

I couldn't have said it better myself. Aside from the costs and the problems with enforcing these types of credits, there are opportunity costs associated with requiring the IRS to administer programs outside its expertise. The Government Accountability Office and the tax inspector general issued reports discussing the IRS' poor performance in providing telephone customer service during the 2009 filing season because of stimulus legislation. That was passed in February of this year. The reports state that customer service declined significantly, despite the fact that collection employees were assigned to staff the phones.

So honest and diligent taxpayers do not get the help they need when they need it, and tax cheats and tax evaders increasingly get away with not paying their fair share, and the tax gap widens.

From a tax administration perspective, the provisions in the various health reform bills will create infinite new problems for the Internal Revenue Service. The Internal Revenue Service is likely to be tasked with implementing provisions for which it actually must go out and collect new data—data that is unrelated to the taxpayer's tax liability.

In addition to the provisions Senator ROBERTS highlighted, the Internal Revenue Service would have to develop new processes and procedures for insurance companies and employers to challenge and appeal the calculations of the high-cost premiums tax and the employer free rider excise tax, both new provisions in the Senate Finance Committee bill. Both these taxes are calculated by a third party, other than the IRS or the individual taxpayer. The IRS would have to develop a method for calculating the new excise taxes on medical devices and pharmaceuticals, also a new provision in that bill, the basis for which is unprecedented.

In light of these issues, I think it is fair to consider a couple questions.

Assuming that an individual mandate is constitutional, do we want the IRS checking up on whether everyone has health insurance?

Another question: Do we want to facilitate the dissemination of tax information to third parties, such as employers or an insurance exchange? We have always been very cautious about maintaining the privacy of individual tax returns.

Another question: Shouldn't we be providing more resources to the Department of Health and Human Services to ensure that it can receive and process the necessary data if this bill is going to be implemented instead of having the IRS do it?

My Democratic colleagues in the Congress and the administration have many ideas for new and complex ways to tax individuals and, of course, tax small businesses as well, to fund all sorts of new spending. It would seem wise to make sure the IRS can enforce the tax laws before being charged with

administering new social programs created because of health reform.

I ask my colleagues on the other side of the aisle to consider these questions as we debate the health care reform bill over the next several weeks.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. CANTWELL. Mr. President, as in executive session, I ask unanimous consent that on Thursday, November 19, at 2 p.m., all postclosure time be yielded back, except for 30 minutes, and that the time be equally divided and controlled by Senators LEAHY and SESSIONS or their designees; that at 2:30 p.m., the Senate proceed to vote on confirmation of the nomination of Judge Hamilton; that upon confirmation, the motion to reconsider be laid upon the table, no further motions be in order, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

Ms. CANTWELL. Mr. President, I ask unanimous consent that on Thursday, November 19, following the period of morning business, the Senate proceed to the consideration of Calendar No. 190, S. 1963, and that the bill be considered under the provisions of the order of November 17; further, that upon disposition of the Hamilton nomination and the Senate resuming legislative session, there be 2 minutes of debate prior to a vote in relation to the Coburn amendment, No. 2785; that upon the use of that time, the Senate proceed to vote in relation to the amendment; that upon disposition of the amendment, the Senate then proceed to passage as provided under the order of November 17.

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

MORNING BUSINESS

Ms. CANTWELL. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

AMERICAN UNIVERSITY OF AFGHANISTAN

Mr. INOUYE. Mr. President, I rise today to apprise my colleagues of an impressive effort in Afghanistan. I recently had the opportunity to visit with our military troops and civilian personnel serving in Afghanistan. While I was there, I had the pleasure to

meet Dr. Michael Smith, president of the American University of Afghanistan. I was embarrassed to admit that until meeting Dr. Smith, I had never heard of the university. Upon learning more about the university, I am encouraged to know that while bombs are bursting and bullets are flying, there is an ongoing and successful American mission to provide educational opportunities to the men and women of Afghanistan.

