is a statement of our independence, our ability to be able to do those things that make life meaningful. This is a particularly important thing for older Americans, many of whom live in rural areas. If you say you have a choice, can you imagine the pain that a 75-year-old American living in a rural area in your State, or mine, or Senator CLELAND's, or Senator STABENOW's, would feel if they say: Here are your choices: We can give you access to some payment for a drug which, if you are unable to secure will almost assuredly decline the quality of our life, and maybe cause death, but in order to get that assistance, you have to give up your independence by giving up the vehicle that allows you to have some degree of mobility. What kind of country is America? We are saying this to the generation that we have defined as our greatest generation. These are, in many cases, the people who have not only lived through the Depression of the 1930s, when our country was in tremendous jeopardy, they fought to defend our country, or they worked in the defense industries, as did that wonderful generation of young American women who did hard manufacturing work in order to be sure that those ships, planes, and tanks were built; and now we are going to tell these people when they are 75 years old: give up your mobility and your independence or give up life because you cannot afford to buy the prescription drugs. What kind of an America is that? That is not the kind of America by which I want my children and grandchildren and great-grandchildren to judge my generation.

Beyond those points, the insult even gets worse because, to use my example of Olga, she is not going to be immune from this gap, either. So under the Republican plan, once she hit the wall, the beginning of that big nonnutritious hole in the middle of this coverage, she would have to pay between $3,450 and $5,300 of drug costs, without getting any assistance.

So we have added insult to the tearing away of dignity and independence. The Republican plan would make this gap harder to fill by only including payments directly made to beneficiaries on their behalf. This is a technical issue, but it is an extremely important issue for many of our elderly.

The typical person, when they were 45 years old, their union negotiated a contract with their employer and the employer said: All right, I am going to put on the table an additional 25 cents an hour of immediate income; or I will write into this contract a provision that says when you get old and retire, I will pay a portion of your prescription drug costs.

I happen to be a retiree of the Florida State retirement system, and I am eligible, when I go on Medicare, to get a certain amount every month toward my prescription drug costs. We are going to say that in calculating how much you have to have spent out of your pocket to become eligible for the catastrophic coverage, you can't include the money that your employer is contributing. You have paid for it back 25 years ago when you gave up that quarter an hour of additional compensation to get that benefit, but now it suddenly evaporates in terms of counting toward meeting your catastrophic number that will allow you to avoid future copayments for your drugs.

It is just blatantly unfair, and it has been one of the hidden issues. If I thought of this idea, I would want to hide it, too. It has been effectively hidden.

Mr. KENNEDY. Can I ask the Senator, and I am so glad the Senator is taking the time to explain this issue, and I hope our colleagues are going to pay some attention to it because it is very easy to say: A prescription drug bill here, a prescription drug bill there, is there really any difference? The Senator is pointing out in great detail some of the very powerful differences.

One that is enormously important is how the Graham bill treats employers. Those good employers who are trying to provide a prescription drug benefit for their employees are hard pressed, particularly smaller businesses that pay a disproportionately high percentage in premiums. Nonetheless, they are prepared to do it.

Under the Graham proposal, there are provisions which help those employers maintain at least the coverage for the employees. It seems to me that everyone wins: The employee wins; the employer wins. The objective of the Graham bill is to make sure they have the coverage, as compared to the Republican plan which has disincentives, as I understand, in terms of the employers.

There are clear disincentives for employers to maintain the coverage, which means there is going to be additional costs and a higher risk of coverage. It is a very important part of the Graham proposal. I wonder if the Senator will spell that out because that is so important when we are looking at what is going to happen to companies that are providing prescription drugs and which program is best suited to make sure we have a continuity of coverage.

Mr. GRAHAM. The Senator is absolutely right. Under the current system, about 30 percent of our 39 million Medicare beneficiaries receive some assistance with their prescription drugs through their previous employer. Frankly, that number has been declining as in more recent years employers have been less willing to add to their benefit package a prescription drug payment in retirement. But 30 percent of current seniors do have that, and there is concern that under the House plan, which has no incentive for those employers to continue to provide the service, they are going to say: Look, we do not need to continue to write

these checks to our retirees. There is now a Federal program. So we are going to cancel out and turn all these people over to the Federal Government to pay.

What we are proposing is that the Federal Government should essentially enter into a partnership with those employers. We would pick up two-thirds of the cost of what we would otherwise pay for a beneficiary. The employer would pick up the rest. It saves the employers two-thirds of what they are paying now, but it gives them enough incentive that they will continue to participate rather than have a new way of cost shift to the Federal Government and to the beneficiaries themselves since under the Republican plan it is less generous than most of these current employee plans, and so they will have to pick up—they, the beneficiaries—additional expenses.

Mr. KENNEDY. If the Senator will yield, as I understand, the CBO has estimated there would be 3.5 million people who are covered now with a good program who would lose that good program and be in the substandard Republican plan.

Mr. GRAHAM. Absolutely.

Mr. KENNEDY. That is CBO. There are the assets provisions the Senator just described. There is a provision which is a disincentive for the employers. And there is the doughnut or the wall which the Senator has described. This is enormously important because their bill fails the truth in advertising test.

Mr. GRAHAM. Mr. President, I appreciate the Senator's thoughtful, incisive questions which underscore some of the differences—I think clear deficiencies—in the legislation the House has already passed.

According to the Corporate Health Care Coalition, the benefit of employer-sponsored coverage is minimized under the Republican proposal and, as the Senator from Massachusetts said, threatens to force employers to choose between private plans or the Medicare plan, and the estimate is that a substantial number of employers would elect to dump their current coverage for retirees and let this become a full Federal plan responsibility.

This would be a threat to over 3 million seniors who today are able to rely on a reduced prescription drug benefit and which under our program would be able to, should they elect to do so, have the benefits of both their employer plan and the new Medicare plan as, in insurance industry terms, a wraparound policy.

Everyone in this Chamber understands the need for fiscal discipline, but this should not come at the cost of providing a meaningful drug benefit for Medicare beneficiaries.

The budget passed by the Senate Budget Committee provides up to $500 billion for a prescription drug benefit. Mr. President, our plan is within that range.

We do not have to provide beneficiaries a Cadillac. Rather, we would be more prudent to provide them with a Chevrolet or a Ford a reliable, useful automobile. But we also do not need to provide a benefit that is more like a moped—unreliable and cannot be driven on regular roads.

Mr. President, I say to my colleagues in the Chamber, now is the time. We have come to the Senate floor year after year promising America's seniors a prescription drug benefit, and every year the seniors have come to the beginning of the new fiscal year thinking this will be the year in which we will see the promised land, this will be the year in which these promises are delivered. Sadly, to recount, every year the seniors have found not an open door but a closed and padlocked door.

Today we can take the giant leap that Medicare beneficiaries have been waiting over the years for us to take. Just last week in Minneapolis, President George Bush said:

> We must make sure that whatever system evolves does not undermine the great innovations that take place in America.

Surely an untried, untested system such as the House Republican proposal which has already passed will have exactly that uncertain impact on medical advances. By using a system that is based on what we already know works, we do not threaten that innovation. We can, in fact, contribute and advance innovation.

That is what our proposal does. By passing the exact system that every Member of the Senate and most Americans use to get their prescription drugs, it is within our power to give America's elderly the parity, the security, they deserve in their lives and in their health care.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CARPER). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. 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. FRIST. Mr. President, I rise to speak on the underlying bill and on the background for Medicare, Medicare modernization, and strengthening Medicare.

First, I am delighted the discussion of health care security for our seniors has reached this stage of debate, active discussion, and active deliberation in this body. The House of Representatives admirably took this issue head on, worked very diligently through a committee process, and produced a bill, after debate, after discussion, and it passed. The House bill received a majority of votes and represents a very deliberate and very solid effort to address the cost of prescription drugs. More importantly, it addresses the issue of health care security—including prescription drugs as a part of the armamentarium physicians or nurses can use in looking seniors in the eyes and saying their health care security can be complete by passage of this bill. I think this is the crux of the issue.

Now is the time for us to act to include prescription drugs—that powerful tool, that powerful element of health care as we know it today—as part of the overall health care security package for our seniors. Including a prescription drug benefit within Medicare is long overdue. Prior to coming to the Senate, I was blessed to spend 20 years providing care to thousands of Medicare patients in the field of chest, heart, lungs, pulmonary status, emphysema, lung cancer, heart disease, and stroke. Thirty years ago, medicines, including prescription drugs, were used in these fields. However, 20 years ago prescription drugs were used a lot more, 10 years ago even more, and today they are an absolutely essential part of health care delivery.

As a surgeon, I do not want to say prescription drugs are more important than surgery, but it is getting to the point that medicines people take every day are equally important in acute and chronic care and in disease management. Now is the time for us to address the financing of health care delivery in this country, both in terms of the organization of health care delivery and insurance coverage.

Everybody knows the Medicare Program is absolutely critical to health care security. I think my colleagues in the Senate will agree that Medicare, health care security for our seniors and for our individuals with disabilities, is critically important and vital. It is imperative that we do not forget that the Medicare debate applies to both seniors and those with disabilities. I believe now is the time to strengthen it. Others might say to modernize it. Yet even others will say to reform it. Whatever word is used, now is the time to take a 1965 program which has been modified over the years in the way that we incrementally do things—and strengthen the program. We need to modernize the program to truly deliver what our seniors and disabled individuals expect us to do—to give them health care security.

So whether one uses the word ''save,'' ''strengthen,'' ''modernize,'' or ''reform,'' now is the time to have a discussion on the floor about the process itself.

As some people listen to the debate about Medicare and prescription drugs, many will question why we need to address the process. The process is important to help move such complex bills along in order to produce a good bill that can be married with the House bill. We can accomplish what most people want to achieve affordable access to prescription drugs for our seniors. This is a complicated issue because the overall cost of prescription drugs will continue to escalate unless we fix it.

Furthermore, health care delivery will continue to change in terms of the overall relative importance of inpatient hospital care, outpatient care, acute care, chronic management, and

disease management. The process is designed to take this complex bill which could potentially be the single largest expansion of an entitlement program and modernize it, including the coverage of prescription drugs.

It is important to enact a bill in a responsible way. The demand for prescription drugs is going to be high because people will be counting on drugs for cures and to improve quality of life. With that sort of potential growth superimposed on a Medicare Program which is not designed for such growth, the impact will literally bring the overall program down.

For some time, the President and I have argued that as we look for prescription drug coverage inclusion, we need to do it in a way that is responsible to the American people—to seniors, to individuals with disabilities, to the taxpayer, to the current generation. This is also important to the next generation coming through the system who, if we do not appropriately fix Medicare, simply will not have the Medicare Program that they expect and deserve for their parents or for them a generation from now. Therefore, Medicare must be strengthened. Medicare must be improved.

I argue we should address prescription drugs through a process that includes the committee structure, where appropriate debate can be carried out. It is not clear if people have followed the debate over the course of today, including which bills are going to be considered, if there are going to be large bills to modernize all of Medicare, if there are going to be very specific bills that look at the prescription drug package to be placed in Medicare, or whether there are going to be catastrophic plans. I am hopeful, if we are going to bypass the committee process and come directly to the floor, that we debate all of those bills so the American people and our colleagues will have the opportunity to see the range of alternatives. If we consider just one bill, especially if it is a very partisan bill and has not been taken through a committee process, the long-term risk to the American people is huge. This will not just affect Medicare beneficiaries but will impact generations who will be Medicare beneficiaries in the future and the people who are paying for Medicare today.

Pharmaceuticals are a critical component of health care delivery. Now is the time to act, so let's do it. Let's not talk about a plan that will take effect 3 years, 4 years, 5 years from now. Let's go ahead and start today and let's do it in a responsible way.

Other Medicare issues my be addressed if health security is our goal. These issues include preventive services and other benefits that are covered by private health care plans today that are not covered in Medicare. When we strengthen, reform and modernize Medicare, we need to do so in a more comprehensive fashion.

We need to look at the Federal Employees Health Benefits Plan, the FEHBP—the health insurance coverage my colleagues and I have. You do not hear us complaining very much about our health care insurance. It is the same plan through which about 10 or 11 million Federal employees get their health care today. We ought to look at that model as we look to include prescription drugs.

There are a number of principles that do need to be stressed as we look forward because we do not know exactly what amendments are going to be coming to the floor today or over the next several days as we consider prescription drug coverage. I would like to stress four principles as we consider prescription drug benefit plans.

First, a prescription drug benefit should be permanent, affordable, and immediate.

By ''permanent,'' I mean that we should not look at bills that will fix the program in another 4 to 5 years, rather, we need a bill to fix the program sooner. We need to act now. We need to have a bill that will help seniors and individuals with disabilities as soon as possible. So, I argue we should not start a bill or legislation and have its effect, say, 3 years from now.

When I say a prescription drug benefit should be permanent, I think it is dishonest for us to tell seniors that this is the fix when it only applies for 4 years to 6 years. It should be incumbent upon us to develop a plan, a proposal. We need to be smart enough to do it in a bipartisan fashion and include time for adequate discussion, so that we pass a bill that can be sustained over time—whether in times of deficit, or surplus. Additionally, a prescription drug benefit needs to take into consideration breakthroughs in medicine that find cures, treat or prevent such diseases as heart disease, Parkinson's disease, emphysema, and other lung diseases. Therefore, such a benefit must be sustainable to the best of our ability over time.

That means when we look at a plan, we don't say it starts at 2005 or 2006 or 2 years from now, and then sunsets 5 years later. I think we need to be honest with seniors and the current generation who is paying for Medicare today by ensuring that this plan is something that can be sustained to the best of our ability, and that it can be sustained over time. So, principle number 1 provides for a permanent, affordable, and immediate prescription drug benefit.

A second principle is that a prescription drug benefit should, in some way restrain what cannot be sustained long-term—the skyrocketing cost of prescription drugs that we see today. Seniors and individuals with disabilities cannot afford the high costs of drugs. Likewise, people in the private sector cannot afford it. Thus, a prescription drug benefit must lower the cost of prescription drugs. I would argue the only known way of doing that long term is through an element of competition, an element where you have informed consumers. It is an obligation of us in government to inform consumers. Consumers are those on the front line—seniors listening, to patients, to doctors, to nurses. Really, it boils down to what is happening at the doctor/patient relationship, to involve an element of educated consumers making smart, and commonsense decisions, long term.

