

toward their prescription drug expenses.

The Congressional Budget Office has given Graham a preliminary cost estimate of \$389.5 billion. Keep in mind, though, that CBO did not have legislative language to review at the time they completed their cost estimate. So, depending on what legislative language is included in the Graham proposal—it could cost more than \$400 billion.

The tripartisan bill with an official CBO cost estimate of \$370 billion provides a solid benefit for all Medicare beneficiaries. Lower-income enrollees are provided with additional protections, which, as I said before, is appropriate.

What the tripartisan bill has that Graham does not is a significant drug benefit for every single Medicare enrollee. Under our 21st Century Medicare Act, enrollees will save on average 50 percent off their drug bills. And, lower-income enrollees will see a 95 percent savings in their drug bills.

The Graham bill fails these people. It fails them badly. Indeed, these failures amount to a massive failure for this body. Under Senator DASCHLE's leadership, Democrats and Democrats alone have tried to write partisan legislation on the Senate floor time and time again this summer.

That has gotten us nowhere. It has led to chaos, to partisanship and, as I said just a minute ago, to failure.

So, where are we now? It looks like we are ready for another mostly partisan vote on a pretty much partisan bill—another vote that will fail to get 60 votes, and will fail to give seniors the help they need.

We could have been somewhere far different from this. The House passed a bill. We could have been in conference with the House at this point. The President wants a bill. We could have been in the Rose Garden. Senator DASCHLE says he wants a bill, but what has taken place here over the last 3 weeks means he really wants something else: an issue.

Had regular order been followed, had the Finance Committee been given the right to work its bipartisan will, we could have had far more than just an issue. We could be far closer to providing real, affordable and universal prescription drug benefits than we are today. The sponsors of the Tripartisan bill, the only bipartisan bill in all of Washington to provide comprehensive, universal coverage on at a cost that is far lower than that in the amendment before us now, were ready and willing to talk to anyone about compromises. We still are.

But we were denied the right to a markup in the Finance Committee. I believe that if it had been given the chance to work its will, the Finance Committee would have reported out a bipartisan proposal, based on the tripartisan 21st century Medicare Act we introduced earlier this month.

I've said it before, everyone in this chamber knows that for anything of

this magnitude to pass—and adding a prescription drug benefit to Medicare is the single greatest entitlement expansion in history—it needs to get 60 votes.

And everyone in this chamber knows that the only way to get 60 votes is to have bipartisan support. The proper place to find bipartisan support is in the Finance Committee, not on the Senate floor.

By bypassing the Finance Committee entirely and doing drafting on the floor—literally on the backs of envelopes—the Democrat leadership has led us to where we are today: In shambles.

Mr. President, I urge my colleagues to sweep up the shambles on the Senate floor and start over. We can and should do better.

I ask unanimous consent that a statement by several organizations be printed in the RECORD.

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

JULY 29, 2002.

THE GRAHAM-SMITH PROPOSAL: CHANGING THE NATURE OF MEDICARE IS NO WAY TO CELEBRATE THE 37TH ANNIVERSARY OF MEDICARE To: Members of the United States Senate:

On June 14, 2002, our organizations sent a letter to Chairmen Tauzin and Thomas in support of their Medicare legislation. We were very clear when we gave our support that our goal was to ensure a voluntary prescription drug benefit which would be available to all Medicare beneficiaries.

The Graham-Smith low-income/catastrophic amendment provides complete drug benefits for only the very poor. The Washington Post reports that "millions of seniors 'in the middle' would not qualify for any prescription drug benefits at all under the Graham-Smith legislation." In short, the middle class would, in fact, receive no meaningful coverage under the Graham-Smith amendment. This means test violates the fundamental principle of Medicare social insurance that it is a universal program, not an anti-poverty program. It is ironic that on the same day that America's seniors celebrate the 37th anniversary of the enactment of Medicare (July 30, 1965), the United States Senate will be considering a proposal that takes us a very significant step away from the general entitlement that Medicare has always been.

The passage of such legislation would change the nature and intent of America's 37-year-old Medicare program. We respectfully ask you to oppose this amendment and enact meaningful prescription drug coverage which would give all Medicare beneficiaries access, coverage and choice.

American Osteopathic Association, Kidney Cancer Association, Cancer Research Institute, Pancreatic Cancer Action Network, Pulmonary Hypertension Association, Center for Patient Advocacy, Endocrinology Associates, National Coalition for Women with Heart Disease.

#### UNANIMOUS CONSENT AGREEMENT—S. 812

Mr. DASCHLE. Mr. President, I ask unanimous consent that notwithstanding the provisions of rule XXII, the Senate at 9:30 a.m. tomorrow resume consideration of S. 812; that there be 90 minutes for debate on the motion

to waive the Budget Act with respect to Senator GRAHAM's amendment equally divided between Senator GRAHAM and Senator GRASSLEY; that if the motion to waive fails and the amendment falls, then the underlying Dorgan amendment be agreed to and the Senate vote immediately on cloture on the generic drug bill, S. 812; further that if cloture is invoked, the bill be read a third time and the Senate then vote immediately on final passage of the bill, with the preceding all occurring without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator does not have the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, I again propound the request.

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

#### UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. DASCHLE. Mr. President, as in executive session, I ask unanimous consent that later today when the Senate considers the nomination of D. Brooks Smith to be a U.S. circuit court judge, there be a time limitation for debate of 4 hours equally divided between the chairman and ranking member of the Judiciary Committee; that at the conclusion or yielding back of the time, the Senate return to legislative session; that following the vote on final passage of S. 812, the Senate return to executive session and vote on confirmation of the nomination; that the motion to reconsider be laid on the table; the President be immediately notified of the Senate's action; and the Senate return to legislative session; and that the preceding all occur without any intervening action or debate.