Today, the American University of Afghanistan has 450 students and will graduate their first undergraduate class next spring. The student body draws from every province and ethnic group in Afghanistan and is nineteen percent female and growing. While the majority of faculty members are American, 15 other countries are represented, including Afghanistan.

The university models itself after other strong international American universities like the American University of Cairo and the American University of Beirut. Its programs focus on business and entrepreneurship, information technology, and many other professional areas.

Since over 85 percent of the student body have been immigrants at some point in their lives and 29 percent of the students graduated high school in Pakistan, one goal of creating this university is to enable Afghans the educational opportunity to earn a degree that can be utilized for the betterment of Afghanistan.

I know many of my colleagues have plans to travel to Afghanistan to visit with our troops. I would encourage all of you to take some time to learn about this university which is one of the unsung efforts we have undertaken in Afghanistan.

I urge my colleagues to support this mission so when the military departs Afghanistan we can leave with a smile and our heads held high knowing that we have not only supported the security and stabilization of Afghanistan but have provided a sustained educational mission as well.

FINANCIAL REGULATORY REFORM AND DERIVATIVES

Mr. GREGG. Mr. President, the journalist H.L. Mencken once observed that, "complex problems have simple, easy to understand, wrong answers." And, though modern history has amply demonstrated the resistance of complex political and economic systems to the easy answer of centralized control, we try time and again to apply top-down solutions to our multifaceted problems. This conflict is brought into no sharper light than by Congress' current efforts at financial services reform; particularly those directed at the labyrinthine world of the multi-trillion dollar derivatives trade.

Derivatives are a vital and complex component of modern financial markets, making it imperative that reform be done right—without damage to the

twin pillars of innovation and capital formation.

The question as to how derivatives should be regulated is not easy to answer, but Congress should start with some guiding principles. First, derivatives regulation should seek to foster a robust, competitive, and liquid marketplace. Second, systemic counterparty risk exposure must be reduced by incentivizing central clearing and increasing reporting requirements to promote transparency. Third, regulation must preserve the ability to engage in bilateral customized transactions for risk management. Finally, we must coordinate our efforts with the international community to prevent global regulatory arbitrage and the flight of capital to less regulated jurisdictions.

Unfortunately, the regulatory reform proposals making their way through both chambers of Congress fail to take into account the intricacies of this dynamic financial product and expose a fundamental misunderstanding of the way in which the marketplace works. Congress must think through the significant, unintended consequences before we act to mandate that all Over-the-Counter—OTC—derivatives be centrally cleared and executed on exchanges or cash collateralized, as well as subjecting end-users to capital charges. By de-incentivizing companies to use these risk management tools, such proposals will have the perverse effect of increasing business risk and raising costs.

The proposals advocated for by the U.S. Treasury and Chairman of the Senate Banking Committee, Senator CHRISTOPHER DODD, seem to provide too many government mandates and not enough flexibility. The proposed regulatory structure for OTC derivatives is built on an inadequate foundation lacking the staff, expertise, technology, and resources needed to provide truly robust oversight. Clearing and exchange-trading requirements do not accommodate the need for customized transactions. Capital and margin requirements threaten to lock up liquidity. Lack of international coordination guarantees a flight of capital away from our shores.

Derivatives may not be part of the Main Street vernacular, they may be unfamiliar to the local car dealership, but the manufacturers that supply those dealerships know them well. Derivatives provide businesses with access to lower cost capital, enabling them to grow, invest, and retain and create new jobs. With the unemployment rate at 10.2 percent nationally, this is no time to increase uncertainty and business costs.

Congress must be mindful of the mobility of capital in the global marketplace as well. Without a proper regulatory balance, capital can and will accept higher risk for less onerous regulation. We must maintain incentives for business to participate in a large and liquid OTC derivative market, while promoting global coordination to

minimize regulatory arbitrage and systemic risk.

Under current proposals, capital requirements that will be imposed on OTC dealers will pass on additional cost to end-users. Coupling these capital costs with a decreasing ability to customize transactions could result in sharply lower usage by end-users. Given that 94 percent of Fortune 500 companies utilize customized OTC derivatives to manage macro-economic risk, providing less certainty to corporate balance sheets will severely undermine confidence in the American marketplace.

