

people don't notice it. It has become so commonplace, nobody even registers with the message it delivers.

For the longest time, we have argued that tobacco should be regulated, that the products that are sold in America should have an agency with oversight keeping an eye on them. The tobacco companies fought it off year after year.

Finally, with this new President, with this new Congress, we have reached the moment where we have a chance to pass this important legislation. This is a bill that will protect children and will protect America, and it will reduce tobacco use. The House passed their version last month with a wide majority, and now it is time for the Senate to act. Every day that we don't act, 3,500 American kids—children—will light up for the first time. That is enough to fill 70 schoolbuses of kids who will try cigarettes every single day for the first time. A thousand of those 3,500 will then become regular smokers. The addiction will begin.

Tobacco companies spend nearly \$40 million every day to lure this new generation of customers with blatant deceptive advertising—promotions of candy-flavored cigarettes and advertising that is aimed directly at kids—all the while they are loading their products not just with tobacco leaf but with chemicals. They put in extra nicotine, incidentally. If there isn't enough nicotine naturally occurring in tobacco, they load it up so that your addiction becomes stronger, your craving grows, and your body demands more and more tobacco. It is time we put a stop to this marketing and give the Food and Drug Administration the authority to regulate this industry.

There are 43 million Americans who smoke today. People often say to me: Well, why don't we just ban this product? If I thought that would end smoking in America, I might consider it. But we know better. With 43 million Americans currently addicted, they are not going to quit cold turkey tomorrow. A black market would emerge, and then the next thing you know the underground economy would be sustaining tobacco. That would not be the result we are looking for.

In my home State of Illinois, about one out of five kids smokes. That means that every year 65,000 kids in Illinois try a cigarette for the first time, and almost 20,000 become regular daily smokers. These kids consume 34 million packs of cigarettes a year. There are 8.6 million people in the United States who currently suffer from tobacco-related disease. It is responsible for 90 percent of lung cancer deaths, one-third of all cancer deaths, and one in five deaths from cardiovascular disease. Approximately half of all continuing smokers will die prematurely as a result of the disease. Sadly, in Illinois, 317,000 kids alive today will eventually die from the smoking addiction which they started as kids.

Here is what the bill does. We put teeth in the law to restrict the mar-

keting and sale of tobacco products to kids. We require tobacco companies to disclose the ingredients on their products. We require the Food and Drug Administration to evaluate any health claims for scientific accuracy and public health impact. We give the FDA the power to require companies to make changes to tobacco products to protect public health. And we require larger, stronger warning health notices on tobacco products. These are common-sense reforms that will start to reduce the terrible toll tobacco has taken on families all across this Nation. The FDA is the right agency to do this. It is the only agency that can bring together science, regulatory expertise, and the public health mission to do the job. Through a user fee on tobacco companies, the bill gives the agency the money it needs to conduct its new responsibilities.

This is a strong public health bill, and it is a bipartisan bill. After more than 10 years of effort, we have never been so close to giving the FDA the authority it needs to regulate tobacco. I urge my colleagues to resist any amendments that will weaken this bill or add provisions that might stop it from becoming a law. FDA regulation of tobacco products is long overdue.

I can recall arriving on Capitol Hill as a new Congressman years and years ago. In the first orientation meeting we had as new Democratic Congressmen, one of the older Members of the House came in, closed the door, and said: I want to tell you something. When tobacco issues come up, we vote with the tobacco companies. That is for your friends in tobacco-producing States. You give them a helping hand, and someday they may give you a helping hand. That is the way it works.

Well, that was one of the first things we were told about being a Member of Congress; tobacco was that important on the political agenda. Certainly for some Members from tobacco-producing States, it may have been the most important thing that brought them to Capitol Hill. However, over the years, some of us wandered off of this agenda. I offered an amendment to ban smoking on airplanes and had the opposition of all of the leaders in the House of Representatives, Democrat and Republican. But it turned out that so many Members of the House flew in airplanes and couldn't stand this fiction of smoking section and nonsmoking section that they supported my amendment. So over 20 years ago we banned smoking on airplanes.

FRANK LAUTENBERG was my champion over here in the Senate and together we started a Federal policy that I might say kind of tipped one domino over and people started saying if secondhand smoke is dangerous on airplanes it is dangerous in other places.

That movement has grown in intensity. We have seen the kind of leadership at local and State levels that has continued to make it a potent force. But today is our chance. As I men-

tioned earlier, I am sure Senator DODD will join me saying we wish one of our colleagues were with us here today, and that is TED KENNEDY, who is home recuperating. TED KENNEDY was our champion and inspiration for years on this issue. He hung in there and fought for this when a lot of people gave up. TED never gave up. When it came to the issues in his heart and soul, he fought as long as he possibly could.

We continue that fight today and he handed the banner to Senator DODD, who has done an extraordinarily good job on this bill. He has been called into action in the Senate repeatedly. Just a few weeks ago we passed the Credit Card Reform Act after more than 20 years of trying. We finally got it done. It was a dramatic change in the law to protect consumers and families across America.

Today, with the passage of this—at least the movement of this bill forward toward passage this week—we are going to be able to protect millions of children and Americans from deadly tobacco-related disease.

I thank Senator DODD for his leadership. I commend this bill to our colleagues. This is our moment in history. Let's not miss it. Let's seize this opportunity to create protection for a lot of young people who will otherwise find you are compromised by this deadly tobacco product.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1256, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 1256) to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, and to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

Pending:

Dodd amendment No. 1247, in the nature of a substitute.

Schumer (for Lieberman) amendment No. 1256 (to amendment No. 1247), to modify provisions relating to Federal employees retirement.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Madam President, as I understand it, we are going to have a vote at 12:30. I ask unanimous consent the time between now and 12:30 be equally divided between the minority and majority.

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

(At the request of Mr. DODD, the following statement was ordered to be printed in the RECORD.)

• Mr. KENNEDY. Madam President, later today, the Senate will vote to approve legislation that should have been enacted years ago—authority for the FDA to regulate tobacco products, the most lethal of all consumer products.

It has been a long and arduous path with many political obstacles. Fortunately, the legislative journey is nearing a successful conclusion. The House of Representatives overwhelmingly passed a nearly identical bill earlier this spring. In May, the Senate HELP Committee approved the FDA Tobacco bill with the support of a strong bipartisan majority. On Monday, 61 Senators voted to invoke cloture on the committee-passed bill. President Obama is anxiously waiting to sign it into law. Passage of the legislation is much more than a victory for those of us who have long championed this cause. It is a life saving act for the millions of children who will be spared a lifetime of addiction and premature death.

The need to regulate tobacco products can no longer be ignored. Used as intended by the companies that manufacture and market them, cigarettes will kill one out of every three smokers. Yet the Federal agency most responsible for protecting the public health is currently powerless to deal with the enormous risks of tobacco use. Public health experts overwhelmingly believe that passage of H.R. 1256 is the most important action Congress can take to protect children from this deadly addiction. Without this strong congressional action, smoking will continue at its current rate, and more than 6 million of today's children will ultimately die from tobacco-induced disease.

Smoking is the number one preventable cause of death in America. Nationally, cigarettes kill well over 400,000 people each year. That is more lives lost than from automobile accidents, alcohol abuse, illegal drugs, AIDS, murder, and suicide combined.

The American Cancer Society, the American Heart Association, the American Lung Association, the American Medical Association, the Campaign for Tobacco-Free Kids and eighty-six other national public health organizations speak with one voice on this issue. They are all supporting H.R. 1256 because they know it will give FDA the tools it needs to reduce youth smoking and help addicted smokers quit.

A landmark report by the Institute of Medicine, released 2 years ago, strongly urged Congress to “confer upon the FDA broad regulatory authority over the manufacture, distribution, marketing and use of tobacco products.”

Opponents of this legislation argue that FDA should not be regulating such a dangerous product. I could not disagree more. It is precisely because

tobacco products are so deadly that we must empower America's premier public health protector—the FDA—to combat tobacco use. For decades the Federal Government has stayed on the sidelines and done next to nothing to deal with this enormous health problem. The tobacco industry has been allowed to mislead consumers, to make false health claims, to conceal the lethal contents of their products, to make their products even more addictive, and worst of all—to deliberately addict generations of children. The alternative to FDA regulation is more of the same. Allowing this abusive conduct by the tobacco industry to go unchecked would be terribly wrong.

Under this legislation, FDA will for the first time have the needed power and resources to take on this challenge. The cost will be funded entirely by a new user fee paid by the tobacco companies in proportion to their market share. Not a single dollar will be diverted from FDA's existing responsibilities.

Giving FDA authority over tobacco products will not make the tragic toll of tobacco use disappear overnight. More than 40 million people are hooked on this highly addictive product and many of them have been unable to quit despite repeated attempts. However, FDA action can play a major role in breaking the gruesome cycle that seduces millions of teenagers into a lifetime of addiction and premature death.

What can FDA regulation accomplish?

It can reduce youth smoking by preventing tobacco advertising which targets children. It can help prevent the sale of tobacco products to minors. It can stop the tobacco industry from continuing to mislead the public about the dangers of smoking. It can help smokers overcome their addiction. It can make tobacco products less toxic and less addictive for those who continue to use them. And it can prohibit unsubstantiated health claims about supposedly “reduced risk” products, and encourage the development of genuinely less harmful alternative products.

Regulating the conduct of the tobacco companies is as necessary today as it has been in years past. The facts presented in the Federal Government's landmark lawsuit against the tobacco industry conclusively demonstrate that the misconduct is substantial and ongoing. The decision of the Court states: “The evidence in this case clearly establishes that Defendants have not ceased engaging in unlawful activity . . . Defendants continue to engage in conduct that is materially indistinguishable from their previous actions, activity that continues to this day.” Only strong FDA regulation can force the necessary change in their corporate behavior.

