asked directly, and he said: I never debated it with my philosophy classmates. That is a considerably different answer.

And from that, they extrapolated he never discussed it, and he wasn't asked any further questions about it by the same person who asked that question.

The fact of the matter is, some ideologically disagree with Justice Thomas. Many on our side disagree with Justice Thurgood Marshall. I happened to have respected him greatly. I didn't agree with a lot of the things he wrote, but I also respected him.

Clarence Thomas is writing some of the most literate, intelligent decisions on the Supreme Court right now.

Let me say the danger of the position of my friend from New York, in saying ideology counts, is: Whose ideology? Because I have seen some very conservative judges get on the bench and become very liberal judges almost overnight. I have seen some very liberal judges get on the bench and become very conservative judges—maybe not overnight but certainly in time.

I have to ask you, if you start talking ideology, whose ideology? There are differences on the Democratic side on ideology. There are differences on the Republican side on ideology. Are we going to have a single litmus test to bar somebody from serving just because they may be against Roe v. Wade or may be pro-life? Are we going to have a litmus test against somebody serving because they once participated as a corporate lawyer? A terrible thing to do, I guess.

No, we should not do that. If we took that attitude, that Roe v. Wade is paramount and preeminent in all judicial considerations, there would have been very few Clinton judges. As I say, he came very close, virtually was the same as the all-time confirmation champion, Ronald Reagan.

So that is the danger, in my belief and in my philosophy, of the position of the distinguished Senator from New York. I respect the position. I respect his openness. I respect his forthrightness. I respect him personally. He is very intelligent, a good lawyer—some would say a great lawyer. I would say that. I enjoy being with him on the Judiciary Committee. But his doctrine is a dangerous doctrine because—whose ideology?

People have tried to stereotype me the whole time I have been in the Senate. I just got finished writing a book that will be published this fall. It is going to be called ''The Square Peg.'' Guess who the square peg is. The fact is, that book is going to show I don't particularly fit in any category. Neither does the Senator from New York. In some respects, he is a very conservative Senator. In other respects, he is very liberal. I have had the same thing said about me. Does that mean neither of us could serve on any court because we might be conservative on some issues, we might be liberal on other issues, that offend some in this body? No, it should not mean that.

Look, if a person is out of the mainstream, that is another matter. But I have seen the argument come up time after time the judges are outside of the judicial mainstream. That is pure bunk, to be honest with you. They do not get through this process where they are nominated by any President of the United States by being outside of the mainstream. They just do not. Some are conservative and some are liberal. This President has nominated some very liberal judges. He has nominated some very good conservative judges. He has nominated people in between. He has nominated Democrats. He has nominated Republicans.

But it is dangerous to say that anybody's personal ideology ought to determine whether a person serves on the bench if that person is otherwise qualified.

I hope my colleague who is forced to sit there and listen to me at this time as the Presiding Officer will reconsider at least some aspects of his position because he may be chairman of the Judiciary Committee someday. When he is, he is going to find that in the interest of fairness, you have to presume and give the benefit of the doubt to the President's nominee, especially unless you can show that they are outside of the mainstream of American jurisprudence.

I have to tell you that I haven't seen many—in my whole time in 26 years in the Senate and confirming almost every judge that currently sits on the Federal bench—that I would consider coming close to being outside of the mainstream of American jurisprudence. By the time they get through the vetting process at the White House, the vetting process of the FBI, the vetting process of the American Bar Association, and when they wind up with a well-qualified rating from the American Bar Association, you can't say they are outside of the mainstream of American jurisprudence, nor can you say that because they differ with you ideologically you have to vote against them.

I happen to love my colleague. I just hope he will reconsider because I don't want him leading those who are less mentally equipped down the primrose path of partisan politics.

I yield the floor to my dear colleague and friend from Florida, who has really fought that good battle on S. 812, which is something I very much respect.

The PRESIDING OFFICER. The Senator from Florida is recognized after the eloquent and kind remarks of the Senator from Utah.