The Congressional Budget Office has found that bills similar to Senator DASCHLE's bill, which will likely be coming to the floor later this week, would not decrease overall drug costs, but would increase drug costs. According to the Congressional Budget Office, bills that rely on public/private sector partnerships and an element of competition will help maintain the costs of drugs. For example, the House of Representatives bill that passed by a majority vote illustrates this point. Additionally, the Breaux-Frist bill, introduced in the 106th and 107th Congress, is based on the Federal Employees Health Benefits Plan model which relies on the private/public partnership. Overall, these bills include an element of competition, capturing the very best of the public and the private sector working together and reducing drug costs for seniors.

The third principle—following the first principle of permanent, affordable, and immediate prescription drug benefit and the second principle of competition to lower the cost of prescription drugs—is that a prescription drug benefit should be fiscally responsible. We need to do it. We need to act in this Congress. We need to act now so it will take effect now, and we need to do it responsibly. This is where dollar figures are important, so we know what these relative alternatives are all about.

Experts estimate proposals offered by Senator DASCHLE and some Senate Democrats would cost at least $600 billion over the next 8 to 10 years. In a time of deficit spending and in a time where the economy is tough, this would ultimately require cuts in other fields like education, national defense and Social Security. Furthermore, it would place a heavy financial burden on the current generation receiving benefits, the generation that is paying for those benefits, and the following generations.

The fourth principle I would like to stress is that a prescription drug benefit should be bipartisan. That means we need to come together. This is a big challenge. This is a big, new entitlement that at the end of the day is likely to be adopted—and I would argue should be adopted—if it is done in a responsible way. I would argue in this climate, especially in this climate where the Senate is about 50–50, where the American people are about 50–50 in terms of partisanship, that the only way for us to succeed is through a bipartisan bill. We need to have people from both sides of the aisle working together in a commonsense, rational

way. Yes, we will concede to tradeoffs on either side to come to common ground. But we need to do it in a bipartisan manner.

The good news is that if we can pull it off with the right leadership, if we can pull it off with people who recognize the importance of pulling people together, we can do it and it can be done now. This will result in seniors benefitting very soon. It can be done in a way that is sustainable. I am absolutely convinced there are enough people who will work together in a bipartisan way on both sides of the aisle—majority of Republicans and majority of Democrats—so we can pass such a bill.

That is a challenge. It is a challenge because we have about 112 days left until the elections commence. The real risk is in trying to pass such a major piece of legislation in a partisan way—partisan could bring it down to where we do not pass a bill. Amidst all the talk at the end of the day, there are not going to be sufficient votes because the bills are not bipartisan.

A lot of the discussion today has been basically the other side of the aisle reaching out and saying we are ready to move forward, we want to take action. But much of the backdrop, is that the Senate Democrats today actually canceled or postponed a markup because of a fear that the tri-partisan bill that normally—normally the bill would come through the Finance Committee to be debated and amendments could be debated and passed or failed. There could be good debate among 20 people in that Finance Committee. The committee of jurisdiction was bypassed today with these bills being brought directly to the floor.

If you agree and if the American people agree that a prescription drug benefit is big, now is the time to act.

The only way in an environment today that tends to be partisan because of these elections is to demand bipartisanship. The only way to pass a prescription drug benefit is to openly consider the bipartisan and the tripartisan bills. And we do that, I again argue, first in the Finance Committee; however that does not look like that is going to happen.

I want to make absolutely sure that the Republicans are not overstating the importance of taking a bill this big through the Finance Committee before coming to the floor of the Senate. The tripartisan bill—the bill that has the majority of votes in the Finance Committee—has not been debated and has not been voted on or marked up in the Finance Committee. Additionally, the bill that Senator DASCHLE likely will bring to the floor sometime in the next several days is a strictly partisan bill which has not been considered in the Finance Committee either. The American people need to understand that Senator DASCHLE is playing straight up politics. I asked the Congressional Research Service to look up the top 10 or so major Medicare bills which passed the Congress over the past two decades and to find out: (1) Where were they first considered? (2) Did they bypass committee and brought directly to the floor of the Senate? They responded. It is very interesting. It looks as if there are about 12 to 15 major bills that have been considered over the past two decades. With the exception of one, all of these bills were considered and reported by the Senate Finance Committee before they were enacted into law. Those bills, again for reference—were TEFRA in 1982, DEFRA in 1984, COBRA in 1986, OBRA in 1978, the Medicare Catastrophic Coverage Act of 1998, the repeal of the Medicare Catastrophic Coverage Act in 1989, OFRA in 1989, OFRA in 1993, BBA in 1995, BBA in 1996, BBRA in 1999 were considered through the Finance Committee. The only legislation out of the 13 which bypassed committee was BIPA in 2000. BIPA is the only piece of legislation out of the 13 bills that did not have Finance Committee consideration before congressional passage.

However, I should note that even that particular bill—BIPA—was overwhelmingly bipartisan and passed overwhelmingly as part of the HHS appropriations in the year 2000. I mention this because it is important for the American people to understand the importance of the process which is now being bypassed in order to consider bills, which if they remain partisan will simply not pass this body.

Let me comment briefly on what I think and what I expect will happen over the next several days. I expect tomorrow we will continue to debate the underlying reforms in Hatch-Waxman. I look forward to hearing from Senator HATCH and others about that particular bill.

There will be several existing bipartisan proposals that are currently being filed and currently being submitted that will be introduced. I think we will have a good debate on a range of issues. It will be an educational process as we go through each of the amendments in the bills that come forward.

I hope as we consider these bills that we have as a goal to make them not political issues but to make sure that they are substantive policy issues that come forward. It is simply too important to be playing politics with our seniors' health care security. I think there will be a lot of opportunity over the next few days to talk about these specific Medicare proposals.

Let me close and simply comment on the patent reform bill and the modifications in Hatch-Waxman that we will in a more systematic way begin to address tomorrow. I think access to prescription drugs clearly needs to be the focus as we go forward, but the overall cost is important too because if you have prescription drugs and other drugs escalating with skyrocketing costs, there is, I think, no system that we can contain that long term over time.

The Hatch-Waxman law, which was passed in 1984, has been tremendous, but it has an impact on cost. The cost issues that we see in the private sector today are increasing 11, 12, and 13 percent. I don't think health insurance can simply be sustained in the long term. One major component of the increase in coverage is prescription drug costs which continue to skyrocket.

But I need to caution my colleagues who did not have the opportunity to sit through the Hatch-Waxman hearings in the Health Committee, it is pretty technical. It is important that we go back and do it right, that we fix Hatch-Waxman, or that we update it and modernize it because it really hasn't had a major look since 1984. But we must do it in a way that maintains the very careful balance that legislators very smartly put together in 1984.

The balance boils down to the fact that you have prescription drugs in the pharmaceutical industry that values patents and certain protections. Because they have those protections for a period of time, they are willing to invest, they are willing to innovate, they are willing to discover, and they are willing to put capital at risk. It is imperative that we all know how important that is. The only answer to finding a cure for coronary sclerosis, for pulmonary emphysema, for acute types of leukemia, or for something as big as HIV/AIDS is going to be research. Furthermore, I would argue that most of the world's research is being conducted in the United States of America.

Nevertheless, the protection and the incentives that we give to make these great discoveries must be balanced. This is the balance that was achieved by Hatch-Waxman with access to drugs. That, in large part, is determined by a strong, a productive, a broad, a growing generic drug industry where we know that important drugs are available at a reasonable cost. When Hatch-Waxman started, generics were only about 20 percent of all drugs. Now it is much greater—greater than 50 percent. But it is time to focus on some of those deficiencies in Hatch-Waxman. It is that balance that needs to be reviewed because both generic prescription drug companies and brand name companies have abused or found loopholes in Hatch-Waxman. Now is the time to fix the loopholes. We need to do that in a correct manner. That is what much of the debate will be about as we go forward.

Another topic, we had the opportunity last week on a couple of days to talk about is bioequivalence. It too is a little bit technical. But it is very important because, if we get it wrong, it is not just a cost issue. If we get it wrong, it can affect safety issues in terms of drugs and generic drugs.

The Hatch-Waxman law allows generic companies to market off-patent drugs if they are demonstrated to be bioequivalent.

There are definitions of bioequivalence that are applied today. If you

have drug A, and you have another drug, and you are saying, well, this drug is the same as drug A, you want to make sure when you actually take that drug that it has the equivalent impact in fighting disease, the impact that it is billed to have, that the active ingredient is absorbed at the same rate, and that the side effects are the same.

The bill, which is the underlying bill on the floor today, could significantly weaken this important patient protection by giving the Food and Drug Administration, the FDA, broad authority to relax the statutory Hatch-Waxman bioequivalency standard.

Senator HATCH will be on the floor in the next several days, I am sure. I look forward to joining him in talking about a range of issues that are of concern to him—and he has been around a long time in terms of watching this bill and watching the effectiveness of this bill—and myself and many others.

Again, there are many other Members on the floor who wish to talk, so I will bring things to a close. But I wanted to bring forward the principles that I think should underline the debate as we move forward.

I wanted to point out, in the bill that is currently actively on the floor, this modification of Hatch-Waxman. There are a range of issues, such as bioequivalence, that I look forward to debating and talking with others about.

At the end of the day, in order for us to really be able to look seniors in the eyes and say, health care security is what this bill is all about, it means we are going to have to work together, we are going to have to do it in a way that is bipartisan, that clearly does not have strict partisanship. We cannot play politics with an issue that is this important.

I look forward to working with my colleagues as these bills more formally come to the floor.

Thank you, Mr. President.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from New York.

Mr. SCHUMER. Mr. President, I am glad to take the floor today because we are beginning a historic and very important debate on the issue of the accessibility and the cost of prescription drugs. It is going to be a very important 2 weeks.

I, first, thank the majority leader for giving us that kind of time. This is not an issue that should be dealt with quickly. It is an important issue. It affects all of our constituencies. And there are many different sides to it. Anyone who thinks the issue is totally cut and dry is mistaken.

We have had great advances in our health care system. Many of them are due to these prescription drugs. We knock our health care system. It is easy to do. But we often forget about its successes.

I point to my childhood where, in my neighborhood, Brooklyn, my friends would get on their bicycles and come to my house on Wednesday afternoons, and they would park their bicycles in the front and walk to the backyard and push their heads up against the window of our kitchen because sitting in our kitchen every Wednesday afternoon was something of a curiosity. It was my great-grandmother, and she was 81.

Most children in the neighborhood had never seen someone over 80. And she was billed as: ''Come see the oldest lady in the world.'' The kids from the neighborhood would come around and look at her. And God bless her, she lived a long, tough life.

But now, only 50 years later, we have Willard Scott on TV reading—he has given up reading about 80-year-olds and 90-year-olds and 100-year-olds—about people who are 105 and 106.

Being 80 is young. My parents, thank God—my dad is going to be 80 next year. He is healthy. He has had a few little bouts, but he is healthy.

That is the other point I make. We not only live longer, we live better. When I think of my dad, who is 79, and played golf Sunday—my family and I went over and had dinner with him and my mom. And I compared them to—I mentioned this to them just that night—how my great-grandmother was so very old and could hardly walk at 81, and here is my dad, just about 80, filled and vibrant.

That did not happen all by accident within 50 years. We have had enormous advances in health care. And let's give credit where credit is due.

A good number of those advances are because of the prescription drugs we have. They are wonder drugs. I did not experience any of them until a year ago when our House physician—our Capitol physician; I am still used to calling him the House physician—prescribed Lipitor because my cholesterol was high and, boom, down it went, almost like a miracle. He explained to me that increases my chances of living longer and healthier. So these drugs are very good things. We do not knock them; we like them. We are glad they exist.

I think every one of us in this body realizes that it takes a lot of work to create some of these drugs; that it takes time; it takes mistakes.

I took organic chemistry when I was in college, in the days when my parents had dreams that I would be a doctor—dreams that went by the wayside, I regret to tell my colleagues.

To do one of those organic chemistry experiments, it is 50 steps. Those are little ones, the rudimentary ones. If you mess up step 46, you do not go back to step 45, you go to the first step because you contaminated the sample. Well, multiply that a million times, and that is how difficult it is to conceive and make these new drugs.

So the companies that make these drugs deserve a lot of credit. These drugs are wonder drugs; they are terrific.

When my friend from Tennessee, Dr. FRIST, comes on the floor, with all his erudition, and says we have to make sure there is a balance, I could not agree more. There has to be a balance. If we were, tomorrow, to do something that would mean the next generation of wonder drugs would not come on the market, we would be disserving everybody: ourselves, our children, our grandchildren. So that is important.

That is why the legislation that is before us today, introduced by Senator MCCAIN and myself, was honed with such care.

Dr. FRIST is right. I am not going to talk in great detail about this. We will have another day to debate the issues. I guess the minority is going to bring some amendments. We will get into the specifics of our bill later. But I do want to say we have taken a great deal of care in how we crafted this bill, mindful of the balance.

Our goal has been to keep that balance. It is our view, Senator MCCAIN's and myself, almost by definition—the 16 bipartisan members who voted for our bill; in even Dr. FRIST's view, who voted against the bill—that that balance had fallen out of whack. Here is what I think happened.

I think for the first 10 years or so, the Hatch-Waxman Act, the Generic Drug Act, worked quite well. New companies that tried to innovate, produced a whole lot of very fine innovations, got a great rate of return. If you look at Wall Street numbers, the drug companies did just about better than any other industry in terms of their profitability. So they were not hurt.

But, at the same time, it was a pretty certain thing that after that drug had its run, and the company not only recouped its costs, and recouped the costs of the mistakes that were made—natural and reasonable—and made a very fine profit, we would let other companies come and put these drugs out on the market.

It worked. When the generic drug comes on the market—we will have a lot more to say about this tomorrow—the cost plummets from 25 to 50 percent of what it otherwise was. A prescription that might cost $100 you can get for $25. Success is shown by the fact that now 47 percent of all the drugs prescribed are generic drugs, creating the same medical benefit but costing people a whole lot less and, incidentally, costing our State governments less when they pay for Medicaid, costing our big companies less when they pay for their health care plans, costing our HMOs less, as well as costing the average person less when he or she goes to the drugstore counter.

What happened in the last 5 years, in my judgment, was that Hatch-Waxman was thrown out of whack. It was thrown out of whack because too many—not all, by the way; a company such as Merck does not engage in this practice; a few other companies are very reticent and reluctant and mild in the way they engage in this practice—in general, a whole lot of drug companies saw that they had these huge

blockbuster drugs on the market and the patents were expiring. They said: My goodness, now the generics will come along, and what are we going to do? We will make a lot less money.

What they started to do was to work with their lawyers and their advertisers and everybody else to figure out ways to basically extend the life of the drug. They have done it a whole lot of ways. In fact, I think I will submit for the RECORD five or six articles in the Wall Street Journal—hardly a publication that is anticapitalist—that showed various ways drug companies tried to get around the laws, tried to stretch the laws. Many of them involved the use of generics. But suffice it to say, they tried to figure out ways of going beyond the original Hatch-Waxman intent.