We must deal firmly with tobacco company marketing practices that target children and mislead the public. The Food and Drug Administration

needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco.

The tobacco industry currently spends over thirteen billion dollars each year to promote its products. Much of that money is spent in ways designed to tempt children to start smoking, before they are mature enough to appreciate the enormity of the health risk. Four thousand children have their first cigarette every day, and 1,000 of them become daily smokers. The industry knows that nearly 90 percent of smokers begin as children and are addicted by the time they reach adulthood.

Documents obtained from tobacco companies prove, in the companies' own words, the magnitude of the industry's efforts to trap children into dependency on their deadly product. Studies by the Institute of Medicine and the Centers for Disease Control show the substantial role of industry advertising in decisions by young people to use tobacco products.

If we are serious about reducing youth smoking, FDA must have the power to prevent industry advertising designed to appeal to children wherever it will be seen by children. This legislation will give FDA the authority to stop tobacco advertising that glamorizes smoking to kids. It grants FDA full authority to regulate tobacco advertising “consistent with and to the full extent permitted by the First Amendment.”

FDA authority must also extend to the sale of tobacco products. Nearly every State makes it illegal to sell cigarettes to children under 18, but surveys show that many of those laws are rarely enforced and frequently violated. FDA must have the power to limit the sale of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machine sales. There must also be serious enforcement efforts with real penalties for those caught selling tobacco products to children. This is the only way to ensure that children under 18 are not able to buy cigarettes.

The FDA conducted the longest rulemaking proceeding in its history, studying which regulations would most effectively reduce the number of children who smoke. Seven hundred thousand public comments were received in the course of that rulemaking. At the conclusion of its proceeding, the Agency promulgated rules on the manner in which cigarettes are advertised and sold. Due to litigation, most of those regulations were never implemented. If we are serious about curbing youth smoking as much as possible, as soon as possible; it makes no sense to require FDA to reinvent the wheel by conducting a new multiyear rulemaking process on the same issues. This legislation will give the youth access and advertising restrictions already developed by FDA the force of

law, as if they had been issued under the new statute. Once they are in place, FDA will have the authority to modify these rules as changing circumstances warrant.

The legislation also provides for stronger warnings on all cigarette and smokeless tobacco packages, and in all print advertisements. These warnings will be larger and more explicit in their description of the medical problems which can result from tobacco use. Each cigarette pack will carry a graphic depiction of the consequences of smoking. The FDA is given the authority to change the warning labels periodically, to keep their impact strong.

The nicotine in cigarettes is highly addictive. Medical experts say that it is as addictive as heroin or cocaine. Yet for decades, tobacco companies vehemently denied the addictiveness of their products. No one can forget the parade of tobacco executives who testified under oath before Congress that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proves that the companies not only knew of this addictiveness for decades, but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

An analysis by the Harvard School of Public Health demonstrates that cigarette manufacturers are still manipulating nicotine levels. Between 1998 and 2005, they significantly increased the nicotine yield from major brand-name cigarettes. The average increase in nicotine yield over the period was 11 percent.

The tobacco industry has a long dishonorable history of providing misleading information about the health consequences of smoking. These companies have repeatedly sought to characterize their products as far less hazardous than they are. They made minor innovations in product design seem far more significant for the health of the user than they actually were. It is essential that FDA have clear and unambiguous authority to prevent such misrepresentations in the future. The largest disinformation campaign in the history of the corporate world must end.

Given the addictiveness of tobacco products, it is essential that the FDA regulate them for the protection of the public. Over 40 million Americans are currently addicted to cigarettes. No responsible public health official believes that cigarettes should be banned. A ban would leave 40 million people without a way to satisfy their drug dependency. FDA should be able to take the necessary steps to help addicted smokers overcome their addiction, and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, FDA must have the authority to reduce or remove hazardous

and addictive ingredients from cigarettes, to the extent that it is scientifically feasible. The inherent risk in smoking should not be unnecessarily compounded.

Recent statements by several tobacco companies make clear that they plan to develop what they characterize as "reduced risk" cigarettes. Some are already on the market making unsubstantiated claims. This legislation will require manufacturers to submit such "reduced risk" products to the FDA for analysis before they can be marketed. No health-related claims will be permitted until they have been verified to the FDA's satisfaction. These safeguards are essential to prevent deceptive industry marketing campaigns, which could lull the public into a false sense of health safety. Only by preventing bogus claims will there be a real financial incentive for companies to develop new technologies that can lead to genuinely and verifiably safer products.

This legislation will vest FDA not only with the responsibility for regulating tobacco products, but with full authority to do the job effectively. It is long overdue.

Voting for this legislation today is the right thing to do for America's children. They are depending on us. By passing this legislation, we can help them live longer, healthier lives. I know that the Senate will not let them down.●

Mr. DODD. There are over 1,000 organizations that support H.R. 1256. I ask unanimous consent that some of these letters of support be printed in the RECORD.

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

MARCH 26, 2009.

Hon. HENRY WAXMAN
*Chairman, Committee on Energy and Commerce,
Rayburn House Office Building, Washington, DC.*

DEAR CONGRESSMAN WAXMAN: We are writing to endorse the "Family Smoking Prevention and Tobacco Control Act," which you introduced on March 3, 2009. If enacted, this legislation will make a significant contribution in our national campaign to reduce the harm caused by tobacco and to protect our children and public health.

As you are aware, in the next 365 days, more than 400,000 Americans will die prematurely from tobacco use and more than 450,000 children, 12 to 17 years old, will become regular, daily smokers and part of the next generation of grim statistics. This year, under your leadership, the United States Congress has an opportunity to bring about fundamental change by enacting your legislation to regulate tobacco products and their marketing.

The "Family Smoking Prevention and Tobacco Control Act" is the kind of tobacco regulation that makes sense and that is long overdue. It would prevent the tobacco companies from marketing to children. It would require disclosure of the contents of tobacco products, would authorize FDA to require the reduction or removal of harmful ingredients, and would require FDA to promptly address the complex issues raised by menthol tobacco products. It would prohibit terms like "light" and "low tar" which have been

used to mislead smokers into thinking that those tobacco products are less harmful. And it would force the tobacco companies to scientifically prove any claims about "reduced risk" products.

Some have questioned whether FDA can take on this important new task and whether it will have sufficient resources. Having thoroughly studied this issue, we believe that the bill gives the FDA the resources it needs to do the job properly; and, without question, the FDA is the right agency to implement this new regulation because it has a public health mandate and the necessary scientific and regulatory experience.

The Congress can change the course of this public health crisis by voting to enact your legislation to provide FDA with authority over tobacco products. This is a strong bill and would significantly advance the public health.

Sincerely,

DONNA E. SHALALA,
*Former Secretary of
Health and Human
Services.*

DAVID KESSLER,
*Former Commissioner
of the Food and
Drug Administration.*

DAVID SATCHER,
Former Surgeon General.

TOMMY G. THOMPSON,
*Former Secretary of
Health and Human
Services.*

JULIE L. GERBERDING,
*Former Director of the
Centers for Disease
Control and Prevention.*

RICHARD H. CARMONA,
Former Surgeon General.

AMERICAN CANCER SOCIETY,
CANCER ACTION NETWORK,
Washington, DC, May 18, 2009.

Hon. EDWARD M. KENNEDY,
*Chairman, Committee on Health, Education,
Labor and Pensions, U.S. Senate, Wash-
ington, DC.*

DEAR CHAIRMAN KENNEDY: On behalf of the volunteers and supporters of the American Cancer Society Cancer Action Network (ACS CAN), the advocacy affiliate organization of the American Cancer Society, we thank you for your leadership on The Family Smoking Prevention and Tobacco Control Act, S. 982. We fully support this legislation to give the U.S. Food and Drug Administration long-needed authority to regulate the production, marketing and sale of tobacco products.

Every year, more than 400,000 Americans die from causes related to the use of tobacco products. The annual direct health care cost from tobacco use is \$96 billion. Every day 3,500 kids smoke their first cigarette and each day 1,000 young people become regular smokers, one-third of whom will die prematurely as a result.

More than 1.4 million Americans will be diagnosed with cancer this year and more than 550,000 will lose their battle with the disease. There will be 159,000 lung cancer deaths this year. Smoking is responsible for 87 percent of the deaths from lung cancer.

Despite the overwhelming evidence of harm to public health and costs to the health care system, tobacco products remain virtually unregulated. In the absence of government intervention, the tobacco industry continues to market its deadly products to children, deceive the general public about the harm they cause, and fail to take any meaningful action to make their products less harmful or less addictive.

Your legislation would begin commonsense oversight of the industry by giving FDA the necessary authority and resources to regulate the manufacturing, marketing, labeling, distribution and sale of tobacco products. The bill will give FDA authority to prevent tobacco advertising that targets children, prevent the sale of tobacco products to minors, identify and reduce the toxic constituents of tobacco products and tobacco smoke, and regulate industry health claims about the risks of tobacco products.

This is strong and effective legislation broadly supported by the public health community. We assure you that ACS CAN will work vigorously to protect the approach you have taken and to see it enacted into law this year.

Thank you again for your commitment to this critically important and long overdue legislation.

Sincerely,

DANIEL E. SMITH,
President.

AMERICAN LUNG ASSOCIATION,
Washington, DC, May 14, 2009.

Senator EDWARD M. KENNEDY,
Chairman, Committee on Health, Education,
Labor and Pensions, U.S. Senate, Wash-
ington, DC.