Mr. GRAHAM. Mr. President, I also appreciate the kind remarks of the Senator from Utah and hope that he will open his CONGRESSIONAL RECORD tomorrow and will read the remarks that I am going to be delivering shortly, as we both share a very strong interest in the same destination, which is to assure that the 40 million Americans who are currently benefitting by Medicare will see in this year a fulfillment of a long held aspiration, which is to expand Medicare benefits to include prescription drugs.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS

Mr. GRAHAM. Mr. President, along with my colleague, Senator GORDON SMITH of Oregon, and a number of other Members of the Senate, earlier today I introduced an amendment which will be debated beginning at 9:30 tomorrow, and voted on at 11 o'clock.

I would like to use this opportunity to briefly summarize some of the elements of that amendment, and then use that as the basis to respond to some comments which have been made questioning the desirability and appropriateness of passage of this amendment.

Our amendment has a simple objective. It is to bring Medicare into the 21st century by providing for it what virtually every private health insurance plan has—coverage of prescription drugs.

When Medicare was established in 1965, prescription drugs were a relatively minor part of a comprehensive health care program. In fact, it is surprising to know that in 1965 the average senior American spent $65 a year on prescription drugs. That number has increased 35 times to over $2,100 as the average amount that senior Americans are spending this year on prescription drugs.

Our objective is to provide a modern Medicare Program by providing a critical missing element from the current program.

In our debate a week ago, there was a great deal of concern about the cost of the plan. I introduced a plan which would have met fully the standards of universal coverage, comprehensive in terms of drugs covered, and affordable to the beneficiary. That plan received 52 votes, which obviously is a majority of the Senate. Unfortunately, we weren't debating under the rules of majority rule. We were debating under the rules that said you had to have 60 votes in order to overcome procedural hurdles. We fell short of those 60 votes.

One of the reasons given for not voting for our plan was that it was just too expensive; it had to be reined in.

So we spent the last week reviewing our proposal to see what we could do in order to make it more acceptable to our brethren so that we can get the 60 votes.

I want to again recognize and thank my colleague, Senator GORDON SMITH, for the great contribution he has made in accomplishing this task.

But one of the things we did was to say we are going to develop a plan which would cost no more than $400 billion over the next 10 years. We received today from the Congressional Budget Office their scoring of our plan where they found the plan actually had a cost of $389 billion over the next 10 years. We thought that would be a goal—holding the cost to under $400 billion that

would result in the support of people who had not voted for our bill last year, saying: This is a proposition for which I can vote. Unfortunately, we didn't get that reaction. But we got the reaction that challenged the Congressional Budget Office, and whether it had accurately scored our bill.

That is a little bit like challenging the umpire in a baseball game you think is not calling the ball in the strike zone. We decided, just like the American and National leagues decided, that we were going to have an umpire for our deliberations, including an umpire for our deliberations over a whole variety of spending, tax, health care, and other proposals that are going to cost the Federal Treasury. The Congressional Budget Office is that umpire. They have looked at our plan. They have given it a score of $389 billion.

It is interesting that the same persons who were challenging us and who offered a competing plan have not received a Congressional Budget Office estimate of their cost. We don't know what their plan is going to cost when the common standards of evaluation are applied. The one that will be before us tomorrow has a Congressional Budget Office estimate of $389 billion.

The second thing we did was we looked at the architecture of the bill. We said we would like to have universal coverage, but we don't have enough resources to provide meaningful universal coverage.

So we have two basic choices: One, you can put water in the soup, make it thinner, and spread it out over more people or you can say, no, we are going to identify those Americans who are most adversely affected by the Medicare benefit for prescription drugs. We identify those people as being in two groups. One is those older Americans who have unlikely high prescription drug bills.