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

Mr. DASCHLE. Mr. President, it is also then my intention to invoke the authority given Senator LOTT and I last week with regard to DOD. It would be my intention to move immediately to the DOD appropriations bill, and we will seek a time agreement on that, perhaps sometime tomorrow morning. Let me thank all of our colleagues for their cooperation and I certainly thank the distinguished Republican leader.

Again, let me outline the schedule, as a result of these unanimous consent agreements, tonight and tomorrow.

We are now in a position to move shortly to the nomination of D. Brooks Smith. There is a 4-hour time agreement that has been allocated to that debate. We will then resume consideration of the Graham amendment tomorrow morning at 9:30. The debate will last an hour and a half. It is equally divided. There will be a vote on the Graham amendment, a vote on the Dorgan amendment, as amended, and a vote on final passage, to be followed by a vote then on the judicial nomination.

I would then move to the DOD appropriations bill, in consultation with the distinguished Republican leader. I should also note that it is my intention to call up the fast-track conference report, and we will, if necessary, file cloture on that motion as well.

Senators should be prepared, if necessary, to be on the floor to accommodate that desire as well.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, for a couple of clarifications, first of all, with regard to the trade promotion authority, from what I believe the majority leader was saying, it would be his intent to call it up tonight and, if there is objection, you would file cloture on the trade promotion authority bill; is that correct?

Mr. DASCHLE. Mr. President, that is correct. I have been informed that there are those who will object, so it is unlikely that we would be able to complete our work on the trade promotion authority conference report tonight. Expecting that, I would intend then to file cloture on the conference report itself.

Mr. LOTT. Mr. President, continuing, I would like to get a clarification because I believe the Senator indicated that after the Dorgan amendment was agreed to, then the Senate would vote immediately on cloture on the underlying generic drug bill, and only if cloture is invoked would you then go to final passage. If cloture is defeated, of course, then that issue would still be pending.

Mr. DASCHLE. The Senator is correct. I anticipate that we would get cloture. If we don't, of course, we will stay on the bill for whatever length of time it takes and be unable to complete our schedule as it has been announced.

Obviously, cloture on the motion to proceed to a conference report is not necessary. This would actually be cloture on the conference report itself with regard to the trade promotion authority.

Mr. LOTT. Mr. President, for those who are following this, I emphasize that nobody has given up any position here or lost any rights. We are trying to set up a process so Senators would know what is going to be the business for the rest of the evening and what would be the sequence of votes tomorrow.

Tonight, we will have the debate on the nomination of D. Brooks Smith for

the Sixth Circuit. I thank Senator DASCHLE for going forward with it. Time is required for the debate, and that can occur tonight. The vote will be tomorrow in the stacked sequence along with votes on the Graham-Smith alternative and then on cloture on the underlying bill.

Depending what happens, we would go to the Department of Defense appropriations bill, which we have made a commitment to complete this week. We will try to get a reasonable time agreement on that. We would have the trade bill following, too. This is a large agenda to accomplish. This agreement is to try to put into place when the votes will occur.

Mr. DASCHLE. Mr. President, again, the distinguished Republican leader is correct. Because the motion to proceed to the conference report on trade promotion authority is subject to a vote, I announce that that vote will take place at 6:15 this evening. That will be the last vote of the day.

We will accommodate Senators who have already expected to speak on the pending legislation, and the 6:15 vote will accommodate all Senators who have come to the floor with an expectation of being recognized.

I yield to the assistant Democratic leader.

Mr. REID. Is it the intention of the majority leader, when we complete that vote, that we would go to the judicial nomination at that time, and then the 4 hours will start on or about that time?

Mr. DASCHLE. The Senator is correct. We would start debate at approximately 6:45 on Mr. SMITH. Senators should be here. The debate will be completed tonight. It is a 4-hour debate. So Senators will have ample opportunity to come to the floor and express themselves. It must be done tonight. There will be no time tomorrow.

Mr. President, I ask unanimous consent that, within that 45-minute time block that has now been designated for debate prior to the vote at 6:15, Senator KENNEDY be accorded 10 minutes of that time.

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

The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, we are well past the time when the 39 million older Americans and disabled citizens should be receiving affordable, comprehensive, and reliable prescription drug coverage. More than 225,000 of these citizens live in New Mexico.

Medicare must be brought into the 21st century and that includes adding a prescription drug benefit. We must pay special attention to the needs of the most vulnerable—low-income seniors and people with disabilities. This is particularly important to New Mexico, where the median income of our senior citizens is just \$11,370, or 15 percent below the national average.

Under the current system, an unconscionable number of these people are

forced to choose every day between filling a doctor's prescription with limited incomes or paying for some other basic need.

As we consider the drug proposal before us, there are some important principles that I believe we should adopt.

The first principle should be that we ensure that the most vulnerable are protected. That includes the neediest, or poorest, the sickest, or those with the greatest health care needs. With the Federal Government now running significant deficits, we clearly have a limited amount of money and cannot ensure all senior Americans and disabled citizens will get everything they need, but we should be sure the most vulnerable are protected.