One of the key ways they did it was to, what I call, innovate, not new drugs but new patents—same old drug, new patent. And because the law had never been updated, as Dr. Frist said, they found a lot of clever ways to do it.

It began to get out of hand. They would say: Give me a new patent because I am changing the type of pill. Give me a new patent because there is a different color bottle in which I will put the drug. No one who voted for Hatch-Waxman thought these were reasons to extend patents.

Then they began to do other things. Some people came over to me and asked: What about the situation where there is a vaccine for HIV and they come up with an oral drug; why shouldn't you allow that to have a new patent? We want to. We don't want to allow the oral patent to then extend the vaccine patent. In other words, if they come up with an oral one, let them apply from scratch, get the whole 20-year patent from the day the patent is filed. But if the vaccine patent is about to expire in a year, don't use the oral patent to extend the vaccine patent. That is a little less virulent form of this kind of game.

So what Senator MCCAIN and I did a couple years ago, actually, was sit down and examine the most egregious abuses. We said: How are we going to curb these abuses? How are we going to restore the original balance of Hatch-Waxman?

The proposal we came up with did that. By the way, it made some of the generic companies not happy either. This is not a bill that is just supposed to side with the generic companies; it is a bill that sides with the consumer. When the pharmaceutical company is abusive, we go after them. But when the generic is abusive, we go after them, too.

In one part of our bill, we wanted to get at the fact that certain generic companies that were given 180-day exclusivity so they might get a leg up and give them incentive to go out on the market, they were sort of selling that right to the pharmaceutical, the brand name company, and then there would be no generic. We stopped that. It was modified by the amendment of Senator EDWARDS and Senator COLLINS. But we looked at the abuses on each side and said: Let's stop it. Let's restore the balance.

This started out as a very modest bill. In fact, I think the pharmaceutical industry didn't pay much attention. They said: Who is going to pay attention to something that is admittedly technical? But what we found was that when you looked at this bill, it was one of the most important ways to reduce cost—reduce cost not just for seniors but for everyone, reduce cost for government and get those generics out.

Over the next couple of weeks we will have a debate on this, and there will be amendments to change what we are doing—probably in the next day or two—and we will debate it.

I want to say two things, though, in addition to talking about this specific proposal. The first is the view of my good friend from New Hampshire that somehow we didn't try to include him, that he is delaying the bill because, well, we could have worked out this language. First, this bill is not brand new. It wasn't written on the back of an envelope last week; it has been around for a long time. On many occasions I would go to Senator GREGG and say: Let's sit down and work something out, and he would be amenable, but nothing much would come of it.

The only point I am making is, he knew about the bill long before. And then at the end, when in an effort to try to get this bill to be bipartisan—it is always better—Senator EDWARDS and Senator COLLINS started to work together on some changes and didn't do a terrible injustice to our bill, Senator GREGG began to get involved. And we started talking to him. Senator KENNEDY and his staff were talking to him. And basically when Senator GREGG had a few objections, we were willing to go along with them.

First, he raised earlier the clarification of the language on this 45-day provision in the bill, the idea that you would have 45 days to sue. Senator GREGG had reminded us that there was an agreement during the markup to clarify the language, to make very specific that if a patent owner chose not to sue one generic applicant, it wouldn't be precluded from suing another. He is right. We honored that agreement. It is in the proposal. Following the markup, the staff changed the language to make the clarification so there would be no confusion.

It is my understanding that those technical changes were then forwarded directly to Senator GREGG's staff. Then the first time we heard about it was long afterwards. I guess it was this morning that we heard this was a problem.

That doesn't sound to me as though you are concerned with policy. That is saying to me, wait a minute, let's delay this thing. And I don't think that is what we should do, no matter what our view is here.

We all agree on the policy. Let me clarify it. The intent of the provision and the effect, because it is now clearly written—it may have not been clearly written before—was not to cut off all the rights of a patent owner if it refrains from suing a particular generic applicant within 45 days. Rather, it just cuts their rights off to sue that company.

It says that if a brand company chooses not to sue a particular generic applicant on a particular patent, the brand company only loses its right to sue that generic applicant or anyone else who sells or distributes that applicant's version of the drug.

So if Schering-Plough chooses not to sue Mylan for a patent infringement within 45 days, if they choose not to sue Mylan, they lose their right to sue Mylan or anyone else who distributes Mylan's version of the drug, but they will have every right to sue Barr or Teva or IVAX or any of the others, in complete accord with what we said that day at the markup.

This is no reason to hold up a bill. It says exactly what my friend from New Hampshire wanted. Now, if there is some staff talk that the language doesn't say that, let's sit down and take a look, but let's do it immediately. Let's not spend 30 hours sitting on the floor, each of us fulminating and not moving the bill forward and doing the people's business.

We have a lot of issues to discuss—not just generic drugs. We will discuss the Canadian importation and the ability of States to form consortia—all to lower costs. Then there is the big debate, of course, which is accessibility, allowing more people to get the drugs.

There is a one-two punch here: Lower the cost and extend the number of people who have the ability to get the drugs. But it is just almost to the point of, at best, counting the angels on a pin and, at worst, a desire to delay, to say that we don't have an agreement.

I wanted to discuss another issue Senator FRIST brought up—the bioequivalence issue. There is a lot of debate about bioequivalence and a lot of discussion about bioequivalence. The enemies of generic drugs, early on, had tried to say that the generic is not the same as the nongeneric in terms of its active ingredient. That reminds me of the argument I had with my mother. I take a vitamin C pill. She would say: Son, drink the regular orange juice. I would say: Mom, the vitamin C in the pill is exactly the same as the vitamin C in the orange juice. She said: No, no, no. I said: Well, it has nice little orange flecks in there, and it tastes different, but if you looked at the oxygen, hydrogen, and carbon atoms lined up in the vitamin C molecule, you could not tell the difference. She said: No, no, have the orange juice.

It is the same thing my friend, the good doctor from Tennessee, is talking about. The FDA knows what bioequivalence is. While some in the brand name debate have tried to imply in the past

that the generic drug isn't as pure, or its inert ingredients may be different from nonactive ingredients, we all know it is bunk. The FDA has had rules on bioequivalence that have met every test for years and years, and no one has contested them. In all of the fighting between the brands and generic name court cases, there hasn't been an issue. All of a sudden, we are hearing that bioequivalence is an issue.

So what did we do? Senator KENNEDY, in the bill—it may have been Senator EDWARDS. Well, an amendment was added in the committee that took exactly what the FDA has done, without any dispute for the last 10 years, and codified it. Now, all of a sudden, we are hearing that bioequivalence is an issue. It is not an issue. It is a smokescreen for people who want to delay.

So my view is a simple one. Let's get on with the debate. We have two major issues before us—the issue of cost and the issue of access. The McCain-Schumer bill, the Dorgan proposal, and the Stabenow proposal on the States, all reduce the cost of the drug—here is my good colleague from Michigan now whom I just mentioned—to everybody, including senior citizens, parents who have a child who needs a serious drug, to State governments.

Then let's go on to what will probably be the main show, which is access, because so many people need access to these drugs. The one is not exclusive of the other. People ask me, Will you be happy if just the McCain-Schumer bill passes? No. I hope it will pass, but we have to go beyond that and we have to increase access. We have to have a good prescription drug plan to undo the mistake of those who wrote Medicare in 1965—except they didn't know there were so many of these drugs.

My plea to colleagues is this: Enough. We are debating about the number of angels on the head of a pin. We are debating about things that have long been settled. Let's move the bill forward. Let's lower our costs. Let's increase access. Let's disagree in a civil and fair way, and then let's vote and let the chips fall where they may.

Mr. KENNEDY. Will the Senator be good enough to yield?

Mr. SCHUMER. I am happy to yield to our leader from Massachusetts.

Mr. KENNEDY. Mr. President, I am struck by the point the Senator makes again on the floor of the Senate, which I have heard him make many times but which I think is important to understand, and that is that this is actually a very conservative piece of legislation. Effectively, if we accept the underlying legislation, which is just a version of the legislation the Senator introduced with Senator MCCAIN, really we are going back to what the original intention of the Hatch-Waxman proposal was all about.

I appreciate the Senator giving the historic perspective because at the time we passed the Hatch-Waxman, we anticipated the breakthroughs in many different areas of new pharmaceuticals to try to deal with the challenges of our time. It has never been more likely than it is now. We are in the life science century. Even since the passage of Hatch-Waxman, we have seen the sequencing of the human genome. We have this extraordinary DNA revolution. We have gone through these extraordinary kinds of basic new research. We have seen this explosion using new kinds of technology matched together with research, which is opening up extraordinary possibilities. We have heard about this in our HELP Committee.

So the opportunities are out there in terms of trying to see the day when Alzheimer's is no longer the scourge of so many families in this country. That would empty two-thirds of the nursing home beds in my State of Massachusetts. That is probably true also in the State of New York. We believe the Hatch-Waxman proposal was to try to make sure for the drug companies, the brand companies, that were prepared to go ahead and take advantage of these extraordinary opportunities, building on the incredible investment the American taxpayer has made in the NIH, which has been doubled in recent years. It is an additional reason the Schumer amendment ought to go in.

We ought to have the energy of those companies in these breakthrough new opportunities rather than in the ''me too'' drugs. This, I believe, is not only dealing with the abuses that exist, but also, if we let this continue along, it seems to me there will be a continued kind of financial incentive not to take chances for these breakthrough drugs that are out there, in terms of making such a difference in dealing with the health challenges we face, and there will be these financial incentives to game the system in order to deny people the lower cost of drugs by the generics.

So I commend the Senator. We will have a lot of debate and discussion about patent and patent laws and timing—30 months, and 180 days, and 45-day windows, and bioequivalency, and the rest. But we are talking about, as the Senator eloquently stated, a major downpayment—the first one that I know in any recent time that will bring pressure to lower the cost of drugs.

This is a major achievement and accomplishment if we do it. It is not going to solve the problem, but for the many families who are going home tonight and buying their drugs and finding out that the costs have increasingly gone up so far beyond the cost of living, it will make a big difference, will it not?

Secondly, I don't know what the argument is—I have not heard it—for the second provision of the Senator's amendment that deals with collusion between the brand names and the generics, which is taking place out there.

That is as bad as the gimmickry we have seen from these corporate scoundrels who have made out like bandits, such as at Enron, getting billions of dollars and then giving short shrift to the workers. What is the difference if those corporations make out like bandits, and in this case, instead of the workers, it is the seniors and sick people who will suffer? I do not see a great deal of difference.

The Senator has made such a strong statement. I am as perplexed as he is that we have not had a chance to get to the bill this afternoon and debate it. The Senator has correctly given the interpretation we had of the clarification of language that was raised.

I point out to the Senator and ask if he will agree with me, if they do not agree with language, we will be willing to accept the language to clarify those provisions. It is very clear what the intention was in the hearing record. We are not trying to change our position. We are still at that position. If they have language to do that, we will take it now and get on with the bill.

We should be under no illusions. That is not it. They want to change other provisions, substantive provisions. All the Senator from New York is saying is, if that is the case, why are we not out here debating those issues and taking votes on them and moving this legislation forward?

Does the Senator find any reason this can justify why we are having this delay on this important legislation that can make such a difference to many people? Why is it that on a Tuesday afternoon in July we are not doing the people's business and voting on these matters, debating these matters but instead are caught in tactical maneuvers by those who are opposed to the legislation?

I say to the Senator, it is being perpetrated by those who do not want any bill at all. If we do not have any bill at all, there will be brand companies that will make billions of dollars out of the pockets and pocketbooks of the consumers, which is in complete violation of the Hatch-Waxman bill. They are the ones who are behind this delay, and that is unconscionable.

I would appreciate any comment the Senator wishes to make on that issue.

Mr. SCHUMER. I thank my colleague. No one puts it better than he does, and he is exactly right. Let's vote; let's debate. Our differences are not very large. That is what makes us scratch our heads and think that really they do not want a bill; they hope we will give up. They hope people will lose interest. They hope something else will come along, maybe another corporate scandal. But I think I can speak for our leader, the Senator from Massachusetts, as well as the Senator from Minnesota, as well as the Senator from Michigan, that we are not letting this issue go away. They can delay us for a week or a month, and we will be back, it is so important.

I will make one other comment. My colleague from Massachusetts is just so good at this. After I am here half as

many years as he, if I can be a quarter as good as him, I will be very happy. Here is what he said and I think it is worth repeating.

We are doing not only the public but the drug companies a favor. With this amendment, we are putting them back on track. They have lost their way. They are degenerating into something that is hated. For people who create such wonderful drugs, why should they be so despised? I saw a survey just recently that the drug industry was more disliked than the oil and gas industry. The reason is they all are losing their way. It should not be for the Senator from Massachusetts, the Senator from New York, the Senator from Michigan, and the Senator from Minnesota to help them find their way; they should find it themselves. But they have lost their way, and the Senator from Massachusetts has stated it exquisitely, which is we are going to send them back on the path of innovating, of creating new wonderful drugs, of doing good for society, and making money as they do it. We want them to do that. But we want them to add value, we want them to cure new diseases, not simply find a new color of a pill that already cures a disease. We want them to find new techniques.

We are sending them in the direction they started, but they have lost their way, and the smart ones in the industry know. I hear it whispered. They are letting the worst ones, the bad apples who will do anything, extend their profitability even if they do not have a new drug in their closet. They are letting those people lead and, in a sense, what we are saying is: Go back to your sacred mission. Go back to the mission of finding new cures and finding new drugs, and not only will you make money, but you will be proud of what you do.

Mr. KENNEDY. Will the Senator yield on that point?

Mr. SCHUMER. I will be happy to yield to my colleague.

Mr. KENNEDY. On this point the Senator makes—and I hope our colleagues will listen—we will put in the RECORD the exact figures, but if one were to look at a chart for new drugs and innovation, one would see that chart rising and rising, going up and up until almost the passage of the Hatch-Waxman bill. From that time, the innovations have gone down. It is the darndest thing we have ever seen.

I was absolutely startled by this. This might have been maybe one or two circumstances, the evergreening process which the Senator has outlined.

On the Senator's point about getting these drug companies back to doing what we had all hoped they would do and we know they can do and hopefully will do, every one of us have family members who benefit from these innovations, but we find that is not where they are going.