DEAR CHAIRMAN KENNEDY: The American Lung Association commends the Senate Committee on Health, Education, Labor and Pensions for considering S. 982, the Family Smoking Prevention and Tobacco Control Act. Your legislation would finally give the U.S. Food and Drug Administration (FDA) authority over tobacco products.

This legislation will provide the FDA with the authority to stop the tobacco companies from advertising to children, making misleading health claims about their deadly products and from manipulating their products to make them increasingly more addictive. FDA authority over manufactured tobacco products will finally allow our nation to begin to take significant steps to reduce the tobacco-caused death toll that claims more than 392,000 American lives each year and results in \$193 billion annually in health care costs and lost productivity.

The American Lung Association is grateful to you for your leadership and we look forward to working with you to ensure its passage by the Senate in June.

Sincerely,

CHARLES D. CONNOR,
President and CEO.

Chicago, IL, May 11, 2009.

Hon. EDWARD M. KENNEDY,
Chairman, Health, Education, Labor, and Pen-
sions Committee, U.S. Senate, Dirksen Sen-
ate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to express our strong support for S. 982, the "Family Smoking Prevention and Tobacco Control Act," and to urge the Senate Health, Education, Labor and Pensions (HELP) Committee to approve S. 982 during its mark up of the bill. This legislation would give the Food and Drug Administration (FDA) the authority to regulate the manufacture, sale, distribution, and marketing of tobacco products. The AMA firmly believes that Congress must act this year to protect the public's health by passing the Family Smoking Prevention and Tobacco Control Act.

Cigarette smoking remains the leading preventable cause of death and disease in the United States. Each year, tobacco use kills more than 400,000 Americans and costs the nation nearly \$100 billion in health care bills. As physicians, we see daily the devastating

consequences of tobacco use on our patients' health. Patients suffer from preventable diseases including cancer, heart disease, and emphysema that develop as a result of the use of a single product—tobacco. The evidence is overwhelming concerning the health risks of using tobacco products, particularly when used over decades.

Ninety percent of all adult smokers begin while in their teens, or earlier, and two-thirds become regular, daily smokers before they reach the age of 19. Each day, approximately 4,000 kids will try a cigarette for the first time, and another 1,000 will become new, regular, daily smokers. As a result, one-third of these kids will die prematurely. Despite their assertions to the contrary, the tobacco companies continue to market their products aggressively and effectively to reach kids, who are more susceptible to cigarette advertising and marketing than adults. Congressional action to provide the FDA with strong and effective regulatory authority over tobacco products is long overdue.

We applaud you for your leadership on strong FDA regulation of tobacco and other critical public health issues. The AMA looks forward to working with you and your colleagues to enact S. 982 and its companion in the House, H.R. 1256, into law.

Sincerely,

MICHAEL D. MAVES.

AMERICAN PUBLIC HEALTH ASSOCIA-
TION,

Washington, DC, May 13, 2009.

Hon. EDWARD KENNEDY,
Senate Committee on Health, Education, Labor
and Pensions, Senate Dirksen Office Build-
ing, Washington, DC.

DEAR CHAIRMAN KENNEDY: On behalf of the American Public Health Association (APHA), the oldest and most diverse organization of public health professionals and advocates in the world dedicated to promoting and protecting the health of the public and our communities, I write in strong support of S. 982, the Family Smoking Prevention and Tobacco Control Act, legislation that would give the Food and Drug Administration (FDA) the authority to regulate tobacco products. In April, the House of Representatives passed this legislation by an overwhelming bipartisan majority and we are hopeful the Senate will move quickly to pass the bill.

According to the Centers for Disease Control and Prevention (CDC), tobacco use is responsible for about 438,000 deaths each year in the United States. In addition to this staggering statistic, tobacco use costs more than \$96 billion each year in health care expenditures, and an additional \$97 billion per year in lost productivity. Furthermore, 3,600 kids between the ages of 12 and 17 years initiate cigarette smoking every day. In spite of this, tobacco products remain virtually unregulated. For decades, the tobacco companies have marketed their deadly products to our children, deceived consumers about the harm their products cause, and failed to take any meaningful action to make their products less harmful or less addictive. Your bill would finally end the special protection enjoyed by the tobacco industry and protect our children and the nation's health instead.

This legislation meets the high standard established by the public health community for FDA tobacco regulation. Importantly, the bill would create FDA authority to effectively regulate the manufacturing, marketing, labeling, distribution and sale of tobacco products, including the authority to:

Stop illegal sales of tobacco products to children and adolescents

Require changes in tobacco products, such as the reduction or elimination of harmful chemicals, to make them less harmful and less addictive

Restrict advertising and promotions that appeal to children and adolescents

Prohibit unsubstantiated health claims about so-called "reduced risk" tobacco products that discourage current tobacco users from quitting or encourage new users to start

Require the disclosure of tobacco product content and tobacco industry research about the health effects of their products

Require larger and more informative health warnings on tobacco products.

Study and address issues associated with menthol tobacco products

We thank you for your continued leadership on this and other important public health issues. We look forward to working with you to ensure the legislation is passed by the Senate and signed by the president this year.

Sincerely,

GEORGES C. BENJAMIN,
Executive Director.

CAMPAIGN FOR TOBACCO-FREE KIDS,
Washington, DC, May 14, 2009.

Senator EDWARD M. KENNEDY,
Chairman, Committee on Health, Education,
Labor and Pensions, U.S. Senate, Wash-
ington, DC.

DEAR CHAIRMAN KENNEDY: We are very pleased that the Senate Committee on Health, Education, Labor and Pensions will next week undertake consideration of S. 982, the Family Smoking Prevention and Tobacco Control Act, your legislation to give the U.S. Food and Drug Administration (FDA) authority over tobacco products. On April 2nd, the House passed this legislation with a solid bipartisan vote of 298-112. We look forward to its passage by the Senate in the near future.

Tobacco use remains the leading cause of preventable death in the U.S., killing more than 400,000 Americans each year and costing our health care system an estimated \$96 billion annually. More than 1,000 kids become regular, daily smokers each day—and one-third of them will ultimately die from their addiction. Amazingly, tobacco products are virtually unregulated by the federal government. Tobacco products are exempt from basic health regulations that apply to other consumer products such as drugs, medical devices and foods. This special protection allows tobacco companies to market their deadly and addictive products to children, mislead consumers about the dangers of their products, and continue to manipulate ingredients in order to make them more addictive and attractive to children.

There are more than 1,000 national, state and local organizations that support this legislation (the full list of supporting organizations can be seen at: <http://www.tobaccofreekids.org/reports/fda/organizations.pdf>) and both the President's Cancer Panel and the Institute of Medicine support Congress giving the FDA the authority to regulate the manufacture and marketing of tobacco products.

We applaud your leadership on this important public health legislation and look forward to working with you to ensure its passage by the full Senate.

Sincerely,

MATTHEW L. MYERS,
President.

AMERICAN ACADEMY OF PEDIATRICS,
Elk Grove Village, IL, April 29, 2009.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: On behalf of the 60,000 pediatricians, pediatric medical subspecialists and pediatric surgical specialists of the American Academy of Pediatrics

(AAP), I would like to express our support for the Family Smoking Prevention and Tobacco Control Act (H.R. 1256), legislation to protect child health by providing the Food and Drug Administration (FDA) with strong authority to regulate tobacco products. The bill made historic progress this year, passing in the House early in the session by an overwhelming bipartisan majority of 292–112. We urge the Senate to take up and approve FDA tobacco legislation as soon as possible and oppose the alternative offered by Senators Burr and Hagan.

It is estimated that more than 3 million US adolescents are cigarette smokers and more than 2,000 children under the age of 18 start smoking each day. If current tobacco use patterns persist, an estimated 6.4 million children will die prematurely from a smoking-related disease. Smoking and exposure to second-hand smoke among pregnant women cause low-birth weight babies, preterm delivery, perinatal deaths and sudden infant death syndrome. Other effects may include childhood cancer, childhood leukemia, childhood lymphomas and childhood brain tumors. Well over 30,000 births per year in the United States are affected by one or more of these problems.

The Family Smoking Prevention and Tobacco Control Act will provide the FDA with broad new authority and resources to regulate the manufacture, marketing, labeling, distribution and sale of tobacco products, including advertising. The marketing provisions include banning advertising near schools and tobacco sponsorship of sporting events. The bill would require tobacco company disclosure of cigarette constituents as well as larger and stronger health warnings on cigarette packs. It would also give the FDA the authority to regulate the amount of nicotine in cigarettes, ban flavored cigarettes, and prevent the marketing of products labeled as “reduced harm.” This enhanced power can reduce tobacco use by adolescents and young adults, thus limiting the number of people exposed to tobacco’s health-compromising and life-threatening risks.

The Academy opposes the alternative tobacco regulation legislation offered by Senators Burr and Hagan titled the Federal Tobacco Act of 2009 (S. 579). It does not provide the protections necessary to protect children from the harms of tobacco. Rather than place tobacco regulatory authority in the FDA, S. 579 would create a new and untested bureaucracy to do the job. The bill does not contain the strong marketing or labeling provisions necessary to prevent our nation’s youth from starting a lifelong addiction to tobacco. The Federal Tobacco Act would also mistakenly assure tobacco users of the safety of so-called “reduced-risk” tobacco products, give the tobacco industry a voice in scientific decision making, and prevent mandating meaningful changes in tobacco product ingredients. We urge the Senate to oppose this alternative and swiftly pass FDA tobacco legislation.

Thank you for your dedication to the health and well-being of children. We look forward to working with you to pass this important legislation.

Sincerely,

DAVID T. TAYLOR, JR.,
President.