The second principle should be that we must use a delivery mechanism that is stable and that seniors can rely on. It must be a system that is accessible and not an untried or untested system. It must be a system that is reliable and stable and not one that potentially leaves seniors without prescription drug coverage or is in transition from year to year, as is often the case with the Medicare+Choice program now.

Before us is the Graham-Smith-Lincoln-Bingaman amendment that meets these principles. It has been a pleasure to work with all three of them on this compromise and others with a similar desire to provide the most help to the neediest and the sickest, including Senators CHAFFEE, FEINSTEIN, and NELSON. This compromise offers the best hope for a prescription drug benefit this year and also compares well to the Grassley-Breaux amendment that received 48 votes in the Senate last week.

In comparing these plans to ensure that the principles of protecting the most vulnerable and to ensure that the proposal is stable and reliable, the Graham-Smith amendment is the only one that meets the two basics, but critical, principles I have outlined.

With regard to protecting the most vulnerable, the Graham-Smith amendment ensures that Medicare beneficiaries below 200 percent of poverty receive drug program assistance. This provides the 12.3 million low-income seniors, or over one-third of elderly beneficiaries, with some protections from rapidly increasing drug costs. In New Mexico, this protects over 100,000 low-income seniors, or 47 percent of elderly beneficiaries.

For these financial vulnerable seniors, they will receive a comprehensive benefit under the Graham-Smith amendment that would be questionable under Grassley-Breaux. Briefly, the Graham-Smith amendment provides coverage up to 200 percent of poverty; limits low-income out-of-pocket expenses to just \$2 and \$5 per prescription compared to up to \$3700 for beneficiaries below 200 percent of poverty in the alternative plan; and, provides coverage for low-income elderly that is as comprehensive as state pharmacy assistance programs and without a drop in employer coverage, which again, is

in sharp contrast to Grassley-Breaux. That amendment provides more limited coverage than some elderly get through employer coverage or state pharmacy assistance programs.

It makes little sense to spend almost \$400 billion and have a consequence that some elderly will receive drug coverage worse than they currently receive, but that would be the consequence of Grassley-Breaux. I appreciate all the hard work Senators GRASSLEY, BREAUX, JEFFORDS, SNOWE, and HATCH have put into their bill and I understand this aspect of their proposal is certainly an unintended consequence, but it is a consequence that CBO estimates will cause one-third of employer to drop retiree health coverage.

Of great significance, the Graham-Smith amendment eliminates the assets test in Grassley-Breaux, which bars low-income beneficiaries from having total assets of more than \$4,000 a year. Own a car under that proposal and you will likely be denied financial protections otherwise.

According to the Kaiser Family Foundation, it is estimated that up to 40 percent of low-income elderly would not pass the assets test even if they are willing to undergo it. In New Mexico, coverage of low-income elderly in Graham-Smith is twice that of Grassley-Breaux—102,000 elderly covered to just 50,000.

In comparing the two proposals for those that are the sickest in society and have the most health care needs, Graham-Smith has a catastrophic limit of \$3,300 out-of-pocket or 12 percent less than the \$3,700 in the competing proposal.

How do the plans fare with respect to providing health and financial security for the elderly and disabled? Again, Graham-Smith is a stronger proposal.

The comparisons are stark. Graham-Smith requires a \$25 annual fee compared to \$288 per year or more under Grassley-Breaux.

Graham-Smith builds on the current employer and state-based systems and does not supplant employer coverage in stark contrast to the unintended drop of one-third of retirees from employer-sponsored plans in the alternative proposal.

Furthermore, the Grassley-Breaux amendment relies upon a virtually untried and untested system. For the full 37 years of the Medicare program, private insurance companies have had every opportunity to offer the elderly drug-only insurance plans. None have done so. This, my friends, is the definition of "market failure" and the very reason we have a Medicare program.

We have evidence of only one instance in which we have a drug-only, private insurance model and that was attempted by the State of Nevada. It is estimated that their current effort cost taxpayers almost 60 percent more through private insurance than if the State had run the program itself. Yet, this is the model the Grassley plan

would require all 39 million Medicare beneficiaries to participate in.

This is clearly a risky proposition. Moreover, the proposal allows insurance companies to bid on an annual basis. Even if we can spend the billions of dollars necessary to induce private insurance companies to participate, we are not buying stability or reliability for the elderly. Bids would come in every year with plans coming and going, just as they do in the Medicare+Choice program.

A prescription drug benefit should provide the elderly some security and not place them in some kind of grand experiment. We should not experiment with the health of our Nation's seniors and disabled.

Furthermore, the Grassley-Breaux model allows insurance companies to charge whatever the market will bear. Beneficiary premium costs could be very high and vary by geographic area and vary by year-to-year.

To deal with the similarity with Medicare+Choice, whereby health plans often pull out and leave seniors without their health plan, the Grassley bill requires the Secretary to provide the plans with whatever inducement or incentives necessary to ensure that people have a choice of at least two plans.

The language reads:

[T]he Administrator may provide financial incentives (including partial underwriting of risk) for an eligible entity to offer a Medicare Prescription Drug plan in that area. . . .

This could cost billions and billions of dollars without giving the elderly any assurance that the plans will be affordable.

For these reasons, I support the Graham-Miller amendment. It meets the principles of providing protections and security to our Nation's most vulnerable citizens through a system that is both reliable and stable. It is for these reasons that AARP and the National Council on Aging support Graham-Miller as well.

This amendment appears to offer us the final opportunity to pass prescription drug coverage for our Nation's elderly this year. To those that criticize it because it does not do enough for the middle class, I agree and point out this should be seen as a first step and downpayment on more comprehensive coverage for the Nations elderly and disabled.