We have doubled the NIH budget, $33 billion, $34 billion a year. We doubled that over a period of time. Why did we double that at a time of scarce resources? The reason we doubled it is because Democrats and Republicans understood this is a life science century, and it is unlimited in its ability. It seems everybody knows this except the drug companies. That is what has been disappointing.

I thank the Senator again for outlining the basic provisions which, as he has mentioned, bring us back to ground zero. They bring us back to what was achieved with the Hatch-Waxman period, and does that to eliminate the collusion which is taking place and the gimmicking of the system which basically means higher prices for consumers. That is the challenge.

If others have better ways of doing it, I am sure the Senator will agree, let's do it, but we did not see that. My friend from Minnesota, Senator WELLSTONE, was in that markup. We did not hear other ways of doing it. All we heard was more delays, more delays, objections, objections, objections. That is because clearly there are billions of dollars at stake. We are talking about billions of dollars of profits for certain of these companies. No wonder they are out here in force trying to resist the Schumer proposal.

I thank the Senator for his excellent presentation.

Mr. SCHUMER. I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I say to my colleague from Maine, and I know the Senator from Michigan is here, I will actually be very brief. This will not be a typical WELLSTONE speech. I only have about 10 minutes. I say to the Senators from New York and Massachusetts, I very much enjoyed their discussion. I thank the Senator from New York for his leadership on this issue.

I remember, I say to Senator SCHUMER, during my years here two very humorous situations; one especially where somebody tried to extend the patent for Lodine. I actually found out about this, and I think Senator KENNEDY was also involved in trying to get to the bottom of it. It was in the language of the bill, but nobody would take credit for it. Nobody would take credit for having done this, although obviously somebody put in the language. It was you laugh or you cry—the whole notion that we can extend the patent and it does not go generic and they make a lot of money. But who gets hurt as a result?

The same thing has come up with Claritin as well. This is a no-brainer of where 99 percent of the people of the country are, that is for sure.

The only issue on which I disagree with my colleague from New York—and I am sorry to be the one more hard hitting on this, and I do apologize—I do not know that the pharmaceutical companies have lost their way—as in recently. As I go back—Senator KENNEDY probably knows the history better than I do—I have done a lot of reading about Estes Kefauver in the early fifties. He took on the pharmaceutical industry, and they took him on.

David Pryor, am I not correct, really did this? We have been battling it out with him for a long time. This is an industry that has been making Viagra-like profits, if I can say that on the floor of the Senate. It would be funny and a little cute to say it, except that what this really means is people cannot afford the prescription drugs, at least the people I represent.

This legislation is very important. I know Senator COLLINS has worked very hard on it. There is quite a bit of bipartisan support. I had a chance to speak earlier this morning about other provisions. I heard Senator GRAHAM speak earlier. Senator KENNEDY has spoken about it.

I want to say one thing about two other pieces of this in about 4 minutes. One is on this whole question of, how are we going to make sure there are affordable prescription drugs? I think delivery is critically important. There is a world of difference between adding this on to Medicare and making it a defined benefit.

We are learning all about defined benefits versus defined contributions as people see what is happening to 401(k)s versus the language in the House bill that suggests this will be the deductible and suggests this will be the premium but, frankly, there is no guarantee of it. This needs to be a defined benefit, and it does need to be a part of Medicare. We ought to at least agree on that.

Then I think there are going to be these trade-offs as to how much money versus how good is catastrophic coverage. I am sorry to go sort of populist on everyone, but I think I heard the Senator from Florida say earlier that for those of us in the Senate and the House—and we make pretty darn good salaries compared to the vast majority of the people we represent—something like 80 percent of our prescription drugs are covered. We might pay 20 percent, and that is it. It seems to me we ought to do as well for the people we represent.

My dream is to someday be in the Senate when we are debating Medicare for all. That is what I want to get back to. I almost think the people we represent should have as good a plan as we have through the Federal Employees Health Benefits Plan. But that is another debate for another time.

I cannot imagine how any of us could support any legislation that says when it comes to catastrophic expenses, after someone is over $2,000 a year—the very point where people are hurting—then we say we are not going to give any coverage, not until they get up to $3,700. That is nonsense. People say: What do you mean? One of the things we want you to do is help us deal with what happens when our expenses go up year to year. That is the second point.

The third thing I want to mention is I am going to be doing a bill on the whole question of drug reimportation for the year, which Senator DORGAN has addressed. It could be Senator SNOWE and Senator COLLINS will be a part of this. I know Senator STABENOW is. We are going to have legislation or an amendment that deals with cost containment, and I want to say one more time it is a simple and straightforward proposition. We are coming out together, and I assume there will be some strong bipartisan support. I know I am going to do it with Senator DORGAN and Senator STABENOW, and I think there will be Republicans as well. Basically, what we are going to say is you use the same FDA strict safety guidelines, and our citizens ought to be able to reimport these drugs.

I want to give some examples, and then I will be finished, I say to my colleague from Maine.

Celebrex, which is used for arthritis: A bottle costs $84.95 in the United States and $30.99 in Canada.

Glucophage, a medicine for diabetes, costs $63.12 in the United States and $16.68 in Canada. Think about that. I will not do the arithmetic because people can figure it out.

Methotrexate, a drug for cancer: $51.03 in the United States, $17.30 in Canada;

Tamoxifen, a breast cancer drug: $287.16 in the United States, $24.78 in Canada—same bottle, same dosage.

Imagine that. There is nothing that infuriates people more in Minnesota, makes them believe they are more exploited and ripped off by this industry, than this sharp contrast in prices.

There is legislation that Senator DORGAN, Senator STABENOW, and I are going to introduce, as well as others—I do not want to speak for Senator COLLINS, but Senator COLLINS and Senator SNOWE have been real leaders on this issue. This does not ask the Federal Government to spend any more money. We do not have to run into that issue. We do not have to talk about how much it is going to cost. This will dramatically reduce the cost of prescription drugs for our citizens.

The only question is this, and then I will sit down: I can promise, once people know it is the same strict FDA guidelines, once we make it clear if anything ever happens, if this goes wrong, then emergency action can be taken—I will say to the Chair this will happen in Nebraska—90 percent of the people are going to say: Absolutely, this is the best kind of free trade, and we ought to be able to do this. We ought to be able to reimport, or our pharmacists should be able to do it. There is one interest that is going to be opposed—pharmaceutical companies. They are not going to like it. But at a certain point in time do we not say: Tough luck. This is going to be a test case of a vote of whether we are going to represent the people in our States, democracy for the many, or whether we are going to let the pharmaceutical companies stop it. It is that simple.

We had a 97-to-0 vote last night on legislation on which Senator SARBANES and others worked so hard. That was stuck in committee forever, and people finally said: We have had enough. Do you know what. People in the country said it. People in the country are beginning to say: We have had enough. We do not want the pharmaceutical industry to run the show. We want you, Senator, to be accountable to us.

That is what these votes are going to be about. This is going to be a test case of whether we have a real system of representative democracy working.

I have taken some positions where I know the majority of people do not agree with me, but not in this debate, not in terms of where the vast majority of people in all of our States are. Let us not disappointment them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. This week we have a tremendous opportunity to make progress on an issue that affects Americans of all ages, but particularly our elderly, and that is the high cost of prescription drugs. I hope by the time the end of next week comes along, we will have passed the tripartisan legislation to provide a prescription drug benefit under Medicare that is long overdue. I also hope we will pass the legislation to which we are about to proceed, and that is the Greater Access to Affordable Pharmaceuticals Act.

I commend my colleagues from New York and Arizona, Senator SCHUMER and Senator MCCAIN, for their leadership and hard work in bringing this issue to the forefront. I was pleased to have had the opportunity to join with my colleague from North Carolina, Senator EDWARDS, in offering a compromise in the Health, Education, Labor, and Pensions Committee last week where it was approved by a strong bipartisan vote.

I also acknowledge the hard work of our chairman, Senator KENNEDY, and our ranking minority member, Senator GREGG, on this issue.

During the last 20 years, we have witnessed dramatic pharmaceutical breakthroughs that have helped to reduce deaths and disability from heart disease, cancer, diabetes, and many other diseases. As a consequence, people are living longer, healthier, and more productive lives. These medical miracles, however, often come with hefty pricetags, raising vexing questions about how patients, employers, and public and private health plans can continue to pay for them.

Prescription drug spending in the United States has soared by 92 percent during the past 5 years to almost $120 billion. These rising costs are particularly a burden for the millions of uninsured Americans as well as for those seniors on Medicare who lack prescription drug coverage. Many of these individuals are simply priced out of the market or forced to make decisions—that no one should have to make—between paying the bills or buying the pills that keep them healthy.

Skyrocketing prescription drug costs are also putting a squeeze on our Nation's employers. We are struggling in the face of double-digit annual premium increases to continue to provide health care coverage for their employees. I know from talking to the small businesses in my State, these escalating costs are a real problem for our smaller employers. They want to continue to provide health insurance coverage for their employees but they simply are finding it increasingly difficult to do so. If they pass on the higher health insurance costs to their employees, more and more of the workers deny coverage. They decline coverage because they cannot afford their share of the premium.

One of the key factors behind the escalating costs of health insurance is the high cost of prescription drugs. These high costs are also exacerbating the Medicaid funding crisis that we hear about from our Governors back home as they struggle to bridge the growing shortfalls in their State budgets.

The Presiding Officer and I have been working very hard on a proposal to increase the Federal match for Medicaid funding to help our Governors and our families, who are so dependent on these services, cope through this difficult time when States are struggling with budget shortfalls.

In 1984, the Hatch-Waxman Act made significant changes in our patent laws that were intended to encourage pharmaceutical companies to make the investments necessary to develop these miracle drugs. At the same time, the legislation was intended to enable their competitors to bring lower cost generic alternatives to the market. In large measure, the Hatch-Waxman Act succeeded.

Prior to Hatch-Waxman, it took 3 to 5 years for generics to enter the market after the brand name patent had expired. Today, lower cost generics often enter the market immediately upon the expiration of the patent. As a consequence, consumers are saving anywhere from $8 billion to $10 billion a year by purchasing generic alternatives.

Moreover, there are even greater potential savings on the horizon. Within the next 4 years, the patents on brand name drugs, with combined sales of $20 billion, are set to expire. If the Hatch-Waxman Act were to work as it was intended, consumers should expect to save between 30 to 60 percent on these drugs as the lower cost generics become available after the patents expire.

However, despite its past successes, it is becoming increasingly apparent that the Hatch-Waxman Act has been subject to serious abuse. While many pharmaceutical companies have acted

in good faith, there is mounting evidence that some brand name and generic drug manufacturers have attempted to game the system in order to maximize their profits at the expense of consumers. News reports, for example, have detailed how the manufacturer of the lucrative drug Prilosec, the patent on which was set to expire last fall, has used the automatic 30-month stay under the Hatch-Waxman Act to tie up generic manufacturers in court, in litigation, over secondary patents in order to keep the generic version of the drug off the market.

In the year 2000, Prilosec was the best selling drug in the world and generated an estimated $4.7 billion in U.S. sales. The Medicaid Program in Maine spent over $8 million on Prilosec in the year 2000. This bill could be cut in half if the generic alternative were available. So instead of the State of Maine spending $8 million on Prilosec if the generic were available, as it should have been last fall, the State of Maine would save about $4 million. That is much needed money that could be put into other health care services.

I mention that because that is just one drug. But that illustrates what happens when a brand name manufacturer exploits the loopholes in the current law to delay consumers access to the generic equivalent. That is just wrong.

It is no wonder that this legislation is supported by a broad coalition representing Governors, insurers, businesses, organized labor, and individual consumers who are footing the bill for these expensive drugs and whose costs for popular drugs such as Prilosec would be cut in half if the generic alternative was available when it was supposed to have been. We are not talking about infringing on the legitimate patents that protect the innovative drugs developed by pharmaceutical companies. We are talking about eliminating abuses that we are finding increasingly prevalent where the brand name manufacturer exploits the loopholes in the current law by engaging in excessive litigation for the sole purpose of keeping the generic off the market.

I ask unanimous consent that letters from the Business for Affordable Medicine and the Coalition for a Competitive Pharmaceutical Market expressing support for the Edward-Collins compromise approved by the committee be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit No. 1.)

Ms. COLLINS. Mr. President, I was also disturbed by the testimony of the chairman of the Federal Trade Commission before the Senate Commerce Committee. He testified there were a number of examples where the branded and generic drug manufacturer actually conspired to game the system and attempted to restrict competition beyond what the Hatch-Waxman Act intended. One case cited in the chairman's testimony involved the producer of a heart medication which in early 1996 brought a lawsuit for patent and trademark infringement against the generic manufacturer.

This is what happened. Instead of asking the generic company to pay damages, the brand name manufacturer offered a settlement to pay the generic company more than $880 million in return for keeping the generic drug off the market. So the brand name manufacturer essentially conspired with the generic manufacturer and paid off the generic manufacturer to keep the cheaper generic alternative from coming to the market.

The consequences for consumers were considerable. This heart medication, which treats high blood pressure, chest pains, and heart disease, costs about $73 a month but the generic alternative would have cost only $32 a month. The compromise legislation that we will soon consider will make cost-effective generic drugs more available by restoring the original intent of the Hatch-Waxman Act and by closing the loopholes that are delaying competition and slowing the entry of generics into the marketplace.

First, as amended by the Edwards-Collins compromise, the legislation would limit brand name manufacturers to a single 30-month stay for patents listed at the time of the brand product approval. Now, this will eliminate the brand manufacturer's ability to stack multiple and sequential automatic 30-month stays during patent litigation in order to keep generics off the market and extend their market exclusivity indefinitely. That is one of the primary abuses that our proposal would end.

It will help ensure that key patent issues are adjudicated before the generic goes to market, while at the same time ensuring that improper late listed patents are not able to obstruct market competition.

We heard in committee examples of the brand name manufacturer making extremely minor changes, such as in the color or the design of the packaging or the scoring of the pill that really did not indicate a different or improved use for the product but, rather, were devices intended to keep the generic off the market for a while longer.

For subsequent patents for which no automatic 30-month stay is available, a brand name company can still obtain a preliminary injunction based on merit to protect their patent rights and keep the generic product off the market if it is justified, if there truly is a legitimate patent issue. However, in too many cases we found there is not a legitimate patent issue. This is just an abuse and an exploitation of the loopholes in the current patent law.

Moreover, our legislation stipulates that the court is not to consider the possible availability of monetary damages when it is deciding whether or not to grant injunctive relief. This provision is intended to address the concern expressed by the brand name pharmaceutical companies that it is difficult to obtain injunctive relief in patent litigation because it is the court's view the treble monetary damages involved in these suits as an adequate remedy.