Mr. DODD. Let me take a couple of minutes. I know my colleague and friend from Wyoming, Senator ENZI, is coming to the floor as well. I think Senator COBURN is going to be here to make a point of order. I will keep an eye out so I do not exceed the time.

I want to point out to my colleagues that this is now down to the last few

votes on this matter. I had hoped we would have been able to consider some of the other amendments that were being offered. But as my colleagues, I think, are probably aware, one of the amendments to be considered was an amendment offered by my colleague Senator LIEBERMAN. There was objection to that amendment coming up. As a result, we could not reach an agreement on allowing time for the other amendments to be considered, amendments offered by Senator ENZI, Senator BUNNING, Senator COBURN, and Senator HAGAN.

In fact, an amendment offered by Senator ENZI—he and I reached an agreement on that. It is regrettable that we weren’t able to get to it. I hope we can fix it at another time. That is an example of what happened when we couldn’t get unanimous consent to go forward. Nonetheless, I hope the substitute will be adopted, cloture will be invoked, and we can schedule a vote for final passage, as I believe we will, in the next day.

This is important. A lot of work has been done on this bill. As Senator DURBIN, our friend from Illinois, pointed out, this is work that has gone on for decades between Republicans and Democrats. It is a bipartisan bill. We spent 2 days on markup, considering amendments, adopting some, accepting some. That brought us to the position we are in today with this legislation.

As I have said over and over again over the last number of weeks as we have considered this bill, this is an unprecedented action we will be taking, an historic moment in many ways. For the first time ever in the history of our country, the 100-year-old regulatory agency, the Food and Drug Administration, which regulates all the food and products we ingest and consume as Americans, will now for the first time be allowed to regulate tobacco products.

The FDA, the Food and Drug Administration, as I pointed out, not only regulates the food we humans consume but also pets—cat food, dog food, bird feed, hamsters—all those products have to be approved by the FDA. One product we have not been able to legislate because of opposition from the tobacco industry is tobacco products. We are about to change that. My hope is with a vote today and tomorrow, and then agreement with the House, the President will be in a position to sign the legislation that will, first, give the Food and Drug Administration the opportunity to regulate these products and, as important, to determine and set guidelines and regulations dealing with the sale and marketing to young people.

It has been said, I know, over and over again, maybe not often enough, 3,000 to 4,000 children begin smoking every day in America. Every day we delay having the FDA take on this responsibility and begin controlling the marketing and sale of these products, we run the risk of more and more chil-

dren starting the habit. We know that of that 3,000 to 4,000 who start smoking every day, 1,000 of them end up becoming addicted to the products. One in five high school students in my State of Connecticut today smoke. I suspect those numbers are probably fairly uniform across the country. Of that number I have mentioned, the thousand who become addicted, about one-third that number will die from smoking-related illnesses. Four hundred thousand people every year lose their lives as a result of tobacco-related illnesses.

Again, this is a self-inflicted wound. Obviously we have known this for a long time. The Surgeon General has warned for years, every scientific study that has been done has cautioned about what happens if people develop the habit of smoking and the dangers associated with it. We talk about loss of life but there are also those who become debilitated through the contraction of various diseases associated with smoking.

I apologize for making this case with numbers, but it is so important my colleagues understand where we are and how important this vote is, to be able to do this. We are now already beginning the debate about health care in the country. That debate is going to go on for the next number of months. A major feature of the health care debate is prevention, to try to prevent people from getting the diseases that cost them and their families and our country so much. What better way to take a step toward prevention than to deal with an issue like smoking and tobacco products, which causes so many deaths in our country, so many illnesses.

In fact, if you take suicides, murders, AIDS, alcohol-related deaths, automobile accidents, drug-related deaths, and combine all of them, they do not equal the number of fatalities that occur every year as a result of the use of tobacco products.

If we are truly interested in making real headway on prevention, what better way than to begin to deal with the issue of marketing and sale of tobacco products to young people. That is what a major part of this bill does.

We also provide help to the producing States because we recognize that for farmers in these States, this will be a major adjustment for them economically. This bill accommodates that as well.

I say to my friends on the other side, particularly, those who have offered—want to offer some of these amendments, we didn’t have a chance to consider some of them, but I want them to know it was not objection on this side to that at all. There were objections to the Lieberman amendment going forward that created this problem. But, nonetheless, the work that has been done on this bill I think is deserving of our support. It is worthy of our unanimous adoption.

As I said over and over again, if you were to collect all of the adult smokers in the country—and 90 percent of adult

smokers began as children, by the way—but if you asked all of them their opinion on whether we ought to do something about marketing these products to children, I would be willing to venture a guess that 98 percent of adult smokers, if they could speak with one voice today, would tell us to pass this bill. The last thing a parent who smokes wants is their children to start smoking. They know the hazards, they know the damage, they know the heartache that comes with the illnesses associated with these products.

On behalf of all parents in the country, smokers and nonsmokers, let us adopt this legislation and take a major step in dealing with the dreaded health problems associated with tobacco products.

I see my colleague from Wyoming so let me stop here and give him the remainder of the time he needs to comment on this. I thank him and his staff who have been working on this. I am a late arrival. He worked with Senator KENNEDY on this problem long before I was directly involved with it. I thank him for his work.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. I thank the Senator from Connecticut, Senator DODD, who is working as chairman on this committee, for his passion, enthusiasm, and for listening to us. We do have a few things that are in the bill, but there are several other things that ought to be considered. We want the bill to be as good as possible. When we do cloture, we cut off that possibility.

I have a couple amendments that I think, if they were addressed—I know one is kind of accepted on both sides, but we cannot get them in. That is a frustration. We should not be having frustrations on something as important as this bill. It is important that we stop kids from starting smoking and that we get people already smoking to stop smoking. It is adding to the health care bills of all of us. It is a cost shift we are experiencing. It is not good for their health. Then there are family members who are having secondary smoke. People do not realize the problems they are giving to their family members by doing that.

I do oppose cloture today. There are several amendments I would like to offer. They are all germane amendments. I am glad they were germane amendments. We have been trying to reach an agreement on offering these amendments but it has been without any success, and if we invoke cloture we will not have a chance to consider any of these amendments.

I hope we have a way to give these amendments serious consideration. If we cannot, I have to oppose cloture and I ask my colleagues to do the same. I think we can get it worked out in a relative hurry but not unless the train stops for a moment, a little hesitation here.

I want to get this bill done. I am hoping we can complete it. But I think

there are some important points that have to be made on it.

I yield the floor.

CHARACTERIZING FLAVOR

Mr. LAUTENBERG. Madam President, recent attempts by the tobacco industry to sell and market candy-flavored cigarettes are a real threat to our Nation's children. With flavors such as cherry, grape, and strawberry, these cigarettes are intended to get our children addicted to a deadly product that kills more than 400,000 people a year. The Family Smoking Prevention and Tobacco Control Act section 907 prohibits the use in cigarettes of flavors, herbs, spices, such as strawberry, grape, orange, clove and cinnamon, when used as a "characterizing flavor" of the tobacco product or smoke. I applaud you along with Senator KENNEDY for prohibiting these products.

Mr. DODD. As you know, most new smokers start as children. Every day, approximately 3,500 kids will try a cigarette for the first time, and another 1,000 will become new, regular daily smokers. We should do everything possible to protect our children from the dangers of smoking.

Mr. LAUTENBERG. However, it is my understanding that the language in section 907 is not meant to prohibit the use of any specific ingredient that does not produce a "characterizing flavor" in a cigarette or its smoke; is that correct?

Mr. DODD. The Senator from New Jersey is correct. While the term "characterizing flavor" is undefined in the legislation, it is intended to capture those additives that produce a distinguishing flavor, taste, or aroma imparted by the product. Nothing in this section is intended to expressly prohibit the use of any specific ingredient that does not fall into this category.

Mr. LAUTENBERG. I thank the Senator for this clarification.

Mr. LEVIN. Madam President, I am pleased the Senate is taking up the Family Smoking Prevention and Tobacco Act which will save hundreds of thousands of lives and more than \$155 billion in health care costs every year. Currently, there are more than 44 million smokers, of which 90 percent began smoking before the age of 18. Tobacco is a product that is responsible for 440,000 deaths each year, is the leading cause of preventable death, and yet, is not regulated.

The Family Smoking Prevention and Tobacco Control Act will go a long way in regulating tobacco products, and will make it less likely that a child will establish a dependence on tobacco products. In the United States alone, every day approximately 3,000 minors take up smoking. Simply reducing the use of tobacco by these minors by even 50 percent will prevent more than 10 million children from becoming habitual smokers, saving over 3 million of them from premature death due to tobacco related disease.

It is critical that the FDA gain regulatory authority over tobacco related

products, in order to ensure that consumers are better informed of the possible risks, addictive qualities, and adverse health effects of these products. In addition, this legislation will create more transparency and, as in many other consumable goods, tobacco manufactures will be required to list all ingredients included in their tobacco products. This bill also gives the FDA the ability to set quality criteria for tobacco products, prohibit cigarettes containing any flavoring other than tobacco or menthol, as well as require the FDA approval for all labels before being put on the market.

In 2005, cigarette manufactures spent more than \$13 billion to attract new users, retain current users, and increase consumption. Children especially are exposed to tobacco advertising, seeing tobacco use glorified in movies, and advertisements and sponsorship of sporting events. This advertising misleads users, children and adults, to believe products are healthy, for example, "light" or "low-tar" designations. Our Nation stands to benefit greatly from this legislation, both in quality of life and revenue saved. The diseases and deaths caused by smoking are preventable, and every person has a stake in the issue, whether they smoke or not.