However, if we do not take this first step, we are giving our Nation's seniors absolutely nothing. For those that voted for the Hagel-Ensign bill, I note that this proposal is very much like Hagel-Ensign in design, with a low-income benefit. Why is protecting the most financially vulnerable among our elderly objectionable?

I think this is a terrific compromise that takes aspects from both the Democratic and Republican proposals.

Mr. President, I believe the amendment Senators GRAHAM and SMITH have offered is a very good-faith effort to provide a genuine benefit to Medicare

recipients. I am glad to support it. It is a product of a lot of discussion. Senator LINCOLN deserves substantial credit, as do Senator STABENOW, Senator FEINSTEIN, Senator CHAFEE, and Senator MILLER. A great many Senators have worked on this issue, in addition to Senators GRAHAM and SMITH, and I particularly appreciate their leadership.

Let me say that the need is enormous. I see it in my home State. Many of the most vulnerable in our society do have very difficult choices to make about whether to fill the prescriptions they are given by their doctors or to meet their other needs—pay their rent, pay their utilities, buy food for the family, whatever.

We need to solve that problem, and we need to do so in a way that makes sense for all the people who benefit from the Medicare Program.

There are some important principles that I think we need to keep in mind as we craft a Medicare prescription drug benefit.

The first principle: We need to ensure the most vulnerable are protected.

The second principle: We need to have a benefit for all Medicare beneficiaries, and I believe we are meeting both of those principles with this proposal.

The third obvious principle: We need to have a delivery mechanism that is stable and upon which seniors can rely. It needs to be an accessible system. It should not be something that is untried and untested so that we do not get into the same kind of mess we had with Medicare+Choice in my State, and I think in many States around the country. I believe this amendment meets those principles. I believe it is a great benefit to us.

Let me say briefly what the amendment does. I have a chart, which may be difficult for some to read, but let me go through it very briefly.

The estimated cost of the Graham-Smith compromise is in the range of \$390 billion. I think that is a reasonable price for this kind of a very major benefit.

There is a benefit for all seniors. All seniors under the Medicare Program have a negotiated drug discount of something in the range of 30 percent, with a 5-percent Medicare payment and an additional discount added on to whatever discount can be negotiated through this program.

In addition to that, the seniors have catastrophic insurance coverage above \$3,300. So if any Medicare beneficiary pays \$3,300 out of pocket, after that, with a small copayment of not more than \$10, they will have the Government cover the cost of any additional drugs needed that year.

There is a substantial benefit for low-income seniors. We are saying people with incomes of 200 percent of poverty or less are covered for all of their prescription drug needs, with a very small nominal \$2 or \$5 copayment, depending upon whether they purchase generic drugs or brand name drugs.

This proposal is designed so that no employer will drop coverage for those who are presently covered. That is a very important provision. This amendment is also designed so there are no additional costs added to the States. Many of our States are faced with real financial difficulties because of the economic downturn, and this is not a time to be adding additional cost to the States. We have guaranteed in this proposal that they not be given additional costs.

That is a summary of the amendment as it is drafted.

What does it mean for my State? It means that all the Medicare beneficiaries in my State, everyone over 65, does get this very substantial catastrophic benefit, as well as the discounts.

It also means that 47 percent of the senior Medicare beneficiaries in my State will fall into the category of 200 percent or less of poverty and will have all of their drug costs paid.

Obviously, the choice we have to make is a difficult choice. We can do what is possible. Politics is the art of the possible, and I think all of us who have served in public office know that politics is the art of the possible. Maybe the possible plus 10 percent, but it is not a whole lot more than that. We need to get 60 votes. We need to get a prescription drug benefit that is understandable, that is straightforward, that is an add-on to the Medicare Program, and that is what we have proposed.

We can do what is possible and adopt this amendment or we can take the approach that the perfect is the enemy of the good and that we are basically not going to go home with anything. We will continue to tell the senior citizens of our States that we were not able to come up with anything and give them excuses.

I hope very much the Senate will not take that latter course. I hope the Senate will embrace this amendment and move ahead so that we can, in fact, deliver a prescription drug benefit. The time is well passed for us to do this. I believe it is very important work that we need to get accomplished.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. I thank the Chair for the recognition. Mr. President, I hope people who are following this debate realize that we are having a debate about politics; that this is a debate about the next election; that this is hardly a debate about Medicare.

How extraordinary it is that we are here talking about an entitlement program that represents the largest single commitment of Federal spending in 37 years, one program that will cost in and of itself more than defending the national security of the United States. Yet no bill has ever been reported out of committee.

This was a process from beginning until end—and I hope we are approaching the end—that was designed to fail.

It was designed to fail because we did not follow the normal procedure; we did not report a bill out of committee. We violated the budget. So, therefore, by not reporting a bill out of committee and by violating our own budget, it means that each of these proposals that are made have to get 60 votes.

We have already had one proposal that had we followed the regular order, the normal procedure of the Senate, would have already been adopted.

I have to note that basically what is going on is a political debate. One of the issues I find alarming about this debate is that it is obvious that some people believe the way to win the political debate is to spend money. I wish to remind my colleagues of a little history.

In 1999, we had a report of the Bipartisan Commission on the Future of Medicare. Senator BREAUX from Louisiana was the chairman. We had a clear majority of Members who were in favor of the recommendations for reform, but we had to have a supermajority of 11 Members to make a recommendation to the Congress and to the President.