Further, the proposal to mandate exchange trading makes little sense in the bespoke OTC derivatives market. The basic assumption of exchange trading reflects the use of standard products. OTC derivates by their very nature are not always standard. In the real world, mandating use of an exchange would inhibit the use of such customized derivates that are useful financial management tools to hedge extremely specific risks. Bespoke derivatives cannot always be substituted with exchange traded or standardized OTC products. Even attempting to craft a carve-out for such derivatives raises the concern of whether the U.S. Securities and Exchange Commission and Commodities Future Trading Commission could agree on what should be traded.

Another red flag raised by the circulating proposals is the unintended consequence of segregating variation margin. The more capital a dealer has to set aside to purchase an asset, the fewer assets it can purchase. Heightened capital requirements restrict a dealer's ability to generate returns on its capital or provide loans to Main Street businesses, students heading to college, or families seeking a mortgage. It also does not protect end users or reduce systemic risk in any demonstrable way.

Corporate scandal and economic failure have provided such a regulatory catalyst many times in the past. It is alarmingly reminiscent of 2002, when Congress enacted Sarbanes-Oxley; introducing a host of new compliance requirements for accounting, corporate governance, and financial disclosure. But, in the years since the legislation took effect, the overhaul has come to be widely regarded as overly complex, unduly burdensome, and a severe disadvantage to American businesses in the global marketplace.

Congress should be instructed by the lessons of the past and not add such regulations that will impede capital formation. The simple, easy, but ultimately wrong answer is to issue a government mandate for every perceived problem. Thinking through the unintended consequences of overregulation and trusting market solutions is more difficult, but it is ultimately the only way to preserve the innovation that powers American markets.

HONORING OUR ARMED FORCES

STAFF SERGEANT JUSTIN M. DECROW

Mr. BAYH. Mr. President, I rise today with a heavy heart to honor the life of SSG Justin M. Decrow. He was a member of the 16th Signal Company, 62nd Expeditionary Signal Battalion. Justin was only 32 years old when he was killed in the tragic November 5 shooting spree at Fort Hood, TX, that took the lives of 13 Americans and left 31 others wounded.

Those who enlist in our Armed Forces make an extraordinary sacrifice, agreeing to routinely face life-threatening dangers abroad as they carry out missions on our behalf. The risks they endure to protect our freedom are never expected to follow them from the theater of war to the safety of American soil, making Justin's death all the more painful and troubling.

Today, I join Justin's family and friends in mourning his untimely death. Justin will be remembered as a loving husband, father, son and friend to many. He is survived by his wife Marikay; his daughter Kylah; and his parents Rhonda Thompson and Daniel Decrow. Justin had returned over the summer from a year's deployment in South Korea before being stationed at Fort Hood.

A native of Plymouth, IN, Justin enlisted in the Army immediately after graduating from high school. At the time of his passing, he was a resident of Evans, GA, where he lived with his high school sweetheart and 13-year-old daughter in a house he built just a few years ago. Justin was planning to become an Army contractor at nearby Fort Gordon, working within his specialty of satellite communications training. At Fort Hood, he had been training soldiers to help new veterans with paperwork. Justin is remembered by family and friends as a very loving man, who enjoyed working with his hands.

While we struggle to express our sorrow over the loss of Justin, we can take pride in the example he set as a soldier, a husband, a father, and a son. Today and always, he will be remembered by family, friends and fellow Hoosiers as a true American hero, and we cherish the legacy of his service and his life.

It is my sad duty to enter the name of Justin M. Decrow in the RECORD of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace.

I pray that the Decrow family, and the families of all the victims of this incomprehensible act, can find comfort in the words of the prophet Isaiah who said, "He will swallow up death in victory; and the Lord God will wipe away tears from off all faces."

MILITARY AND VA APPROPRIATIONS

Mr. BOND. Mr. President, in this ever-difficult era of economic recession