I was disappointed in 1998 when the Fourth U.S. Circuit Court of Appeals decided in *Brown & Williamson Tobacco Corporation v. Food and Drug Administration, FDA*, that the FDA did not have the authority under existing law to regulate tobacco as an addictive drug, and I am pleased the Family Smoking Prevention and Tobacco Control Act will take steps to address this lack of regulation. This bill has the support of over 1,000 organizations and deserves our support.

Mr. CARDIN. Mr. President, I regret that the Senate was unable to reach an agreement with regard to consideration of the amendment which Senators LIEBERMAN, AKAKA, COLLINS, and VOINOVICH offered to H.R. 1256. The amendment, which was ruled non-germane, reformed several Federal employee retirement provisions. It made changes to benefit computation rules for certain Federal employees, including the ability to count sick leave and part-time service, and it authorized Federal agencies to reemploy Federal pensioners on a part-time basis.

I cosponsored this amendment. Its importance particularly resonates with me as a large number of Federal employees work and reside in my home State of Maryland. But that is not why I cosponsored it. I cosponsored the amendment because it was the right thing to do for all of America's Federal employees.

The Lieberman amendment would have extended to employees under the Federal Employees' Retirement System certain benefits which already apply to employees under the older Civil Service Retirement System. This bipartisan amendment had the potential to affect the lives of hundreds of

thousands of Federal employees who work hard every day, many at modest pay grades, only to find that their benefits do not mirror those of their colleagues in the same positions.

We had an opportunity to send an important message to America's Federal workers by bringing up this amendment. We had an opportunity to give them additional incentives to continue the missions they pursue on behalf of all of us, to demonstrate that Congress still cares about doing what is right and fair. I regret we were unable to consider this amendment because of the objections of a minority of Senators.

I commend Senator LIEBERMAN and the other Senators who worked so diligently on this amendment. We will have other opportunities. I pledge my continued support for America's Federal employees, just as they continue to work for America each and every day.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Madam President, on behalf of Senator LIEBERMAN I ask unanimous consent, notwithstanding rule XXII, that I be permitted to call up amendment No. 1290 and that the amendment be modified with the changes at the desk; that once this modification is made, amendment No. 1256 be withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. DEMINT. I object. I make a point of order that the pending Lieberman amendment is not germane.

The PRESIDING OFFICER. Objection is heard. The point of order is well taken. The amendment falls.

Under the previous order, the substitute amendment is adopted.

The amendment (No. 1247) was agreed to.

Mr. DODD. The pending matter will be a vote at 12:30, in a few minutes, on the cloture motion, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD. We will go to the vote right away. I appreciate the comments of my friend from Wyoming. I wish the RECORD to note there were no objections on this side to any of the amendments being offered, the germane amendments. My friend from Wyoming is absolutely correct. I regret that, that we didn't have an opportunity to debate those, but let me say there may be a time and opportunity for us to deal with these on other vehicles as well, but my hope is we can invoke cloture and move forward.

I am prepared to yield back the time and proceed to the vote.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the

Senate the pending cloture motion, which the clerk will report.

The 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, hereby move to bring to a close debate on Calendar No. 47, H.R. 1256, Family Smoking Prevention and Tobacco Control Act.

Harry Reid, Christopher J. Dodd, Robert P. Casey, Jr., Debbie Stabenow, Blanche L. Lincoln, Patty Murray, Ron Wyden, Jack Reed, Sheldon Whitehouse, Maria Cantwell, Roland W. Burris, Richard Durbin, Mark Udall, Edward E. Kaufman, Tom Harkin, Benjamin L. Cardin, Bill Nelson.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is waived. The question is, Is it the sense of the Senate that debate on H.R. 1256, Family Smoking Prevention and Tobacco Control Act, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

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

The yeas and nays resulted—yeas 67, nays 30, as follows:

[Rollcall Vote No. 206 Leg.]

YEAS—67

Akaka	Grassley	Murray
Baucus	Gregg	Nelson (NE)
Bayh	Harkin	Nelson (FL)
Begich	Hutchison	Pryor
Bennet	Inouye	Reed
Bingaman	Johanns	Reid
Boxer	Johnson	Rockefeller
Brown	Kaufman	Sanders
Burris	Kerry	Schumer
Cantwell	Klobuchar	Shaheen
Cardin	Kohl	Snowe
Carper	Landrieu	Specter
Casey	Lautenberg	Stabenow
Collins	Leahy	Tester
Conrad	Levin	Thune
Corker	Lieberman	Udall (CO)
Cornyn	Lincoln	Udall (NM)
Dodd	Lugar	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Gillibrand	Murkowski	

NAYS—30

Alexander	Crapo	Martinez
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Risch
Brownback	Graham	Roberts
Bunning	Hagan	Sessions
Burr	Hatch	Shelby
Chambliss	Inhofe	Vitter
Coburn	Isakson	Voinovich
Cochran	Kyl	Wicker

NOT VOTING—2

Byrd Kennedy

The PRESIDING OFFICER. On this vote, the yeas are 67, the nays are 30. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Connecticut.

Mr. DODD. Madam President, I wish to thank my colleagues. This is, again,

a strong bipartisan vote on this issue, and it allows us now to get to the final passage. We have had about, I think, three cloture votes on this bill. If we followed the regular order, the vote would occur at 6:05 a.m. tomorrow morning. I am sure the leader will not make us do that, but that may be the price you pay for all the cloture votes we have had to go through. But sometime tomorrow the vote will occur, and the leadership will obviously decide when.

Let me again thank Senator ENZI and his staff and Senator KENNEDY and his staff. They have gone back many years. I am a place-holder on this. I hope our friend from Massachusetts is watching this because he battled 10 years to get us to this point.

If we can make a dent in those 3,000 to 4,000 kids who start smoking every day—the estimates are 11 percent will not start smoking because of what we are about to do on this bill. If we can make a difference in those 400,000 who lose their lives every year and those who contract emphysema and related illnesses, this may be the most important prevention step we take in the short term on our health care efforts.

So for my colleagues on both sides of the aisle who have made this possible, this is a moment they can take great satisfaction in having made a significant contribution to the well-being of Americans. I thank all of them for that and urge a strong vote tomorrow for the passage of the legislation. Then we will work out—and we may not have to work out differences with the House—but if we do, we will then send this bill to the President for his signature, hopefully in the next few days. For the first time in the history of our country, the Food and Drug Administration will be able to regulate tobacco products, and that is a major achievement for our country's children.

With that, Madam President, I thank my colleagues again and suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold his request?

Mr. DODD. Madam President, I withhold that request.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, I ask unanimous consent to be able to speak as in morning business for 20 minutes.

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

SAFE COMMISSION ACT

Mr. VOINOVICH. Madam President, I rise today to again call attention to the irresponsible and reckless fiscal path we find ourselves on as a nation and to urge my colleagues to act now to take the first step toward meaningful, comprehensive tax and entitlement reform through the enactment of the Securing America's Future Economy Commission Act, which I introduced with Senator JOE LIEBERMAN.

I urge my colleagues to take the time to read a recent letter from Senator

LIEBERMAN and I urging their support of this legislation.

The SAFE Commission has broad bipartisan support outside of Congress, including the Peter G. Peterson Foundation, the Business Roundtable, the Concord Coalition, the National Federation of Independent Business, the Brookings Institution and the Heritage Foundation—I think if you get the Concord Coalition and the Heritage Foundation to support a piece of legislation, it has to be pretty bipartisan and fair—and also the Committee for a Responsible Federal Budget. All of these organizations back the SAFE Commission concept as the way to tackle tax reform and our entitlement crisis.

I say to the Presiding Officer, as you may know, recently Chinese Prime Minister Wen Jiabao publicly voiced his concern about the security of the “huge amount of money” China has invested in the United States, saying, “To be honest, I am definitely a little worried.” He then went on to call on the United States to “maintain its good credit, to honor its promises and to guarantee the safety of China’s assets.” I hope this frightens you as much as it frightens me. China is the largest foreign creditor of the United States, holding an estimated \$1 trillion in U.S. Government debt. Though it may be unlikely due to the complex interdependent relationship we have with China, if China were to call in that debt, sell off its holdings, or direct its foreign investments away from the United States, the impact on our economy and our national security would be devastating. I have been saying for years that we cannot allow countries that control our debt to control our future.

The fact is foreign creditors have provided 70 percent of the funds the United States has borrowed since 2001. As a result, 51 percent of the privately owned national debt is held by foreign creditors—mostly foreign central banks. That is going to be increased significantly because of all the borrowing we are doing. These lenders are starting to express significant concerns about the status of our fiscal situation. To be frank, they should be concerned.

Our spending is out of control. As a result, our debt is skyrocketing. When I arrived in the Senate in 1999, gross national debt stood at \$5.6 trillion, or 61 percent of our GDP. The Obama administration recently projected the national debt to more than double to \$12.7 trillion by the end of fiscal year 2009. From 2008 to 2009 alone, the Federal debt will increase 27 percent, boosting the country’s debt-to-income ratio—or national debt as a percentage of GDP—from 70 percent last year to 89 percent this year.

As shown on this chart, here is where we were back when I came to the Senate in 1999. In 2008, last year, the national debt as a percentage of GDP was 70 percent. Today, it is at 89 percent. You can see we are going to be very

close to 100 percent of our GDP on our national debt. I call this the Pac Man that is eating up our revenue—particularly the interest. We are going to pay money that could be used for other things.