I mentioned earlier the average senior American is a little more than $2,100. We set the standard of $3,300 for catastrophic. That is when the cost of prescription drugs becomes beyond what you can expect many senior Americans can pay. Remember, the average income for senior Americans this year is about $14,000 to $15,000.

Second, we said the next group we would like to help is the neediest, those who have the lowest income; and, therefore, the cost of prescription drugs takes a disproportionate amount of their meager income.

We also said, however, there should be some benefits that all of America's seniors can secure. For that group of Americans, we are going to provide the opportunity for a modest $25 a year enrollment fee to get a card, which will entitle them to get the benefits of pharmacy benefit managers, who will negotiate with the pharmaceutical companies to get discounted prices, which will then be made available to the Medicare beneficiaries.

In order to assure that those PBMs will be part of this and that all the seniors will get even beyond what can be negotiated, we are going to provide a 5-percent supplemental reduction of the cost.

For example, if a senior had the standard cost of $100 for a particular prescription, PBMs are estimated to be able to negotiate between a 15 and a 25-percent discount, so assume they can get 20 percent; that would reduce the cost of the drugs to 80 percent. Then the Federal Government would pick up 5 percent of that cost, or $4, so that the senior, instead of paying $100, would be paying $76. That is not an insignificant benefit.

That same senior would also have an insurance policy against catastrophic losses at $3,300. The peace of mind, the reduction of the fear of what the consequences would be if a healthy senior has a heart attack or develops some other serious chronic disease, where suddenly their prescription drug costs are escalating, this will give them that peace of mind.

There was another objection raised to that format that I just outlined, and that is, for the first time in the history of Medicare, we are going to be making a differential; we are going to be recognizing these Americans who have the lowest income among the 40 million seniors and give them some special benefits to help them, because they are the neediest of our seniors, to be able to meet the cost of their prescription drugs. I plead guilty. We are doing that.

We are saying that the poorest of America's seniors, which we define as those who are at or below 200 percent of poverty, will get prescription drugs from the time they enroll in this program, with only a modest copayment of $2 for generic drugs and $5 for brand name drugs.

It is said this is the first time we have ever split the Medicare population and provided such special treatment for a class; in this case, a class defined because of the level of their need. That is not true. In fact, we have a number of examples in Medicare today where we are providing different benefits based on income. Just to mention two of those, we have a program called SLiMBies and QMBies.

SLiMBies are for those Americans who have an income between 100 percent and 120 percent of poverty. For those, there is a payment of the Part B premiums, which today are running approximately $50 a month. The Federal Government picks up the cost of those payments for Americans between 100 and 120 percent of poverty. For those who are at or below 100 percent of poverty, we not only pay for their premiums, we also pay for their deductibles and their coinsurance.

So America, a compassionate society, has had a history of recognizing the special circumstances of the neediest of our elderly. We will extend that policy by the amendment which we will vote on tomorrow.

We will have, as the delivery system for this drug benefit, Medicare as we have known it, Medicare as it has served the interests of senior Americans for 37 years.

There are some who say that is an out-of-date system; it is an antiquated process, that we need to get private insurance to deliver prescription drug benefits.

That was an intriguing idea, so I began to ask: What is our experience with private insurance delivering a prescription drug benefit? In fact, I had the conversation with a number of pharmaceutical company executives who have been a primary advocate of this plan, private insurance delivering prescription drug benefits. I asked: How do you, and how do your employees, get their prescription drugs? They said: Well, we have a contract with an insurance company that provides for the health care coverage of our employees, including myself and they, in turn, contract with a pharmacy benefit manager to administer the drug component of our health care program.

I said: No. Do you have, for the drug component of health care for your employees, a separate program with a separate private insurance policy?

They said: No, we don't have such a program. In fact, I don't think one exists.

Do know what. They are right. One does not exist. Nobody is offering a prescription drug-only private insurance policy, which is what some would say should be the method by which we deliver prescription drugs to 40 million older Americans.

