When I was at Wharton back in the midsixties, the uptick rule was an article of faith. But a couple years ago, the 70-year-old uptick rule became another casualty of deregulation, an impediment to market liquidity, they said.

A little over a year later, two of the Nation's biggest banks—Bear Stearns and Lehman Brothers—had collapsed. Lehman's failure alone, with $613 billion in debt, was far and away the largest bankruptcy in U.S. history. Both banks were victims of their own risky behavior and their own poor judgment. Their thinking was clouded by an aura of invincibility—willingly taking highly leveraged positions in what turned out to be toxic assets.

But while Bear and Lehman certainly are responsible for their actions, naked short selling played a crucial role in accelerating their fate.

I wish to make an important distinction. Short selling is a well-established market practice. It can enhance market efficiency and price discovery. I, myself, have sold stock short on many occasions, but I always had to borrow the stock first before I could sell into the market.

Naked short selling is another matter altogether. It occurs when someone sells a stock they do not own and have not borrowed. Naked short selling creates two risks in the marketplace. The seller may not be able to deliver the necessary shares on delivery date and bad actors can manipulate stocks downward, repeatedly selling something they do not own.

Naked short selling, without first borrowing or obtaining a so-called hard locate of the shares, essentially increases the number of shares in the market, which tends to lower the value of the stock.

It is exactly as if I made three copies of my car's title and then sold the title to three different people. By the time I sold my third title, it would likely be impossible to deliver the car to the third buyer and its value would also have declined.

When Bear Stearns and Lehman started to crumble, many believed manipulative naked short sellers, using a series of large and frequent short sales known as bear raids, helped drive both firms into the ground. Bear Stearns' stock dropped from $57 to $3 in 3 days. Let me repeat. Bear Stearns' stock dropped from $57 to $3 in just 3 days.

When Lehman collapsed, an astonishing 32.8 million shares in the company had been sold short and not delivered on time.

The SEC has proven incapable of both preventing market manipulation from happening and punishing those responsible for it. We cannot allow this to continue.

Since March, a bipartisan group of Senators and I have been calling on the Commission to reinstate some form of the uptick rule and put a rule in place that the SEC Enforcement Division could use to stop naked short sellers dead in their tracks.

At a recent SEC roundtable, major problems with the current regulatory structure were exposed. Even panelists heavily stacked in favor of industry admitted that compliance with the requirement is widely ignored. Commissioner Elisse Walter acknowledged, prosecuting naked short sellers on the reasonable belief standard is a ''very difficult case to bring.''

Because the ''reasonable belief'' standard is unenforceable, abusive short sellers are essentially free to engage in criminal activities without fear of facing criminal prosecution.

The SEC's silence speaks volumes. They have given no indication that there will ever be action. Nothing—from the SEC's strategic plan to various speeches by SEC executives—acknowledges that this is a priority. The SEC has taken action on insider trading; it should devote the same intensity of purpose to stopping abusive naked short selling.

I suspect the problem is that our financial institutions, which can now trade stocks with previously unimaginable speed and frequency, simply are unwilling to support any regulation that will slow down their profit- maximizing programs. High-frequency traders balk at the suggestion that they wait in line and get their ticket punched—by first obtaining a ''hard locate'' of the stock—before selling short. If that is the case, then we are letting technological developments on Wall Street dictate our regulatory and enforcement destiny rather than vice versa. That philosophy is simply unacceptable.

Clearly, the cost of inaction in this area is too great to ignore. Accordingly, I urge my colleagues to join Senators ISAKSON, TESTER, SPECTER, CHAMBLISS, and me as cosponsors of S. 605, which requires the SEC to move quickly to address naked short selling by reinstating the substance of the prior uptick rule and requiring traders to obtain a contractual hard locate before selling short. We need to send a strong message to the SEC that the Congress will not tolerate inaction on this critical issue.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona, the Republican whip.