Alarming, the figures I just mentioned do not count our accumulated, long-term financial obligations. The Peterson Foundation recently pointed out that the Federal Government has accumulated \$56.4 trillion in total liabilities and unfunded promises for Medicare and Social Security as of September 30, 2008. That works out—listen to this—to \$483,000 per American household or \$184,000 for every man, woman, and child in the country to pay for these unfunded obligations. In other words, we have \$56.4 trillion in total liabilities and unfunded promises for Medicare and Social Security. It is an unfunded liability. If you look at it per household, it is \$483,000 per household, and if you look at it per individual, for every man, woman, and child in the United States, it is \$184,000.

To be completely fair to President Obama, our annual deficit and growing national debt have been problems for some time now. And, folks, I have come to the floor of the Senate time and time again to talk about paying down debt, balancing our budget, and so forth.

To my knowledge, President Bush never once mentioned the debt in any one of his State of the Union Addresses to Congress. But under the Obama administration, we have exacerbated the problem with an Omnibus appropriations bill that includes \$408 billion in nonemergency funding, a \$787 billion stimulus bill, and a 10-year proposed budget where the lowest deficit for a single year is larger than any annual deficit from the end of World War II to President Obama’s inauguration.

I know we are going through some tough times. Over the past year, we have been hit by an economic avalanche that started in housing, spread to the financial and credit markets, and then continued onward to every corner of our economy. I know it well. I am a Senator from Ohio. We are spending money to get out of this economic mess, but we cannot allow that to be an excuse to continue our reckless fiscal path. We have to start finding ways to work harder and smarter to do more with less. It does not take an economist to realize our course is unsustainable. I know it, the Obama administration knows it, the American people know it.

The Obama administration knows we can no longer ignore this crisis. Peter Orszag, whom I consider a friend, the Obama administration’s OMB Director, has even said:

I don’t want to sound like the boy crying wolf, but it is a fact that, given the path that we are on, two things: One is we will ultimately wind up with a financial crisis that is substantially more severe than even what we are facing today if we don’t alter the path of

Federal spending; and secondly, that if we were on that path in the future and something like we are experiencing today occurred, we would have much less maneuvering room to fight those fires, because we will have already depleted the fire truck.

And I am disappointed that as OMB Director he has forgotten his commitment to entitlement and tax reform he so boldly and loudly called for when he was CBO Director. You would think a change in title would not cause such a memory loss on as important an issue as the financial health of our country. To me, it can only mean one thing: that Peter Orszag’s boss, President Obama, must not be serious about addressing the growing national debt or, worse, does not understand our fiscal crisis or, even worse than that, that he just does not care.

Just last Friday, the Washington Post ran an opinion piece taking the administration to task for lacking a plan on just how we start to dig our country out of this financial crisis. The article details Treasury Secretary Geithner’s trip to Beijing 2 weeks ago, where he went to reassure China—the world’s largest holder of our Treasury debt, as I mentioned—that lending money to the U.S. Government is still a wise thing to do.

Mr. Geithner insisted that:

In the United States, we are putting in place the foundations for restoring fiscal sustainability.

In a moment that all Americans should consider a wake-up call, Mr. Geithner was met with laughter—laughter—when he told a group of Chinese students that their country’s assets were very safe in Washington.

Madam President, I ask unanimous consent to have printed in the RECORD this Washington Post article. The title of it is “No Laughing Matter, Why the U.S. needs to get serious now about long-term budget deficits.”

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

[From the Washington Post, June 5, 2009]

NO LAUGHING MATTER

The Obama administration inherited from its predecessor both a tanking economy and a huge federal budget deficit. Under the circumstances, it cannot be faulted for increasing the deficit in the short run, because a mammoth recession called for fiscal stimulus. Thus, it is neither surprising nor irreversibly dangerous that the total federal debt held by the public looks as if it will reach 57 percent of gross domestic product by the end of fiscal 2009 on Sept. 30—well above the previous four decades’ average of about 40 percent. What is more alarming is that, barring major spending cuts or tax increases, President Obama’s budget could drive that figure to 82 percent by 2019, according to the Congressional Budget Office.

We are already getting a taste of the problems that could develop if the president and Congress do not address this soon. Since the end of last year, the interest rate on 10-year Treasury notes has gone up from 2 percent to over 3.5 percent. That number is within historical norms; indeed, Treasury rates probably had been artificially depressed during the financial panic of the fall. But the spike, which will cost the government tens of billions of dollars, also reflects mounting investor concern—at home and, especially,

abroad—about the U.S. fiscal situation. If government borrowing costs continue to accelerate, they could kill economic growth for years to come.

It was a sign of the times that Treasury Secretary Timothy F. Geithner had to travel to Beijing this week to reassure China, the world's largest holder of Treasury debt, that lending money to the U.S. government is still a wise thing to do. Mr. Geithner insisted that, "in the United States, we are putting in place the foundations for restoring fiscal sustainability." To be sure, China doesn't have many good alternatives to parking its massive trade surpluses in dollars. But it does have some, including commodities and the debt of more fiscally prudent European governments. In a moment that all Americans should consider a wake-up call, Mr. Geithner was met with laughter when he told a group of Chinese students that their country's assets were "very safe" in Washington.

The chairman of the Federal Reserve, Ben S. Bernanke, was considerably more decorous than the Chinese students in testimony before Congress on Wednesday but, in essence, only slightly less skeptical. "Even as we take steps to address the recession and threats to financial stability," he said, "maintaining the confidence of the financial markets requires that we, as a nation, begin planning now for the restoration of fiscal balance."

Mr. Bernanke did not say explicitly that there is no such plan in Mr. Obama's budget—at least not according to the CBO, whose estimates of the president's budget show annual deficits lingering indefinitely above 4 percent of GDP. Nor did he point out that Congress has yet to come up with credible financing for the president's desirable but expensive health care proposal. He did not say that Mr. Obama and Congress have done nothing so far to deliver on the president's pledge of entitlement reform. But if the Fed chairman had said those things, he would have been absolutely right.

Mr. VOINOVICH. Madam President, this week, as you know, President Obama announced a plan to reenact statutory pay-as-you-go, pay-go. Now, what is "pay-go"? Pay-go basically is this: If you want to spend more money, you either have to find other spending you are going to reduce or, in the alternative, you are going to have to raise taxes to pay for it.

Unfortunately, the President's plan exempts things like the 2001-2003 tax cuts, patching the alternative minimum tax, updating physicians' payments in Medicare—and last but not least, modifying the estate tax. These expenses would be exempt from pay-go.

Folks, I believe this is intellectually dishonest. This does not reflect the high standards the President has set for his administration. In my opinion, it is more like the smoke and mirrors of the past that got us into the mess we find ourselves in today.

Maya MacGuineas, president of the Committee for a Responsible Federal Budget, puts it like this:

It is like quitting drinking—

She was referring to the President's pay-go announcement. Here is what she says—

It is like quitting drinking, but making an exception for beer and hard liquor. Exempting these measures from pay-go would increase the 10-year deficit by over \$2.5 trillion. That's not fiscal responsibility.

Today, I am reiterating my call for President Obama and Congress to enact the first pillar of meaningful tax and entitlement reform through the enactment of the SAFE Commission Act. I am asking my colleagues and their staffs to step up and look at this legislation and read the "Dear Colleague" letter Senator LIEBERMAN and I sent this last week with materials from the Peterson Foundation. Those materials, for a Senator or for staff members, lay out what I am talking about today. In addition, there is a DVD that is called IOUSA that was put together by the Peterson Foundation. I think it takes about an hour to look at it, but I don't know of anything that is out there today that depicts our financial crisis as well as that DVD does.

The SAFE Commission we are talking about would create a vehicle, much like we do for the BRAC process, to take on the tough issues of Social Security, tax reform, and creating, by a vote of 13 out of 20 members—there would be 20 members on the Commission; 2 of them would be from the administration, but it would take 13 out of 20—and if you have 13 out of 20, the recommendations would be fast-tracked through a special process and brought to the floor of both Chambers.

In other words, we would give it expedited procedure and then we would have to either vote up or down, just as we do on the BRAC process. It would break the logjam in Washington and show the American people and the world that we are serious about getting this Nation back on track.

For the life of me, I cannot understand why President Obama doesn't support this concept. I know he is getting a hard time from Speaker PELOSI and from several other Members in the House of Representatives, although STENY HOYER is in favor of the commission approach to solving our entitlement and tax reform crisis. We all know we can't get this done through the regular order of business. We know it. We would not be able to get it done. The proof of it is we haven't been able to do it thus far, so we are going to need the Commission. Everybody understands we are going to need it.

I know the President wants to move on climate change. But he has to know that from a substantive point of view and a political point of view, he is going to have to do something about this long-term financial crisis in which we found ourselves. It would seem to me he could go forward with climate change, he could go forward with health care reform, and get the Commission formed. It will take the Commission at least a year to finish its business.

Think of this: If the Commission is able to get 13 out of 20 members to come back with a bipartisan solution to dealing with tax reform and entitlement reform, that would be wonderful. It would take that issue off the President's plate. In other words, sooner or later, our President and his party are

going to have to face up to the fact that the people of America are really worried—and so are the people of the world—about us doing something about tax reform and entitlement reform.

Wouldn't it be great—I mean, if I were the Governor, as I was for 8 years in Ohio, and somebody said: Governor, you know what. You have a real problem. And what we are going to do is, we are going to put a commission together on a bipartisan basis, and we are going to come back with recommendations to get the job done—I would kiss them and say: Wonderful. I could kind of forget about it, except for the two people in the administration who were working on it. If they came back with a bipartisan solution, wow. Get it through Congress and we deal with the substantive problem and we get a big political problem off our plate just before going into the next Presidential election. So I just hope there is some more thought being given by the administration, more thought given by the Congress.