That bill would have funded prescription drugs with the savings that we would have obtained by reforming Medicare. Until the last minute, it looked as if we would get the 11, but President Clinton had his four appointees all vote no.

When that happened, President Clinton held a press conference and released a program and said: If you would give me \$168 billion, I can fund prescription drugs for American seniors. That was in 1999.

Then in the year 2000, the Senate debated a proposal, that Senator Robb was the sponsor of, that basically said if you will give us \$242 billion, we can provide prescription drugs for America's seniors.

Then last year, Senator BAUCUS said we could fund a program that meets every need that the American people have, all the needs of our seniors, for just \$311 billion.

Then when we wrote a budget, the Democrat proposal in the Budget Committee, which was never adopted by the Senate, and we were told—actually \$168 billion, \$242 billion, \$311 billion—that is not enough, we need \$500 billion. Then on the bill on which we did not waive the budget point of order last week, we were told that it would require \$600 billion.

When we fill up the gaps, when we project out for 10 years, we have been seriously debating on the floor a proposal that would spend a trillion dollars, that has never been reported by any committee, that has never had a systematic consideration by a committee of the Senate, and that was designed from the beginning to fail.

I wish to conclude by making the following points: The proposal by Senator GRAHAM of Florida and Senator SMITH of Oregon that is before us, that we are

going to vote on in the morning, is being sold as a catastrophic coverage proposal that is quite similar to a proposal that Senator HAGEL, Senator ENSIGN, and I offered that got over 50 votes.

I would like my colleagues to understand that this proposal is nothing like our proposal. It is better than the original Graham-Miller proposal, it is more affordable, but it is not the proposal that Senator HAGEL, Senator ENSIGN, and I made. Our proposal said that we can set up a simple program where every senior in America will be able to engage, through a private company, in buying pharmaceuticals competitively so that we can bring down the cost of pharmaceuticals between 20 and 40 percent for everybody.

Then we had a stop loss, a maximum out-of-pocket expenditure, that for moderate-income seniors was about \$100 a month. They would be spending that \$100 a month through these private companies that would be purchasing pharmaceuticals competitively, and they would be spending their own money and therefore would be cost conscious. When they reach that \$100 a month and the Federal Government starts picking up the cost, they have already entered into a situation where they are buying pharmaceuticals competitively.

Secondly, we did not have the same stop loss for everybody. One of the reasons the bill before us costs \$400 billion over 10 years and provides such little coverage is that Bill Gates has the same stop loss that my mother has. Ross Perot has the same stop loss that the poorest recipient of Medicare in America has. This is not at all like the Hagel-Ensign bill, where the stop loss was dependent on one's income.

I remind my colleagues that was an affordable proposal. It was the only proposal that we have voted on that was within our budget, for the simple reason that it put the money toward helping the people who needed the help the most.

The problem with all of these other proposals is that for every 10 people they help, 8 people do not need it. We are displacing massive amounts of private health insurance in the name of helping people who do not have health insurance. The advantage of the Hagel-Ensign proposal, the reason it was within budget and these other proposals are not, is that it put the focus of attention on helping people who fell into two categories. Either they had relatively low income and substantial drug bills, or they were moderate and upper income with astronomical drug bills. In either case, they got help. But if their drug bills are low relative to their income, they did not get help and, quite frankly, people who have incomes and retirement that run into the hundreds of thousands of dollars and have private health insurance are not the people in need. It is the people who do not have health insurance and who are having a very difficult time with

paying for their pharmaceuticals who need help.

I hope this amendment will be rejected. When we do not have enough unity of purpose to pass a bill out of the committee of jurisdiction, in this case the Finance Committee, we should not be engaged in a political exercise on the floor where we are literally committing ourselves to a trillion dollar expenditure over the next 10 years. We are talking about the largest commitment of money that this Nation has undertaken in 37 years, and yet there is no substantial bipartisan agreement. Every proposal is tailored to some political constituency. We are dealing with a process that was designed to fail by not reporting a bill out of committee, by not staying within budget and, therefore, having to get 60 votes. So my own opinion is that the sooner this charade ends, the better off America will be.

Let the record show there has been only one proposal that was within budget. There has been only one proposal that was fully funded by the budget and that was logically consistent, that encouraged efficiency and economy and met the needs of the people who need the help the most, and that was the Hagel-Ensign bill.

I urge my colleagues to reject the amendment that is currently pending before the Senate. We are going to vote tomorrow. It has a budget point of order. It is \$100 billion above the budget. When we adopted this year's budget last year, we said we were going to spend up to \$300 billion on providing prescription drug assistance. This amendment, by the most generous scoring that can be made, costs \$400 billion. I urge my colleagues, do not waive the budget point of order, sustain the budget process, and reject this amendment.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). Under the previous order, the Senator from Nevada is recognized.

Mr. ENSIGN. Madam President, I wish to talk about the Graham-Miller amendment for prescription drugs. First, I compliment the people who have been working on it. We think they are at least going in the right direction. They have adopted some of the parts of the bill that Senator HAGEL and I had proposed, but I believe there are some fundamental flaws in the amendment as currently drafted.

I was in a working group yesterday. I tried to point out some of these flaws, and I want to point those out on the floor because I think these are very important issues that we get fixed in any prescription drug bill that we eventually, hopefully, pass out of the Senate and someday get to the desk of the President.

In the Graham-Smith amendment, for the people above 200 percent of poverty, they use the catastrophic bill; they use basically what Senator HAGEL and I had talked about, where seniors pay out of pocket for the first x dollar

figure and then above a certain dollar figure the Government would step in and take care of the costs.