HEALTH CARE REFORM

Mr. KYL. Mr. President, the goal shared by all of us in the Senate is to make health care more affordable for Americans. Some ask why there hasn't been more support for medical liability reform—a popular, cost-free measure that would unquestionably yield significant savings for patients and doctors. The most honest answer to that question came from former Vermont Governor and Democratic National Party Chairman Howard Dean, who said at an August townhall meeting in Virginia that medical liability reform has not been included in any of the Democrats' bills because they don't want to take on the trial lawyers.

Protecting trial lawyers should not be the goal of health care reform. Their multimillion-dollar ''jackpot justice'' lawsuits drive up the cost of health care for everyone and are a big reason America's health care premiums have soared. Why? To help guard themselves from ruinous lawsuits, physicians must purchase expensive medical liability insurance, often at a cost of $200,000 a year or more for some specialists such as obstetricians and anesthesiologists.

Because doctors pay for this insurance, patients do too. Hudson Institute economist Diana Furchtgott-Roth estimates that 10 cents of every dollar paid for health care goes toward the cost of doctors' medical liability insurance. Dr. Stuart Weinstein, the former president of the American Academy of Orthopedic Surgeons, has written about the extra cost of delivering a baby because of the high cost of these premiums. If a doctor delivers 100 babies a year and pays $200,000 for medical liability insurance, then ''$2,000 of the delivery cost for each baby goes to pay the cost of the medical liability premium,'' Dr. Weinstein wrote. So the costs of this insurance, passed on to patients, are real.

An even bigger cost related to the threat of lawsuits is doctors' use of defensive medicine. The looming specter of lawsuits makes most doctors feel they have no choice but to take extra or defensive precaution when treating patients. A 2005 survey published in the Journal of the American Medical Association found that 92 percent of doctors said they had made unnecessary referrals or ordered unnecessary tests and procedures solely to shield themselves from medical liability litigation.

To say the costs of defensive medicine are high is an understatement. Sally Pipes, president of the Pacific Research Institute, has found that defensive medicine costs $214 billion per year. A new study by PricewaterhouseCoopers reveals similar findings, pegging the annual cost at $239 billion. So you have the approximate amount here—$214 billion and $239 billion. In any event, defensive medicine imposes a huge cost on the American public.

Medical liability reform would work to bring down health care costs for patients and doctors. Among the ways to do it are capping noneconomic damage awards and attorney's fees and implementation of stricter criteria for expert witnesses who are testifying in these medical liability lawsuits. Trial lawyers frequently use their own experts to criticize the defendant doctor's practice. Well, the experts should have no relationship with or financial gain from the plaintiff's lawyer, and they should have real expertise in the area of medicine at issue.

Some States, including my home State of Arizona, have already implemented medical liability reform measures with positive results.

Dr. James Carland, who is president and CEO of MICA, which is Arizona's largest medical liability insurer, wrote a letter to me recently to describe some of the results he has seen from medical liability laws implemented in Arizona, specifically from two statutes—one that reformed expert witness standards and another that imposed a requirement to inform the defendant, before trial, of expert witness testimony and to preview the substance of that testimony. Dr. Carland wrote that the enactment of these two statutes has ''reduced meritless medical malpractice suits'' in Arizona. Indeed, after their enactment, medical liability suits dropped by about 30 percent. That drop has been accompanied by a drop in medical liability premiums. Since 2006, MICA has reduced premiums and returned about $90 million to its members in the form of policyholder dividends.

Another State that has had success with medical liability reform is Texas, which passed a series of measures in 2003, including limits on noneconomic damages and a higher burden-of-proof requirement for emergency room negligence. The number of doctors practicing in Texas has now skyrocketed, while costs have plummeted. It has been widely reported that since those reforms were implemented, medical licenses in Texas have increased by 18 percent and 7,000 new doctors have moved into the State.

To reduce costs for both physicians and patients, Senator CORNYN and I have introduced legislation that would achieve medical liability reform by combining what has worked best in our two States, Texas and Arizona. We have taken the Texas stacked cap model for noneconomic damages and coupled it with expert witness statutes proven to limit the filing of meritless lawsuits.