We all say: Oh, yes, we are concerned about the national debt. We have to do something about it. But when you go home, what are you going to point to for the people, your constituents? What are you going to point to and say: I am sincere about this; I want to do something about it. Then they are going to ask you: Well, what did you do? One of the things you can do is say: I supported a bipartisan commission. They are going to go to work during the next year. They are going to come back with recommendations, and this is the way we can deal with the problem that is going to be such a burden on the future of our country.

I came here in 1999, and one of the reasons I came here was to deal with our deficits and with reducing our national debt. I am going to be leaving this place at the end of next year. I have three children, and I have seven grandchildren. I happen to believe that just like the pages who are here today in this room, they are going to have to work a lot harder, work a lot harder than I do in order to maintain the standard of living that I have been able to have because the competition in the world today is a lot keener than it was 15 or 20 years ago. They are just going to have to work harder than they have ever had to work before to maintain the kind of standard of living that we would like to have for them and for my children and grandchildren. But if you think about it, if we don't deal with this problem I am talking about today, we are going to lay on their backs taxes that will break the bank.

So we put them in a position where they are going to have to work harder to maintain a decent standard of living. Then, what we are saying to them is, we are going to let you pay for those things that we weren't willing to do without or pay for on our own. To me, that is absolutely immoral. It is absolutely immoral.

One of the things I would hope is—and I feel like a broken record, but I

would hope that the Holy Spirit would somehow enlighten us to face up to this very serious responsibility, one that if we don't face up to, will have a devastating impact on the future of our country and our children and grandchildren.

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

The PRESIDING OFFICER. Will the Senator withhold his request?

Mr. VOINOVICH. Yes, I will.

Mr. VITTER. Madam President, I ask unanimous consent to speak for up to 15 minutes as in morning business.

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

DRUG REIMPORTATION AND REFORM

Mr. VITTER. Madam President, today I rise to speak on two crucial issues which I had hoped we would not only be debating in the context of this FDA bill currently before the Senate, but actually acting on in that context. So I have to say as I speak about these two issues I am disappointed we are not taking this obvious, major opportunity of acting on a major FDA bill to again not only have me speak, but all of us act together on the crucial issues of, No. 1, the reimportation of prescription drugs; and, No. 2, meaningful generic drug reform so that we get generics to market sooner as a lower cost alternative for American consumers. I wish to touch on each of these in turn.

I was glad to support my friend, the distinguished Senator from North Dakota, and many Democratic and Republican colleagues, in introducing an amendment to the FDA tobacco bill to enact comprehensive reimportation of prescription drugs. This has long been an issue that has truly united, in a sincere bipartisan way, Democrats and Republicans. Many Democrats and many Republicans have agreed. I think at a time when, unfortunately, the partisan divide and sometimes divisive and bitter partisan rhetoric is at an all-time high, it is important to find areas where we can bridge that divide in a meaningful and sincere way.

It is important to work on real issues and real solutions together and bridge that divide. Reimportation is a great example of that.

Now, we have on record a clear majority in the Senate and well over 60 votes for reimportation. We have a clear majority in the U.S. House for reimportation, and we have an administration and a President who are for reimportation, and he is on record in that regard in his service in the U.S. Senate. In addition, we have an important issue that can save all of us and can save our health care system billions of dollars as we go into health care reform. Surely, we need to be talking and acting in ways that can cut costs in health care without endangering the public, without hurting patient care, and this is a great opportunity.

The CBO has estimated that Americans would save about \$50 billion—\$50

billion with a “b”—over the next 10 years if reimportation were enacted. So we have a true bipartisan issue which has true consensus support in the Senate, in the House, and in the administration, which can save all of us and our health care system \$50 billion. Let's act. Surely, this is a recipe for something we can act strongly on and produce positive results.

So what is going on? Well, I am afraid what is going on is exactly what my colleague, the Senator from Arizona, Mr. MCCAIN, suggested on the Senate floor last week. He stood bravely on the Senate floor and read directly from a lobbyist e-mail, a lobbyist of big PhRMA, the association which represents the biggest pharmaceutical companies, and read a detailed e-mail about how they were going to block and derail this effort of mine and Senator MCCAIN's and Senator DORGAN's and others.

I think seeing that come to pass, seeing this effort successfully blocked from the FDA bill—something that is clearly a major opportunity on which to pass reimportation, a big FDA bill—that has to grow the cynicism of the American public. Americans all across our country have to be out there thinking: OK, what is wrong with this picture? Reimportation unites Democrats and Republicans, a big majority in the Senate, a big majority in the House, the support of the President, saves the system \$50 billion, obvious opportunity to pass it on an FDA bill, but, once again, it is cut off. It is blocked from consideration, from moving forward. That has to increase everybody's cynicism, and we have to work beyond that to pass this important legislation for the American people.

I am happy the majority leader has generally said he would find time on the Senate floor for consideration of a reimportation bill. We need to move. We would like a date certain, Mr. Leader, a date certain for that important consideration. After so many years of waiting, after so many years of the big PhRMA lobbyists and others blocking us from that consideration, we would like that debate and that action as soon as possible. It is certainly appropriate as we go into a major debate on health care reform.

I would underscore the same message with regard to the second crucial topic: reform with regard to generic drugs. For many months now, I have been working with several Members, most notably Senator SHAHEEN of New Hampshire, on bipartisan consensus generic drug reform.

Once again, I was very hopeful that this FDA bill on the floor of the Senate now would be a prime opportunity, an obvious opportunity, to pass that consensus bipartisan reform. Once again, that door was closed to us. We are not going to have that opportunity, and I express real disappointment.

But we need to act in that area. I look forward to continuing to work with Senator SHAHEEN, Senator BROWN,

and others in that important area. We have been focused on two things, in particular, that can make a huge difference.

First, we need to clear up certain loopholes, quite frankly, in the law that allowed drug companies to make labeling changes when their patent protection is about to run out, when generic was about to be open to go on the market. They were able to make slight labeling changes to extend that protection longer, in my opinion, in a somewhat artificial way. We need to reform the law and clear up those loopholes so that generic can come to market and provide Americans with a lower cost alternative.

Surely the drug companies need a period of protection so they can recoup their enormous investment in research and development. But what they don't need, and what we should not allow, in my opinion, is tweaking the labels at the eleventh hour and extending that protection in an artificial and, in my opinion, unreasonable way. That is a big area of reform I have been working on with Senator SHAHEEN and others.

A second area of needed reform is to elevate the Office of Generic Drugs and its importance within the FDA. We need to give it more stature. We need to have the head of that office report directly to the head of the FDA, the Administrator. We need to fund it properly so that, again, we put the proper emphasis on generic drugs. Generics are a good, safe, lower cost alternative to millions of American seniors and other Americans. They provide that today. But they can provide that lower cost alternative to an even greater extent if we take these commonsense, consensus, bipartisan measures—if we do away with these loopholes that allow last-minute labeling changes to artificially and unreasonably extend a company's patent, and if we elevate the stature of the Office of Generic Drugs within the FDA.

Again, it was an obvious opportunity to do just that in a bipartisan consensus way as we debate and act on this major FDA bill on the floor of the Senate now. I am sorry that door has been closed to us. I am sorry we have lost that opportunity. It is a shame. But we need to move on that issue, just as we need to move on reimportation now in the next few months this year in this body and in the House of Representatives.

We desperately need important health care reform. We need savings in the system to make costs of the overall health care system more reasonable, without sacrificing patient care, without telling seniors they cannot get this treatment or they cannot get that operation. These are commonsense, achievable ways to do that, by stabilizing the cost of prescription drugs. That is one of the most significant costs in our health care system with one of the most significant growth patterns. So let's act on reimportation, let's act on generics reform, let's act in

a bipartisan way, let's act for the best interests of American seniors and all the American people.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

(The remarks of Mr. SANDERS pertaining to the introduction of S. 1225 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SANDERS. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. 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. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

CREDIT CARD FAIR FEE ACT

Mr. DURBIN. Mr. President, yesterday I reintroduced the Credit Card Fair Fee Act. This legislation will provide fairness and transparency in the setting of credit card interchange fees.

Several weeks ago, the Senate passed legislation that will crack down on abusive fees and practices that credit card providers impose on consumers and cardholders. It is landmark legislation. It was 20 years in the making. I was pleased to support it and glad it passed.

We also need to take a hard look at the fees and the restrictions credit card providers impose on retailers. Retailers such as the restaurant down on the corner, the grocery store, the shop, these have to be looked at as well.

Currently, banks and credit card companies impose a system of fees and restrictions on retailers that accept their cards as a form of payment. There is a growing recognition that many of these fees and restrictions are anticompetitive and unfair to businesses and consumers.

Many people assume credit cards make their money off the customers who use them in direct payment, interest charges, and penalties. It turns out there is a whole level of fees that is imposed on retailers which, obviously, is passed on to consumers but have a direct impact on sales in America. If we do not address flaws in the system, many businesses will find it hard to make a profit, and the credit card fees cause consumer prices to go up as well. The most flawed element of the current system of merchant fees is the interchange fee. It is a fee merchants pay to card issuing banks on each debit or credit card transaction.

Under the current system, card networks, such as Visa and MasterCard, unilaterally set the rates for these interchange fees. These fees vary from card to card, but they average about 2

percent of the transaction they cover. Card companies don't let their member banks negotiate with merchants over the fee rates, and they prevent merchants from encouraging customers to use cards that carry lower fees.

Yesterday, the Secretary of the Treasury was in before my appropriations subcommittee. It turns out, we accept credit cards for some 200 different agencies in the Federal Government. I asked the Secretary how much we pay in interchange fees to these credit card companies—as we accept credit card payments for everything from taxes to purchases at the Government Printing Office. It turns out it is well over \$200 million a year. The GAO did a study in which it was asked whether, in fact, the Federal Government bargains for lower interchange fees because of the volume of business we do. It turns out there is virtually no bargaining allowed, not even with the Federal Government.