The problem is in the category of people below 200 percent of poverty, they basically give them full coverage with very little expected of the senior—only \$2 for generic drugs on a copay and \$5 for name brand drugs. Those seniors in that income category are not going to be held accountable. That is not enough money out of pocket to affect their behavior, in my opinion. The reason they have to be held accountable for the behavior is because we do not want people abusing the system and taking drugs.

People say, well, these are prescription drugs. Why would anybody just get prescriptions? I happen to be a veterinarian by profession and have worked with people coming in with their pets. Talk to any pediatrician, any family practitioner in human medicine, it does not matter, they will tell you that people come to them, however they are feeling, if they are feeling ill, regardless of whether they need antibiotics, they expect them or they expect some kind of a prescription. With children in this country, we understand when their parents bring their kids to the doctor for an ear infection—almost all of those ear infections are caused by viruses.

Viruses do not respond to antibiotics, yet almost every time when somebody walks out of the doctor's office for their kids' ear infection, that child is put on antibiotics. It is one of the reasons we have so many drug-resistant secondary bacterial infections in ear infections—because we treat with antibiotics. The virus is there, it kills normal-growing bacteria, and you get a secondary bacterial infection, which is a reason that a lot of kids need to have tubes put in their ears, along with all kinds of other problems.

It is the same problem with a lot of seniors. If you are sick, you go to the doctor—you have a virus, whatever it is; you have a complaint, you expect to get better. A lot of times, physicians will prescribe medicine simply as a placebo effect. They know if I do not give this person something, they will go to another doctor. If the person is paying out of pocket, there is some incentive to ask the questions: Do I need these medications? Can I get a better price? Maybe I should buy the generic. The only difference between \$2 and \$5, generic versus brand name, is not necessarily that great incentive, but if they paid the first dollars out of their pocket, which is what our bill required, based on income—a sliding scale based on income—they would pay the first dollars out of pocket.

For instance, somebody who made around \$15,000 to \$17,000 a year under our bill would pay, on average, \$100 to \$120 a month out of pocket. After that, other than a small copay, the Government would pick up the costs. That person with diabetes, taking five or six different drugs, would have gotten the

help they need without losing all of their assets. Right now, they get no help, and our bill would have given them the help.

Because we had some complaints about our bill—that if you make \$1 more than \$17,700 a year, you went from a maximum out-of-pocket expense of \$1,500 to \$3,500—we are trying to build more of a gradual scale into our bill so there will not be the dramatic dropoffs. We are also trying to put some of the money and give low-income seniors a little more help under our bill. We think we will be able to do this and still be within the \$300 billion budget.

What is important about being in the \$300 billion budget? The fact is, unless we are within \$300 billion, we are violating the budget we set up. That is the reason it needs a 60-vote point of order. If our bill were reported out, if it were done properly, if we would take our bill, report our bill out of committee, and take all of the bills that have been voted on, report them out of committee, our bill is the only one that could become law because it is the only one that only would have needed 51 votes. Our bill got 51 votes.

The bill tomorrow that will be voted on, from what I understand, will only get 54 or 55 votes and therefore will not be able to waive the budget point of order.

If the majority leader would take our bill to the Finance Committee, let that bill be reported out of the Finance Committee, we actually could have this process go forward. Our bill, within the budget, would not need the 60 votes. It does not seem as though any proposal will get the necessary 60 votes. So let's work together, go through the process, through the Finance Committee, and report out a bill like this. We are willing to work with people on the numbers. As long as we can fit within the \$300 billion budget number, we will not have to get the 60 votes and we can get a bill reported out of the Senate.

If we want to look at seniors this next year and say, we are really going to be helping you, I believe our proposal should get serious consideration from people. For those seniors who truly need the help, I don't believe we should look at them, especially with the November elections coming up, and say, sorry, politics got in the way again.

The Republicans are blaming Democrats, Democrats are blaming Republicans, and the bottom line is seniors are not getting the help they need. I truly believe we need to give the seniors some prescription drug benefit. However, I also believe we need to do it in a fiscally responsible way for the young people in the United States. If we do not do that, we will regret it in the future. Let's work together on this and pass a real prescription drug benefit that we can afford.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Massachusetts.

Mr. KENNEDY. I understand I have 10 minutes. I yield myself 9 minutes.

I have had the opportunity to spend a good deal of time in the Senate over the past days and had the chance again this afternoon to listen to many colleagues describe what is before the Senate. I have listened to the recent comments of my friend from Texas, saying this is just all about politics, and others saying we cannot consider the proposal of Senator GRAHAM or Senator SMITH because of gaps and loopholes. I have heard a great deal of characterization of what is before the Senate.

What is before the Senate is an opportunity to make a very important downpayment for the seniors of this country, in a partial fulfillment of the promise we made to them in 1965 when we passed Medicare. That was a solemn pledge to the senior citizens of this country that said, play by the rules, pay into the system, and you will have health security when you retire.

That was the commitment. That is what everyone remembers. And I had the opportunity of being there. Our majority leaders, our minority leaders, those in support of that program made that commitment to the American people. They made it to the workers at that time and to the parents and to the grandparents of that time: Health security will be yours.

We all have an opportunity now to travel back to our hometowns and to listen to our seniors. Anyone who does that knows that we are failing that commitment every single day. Why? Because we provided hospitalization and we also provided physician services, but we have not provided prescription drugs. That is something we all understand. No one can say to our senior citizens: We have met our responsibility to you.