Second, the legislation will prevent the current 108-day exclusivity provision of the Hatch-Waxman Act from becoming a bottleneck for subsequent generic competitors. Under Hatch-Waxman, the first generic drug company to file an application with the FDA certifying that the patents on the brand name product are either invalid or will not be infringed is now granted 180 days of market exclusivity, once its application is approved. Entry to the market for other generics is therefore frozen until the 180-day period runs out on the first-to-file.

This provision has made it attractive for the kind of abuse that I mentioned earlier, and that is where a brand name manufacturer pays the first-to-file generic company to stay off the market.

What that results in is nobody else can come to market, under the current law, during that 180-day period. So you can see how that is abused, when the brand name firm pays the generic manufacturer to essentially forfeit that 180 days of exclusive market rights.

Under our legislation, the first generic applicant would forfeit that 180 days of exclusive market rights if it failed to go to market during that time, or entered into an agreement with a brand name company that the FTC determines to be anti-competitive. I think that would help end or eliminate altogether the kinds of deals between the brand name manufacturer and the generic manufacturer that are such a disservice to consumers.

The original Hatch-Waxman act was a carefully constructed compromise that balanced an expedited FDA approval process to speed the entry of lower cost generic drugs into the market with additional patent protections to ensure continuing innovation.

Regrettably, however, the law now needs to be strengthened and reformed so we can eliminate the abuses that we are seeing. This bipartisan compromise bill restores that balance by closing the loopholes that have reduced the original law's effectiveness in bringing lower cost generic drugs to market more quickly. Increasing access to these lower cost alternatives is all the more important as we begin work to provide an affordable and sustainable Medicare prescription drug benefit.

Mr. President, I urge all our colleagues to join me in supporting this legislation. It will do a great deal to make prescription drugs more affordable by promoting competition in the marketplace and increasing access to lower price generic drugs.

I yield the floor.

EXHIBIT 1

COALITION FOR A COMPETITIVE PHARMACEUTICAL MARKET,
Washington, DC, July 10, 2002.

Hon. EDWARD M. KENNEDY,
Chairman, Senate Health, Education, Labor and Pensions Committee, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As a broad-based coalition of large employers, consumer groups, generic drug manufacturers, insurers, labor unions, and others, we are writing to advise you of our strong support for the Edwards/Collins amendment to S. 812, the Greater Access to Affordable Pharmaceuticals Act. We believe it is critical that Congress act this year to pass legislation that would eliminate barriers to generic drug entry into the marketplace. The legislation you will be marking up today clearly would accomplish this long-overdue need.

Prescription drug costs are increasing at double-digit rates, and clearly are unsustainable. Current pharmaceutical cost trends are increasing premiums, raising copayments, pressuring reductions in benefits, and undermining the ability of businesses to compete in the world marketplace. We believe that a major contributor to the pharmaceutical cost crisis is the use of the Drug Price Competition and Patent Term Restoration Act of 1984 clearly in ways unanticipated by Congress, which effectively block generic entry into the marketplace. The repeated use of the 30-month generic drug marketing prohibition provision and other legal barriers have resulted in increasingly unpredictable and unaffordable pharmaceutical cost increases.

Although the compromise amendment being offered today does not totally eliminate the 30-month marketing prohibition provisions, as would be our preference, it does make important process changes that will lead to a more predictable, rational pharmaceutical marketplace. We recognize that compromises have been necessary to garner the support of a majority of the Members of the Committee and appreciate your leadership and the hard work of your staff. However, we would strongly oppose any additional amendments that would undermine the intent of this legislation by further delaying generic access or reducing competition and increasing costs to purchasers. We also remain opposed to legislation that would increase costs to purchasers either through extended monopolies or unnecessary and costly litigation.

We are convinced that the legislation you are advocating will make a major difference in increasing competition in the marketplace and enhancing access to more affordable, high quality prescription drugs. We look forward to working with you and other Members of the HELP Committee to ensure that this important legislation is enacted this year.

The Coalition for a Competitive Pharmaceutical Market is an organization of large national employers, consumer groups, generic drug manufacturers, insurers, labor unions, and others. CCPM is committed to improving consumer access to high quality generic drugs and restoring a vigorous, competitive prescription drug market. CCPM supports legislation eliminate legal barriers to timely access to less costly, equally effective generic drugs.

CCPM Participating Members: American Association of Health Plans; Aetna; Anthem Blue Cross and Blue Shield; Blue Cross and Blue Shield Association; Caterpillar, Inc.; Consumer Federation of America; Families USA; Food Marketing Institute; Generic Pharmaceutical Association; General Motors Corporation; Gray Panthers; Health Insurance Association of America; IVAX Pharmaceuticals; National Association of Chain Drug Stores; National Association of Health Underwriters; National Organization for Rare Disorders; Ranbaxy Pharmaceuticals; TEVA USA; The National Committee to Preserve Social Security and Medicare; United Auto Workers; Watson Pharmaceuticals; and WellPoint Health Networks.

BUSINESS FOR AFFORDABLE MEDICINE,
Washington, DC, July 10, 2002.

Hon. SUSAN COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLLINS: The Business for Affordable Medicine coalition encourages you to support the Edwards-Collins amendment to the 1984 Drug Price Competition and Patent Term Restoration Act (Hatch-Waxman Act).

The Senate Health, Education, Labor and Pensions Committee is scheduled to vote today on legislation to close loopholes in the Hatch-Waxman Act that delay competition and prevent timely access to lower-priced generic pharmaceuticals. Your vote for the Edwards-Collins amendment will ensure genuine reform for all Americans who face barriers to affordable medicine.

BAM members hope to continue working with the Committee and the Administration on appropriate enforcement mechanisms that avoid unnecessary and costly litigation.

Consumers and institutional purchasers (including employers, and federal and state governments) can no longer afford the anticompetitive practices that are made possible by loopholes in the Act. Now is the time for Congress to restore the original intent of the Hatch-Waxman Act—no more gaming of the system at the expense of purchasers across America.

Please take a moment to review the attached information, including a letter from BAM member governors outlining their concerns about this costly issue and the need for real reform. For more information about BAM, please visit our webswite at www.bamcoalition.org.

Thank you for your assistance in making Hatch-Waxman Act reform a reality during the 107th Congress.

Sincerely,

JODY HUNTER,
BAM Co-Chair, Director, Health and Welfare, Georgia-Pacific Corporation.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I appreciate the opportunity to speak once again on this very important topic of lower prices of prescription drugs and providing real Medicare prescription drug benefit. I join my colleague in speaking to the fact that we need to pass the bill that came out of the committee to close generic loopholes and stop the drug companies from gaming the system. I think everyone should be commended for bringing this to the floor. I appreciate the fact that they have done that.

The frustrating thing at this point is, despite the fact that there was an overwhelming bipartisan vote to bring this legislation to the floor so we could begin to add to it—add medicare prescription drug coverage, add other ways to increase competition and lower prices—we come this week with great anticipation of this debate to work together and work out all the details after a vote of 16 people saying yes in committee to only 5 saying no, a bipartisan vote—we come to the floor last night, and a colleague on the other side of the aisle objects to us proceeding even to the bill.

Colleagues come and talk about concerns about working out details, which we want to do, we know we have to do, and we will do. But we are being stopped. In fact, the clock has been ticking since last night and we are not even able to bring this issue before the Senate. It is amazing to me that, with the importance of this issue and all the words that have been spoken on this floor and the House, during Presidential campaigns and all the campaigns that we have been involved with—we come to the moment of truth of being able to bring this to the floor for debate and, instead, we are seeing an attempt to stall. We are seeing an attempt to hold us up from proceeding. That is of great concern.

I have great respect for my colleague from New Hampshire, but I disagree with this approach, and I urge him to reconsider and give us the opportunity to bring this to the full Senate.

Mr. GREGG. Will the Senator yield?

Ms. STABENOW. I am happy to yield.

Mr. GREGG. Mr. President, I ask unanimous consent that we proceed to the bill; we vitiate the vote on cloture and proceed to the bill.

The PRESIDING OFFICER. The Senator cannot make such a request until he has the floor.

Mr. GREGG. Will the Senator yield for me to make that request? The Senator suggested I make the request. I am willing to make it.

Ms. STABENOW. I would be happy to yield.

Mr. GREGG. I ask unanimous consent——

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. I ask unanimous consent we vitiate the cloture vote and proceed to the bill.

The PRESIDING OFFICER. Is there objection? The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this is an interesting proposal. It is 5 o'clock in the afternoon now on Tuesday. We had the opportunity last evening to lay down the bill. We could have considered the amendments during the course of the day and made some real progress on it. But it was the determination of the other side not to permit us to do that.

Mr. GREGG. Regular order. Regular order, Mr. President.

Mr. KENNEDY. The regular order is——

The PRESIDING OFFICER. Does the Senator object?

Mr. KENNEDY. I am reserving my right to object.

Mr. GREGG. Regular order. I ask for regular order.

Mr. KENNEDY. Mr. President, I understand that under the regular order, I have a right to object, and I——

The PRESIDING OFFICER. The Senator has a right to object. But not make a speech.

Mr. KENNEDY. Pardon? No?

Mr. GREGG. I ask for regular order. Either objection should be or not be made.

Mr. KENNEDY. Objection.

The PRESIDING OFFICER. Objection is heard. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we had the opportunity to go to this bill last evening. We have been waiting here all day long in order to take action on this legislation. Legislation that can have a direct impact in terms of the cost of prescription drugs and also on coverage.

Now at 5 o'clock, the Senator comes here without any kind of notice and makes this request. I think the American people are entitled to know why, since the Senator from New Hampshire was the one who originally objected to bringing up the bill. I would be prepared to vote right now on whether to proceed to the bill if the Senator wants to call off tomorrow's cloture vote.

But if the Senator is objecting to the bill on substantive grounds last night, I think the American people are entitled to know where their Senators stand on considering this legislation. If the Senator wants to do it tonight, that is fine with me. If he does not care to do it tonight, we will follow the regular order and tomorrow when the roll is called—as it will be done here in the Senate—when the roll is called, we will find out. The American people will find out who believes we ought to move ahead with this legislation. That is the way it should be.

There has been objection raised to the majority leader to moving ahead. Now I think, since this issue has been raised during the course of the debate, during the course of the day, the American people are entitled to know who is going to be for this particular legislation.

That is why I have raised that issue.

Mr. SCHUMER. Will the Senator yield for a question?

Mr. KENNEDY. I believe I have the floor.

The PRESIDING OFFICER. The Senator has the floor.

Mr. KENNEDY. Mr. President, I think it is wise, if we are going to conduct our activities, that we do it in the light of day rather than the twilight of the evening. We ought to have the chance to have an open kind of a process. We have the Senator from Michigan here who has been waiting to make an excellent presentation. I was engaged in a conversation with my friend and colleague from Maine about this. Suddenly, there is a unanimous consent request to just go ahead with the legislation.

I think we ought to conduct a full debate on this issue, which is of such importance and consequence to families across the country in terms of the cost, availability, and accessibility of prescription drugs. And we ought to do it in the light of day. We ought to have a good debate on this issue.

But since there has been objection to the majority leader proceeding to this issue, because evidently the Committee did not conform to the understandings of certain Senators, and there has been objection raised from that side of the aisle during the course of discussion and debate, I am going to insist that the Senate go ahead and have a roll call vote. We are going to vote on this. And the American people will understand who is for moving ahead with this legislation and who is not. Hopefully, we can then make progress on this legislation. We will consider amendments and begin the substance of this debate rather than just the general debate.

I would be glad to yield to the Senator from New York. I believe I have the floor. The Senator from New York has asked for me to yield for a question.

Mr. SCHUMER. I thank the Senator. I appreciate his yielding. I want to make an inquiry of him. I am, in fact, in accord with what my friend from Massachusetts said.

We have now spent all day today. We could have spent it debating amendments and moving the bill forward. We might have even been able to go forward on Friday. All of a sudden, after all of this, when we can't accomplish anything, when we can't accomplish amendments, our good friend from New Hampshire comes up and says: Never mind.

Well, there is a reason we think we ought to have a vote. We ought to see where people are. We ought to avoid this from happening another time. What if it happens again 2 days from now? What if there is an amendment that gets somebody upset and they decide to filibuster again? Then we are in the middle of debating access, or in the middle of debating Canadian reimportation.

Let us see where the cards are. Let us see if there was a real reason to delay and delay and delay. Let us see where the votes are. Do people really want a delay? This idea of spending a whole day—I don't mind it. I like this issue. I have fun talking about it. I think it is good that the American people hear about it. But I would rather be voting on amendments. I would rather be crafting legislation. I would rather be reducing the cost of drugs to my constituents from Buffalo to Montauk from Plattsburgh down to Brooklyn.

I completely agree with my friend from Massachusetts. If you want to have a vote now so we can avoid these games in the future, by all means. But if you don't want to have that vote now, then let us wait until tomorrow. Let's have a vote on this. God knows we have spent enough time debating the issue.

I thank him for making that point so well and so forcefully.

Mr. KENNEDY. I see the Senator from Michigan has asked to be recognized. I yield to her.

Ms. STABENOW. Mr. President, I appreciate very much having the opportunity as well to raise the issue. I appreciate now our friend wants to move ahead with this issue. But we certainly want to make sure we have a vote so that we know that in fact we can proceed.

I ask of our leader, the Senator from Massachusetts: In order for us to guarantee that we can proceed and that this will not happen again in the future, is it his assumption that it is best for us then to move ahead to a vote so we may guarantee in fact, as my friend from New York said, that we don't have this happening again and not just a series of filibusters in order to stop us from moving ahead on this important issue?

Mr. KENNEDY. I thank the Senator. I intend to yield the floor. I will insist on the regular order so that we have a chance to vote on this tomorrow.

I see my friend and colleague, our leader from Nevada, wishes to address the Senate. Obviously, I would follow the leadership in terms of when that vote would occur. If the request is that we move ahead with a vote this evening, I will certainly support that proposal.

(Several Senators addressed the Chair).

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, crocodile tears are being shed here, I see. We agree to vitiate the vote. But we didn't want to vitiate the vote. We agree to proceed to the bill. We don't want to proceed to the bill. All day we heard about how outrageous it was that we were having to go to a vote. Suddenly, crocodile tears appear to be shed early today.

My reason for suggesting that we vitiate the vote was in response to the specific comments of the Senator from Michigan. The Senator from Michigan came to the floor and called upon me by name and by State to proceed with the bill. That is what the Senator from Michigan called upon me to do.

I ask if it is possible to read back the statement the Senator from Michigan made just prior to the most recent exchange.

The PRESIDING OFFICER. The statement would have to be obtained from the Official Reporters.