Republicans offered these kinds of liability reform amendments during the Finance Committee markup, but all of them were ruled out of order by the chairman of the committee. One of these amendments, recently scored by the Congressional Budget Office, would have saved the Federal Government $54 billion in health care costs over the next 10 years. My colleague from Nevada, Senator ENSIGN, asked the Director of the CBO if we could expect a similar approximate reduction in cost in the private sector, since about half of all medical costs are paid for by government and the other half in the private sector. Dr. Elmendorf, the Director of the CBO, agreed that we could expect approximately the same additional amount of savings in the private sector. That would be well over $100 billion.

Medical liability reform enjoys heavy support among our bosses—the American people. According to a new Manhattan Institute paper, 83 percent of Americans want to see it in any health care bill passed by the Congress. Despite this support and the concrete evidence that it would lower health care costs for doctors, patients, and the government, none of the health care bills being written by congressional Democrats tackle medical liability reform. It makes no sense that in debates about bringing down cost, this commonsense measure is ignored by the majority party. If we are serious about making health care more affordable, we must have medical liability reform. We will work for the American people, not the trial lawyers.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. KAUFMAN). Without objection, it is so ordered.

The Senator from Maryland is recognized.

Mr. CARDIN. I thank the Chair.

(The remarks of Mr. CARDIN pertaining to the introduction of S. 1816 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

FISCAL POLICY

Mr. DORGAN. Mr. President, in recent weeks, and especially in more recent days, we have had a lot of discussions on the floor of the Senate by Members about the Federal budget deficit and about fiscal policy. It is a serious issue in my judgment, one to which we have to pay a lot of attention. But some of the discussion on the floor of the Senate has been wrapped in partisan wrapping. The suggestion is the fingers are all pointing to the new President—new because he has been in office only 10 months. Somehow this very deep fiscal policy hole, these very large and growing Federal budget deficits, should be laid at his feet.

The fact is, in my judgment, there is plenty of responsibility to go around on all parts. I am going to talk a little about that. This administration knows it. They have some responsibility. This Congress certainly has major responsibility. The past administration has significant responsibility.

The American people are a lot less interested in who wants to own up to that responsibility than they are about who is going to try to do something to fix our deficit problems. We cannot have deficits that are growing far out into the future. We cannot continue to deliver a level of government the American people are unable or unwilling to pay for without very serious consequences to the American way of life. I want to talk just a bit about that.

First and foremost, the deficits are growing and have been very serious. It is not unusual that in the middle of the deepest recession since the Great Depression we would have growing Federal budget deficits. Why? Because more people are unemployed, out of work. More people need the kind of social services and the stabilizing payments that we do. When people are in trouble and we are in a recession, that increases the spending.

It is also the case that the amount of revenue we expected this year is down about $400 billion because people are making less money, corporations are making less money, less is coming in in tax revenue. So it is not unusual, in the middle of the most significant economic trouble since the 1930s that we have higher spending, less revenue, and therefore deficits that are ratcheting up.

Deficits just by themselves would not necessarily be something that we would object to if the deficits purchase something of great value that was necessary at this moment. Ask this question and I expect the answer is self-evident. What if someone said: You need to spend $1 trillion that you do not have, $1 trillion of deficits right now, but if you do that, if you spend that $1 trillion, you will cure cancer. Do you think anyone would say: No, that is not a smart thing to do. Of course we would do that, because it would promote dramatic dividends for a long time.

But regrettably that is not what this deficit is about. This is not about having done something of significant merit. This is largely a structural deficit in which we have an expenditure base that is growing, and a revenue base that has not kept up, and now it has been aggravated, especially in a very deep recession. When I see the folks on the other side of this aisle come to the Senate to talk about generational theft, and to point fingers at the administration, let me be quick to point out, there is a long history to how we got to where we are, a very long history that does not start at 1600 Pennsylvania Avenue in January of this year. Let me revisit a little bit of that history, if I might. I am not doing it to suggest that one side is all right and the other side is all wrong. I am doing it because there are people who come to the floor of the Senate seeming to act as if they were exploring the surface of Mars while all of this was going on. In fact, they were not. Many of them were here in this Chamber.

When President Clinton left office in the year 2000, we had a $236 billion budget surplus. That was called the ''unified surplus.'' The actual ''on-budget surplus'' which does not count