If we do not pass a good benefit package here, we are continuing to fail our senior citizens.

That may be described as politics to the Senator from Texas, and it can be described as \$400 billion by the Senator from Nevada. Our proposal that provided the comprehensive care, where we got 52 votes and if we would have had 8 votes from our Republican friends, we would be on our way to conference this evening to try to guarantee that kind of protection. But no, we say we cannot do that. Then all afternoon, we had hearings about gaps in this proposal or that proposal. If you go from approximately \$800 billion down to \$400 billion, you are going to find out that you are not going to have the same benefit package. And if that is what you want on that side to agree to, we will agree to that. But I tell you something else we agree to: We make our commitment when we get this passed, and passed with the help of some courageous Republicans, we are not stopping there; we are coming back

and we are going to complete the job. That is our commitment to the seniors tonight and tomorrow, that this is a downpayment. But it is only the beginning, no matter how concerned you are about why we are considering this legislation on the floor of the Senate.

I was here for 4 of the last 5 years when we could never get this bill out of the Finance Committee—buried, buried, buried by Republican leaders on the floor of the Senate and leaders on the Finance Committee. Finally, we have a courageous Democratic leader who puts this before the Senate.

Then we hear: Oh, no, we cannot consider that because that is politics. What was political was denying the ability for the Senate to consider this over the period of the last 4 years. Where have you been? Where have you been?

I can tell you where we are. I can tell you where BOB GRAHAM is, and Senator SMITH is, and that is here tomorrow and they are going to be saying: This is a downpayment. This doesn't do all the job. We all want to have a better benefit package, but we are denied that opportunity. We were denied that by the failure of the votes on that side; make no mistake about it.

Who are the people we are talking about? We are talking about, as has been described earlier in this debate—we are talking about the greatest generation, those who have fought in World War II, who have come back, and are now in their golden years. Those are the people we are talking about. That is what is at issue here. Are we going to meet our responsibility to men and women who fought in World War II, fought in the Korean war, some, perhaps, could even be qualified from the Vietnam war—men and women who brought the country out of the Depression, served, and built the Nation to the great Nation it is; and they need prescription drugs. And we are rattling around down here wondering how we gain political advantage. That is what is motivating those of us on this side, to meet that responsibility, Senator.

We heard the same arguments I heard when we were battling Medicare. I have read the history and we heard the same arguments when they were passing Social Security: We cannot do it. We should not do it. We can't make that kind of commitment. Medicare was the exact same thing: We can't afford it. It is socialized medicine. I haven't heard about socialized medicine out here since 1994 when we were debating a comprehensive health care program. I have not heard socialized medicine, but that is what we were talking about in the Medicare debate. They spared us that, but they still bring it up in opposition. And I don't question that because that side of the aisle was opposed to Medicare, and they were opposed to Social Security. Are we in any doubt they are opposed to this endeavor?

Tomorrow, make no mistake about it, this will be the key vote in terms of

prescription drugs. I wish we were back to the time that we were considering the more comprehensive program that made sure we were going to attend to all the needs of our senior citizens, all of those needs. That is what we ought to be doing, but we cannot do it because we have been defeated on that. But we are not giving up. We are coming back again. We are making the commitment, if we are able and successful, to get this downpayment. It will make an important difference to the quality of lives for millions of our senior citizens.

Look what the CBO talks about. The program will reach almost half—49 percent of our neediest senior citizens, and for those above the \$3,300—another 15 percent. If you add those together, it is virtually two-thirds of all of our seniors. We wish it were 100 percent, but they wouldn't give us the eight votes. This is two-thirds. It may not have all the benefits, let alone the other advantages in terms of the lower discount rates that will benefit those even in that third. But it is a sincere effort, the best effort that could be done over the period of these last 2 days, to try to continue this battle and continue the struggle.

That is what this is all about. We reject those who say this is not the time, this is not the place. I listened with great interest to those who were defending the program that was advanced earlier last week. That had a drug program for \$330 billion, and they are trying to compare that to the one that was introduced by Senator GRAHAM, saying it was more comprehensive, it was more complete, it would provide our seniors with better services? Then why didn't the seniors support it? That is our simple answer. Why didn't the seniors support it? You couldn't get the support because it failed to do that.

We welcome the fact that the senior organizations support the Graham-Smith program. They supported our efforts a week ago when we were trying to get the comprehensive program. Over the period of these last days, they have looked the range of different options being proposed. These groups that represent seniors understand what is at risk and what opportunities lie before us now, and they are supporting our efforts to get this downpayment.

When we get this downpayment, that is what it will be. It will be a downpayment. We will hear voices continuing to harp on the other side that would really like to take even more hundreds of billions of dollars and give it to the wealthiest individuals in this country and reduce their taxes, but this is about making sure that we are going to walk the walk and give to our senior citizens that same kind of prescription drug program that my friend PHIL GRAMM has, right over here, in the well of the Senate. He has a comprehensive program. He pays about a 25-percent copay on his program. Every Member of the Senate has it.

Should we retreat on a commitment to try and do for the people of this



country what the Members of the Senate have already done for themselves? I say vote for the Graham proposal. We will make the commitment that this will be a downpayment and we will see the day when our senior citizens will be able to raise their heads high and know they will not have to fear when they hear from their doctors that they need prescription drugs in order to live a healthy and happy life.