I would analogize it to putting those 40 million older Americans on the Wright brothers first flight at Kitty Hawk. Do you want to really experiment with such a significant part of the health care of older Americans when nobody in any other sector, public or private, is using such a plan? I don't think that is a very prudent or conservative idea.

Why are there no insurance companies that are providing a drug-only prescription benefit? The answer is: Because they say it is not an insurable risk. It would be the same answer that you would get if you were to ask: I own a house, and I want to buy fire insurance, but I only want to buy the fire insurance to cover the kitchen, or I have a rear bedroom which is next to an old and creeky tree that might fall over and crush the roof in a wind storm, so I only want to cover that back room.

The insurance company would turn you down. They would say: We are not going to insure a specific room within your house; we will insure your whole house and take the total risk, but we won't let you parcel it out piece by piece.

That is the same answer as to why no private insurance company today is providing a prescription drug-only benefit. They will insure your whole body. They will insure all of the health care that you might require. But they will

not break it down into individual fragmented pieces, such as a prescription drug-only insurance policy.

There are some other concerns, such as if you were to go to a private insurance policy, you would run very strong possibilities that there would be big sections of the country that would not be covered because they have populations that are peculiarly expensive. One of those which we are already seeing in the whole body of insurance called Medicare+Choice—an HMO that insures not just prescription drugs but all of your health care needs—is almost nonexistent in rural America.

Why are they not in rural America? It is not because there are not doctors and hospitals and other facilities that can treat people in rural America. It is because the population of seniors in rural America is actuarially expensive and, therefore, an unattractive population to insure and treat.

According to a 1998 report by the Kaiser Family Foundation, rural beneficiaries are 20 percent more likely to be in fair or poor health than their urban cousins. Rural seniors are 20 percent more likely to be under 150 percent of the Federal poverty level than their urban cousins.

A study that was done in June of this year by the National Economic Council said that rural beneficiaries are 50 percent less likely to have drug coverage compared to their urban counterparts, which probably means they are less healthy because they have not had equal access to drugs. They use 10 percent more prescriptions than urban seniors, and nearly 60 percent of rural beneficiaries reported not being able to purchase drugs because of their cost.

We know from our experience with Medicare+Choice that HMOs will not accept the risk of covering this urban population. What leads us to believe they are not similarly going to be left behind with this effort to have prescription drug only insurance policies? I think the answer is, unfortunately, they will be left behind.

This last issue is not really a debate about drug coverage. It is a debate, rather, about Medicare itself. Shall Medicare continue to be a universal program that is administered through the Federal Government or shall it be a program whose administration will be privatized? That is the debate.

We know there are people in this Chamber and particularly the predecessors who were here in the 1960s who thought that Medicare would fail, that it was not a sustainable system. I say quite to the contrary, Medicare has delivered on its promise of substantially increasing the health and welfare of older Americans.

That brings me to my concluding observation which is that today is a fortuitous day to be having this debate because it happens to be the anniversary of Medicare. On July 30, 1965, then-President Lyndon Johnson went to Independence, MO, the home of President Harry Truman, a man who had spent much of his political career advocating for the needs of senior Americans and particularly access to affordable health care. So it was fitting and proper that President Johnson signed the bill at their home and then gave the first two Medicare cards to President Harry Truman and his wife Bess. That is the tradition we have had, a great tradition of service, respectful and compassionate, to America's seniors.

We would honor that tradition if tomorrow we adopt the amendment which will for the first time in its history expand a prescription drug benefit for the beneficiaries of Medicare. It is a step which will not only honor those who 37 years ago championed this program, but it will also honor those who are served by it today, our grandparents, our parents, our family, and friends who look to Medicare as the means of securing their health care. Those are the people for whom we will be voting tomorrow.

I hope my colleagues will grasp this opportunity to see that we bring Medicare into the 21st century.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m., Wednesday, July 31, 2002.

Thereupon, the Senate, at 9:03 p.m., adjourned until Wednesday, July 31, 2002, at 9:30 a.m.