Mr. GREGG. I will represent—and hopefully people will take the representation as accurate—that the Senator from Michigan was on the floor asking why I was slowing the bill down and called on me to——

Ms. STABENOW. Will my colleague from New Hampshire yield?

Mr. GREGG. I would be happy to yield for a question.

Ms. STABENOW. I was here at 10 o'clock this morning asking that, and I

think it would have been very appropriate if you had been here at 10 o'clock this morning. We would have welcomed that. We have all day been asking that. Now we are at a point where I think the concerns of my friend——

The PRESIDING OFFICER. The Senator from New Hampshire yielded for a question.

Ms. STABENOW. I ask why you were not with us this morning. We have been asking all day.

Mr. GREGG. I appreciate that question. I wasn't here this morning when you asked that question. But there is a tempo to this body. And the tempo involves putting on the RECORD the reasons this bill was, in my opinion, being brought forward in a manner which was inconsistent with the agreements which had been reached, in my opinion, within the committee.

There are two items that were represented as being fixed before the bill came to the floor, in my opinion. Neither of those items was corrected. The bill has had a very short shelf life. It was introduced last—we saw it for the first time, I believe, last Wednesday morning. It was passed last Thursday, and it was on the floor without a report on Monday.

During that period of it being passed in the committee on Thursday, there was an understanding between Senator EDWARDS and myself that part of the bill was incorrect and it would be fixed. Between Senator FRIST and Senator EDWARDS, there was another part of the bill that was incorrect which would be fixed.

For me, it seems inappropriate to move to the bill in such rapidity without having made that point—that point I spent a considerable amount of time making this morning and this afternoon, and which I am happy to continue to make.

But as a practical matter, I think the point has been made. I am willing to proceed to the bill, as the Senator from Michigan said. She came to the floor while I was here. I wasn't here this morning. Regrettably, I didn't hear your excellent speech. I am sure it was an excellent speech. But I was here to hear your last excellent speech. In response to it, I thought: Gee, let us proceed to the bill rather than have a vote tomorrow. We can have a vote tomorrow. I would counsel everyone to vote in favor of it, if they can.

Mr. SCHUMER. Will the Senator yield?

Mr. GREGG. I will yield in a second.

But the question was why I made this statement. It was because the Senator from Michigan asked me. I was stunned, startled, and surprised by the Senator from Massachusetts who, upon—and I understand that he was in a conversation and probably didn't hear the Senator from Michigan ask me. But had he heard the Senator from Michigan ask me, I am sure he would have said that is a reasonable response to the Senator from Michigan, I agree with it, and we should move to a vote.

I am also surprised that someone on the other side of the aisle is objecting to proceeding to the issue without a vote. If that is the case, that is the case; so be it; let us have the vote tomorrow. But if you want to proceed to the issue right now, I am perfectly willing to do that without a vote.

Mr. SCHUMER. Will the Senator yield for a question, my good friend?

Mr. GREGG. I will yield for a question. I am sure it will be an excellent question.

The PRESIDING OFFICER. The Senator from New Hampshire yields for a question.

Mr. SCHUMER. I thank the Senator.

He knows from the days we played basketball together in the House gym that my questioning ability is about equal to my basketball playing ability—not very good. But I would simply ask him a question.

If he wishes to move to the bill, and understanding that some of us feel a little grieved that we debated this all day, why would he object to us having a vote right now and then moving to the bill?

Mr. GREGG. I would answer the question, because my colleague from New Hampshire is in New Hampshire attending a funeral. I would otherwise be happy to move to the vote right now.

I renew my request that we proceed to the bill.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, I object.

The PRESIDING OFFICER. There is objection.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire still has the floor.

Mr. GREGG. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I have the opportunity to spend a lot of time on the floor and I see what goes on here more than this very important piece of legislation dealing with prescription drugs. For months and months, I have seen this. I have watched what has gone on. And it does not matter whether it is election reform, whether it is the energy bill, whether it is terrorism insurance, the supplemental appropriations bill, the Department of Defense authorization bill, or, as a couple hours ago, trying to move to military construction appropriations, it does not matter what we do, we cannot do it because they will not let us.

This is no different. And the answer is, you know, we can talk about: Sure, let's do it today. We will do it right now—after we have wasted actually 2 days—not 1 day, 2 days. Today is Tuesday.

This is the same on every piece of legislation with which we deal. And the reason is they do not want us—''they,'' meaning the Republican minority, do not want us to deal with this legislation—this legislation, election reform, energy, terrorism insurance, the supplemental, DOD authorization.

And the game does not stop with cloture on getting the bills to the floor with a motion to proceed. It is one thing after another. No, they don't want a 3-to-2 breakdown on the conference committee. They want 4 to 3. Or it doesn't matter what it is, we can't do it right.

But, Mr. President, we have the ability to persevere. And we have been able to pass election reform in spite of their not wanting us to go to it. We have been able to pass an energy bill in spite of their not wanting us to go to it. We have been able to pass a good terrorism bill in spite of not being able to get to it for weeks and weeks and weeks. We have passed a supplemental bill that is a good bill. The Department of Defense authorization bill is a good bill.

We have the ability to persevere and we are going to do it on prescription drugs. They can stall us for days. That is what this is all about, the big stall. That is one thing I have learned. I know what this is: stall, delay. And, of course, the Senator from Massachusetts is absolutely right; that is all this is about.

I have the greatest respect for the senior Senator from New Hampshire. He is good and he knows Senate procedures. He served in the House and was Governor of New Hampshire. And he is now a Senator, senior Senator. He knows the rules. He knows they have gotten 2 days on us on this bill to prevent us from offering amendments. I would like to spend some time on the Graham-Miller legislation, which the vast majority of the Senate—Democrats—support. It is good legislation. We should have been debating that all day today, and started on it yesterday.

No, we will not be able to do it. And the word has come from the other side that the minute it comes up—the minute it comes up—they are going to raise a point of order. And so the longer they stall on that, the less opportunity it will give us to talk about substantive issues.

So I am not surprised. This is the way it has been. They are going to continue to do this because they do not want the Senate Democrats to have victories. And we are having them in spite of having to fight every step of the way—every step of the way—to get where we need to go.

Mr. GREGG. Will the Senator yield for a question?

Mr. REID. I am happy to yield to my friend from New Hampshire for a question.

Mr. GREGG. I am willing to give you a victory. I am saying: You win. Proceed to the bill.

Mr. REID. Let me respond to my friend. I also understand this, that you have stalled for 2 days, at least. I think we can count Friday as another stall day.

Mr. GREGG. The bill wasn't passed until last Thursday.

Mr. REID. You stalled for 2 days. And here we now have a situation where,

after having wasted 2 days, we now are in a situation where you say: OK, let's just go to it.

It is 5 o'clock tonight. You have told us your friend in New Hampshire has a funeral. I also spoke to our colleague from New Hampshire. He said: Do you think there are going to be any votes? I said: It looks like you're not going to give us any votes. I said: I would hope we would have a vote on military construction. Right out here at about 2:30 today he and I visited.

So I say your statement that our colleague from New Hampshire is at a funeral—I am glad he is attending a funeral. I am glad he was able to go there. I think it is the right thing to do. But what I say, if going to a funeral isn't an excuse for missing a vote, there isn't one that exists in the world. So I think that is a very poor excuse for our not voting on this tonight.

If, in fact, you want us to go forward, I ask unanimous consent that we vote on cloture right now. Let's say at 5:45. Give people an opportunity to get here. We vote. I will spread on the RECORD that anyone who questions the junior Senator from New Hampshire not being here for the vote—I will personally campaign against that person and say that it is wrong for anyone to raise that as an issue.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Reserving the right to object, I would actually note I am actually the junior Senator from New Hampshire. But independent of that subtlety——

Mr. REID. Let's say, you don't act like the junior Senator.

Mr. KENNEDY. Not all the time.

Mr. GREGG. Let me make the point, we do not need a vote because I am willing to agree to go to this without a vote. But if we are going to have a vote, let's have it when it was originally scheduled, which is tomorrow at 10:30 or 9:30, whatever it was. So I would object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. I say to my friend from New Hampshire, we have had people who have told us they didn't want us to go forward. And I think they should be called here and cast a vote and see how—I don't like to use words like this, so I will not use the word ''phony''—let's say deceptive.

Here they are now. They are saying: We aren't going to let you go to this, but we don't want to vote on it. I want them to vote on it. Probably the vote will be 98 to 0. We will show how fallacious and foolish and wasteful it was not allowing us to go forward on this anyway.

Mr. GREGG. If the Senator will yield for a further question, I think the Senator's knowledge of process around here certainly exceeds mine and, obviously, it borders on genius. And, therefore, I suspect the Senator knows there are ways in which to get one's point across in this institution which involve procedural activities.

My purpose in raising this issue was to get my point across, that I believed the bill was coming to the floor without having been adequately structured as to how it was going to leave the committee. Now, I made my point. I am happy to move on without a vote. There will be a vote tomorrow, if you wish to have it, and it will probably be 98 to 0.

Mr. REID. Does my friend have a question?

Mr. GREGG. My question is, Why do you need a vote?

Mr. REID. For the reasons that have been outlined, in detail, by the Senator from Massachusetts, and by me.

So I ask unanimous consent that the cloture vote on the motion to proceed to Calendar No. 491, S. 812, occur at 10:30, Wednesday morning, July 17, and that the time until the cloture vote be equally divided and controlled between Senators KENNEDY and GREGG or their designees; and that the mandatory quorum under rule XXII be waived; that immediately following the vote, if cloture is invoked, the motion to proceed be agreed to, and the Senate begin consideration of S. 812.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, the majority leader has asked that I announce there will be no more votes today.

I would say, after having said that, that is really too bad. What a time to do military construction today. We would take 20 minutes, plus 45 minutes. We would finish that bill and send it to the President.

Now, I would say that my friend from Arizona complained because he wants firemen. I have checked with Nevada. I will be very brief. I know people want to talk on prescription drugs, which they should, but in Nevada—you know, my friend from Arizona is complaining he wants to make sure there is going to be money to fight these fires—we have the Mud Springs fire covering 4,000 acres; Eagle fire, 10,000 acres; Buckeye fire, 850 acres; Ellsworth fire, 1,200 acres. They are burning right now—the Belmont fire, 650 acres; Cold Springs fire, 1,000 acres; Adobe fire, over 500 acres; Bridgeport fire, 250 acres; Pony Trail fire, 100 acres; Lost Cabin fire, 1,500 acres.

I am willing to do what we always have done: Wait until the money comes forward in the Interior appropriations bill. We have already established that the President should push this in the supplemental. He has not done that. Maybe he will do that. That is no excuse, no reason for not going forward with this bill.

As I outlined following Senator KENNEDY's statement, it is a sham. Everything we do here is an ordeal. It is an ordeal to get money to take care of construction needs for our military around the world. I repeat, election reform, energy, terrorism, supplemental appropriations, DOD, the corporate security bill, whatever it is, the big stall takes place. And we are able, in spite of that, to work our way through the system and declare some victories for the American people. We are going to continue to do that.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will just take a minute or two, and hopefully the Senator from Michigan will be able to complete her statement. She has been here all day long. She has yielded to all of the interventions. She has a determination that cannot be matched, but she also has patience and grace that can't be matched either. I will just take a moment, and hopefully she will be recognized.

Just as a general matter, this legislation is enormously important. We have all said that during the course of the day. I hope at the start of the substantive debate we can have a sense of civility about how we are going to proceed. If there are legitimate kinds of concerns, as expressed by the Senator from New Hampshire about being unwilling to permit the Senate to move forward, I will take those. I don't agree with them, and I think they are misplaced for reasons I have outlined, but I can understand those. Then we are going to play by the rules.

But I would hope, as we begin this extraordinarily important debate and discussion, that we will free ourselves from gamesmanship and surprises. Let's try and deal with this important issue. Let's share our amendments if we are going to call them up. Let's get back to a sense of civility. People have strong views. This is enormously important. The underlying legislation and these amendments are incredibly important.

People are entitled to have the full attention and consideration of the Members of this body and to be free of the gamesmanship that too often takes place. I hope at the start of this, we will have that as a basis on the way to proceed. I think the American people expect no less. There has been objection, as has been pointed out, to our considering this. This is too important. The American people will see with tomorrow's vote on the will of the Senate, whether this legislation is flawed in some way or whether we ought to proceed to it.

As the Senator from Nevada has pointed out, we are prepared to have that vote this evening as a roll call vote, so that the American people can see, after listening to this debate all day long and after the allegations and charges that were made about the incompleteness of the legislation, whether there are substantial Members of this body who don't feel we ought to go ahead, or whether the majority believe we should go ahead.

At the beginning of this debate, which will take some time and is very important, let's hope we can proceed in a way that is worthy of this institution.

I thank the Senate.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to comment on some of the remarks of the majority whip and some of the comments of the chairman of the committee with respect to this legislation.

No. 1, the junior Senator from New Hampshire has every right, as ranking member of the committee, to be outraged at the way this bill was brought to the floor. It is my understanding, listening to him today and from the discussion in committee, that there were certain commitments made with respect to bringing this bill to the floor. The fact is, the reason we have seen delays on the floor on the energy bill, the terrorism insurance bill, election reform, a variety of other bills, was because those bills had bypassed committees. They had been brought straight to the floor.

Now we are talking about another bill, the Medicare drug bill, which will be amended, attempted to be amended, to this underlying bill that will be bypassing the committee and brought straight to the floor. What is the underlying bill? A bill that was introduced on Thursday and now is on the floor. No one had seen it. I am still trying to understand this legislation. It is very technical, very complex. It is very important to my State, in which there is a lot of drug manufacturing. I am still trying to understand the complexity of what this bill actually does. It is here on the floor, and we are asked to just move ahead.

The Senator from New Hampshire had some understanding of what was going to be changed. As you know, when you are marking up a bill in committee, markups are not about legislative language. There are concept documents that are then put into legislative language and brought to the floor. The Senator from New Hampshire had understandings and those understandings were not incorporated into this legislation.

The Senator from New Hampshire had a right to come to the floor and explain his dissatisfaction with this procedure. We have two procedures set up: No. 1, you completely bypass the committee; No. 2, you go through committee, and then you don't bring the bill out that you say you are going to from committee.

The Senator from New Hampshire simply wanted to make that point. As you know, in the Senate we have the opportunity to put a halt on things temporarily so you can make a point. The point is, procedurally this Senate is being run amok, whether it is the work now coming out of committee or, more often than not, it is the work that is not even done in committee.