I think the time has expired.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### TRADE ACT OF 2002—CONFERENCE REPORT—MOTION TO PROCEED

Mr. REID. Madam President, I move to proceed to the conference report to accompany H.R. 3009, the Trade Act of 2002, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

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

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

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

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

The result was announced—yeas 66, nays 33, as follows:

[Rollcall Vote No. 198 Leg.]

#### YEAS—66

|           |            |             |
|-----------|------------|-------------|
| Allard    | Domenici   | Landrieu    |
| Allen     | Edwards    | Lieberman   |
| Baucus    | Enzi       | Lincoln     |
| Bayh      | Feinstein  | Lott        |
| Bennett   | Fitzgerald | Lugar       |
| Biden     | Frist      | McCain      |
| Bingaman  | Graham     | McConnell   |
| Bond      | Gramm      | Miller      |
| Breaux    | Grassley   | Murray      |
| Brownback | Gregg      | Nelson (FL) |
| Bunning   | Hagel      | Nelson (NE) |
| Burns     | Hatch      | Nickles     |
| Cantwell  | Hutchinson | Roberts     |
| Carper    | Hutchison  | Santorum    |
| Chafee    | Inhofe     | Smith (NH)  |
| Cleland   | Inouye     | Smith (OR)  |
| Cochran   | Jeffords   | Specter     |
| Collins   | Johnson    | Thomas      |
| Craig     | Kennedy    | Thompson    |
| Crapo     | Kerry      | Voinovich   |
| Daschle   | Kohl       | Warner      |
| DeWine    | Kyl        | Wyden       |

#### NAYS—33

|          |         |          |
|----------|---------|----------|
| Akaka    | Conrad  | Ensign   |
| Boxer    | Corzine | Feingold |
| Byrd     | Dayton  | Harkin   |
| Campbell | Dodd    | Hollings |
| Carnahan | Dorgan  | Leahy    |
| Clinton  | Durbin  | Levin    |

|             |          |            |
|-------------|----------|------------|
| Mikulski    | Sarbanes | Stabenow   |
| Murkowski   | Schumer  | Stevens    |
| Reed        | Sessions | Thurmond   |
| Reid        | Shelby   | Torricelli |
| Rockefeller | Snowe    | Wellstone  |

#### NOT VOTING—1

Helms

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3009), to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The report will be printed in the House proceedings of the RECORD)

The PRESIDING OFFICER. The majority leader.

#### CLOTURE MOTION

Mr. DASCHLE. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on the conference report to accompany H.R. 3009, the Andean Trade bill.

Harry Reid, Max Baucus, Dianne Feinstein, Ron Wyden, Robert G. Torricelli, John B. Breaux, Thomas A. Daschle, Thomas R. Carper, Blanche L. Lincoln, Zell Miller, Charles E. Grassley, Larry E. Craig, Phil Gramm, Jon Kyl, Frank H. Murkowski, Trent Lott.

The PRESIDING OFFICER. The majority leader.

#### EXECUTIVE SESSION

#### NOMINATION OF D. BROOKS SMITH TO BE UNITED STATES CIRCUIT JUDGE

Mr. DASCHLE. Madam President, I now ask that the Senate proceed to executive session, as provided under the previous order.

The PRESIDING OFFICER. The Senate will proceed to executive session, and the clerk will report the nomination.

The assistant legislative clerk read the nomination of D. Brooks Smith, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. There are now 4 hours for debate, evenly divided between the chairman and ranking member.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, it is with considerable pride that I urge

my colleagues to vote to confirm a very distinguished Federal judge, D. Brooks Smith, now Chief Judge of the Western District of Pennsylvania, whose nomination is now before the Senate for the Court of Appeals for the Third Circuit.

Judge Smith comes to this position with an outstanding academic background, having received his bachelor's degree from Franklin and Marshall College in 1973, his law degree from Dickinson Law School, and then engaged in the active practice of law for 8 years before becoming district attorney of Blair County, PA, a populous county whose county seat is Altoona.

He then became a judge of the Court of Common Pleas of Blair County in 1984, serving for 4 years until he became a judge for the United States District Court for the Western District of Pennsylvania where he is now the chief judge, and for now almost 14 years has had very distinguished service there.

I came to know Judge Smith when he appeared before the bipartisan nominating panel which had been established by Senator Heinz and myself, and I found him very well qualified and have known him on a continuing basis rather well over the course of the past 14 years. I have talked to him on many occasions and met with him on many occasions, discussing problems of the courts administratively, and issues that may come before the Judiciary Committee. He has been an outstanding jurist.

Judge Smith enjoys a unique reputation among all of the people who know him. During his confirmation hearings, large groups of people who knew him rallied to his defense and came forward to attest to his erudition, his scholarship, his good character, and his judicial temperament.

Certain issues have been raised which had delayed the confirmation. One involved a fishing club in which he was a member, but that club did not practice what is called invidious discrimination because it was a social club only. While in confirmation hearings for the district court, he had said he would resign from the club if they did not change their membership rules. It was later determined in 1992 in an opinion of precedential value that the club did not engage in invidious discrimination, so there was no reason for him to leave the club.

An issue arose on a case, where he presided for a relatively brief period of time, as to whether there should have been an earlier recusal. The matter was inquired into, investigated at length by former Gov. Dick Thornburgh and former Attorney General of the United States, and in an elaborate statement, he went through the case in detail and found, as I concluded as well, that the judge had made a timely recusal.

Some issues were also raised as to a speech which Judge Smith made on the Violence Against Women Act. He had concluded that there was not Federal jurisdiction for that particular statute.