I don't know why we have a Finance Committee, much less a chairman of the committee, because every important issue the Finance Committee has had to deal with this session has been bypassed. The committee has been bypassed.

Whether it is taxes or Medicare prescription drugs, I cannot think of any two issues more important—I also include trade—the three most important issues Finance deals with: trade, taxes, and health care—of the three major issues of this session of Congress, the Finance Committee and the chairman were simply bypassed. Partisan bills were brought straight to the floor.

Why are we discussing this underlying bill? They brought this bill up because this is the vehicle by which to talk about health care because they couldn't get their prescription drug bill through the committee. They couldn't get the Democrat prescription drug bill through committee because it is a partisan approach. It will get no bipartisan support. It has no scoring. It has not even been written yet. It is still being worked on.

The bottom line is, they couldn't get that through committee. Actually, the bill that would have come out of committee—I am fairly confident—the bill that would have come out of committee would have been a bipartisan bill. But it wouldn't have been a bill that the majority leader wanted. So he takes the gavel out of the hand of the chairman and runs the bill straight to the floor; that is, his bill. That is a partisan bill.

Why does he do that? We are still operating on last year's budget agreement. Last year's budget agreement requires two things of a Medicare prescription drug bill: No. 1, that it be within the budget amount, which I believe is $300, $350 billion in number—it has to be that number or under—No. 2, it has to be reported from the Finance Committee.

So here is the state of play now because we are playing politics with prescription drugs instead of trying to do prescription drugs. We are playing politics. Why? Because any bill that is offered in the Senate that provides a prescription drug benefit for seniors will be subject to a point of order which is 60 votes. Why? Because it was never reported through the Finance Committee. Why? Because the majority leader refused to let the Finance Committee mark up a bill.

So what has he done? He has set up a game where he has placed the bar so high that no benefit will pass the Senate. Why? Morton Kondracke answered that in Roll Call when he said it is obvious the Senate Democrats wanted the issue more than the prescription drug coverage for seniors. They would rather have the issue this fall than the drug coverage for seniors as soon as possible.

I have not been around that long. I have been around since 1991. But since I have been here in the House and in the Senate, I have noticed one thing: When it comes to dealing with the big issues of the day, particularly health care, taxes, Social Security, et cetera, by and large—particularly with Social Security and Medicare entitlements—you cannot pass one of these pieces of legislation without a bipartisan consensus. You cannot do it, and I argue that you should not do it. You should try to work together to get a consensus. If you are serious about getting a bill through the Senate on prescription drugs, you cannot bypass the committee, bypass bipartisan agreements, bring a partisan bill to the floor, play games of 60-vote points of order, and claim you tried and the other side blocked you from succeeding, which is exactly the way this is going to play out.

Let's have no illusions as to how this will end. This is not a serious discussion, folks, of getting prescription drugs for seniors. This is a serious campaign rhetoric debate about who is for seniors more, knowing full well, the way the game was set up, seniors will lose, no matter what happens.

If you were serious about getting a prescription drug benefit for seniors, you would take it through the Senate Finance Committee and they would do the work that should not be done on the floor of the Senate. You have folks on the Finance Committee who have waited years and years to get on that committee and have studied these issues very hard, such as the Senator from Massachusetts, who is an expert in the areas under the Labor Committee's jurisdiction. He is an expert. He has been working on these issues. This is his area of expertise in legislating. When the Finance Committee deals with welfare, taxes, trade, Medicare, and health care, this is their area of expertise. They work together. This is a dynamic. That is how committees work. They work together and find compromise. They understand the real intricacies of the issues, and they work together to knead together legislation that will work and come to the floor without all of the different problems that confront a virgin piece of legislation that is dreamed up in some back room somewhere.

That is how the process works to help the Senate do its work. You build consensus in committee. You get Democrats and Republicans working together to form agreements and coalitions, to bring a bill to the floor so you can continue that. That has all been thrown out the window. Why? This bill is about partisan politics. This bill is about the November election. This is not about providing prescription drugs for seniors.

This is really tragic. It is amazing to me that the Senator from Nevada would complain about losing 2 days. We are going to lose 2 weeks in the Senate. We are going to spend 2 weeks debating health care issues that, because of the procedure that has been set up, will never pass the Senate, because we have set up a procedure that is doomed to fail, we have set up a procedure that does not allow bipartisan cooperation.

We have a bill introduced by members of the Senate Finance Committee—a tripartisan bill—that would have passed the committee, that could

have come to the floor. A lot of the problems already could have been worked out. We could have spent less time, not more time, here in the Senate. If we really wanted to do a prescription drug bill, we could have let the Finance Committee do its work and we would have had the issues narrowed as a result of that. We could have come to the Senate floor and worked together and tried to get a bipartisan bill that could be conferenced with the House, so we could get a Medicare prescription drug bill. But a prescription drug bill is a partisan issue now. That is the result of this procedure we have going right now.

I don't understand why we say we have lost 2 days. We just voted on the corporate accountability and accounting bill at 7 o'clock last night. We had amendments and debate going on up until then—which would be allowed. There were amendments that were not allowed to be offered. We had debate going on and we had 4 or 5 votes last night. So I don't know how we have lost 2 days. The Senator from New Hampshire, about an hour ago, said he would be willing to vitiate the vote. There has been plenty of time for Members to lay down amendments. I think I can stipulate for the record, if anybody on the other side would care to have the stipulation as a satisfactory admission on our part, the vote tomorrow will be unanimous to move to proceed to the bill.

I don't think there is any question that every Member on this side wants to proceed to the bill. We want to talk about prescription drugs. We want to have our ideas. We have three different plans on this side of the aisle that are supported by various Members. Senator SMITH from New Hampshire and Senator ALLARD have a plan, Senators ENSIGN and GRAMM have a plan, and the tripartisan plan that is supported by many Republicans, all of which I think bring a tremendous contribution to the debate. We will have good discussions about it.

I know the Senator from Nevada said he wishes we had the Democratic prescription drug bill up. I hope the Senator from Nevada offers that bill right out of the shoot. I hope we do have a vote on that tomorrow, or lay down that bill and have a discussion about it. I think it would be great.

Mr. REID. Will the Senator yield for a question?

Mr. SANTORUM. Yes.

Mr. REID. Would the Senator from Pennsylvania support, then, an up-or-down vote on the Graham-Miller bill that you just talked about? Do you want to debate that, and would you be willing to have an up-or-down vote?

Mr. SANTORUM. I think we should have up-or-down votes on every plan I just listed. If the Senator would agree to up-or-down votes on the tripartisan plan and the other two plans I just listed, which are serious legislative proposals, I think there would be no question you would easily get an agreement to have an up-or-down vote on the point of order on all of those.

Mr. REID. I am not talking about a point of order. I asked the Senator from Pennsylvania if he would give us an up-or-down vote on the Graham-Miller prescription drug benefit plan.

Mr. SANTORUM. Obviously, the procedure by which this bill has been brought to the floor has tainted this entire process. I believe, actually, the best chance we have to get the high-water mark—in other words, the most votes on any bill—will be the tripartisan bill because it has tripartisan support.

Mr. REID. So the answer to my question is no?

Mr. SANTORUM. Again, I suggest that you have created the atmosphere by which the point of order is available to some Members, and whether I agree or not doesn't matter. I think there will be Members on both sides of the aisle who will raise a point of order. Why? Because it is available. The Senator from Nevada knows full well if points of order are available, someone on this side—or the other side of the aisle, I might add—will raise a point of order. You have brought this bill to the floor by bypassing the Finance Committee. You have brought it with an instant point of order. That is the remarkable thing. You could have a prescription drug benefit bill that would cost $10, and if you brought that to the floor, it would have a budget point of order. Why? Because the budget says the bill had to come through the Finance Committee. So what we have done is set the bar where you now have to have every single Member of the Senate agree that this bill comes to the floor without objecting to it on a point of order.

As the Senator from Nevada knows, you hardly get anybody to agree to anything around here, much less a multibillion-dollar expansion of health care benefits, without having someone opposed to the legislation and then raising a point of order. So what we have done, as I said before, is set the bar so high that you have ensured that nothing will happen.

I will yield for a question.

Mr. REID. I would say that the bill we are working on here was reported out of the HELP Committee by a 16-to-5 vote; 5 Republicans voted to bring it to the floor. That is why we were so stunned when we weren't able to go to the bill. I also say that it appears to me that this bill didn't need to go to the Finance Committee; it was under the jurisdiction of the HELP Committee. But even if a bill went through the Finance Committee, it would still need 60 votes and we could raise a point of order on it.

Mr. SANTORUM. Mr. President, taking back my time I say not necessarily. It depends. If it were in the budget constraint and were not marked up in the committee, would it not be subject to a point of order?

Mr. REID. Being marked up in committee makes no difference whatsoever.

Mr. SANTORUM. That is not what last year's budget agreement says.

I also make the other point that, with respect to this bill—and you said you were shocked at the objection. I hope you listened to the Senator from New Hampshire in laying out what were legitimate complaints about the way this bill was brought to the floor, when certain assurances were given. As you know—and the Senator is a committee chairman and knows how markups work—certain assurances were made about issues being brought up in committee, and technical corrections or other corrections were ''agreed upon.'' And then when the bill came to the floor, those changes were not made.

Mr. LOTT. Will the Senator yield?

Mr. REID. Mr. Leader, he asked me a question. May I respond?

Mr. LOTT. I will be happy to let the Senator respond, and then I want to ask a question.

Mr. REID. I will be very quick in responding to the question. I say to my friend, in response to the question—even though you had the floor and you asked me a question—this, as far as I am concerned, is one of those excuses I have talked about. The bill was reported in a bipartisan fashion out of committee.

My friend from New Hampshire, the junior Senator, said: You told me certain things. That is what the amendment process is all about. He said: It is technical in nature. This is just an excuse not to go to the bill. This is just an excuse not to go to the bill. We are wasting time that should be used on prescription drugs. That is what we have tried to establish today. We are wasting time when we should be dealing with the bill itself, not talking about technical amendments that should not be here. It is here, it is here on a bipartisan basis.

Mr. SANTORUM. Reclaiming my time, the Senator knows fixing legislation on the floor is a lot harder than having something in the base bill. The fact is, the Senator believed certain assurances were made and those assurances were violated. He wanted an opportunity to pause to make that case. Subsequent to him making that case, he agreed to vitiate the vote. In fact, he agreed to proceed to the bill over an hour ago, and he agreed to vitiate the vote a couple hours ago.

All I suggest is, if we were serious about moving to this legislation, having a discussion about prescription drugs, we could be doing that right now. We are in some degree doing that right now. We could be on an amendment. I hope the Senator from Nevada or somebody on his side puts down the Democratic proposal that we can have this debate, begin in earnest and have votes. I will be happy to yield to the leader.

Mr. LOTT. Mr. President, if the Senator from Pennsylvania will yield, let

me clarify. There are several issues in play. First of all, there was the point the Senator from Pennsylvania was just making that there was some understanding that Members thought they had some modification of the bill that was going to be made that did not happen. Maybe that was just a misunderstanding, but that contributed to this problem.

The second issue, this is not just about this drug pricing bill. Everybody knows this is going to wind up being the vehicle for debate on prescription drugs. There is concern about going forward in this way; that this is going to be a process to which I have referred as mutually assured destruction because whatever is offered is going to have to get 60 votes because it did not come from the Finance Committee and/or because it exceeds what the budget allows. And that is the point I wish to clarify.

If I am misinformed, I would like to know that at this point. But my understanding clearly is that because we do not have a budget resolution passed by the Senate, we do not have any budget numbers, that the number we are operating on that is allowed for prescription drugs is $300 billion. That is what was identified last year, and that still is what applies.

If you exceed that amount, you have to have 60 votes to overcome a point of order. Secondly, if it does not come from the Finance Committee, that in itself would require 60 votes to overcome a point of order.

There are two reasons we will have to have 60 votes to pass any of the bills that may be offered in the prescription drug area.

If that is not correct, then I stand corrected. If we could get a bill out of the committee that was under that amount, then there would not be a problem. At least one of the approaches, or maybe a couple approaches, that will be offered—the one by Senators HAGEL, ENSIGN, and GRAMM that would cost, I understand, somewhere between $150 billion to $170 billion—would not require the votes to overcome the point of order, but it would because it did not come through the Finance Committee.

There is a simple solution to this: The Finance Committee should meet and vote. We have met for hours trying to figure out the right way to do this. It is difficult, it is complicated, and it is important. We met 4 hours, and I was there a couple hours last week. Yet we have not had a markup. Let's go to a markup, have debate, amendments, and see if the Finance Committee can report a bill. That is what I urge we do. Then we can have a bill that came out of the committee, that could have tripartisan support, and it would not be subject to a 60-vote point of order. We could pass it with 51 votes and get real help to people who need it—the elderly, sick, poor people—and we can do it this week.

Mr. SANTORUM. Was there not a markup scheduled for the Finance Committee this week?

Mr. LOTT. There was a markup. We marked up two minor bills last week, and there was a markup scheduled at 10 o'clock this morning. It was delayed to 2 o'clock and then cancelled. Why? Because Senators SNOWE, GRASSLEY, and others in the tripartisan effort served notice that they were going to offer a prescription drug package to a so-called minor bill. As a result of that, that markup was canceled.

It really bothers me. It looks to me that we are headed for a situation where, when the smoke clears next week, no package will be left standing, and we will not have passed a bill with 60 votes and the people once again will not get the help they need. We seem to be striving to find a way not to do this. I do not understand it.

I do not question the merits of the different bills. We can argue about them and we can debate them, but if the end result is nothing, is that good? As far as the underlying bill, if we knew debate was going to be on the drug-pricing issue, we could have started earlier, and we could probably have finished it this week. But there are two distinct issues that are riding on each other. It is a real problem.

Once the prescription drug bills perhaps fail, I guess we will come back to the base bill, and it will probably pass and I assume it will be a bipartisan vote: Some for it; some against it. I want to clarify, it is my understanding that clearly it takes 60 votes because of the amount involved and because the Finance Committee will not have acted.

Mr. SANTORUM. The Republican leader is correct. As I said earlier, if a drug benefit bill were brought forward that cost $10, it would be subject to a budget point of order because of this procedure.

People are asking: Why is the 60-vote procedure such a problem? The Senator from Nevada asked would I object to an up-or-down vote on one of them? I can certainly agree to that. The problem is the 99 other Senators; only one of them needs to object to an up-or-down vote and make a point of order against the underlying bill because it is not reported out of the Finance Committee, and we have a problem. We have to get 60 votes.

The interesting question is why are we in this situation? Obviously, because the majority leader has decided to bring a bill straight to the floor and not through committee. Why are we in this situation even stepping back from what happened yesterday? Because we do not have a budget. We have no budget. For the first time since 1974, we have no budget in the Senate. Now we are starting to see the consequences of not having a budget.

The other point is we do not have any appropriations bills passed. I am not the one objecting to the MILCON appropriations bill, and I hope we can work that out and I would be very supportive of passing it on a very short timeframe. The fact is, we are way behind on appropriations, and if I look at the schedule, we are talking about health care this week, next week, and talking about homeland security the week we leave. I do not see any time in here to do 13 appropriations bills that are necessary to run the Government of the United States.

We have no budget, we have no appropriations bills, and as a result of having no budget, we have a, to be very candid, screwed-up system by which we are dealing with a Medicare prescription drug bill, which to my constituents—and I represent per capita the second oldest population in the country—is perhaps one of the most important bills, maybe the most important bill, we are going to deal with in Washington, DC, for the people of Pennsylvania.

I always say we are second to Florida per capita in the number of seniors, but my comment is, my seniors care more about Medicare and prescription drugs than the ones in Florida because all my rich seniors move to Florida, and what is left in Pennsylvania are the folks who really need the coverage and cannot afford it. So this is a very important bill for the folks in Pennsylvania.

This is something we want to accomplish. This is not something I want to be held up by some procedural trick.

I will say without reservation that if we had a clean process and we had a bill that came out of the Finance Committee that was not subject to a point of order, we could begin the amending process and have the Senate work its will. Would I be happy with the product? I would probably not be overjoyed with it. I do not even know if I would vote for it. But we would move the process forward where we get a bill to conference that is conferenceable with the House, and we have the potential of getting a prescription drug benefit for millions and millions of seniors across America who are relying on us to do it. But instead of going through the process which assures us of getting a bill, we have developed a process which assures us of getting no bill.

So don't anybody next Friday say, oh, golly, we did not make it; oh, golly, we did not pass a bill and think, gee, we really gave it a good chance.

This process was scripted for failure. This process was created for a partisan issue in November and nothing more. This is not a serious debate about Medicare prescription drugs. When we are serious about doing Medicare prescription drugs, we will do it the way it was intended to be done and contemplated by the budget of last year, which is what is done with every other major entitlement bill we have ever dealt with in the Senate. What is that? Go through the committee of jurisdiction. The committee works its will. A bill is brought that has had a lot of the kinks worked out, has had bipartisan compromise by experts who study and

work on that kind of legislation—that is why they are on the committee—and the bill is brought to the floor to work out the final, in many cases major, issues. Then you get the bill done, you go to conference, and you move on.

That is not what is happening. Why? That is a good question. Why? Do we not trust the chairman of the Finance Committee to mark up a bill? Do we not trust the committee of jurisdiction to take up this legislation on which there is intense interest in the committee? There are several bills germinating out of members of that committee on both sides of the aisle. Why do we not trust this committee to do its work on the most important issue that that committee will deal with this year? Why have we said we do not trust the Finance Committee, we do not trust the chairman, we are going to go over their head, we are going to bring a partisan bill, which to my knowledge no one on this side of the aisle has seen? And I suspect there are a lot of folks on that side of the aisle who have not seen it.

The bill has not been scored. We have no idea how much it costs. The Senator from Nevada said he hoped to be debating this bill tomorrow. I hope to be debating the bill tomorrow, too, because I would like to see it.

Think about this: The largest expansion of entitlement programs in the history of the country, and we are going to bring the bill to the floor, having not gone through committee, having not seen it, and ask for a vote on it.

The rumor mill among the press is this bill costs $800 billion. Now, that may be high. I do not know. That is the number I heard outside. That is $800 billion, not over 10 years, because the bill sunsets, but only 6 years. So it is a trillion-dollar expansion of government. That is even a big number for Washington, a trillion-dollar expansion of government, and no one has seen the bill. It has not gone through committee. There has not even been a hearing on the bill. A trillion-dollar expansion of government, and there has not been a hearing on the bill, much less a markup.

Now what they are telling the American public is: We are really serious, aren't we? We are serious about passing a drug bill, aren't we? We have not had a hearing on it, we do not know how much it costs, we haven't gone through committee, haven't marked it up, we have not brought it to the floor, but trust me, we are serious about passing a bill. This is real, this is legit, we really want to do this, we really want to make this happen.

Remember, we have not drafted the bill, do not know how much it costs, have not had a hearing, have not had a markup, have not even brought the bill up to the floor, but we are serious, and it is, by the way, a trillion dollars. We really want to make this happen, and we are going to get it done in a couple of days, trust us, and we will work it out. That is the procedure.

Then we have people saying: How dare you raise a point of order against this bill that has not been finished, that costs a trillion dollars, has not had a hearing, has not been marked up, has not come to the floor. How dare you raise a point of order against this trillion-dollar expansion of government. How can you do that? You must not care about seniors. That is going to be the issue in November: You do not care about seniors because you did not allow us to pass a bill that no one had seen, costing potentially a trillion dollars, that no hearing had been held on, that no markup had been done on, and that we had not had the opportunity to even see and debate on the floor, with people wondering why we raised a point of order.

Mr. REID. Will the Senator yield for a question?

Mr. SANTORUM. I would be happy to yield for a question.

Mr. REID. Is the Senator aware that this legislation about which the Senator from Pennsylvania speaks has been written and authored by these two radical Democrats by the name of BOB GRAHAM from Florida and ZELL MILLER of Georgia, who both have credentials, I would suspect, that are as moderate as any in the Senate? Is the Senator aware of these two men who have sponsored this legislation, who have written it?

Mr. SANTORUM. I understand they have been involved in the writing of the legislation.

Mr. REID. Is the Senator also aware that this legislation about which the Senator speaks has been endorsed by many organizations and groups in America, including the AARP?

Mr. SANTORUM. Which I find remarkable to believe, and the answer is, I do know that some organizations support it, but I find it remarkable to believe that any legitimate organization would endorse a bill they have not seen and have no idea how much it costs. The answer to your question is, yes, I am aware that certain organizations have endorsed it. I question the responsible nature of those organizations that would endorse a bill they have not seen, have no idea what the impact is on their members, and have no idea what the impact is as far as the cost to their members and the cost to the taxpayers, because we do not know that yet.

Mr. REID. I have two very brief questions I would ask the Senator to answer.

Mr. SANTORUM. Sure.

Mr. REID. The Senator is not suggesting in any way that AARP is not a legitimate organization, is he?

Mr. SANTORUM. I did not say legitimate. I said responsible. There is a difference. They are certainly legitimate. I question how responsible they are.

Mr. REID. In the Senator's first statement, he did say legitimate.

Mr. SANTORUM. If I did, let me correct that. AARP is certainly a legitimate organization. I would question how responsibly they are acting if they are endorsing legislation they have not seen and do not know how much it costs.

Mr. REID. The Senator has indicated we should be working on appropriations bills, and I agree with the Senator. But is the Senator aware that for—I have lost track of the days, but for several days I have offered at least four, maybe more, unanimous consent requests that we move to military construction with a time of 65 minutes and I have received an objection on that side of the aisle?

Mr. SANTORUM. I would say to the Senator from Nevada, he did not receive an objection from me. All I can say is we have a Member or two on this side of the aisle who are concerned about the ability to pay for fires in their States, and I think the Senator knows that. We all have concerns about appropriations and disasters in our State. I certainly respect the Senators objecting to that. I hope we can work that out because I agree with the Senator from Nevada that we should be dealing with appropriations bills.

MILCON is one that is usually not very controversial, there usually are not a lot of amendments to it, and we should be able to pass it in a very short period of time. We are certainly working on this side of the aisle very diligently to try to take care of the objections so we can get to that issue.

I appreciate the Senator moving forward on that, and I hope the Senator from Nevada will then, after we get MILCON done, move to the Defense appropriations bill because I think it is vitally important, as we are fighting this war and we are trying to protect the homeland and we are doing things that are on the cutting edge of transforming our military, that we get that legislation passed in the Senate. When we get MILCON and DOD passed, the soldiers, sailors, airmen, and marines will know the money is there and the program dollars can be spent in a much more efficient way.

I am a member the Armed Services Committee, and that is always a concern, that there will be a delay in the release of money in the appropriations process. I think that would be a very important thing we could do between now and the August recess, if possible. I will certainly work with my colleagues on this side of the aisle to get them to have a very short list of amendments and see if we can get a DOD bill passed in short order.

Mr. REID. If I could respond to my friend without his losing the floor, as a member of the Appropriations Committee, we reported out this morning, or this afternoon—around noontime—the largest appropriations bill in the history of the country. That is why—and the Senator has taken my script—I have said basically the same thing on military construction. We have to move forward on that because we have construction projects for our men and women in the military all over the

world. Most of them, of course, are in America, but we have military construction projects around the world that are waiting, and we need to get to that.

I appreciate the Senator saying he would join with us, but the problem is we have had trouble moving all legislation, not the least of which is the military construction appropriations bill.

I appreciate the courtesy of the Senator allowing me to ask questions.

Mr. SANTORUM. The Senator from Nevada is always courteous to Members on our side when we come to the floor and we appreciate that gentility in the way he deals with questions and answers and appreciate his questions. I know we can work together in a bipartisan way to manufacture as many appropriations bills as possible between now and the August break. I know the Appropriations Committee has begun to churn out these bills in marathon sessions. That is welcome news.

Hopefully, we can get to what I believe is the most important. It is a big bill and it is complex. It is several hundred billion dollars. It is still smaller than this bill and a heck of a lot less complex, a bill that potentially could be presented here by the majority to expand prescription drugs.

Again, even though I object to the way this procedure is being done, I am very much for having this debate on the Senate floor and trying to get a prescription drug bill done that meets the needs of our seniors all across the country. I don't like the way it is structured. I don't believe it has been structured in a way that will lead us to a result that can be satisfactory to any senior. It is certainly a debate we should have. I just wish we had it under circumstances with a possibility of success. I don't think we are heading in that direction at this time.

A final point is on the underlying legislation. As I said before, I have only had a chance to look at it over the last 24 hours since I have been back in town. I have some concerns about this underlying legislation. This is more of a vehicle than a substantive issue. We have to understand, when it comes to the pharmaceutical companies, they are the great whipping boy in the Senate and certainly in the House and many places across the country. The fact is, about 50 percent of the new drugs that come on the market come from innovations in the United States of America. People are alive today who are listening to my voice because of pharmaceutical companies making billions of dollars in investments each year to create new drugs, to move the envelope forward, to improve the quality of and to lengthen people's lives.

I understand they get beat up on because they try to use their patents and they charge more money here than in other countries and all the other things said about them, but the fact is, if bills such as this pass—and I am concerned about this particularly, some of the litigation provisions—we are going to erode the incentives for pharmaceutical companies to invest in cures.

It is popular, very popular, to go around and promise seniors you are going to get them cheap drugs; that these generics are the answer. These filthy horrible drug companies, the pharmaceutical companies, the name brand pharmaceutical companies are horrible people who are raping and pillaging you, and if we just give all their patents to the generic folks as quickly as possible and give the generics an opportunity to get in there quicker, your drug prices will be lower. That is an argument that appeals very much to this generation of seniors and this generation of pharmaceutical users at the expense of future cures for them and others.

Some may say that is a good tradeoff. The politics is smart, I guess, because people would rather have the money in their pocket than the perspective of maybe something happening that may or may not affect them in the future. I understand the game. I understand the politics. The politics are great in being able to promise somebody a 50-percent reduction in their drugs, or a 30-percent reduction in their drugs. That is great. People see it, feel it, and hear it. But people also need to realize that when you do that, you limit the innovation that occurs; you limit those lifesavings drugs, the enhancing of the quality-of-life drugs that come out of this Nation's terrific pharmaceutical industry.

Sure, I will join others on this side with some amendments. I know Senator HATCH and Senator GREGG have concerns about this underlying legislation, have concerns about some of the issues, such as the reimportation of drugs.

I have very serious concerns about the safety of the reimportation of drugs. In Canada, they are cheap and they can send them back here and they are cheap. They sell them in Canada because they say this is how much you are going to charge; if you don't want this price, you cannot sell your drug in Canada. By the way, if you really want the drug, we will make it and sell it here ourselves. So you have no market and we will sell your drug anywhere.

You say: I cannot believe that happens. That happens.

Here is a pharmaceutical company that says: I charge $2 for the drugs in America; it costs me a quarter to make them. I charge $2 for the drug in America. It costs me a quarter to make it—that is, the process to make it. But the rest is to make up for the many cases, hundreds of millions, invested to get this formula to where it is. I have to make it up somehow so I have to charge more.

Canada says: I will only pay you a dollar; I will not pay you $2. I will only pay you $1 or 50 cents. The drug company has to make a decision: Do I sell it for less there and get the wrath of the American politicians who say, look how cheap this drug is, or do I sell it for less there, still cover my costs, and make a small profit—not as much, but I make a small profit—or do I not sell my drug there, have a Canadian steal my patent, make the drug and sell it there anyway?

If you are a pharmaceutical company, that is a decision you have to make. Some say: No, I don't want to sell the drug. I will not do it. Others say a little profit is better than none. And some suggest this is perhaps a unique drug, they feel a social obligation to make it available in countries because this is a drug that maybe doesn't have anything similar to it. So they sell the drug even at a very small profit because they feel a social responsibility to do so because it will save lives.

For this, they have Senators of the Senate holding up drugs and saying: Look at these rotten drug companies. Look at these rotten drug companies. Look what they are doing.

Understand the story because you are not being told the full story. You are not being told what really happens. Yes, they are cheaper, but now you understand why they are cheaper. They can say no. Fine. In some cases, saying no means people will die. Most pharmaceutical companies, contrary to what you hear, are not in the business of wanting people to die so they sell their drugs. I suggest we understand the whole story before we get into how bad these guys are for selling drugs cheaper in other places.

The bottom line is the American public, as a result of the way foreign governments operate, subsidize research in the world. Is it the right thing to do? We should have a good policy discussion on that. There might be legitimate competing arguments whether we should subsidize the research by paying more for research. However, if we do not, the research will not get done and people will die because that new drug that could have been invented had the investment been made will not be developed or it will be much later.

Those are the chances. I know that is taking the dollar you could get now for cheaper drugs for the promise of something better later. One thing drug manufacturers can point to is the promises have been made good, if you look at the quality of the pharmaceuticals that we have on the market today and for people whose lives are being saved and the quality of life that is being improved.

Understand what we are doing. This is not as simple as some would let you believe. Understand what we are doing. We are going after the big bad pharmaceutical companies that are responsible for many people being alive today.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that the Senate