If merchants want to accept credit cards, those merchants simply have to abide by the rates, just like the Federal Government, that the card networks set, even when the rates are increased.

In fact, card companies regularly increase their interchange rates. A report by the Federal Reserve Bank in Kansas City found that between 1996 and 2006 Visa and MasterCard interchange rates increased from approximately \$1.30 per \$100 transaction to \$1.80. That is about a 40-percent increase over that 10-year period of time. The rates have gone up even further for cards that have rewards programs. The total amount of interchange fees collected last year was \$48 billion, according to estimates of the National Retail Federation. It is a huge increase from 2001, when the figure was \$16.6 billion.

Despite these rising fees, many merchants have no real choice but to accept these cards as a form of payment. Consumers use their credit and debit cards for over 40 percent of all transactions. Interchange fees cut into retailer profits and force many merchants to raise consumer prices or go out of business.

As you think about it, what does it mean for the profitability of a company if the business is required to pay the credit card company 2 percent of the sale price on every sale? Well, for some companies that operate on a very tight margin, it can be significant. Best Buy, the large and successful electronics retailer, has a net profit margin of only 2.2 percent. Whole Foods, a well-known grocery store, has a profit margin of 1.4 percent. The food and drugstore retail sector has a profit margin of only 1.5 percent, according to *Fortune* magazine.

How can these companies continue to be profitable if rising interchange fees paid to credit card companies cut into their already small operating margins? In 2007, the National Association of Convenience Stores reported the entire convenience store industry had profits

of \$3.4 billion dollars; however, they paid credit card interchange fees of \$7.6 billion. Over twice the amount of industry profit was paid to credit card providers.

Of course, it has an impact on smaller businesses. Rich Niemann, a friend of mine, who is coming by my office this afternoon in Washington, runs Niemann Foods, a chain of 65 grocery stores based in Quincy, IL. Every year I meet with him, and every year he asks me for help with interchange fees. Last year, Niemann Foods made \$6 million in profits but paid \$3 million in interchange fees. Those fee payments are going up every year. He has no ability to negotiate any change in those fee amounts. It is a growing expense he can't control.

Rising interchange fees cause many merchants to raise the price of their goods to cover these interchange fees. I don't want to drive small grocery stores out of business or small convenience stores. We don't want prices to go up for consumers across the board because of nonnegotiable credit card fees. The Credit Card Fair Fee Act will help restore fairness. The goal is simple. It incentivizes companies that provide credit cards and the merchants that accept them to sit down together and negotiate fees and terms both sides can live with.

The bill establishes a framework for negotiations and gives both sides a legitimate voice at the table. Under the bill, merchants would receive limited antitrust immunity to negotiate collectively with the providers of card systems over the fees and terms for access to the system. The bill then motivates the merchants and card providers to work out voluntary agreements. It establishes a mandatory period for negotiations.

If they fail to reach a voluntary agreement, the matter would then go to an arbitration-style proceeding before a panel of judges appointed by the Justice Department and the Federal Trade Commission. The judges would collect and disclose full information about credit card fees and costs and then order a mandatory settlement conference to attempt to facilitate a deal. If that fails, the judges would conduct a hearing where the merchants and card providers would each propose what they think is a fair set of fees and terms. The judges then would select the proposal that most closely represents what would be fairly negotiated in a competitive market. This set of fees and terms would govern access to the card system by merchants for a period of 3 years.

The bill contains safeguards to ensure the judges can only select a set of proposed fees and terms that is fair and pro-consumer. But the ultimate goal is to reach a deal before the process gets to the point where the judges would need to issue a ruling.

This is an archaic element of commerce in America that has a direct impact on consumers, the money we pay

for goods and services, as well as the profit margins of a lot of businesses that are struggling. The credit card companies have been unable to justify their interchange fees in terms of the actual cost of processing credit card payments. It is a profit margin on their side for which they are not accountable.

My legislation is supported by the Merchants Payments Coalition, a coalition of retailers, supermarkets, convenience stores, drugstores, fuel stations, online merchants and other businesses. The coalition's member associations collectively represent about 2.7 million stores nationwide, with approximately 50 million employees.

I ask my fellow colleagues in the Senate to take a look at the legislation. I warn them in advance, if they are interested in looking at this issue of credit cards and interchange fees, be prepared. You are going to hear from every bank that issues a credit card, and they are going to tell you the Durbin legislation is the end of the world. But I hope you will also listen to the merchants and retailers in the States you represent. They will tell you this system is unconscionable and unsustainable.

To have the credit card companies dictate these fees to their retailers all across America is fundamentally unfair. We should have arm's length negotiation. We should also have at the Federal Government level a negotiation to determine what is the best arrangement for taxpayers when it comes to paying these credit card fees to the companies that provide credit cards for transactions with the Federal Government. It is not an unreasonable approach.

I hope my colleagues will take a look at this issue, and I hope they will listen to their merchants and retailers back in their States.

GUANTANAMO

Mr. President, I wish to commend the Obama administration for the progress they have made to date on closing the detention facility at Guantanamo Bay. According to media reports today, the Obama administration has reached a historic agreement with the Government of Palau to transfer 17 Guantanamo detainees to this Pacific island. These 17 detainees are Uighurs from China.

The Bush administration determined that all 17 are not enemy combatants and do not pose any risk to U.S. national security. The Bush administration had determined the Uighurs couldn't be legally returned to China, for fear they would be imprisoned and tortured. A Federal Court looked at all the classified evidence against these 17 Uighurs and found there was no legitimate reason to hold them and ordered them released. The President, this administration, is going to follow that court and follow the law.

I commend President Obama and those working with him for finding a solution to what has been a vexing

problem by convincing the Government of Palau to accept Uighur detainees. This is the kind of diplomacy we need to achieve a better standing in the world and a more peaceful and secure situation for the United States.

Something else happened yesterday as well. There was an important development. The administration transferred Ahmed Ghailani to the United States to be prosecuted for his involvement in the 1998 bombings of our Embassies in Kenya and Tanzania. Those bombings killed 224 people, including 12 Americans. I have been to Kenya. I saw the bombed building. It was devastating. It is hard to imagine what happened inside that building and nearby when those bombs were detonated. We know 224 people died, including 12 of our own.

I wish to commend President Obama for his determination to hold Ahmed Ghailani accountable for his alleged crimes. For 7 long years, the Bush administration had failed to convict any of the terrorists who planned the 9/11 terrorist attacks. For 7 long years, only three individuals were convicted by military commissions at Guantanamo. Two of those individuals, incidentally, have been released. President Obama has been clear, it is a priority for his administration to bring to justice the planners of 9/11 and other terrorists who have attacked our country, such as Ahmed Ghailani.

Unfortunately, this issue has become very political and very complicated over the last several months. Some of my colleagues on the other side of the aisle have expressed some things on the Senate floor which I don't think are consistent with the security of the United States. Senator MCCONNELL, the distinguished minority leader, and Senator KYL, the distinguished assistant minority leader, have argued we should not transfer suspected terrorists from Guantanamo to the United States in order to bring them to justice. They have argued we cannot safely hold any of these detainees in prison in the United States, even—one of their arguments—during the course of the trial.

When you look at the failed track record of prosecuting terrorists at Guantanamo, it is pretty clear if Ahmed Ghailani isn't prosecuted in the U.S. courts, there is a good chance he will never be punished for his crimes. President Obama made it clear when he said:

Preventing this detainee from coming to our shores would prevent his trial and conviction. And after over a decade, it is time to finally see that justice is served, and that is what we intend to do.

Even Senator KYL appears to have softened his position. On the floor of the Senate yesterday, he spoke about Ahmed Ghailani and said:

Everybody acknowledges that there are some people who need to be tried for serious crimes, in effect, like war crimes, and they should be tried in the United States.

I commend Senator KYL for this statement. I think it is a sensible, rea-

sonable position. But let us acknowledge the obvious: If we are going to try these Guantanamo detainees in the United States, we are going to incarcerate them while we try them. There is no other reasonable alternative. If they are found guilty and face imprisonment, what will we do with them? I am glad Senator KYL acknowledged the obvious. Of course, we have to bring these terrorists to justice, and an American court is the best place to do it.

The U.S. Government frequently brings extremely dangerous individuals to the United States for prosecution. Ramzi Yousef—the mastermind of the 1993 World Trade Center bombings, captured in Pakistan—was brought to trial in the United States, convicted, and is now being held in a Federal supermaximum security prison, a convicted terrorist.

Some of my colleagues on the other side of the aisle continue to argue we should not prosecute Guantanamo detainees in U.S. courts because no prison in America is safe to hold them. Ramzi Yousef was held in the Metropolitan Corrections Center in New York during the course of his trial for over 2 years—safely. My colleagues seem to think American corrections officers are not capable of safely holding terrorists. Republican Senator LINDSEY GRAHAM, who is a military lawyer, said:

The idea that we cannot find a place to securely house 250-plus detainees within the United States is not rational.

What is the record? Today, our Federal prisons—and this is the most updated number from the Justice Department—hold 355 convicted terrorists, including al-Qaida leaders such as Ramzi Yousef, who masterminded the World Trade Center bombing in 1993. No prisoner has ever escaped from a Federal supermaximum security facility. Clearly, we know how to hold these terrorists safely and securely so no one in America is at risk.

Unfortunately, some on the other side of the aisle continue to argue that we should keep Guantanamo open at all costs. I disagree. I believe, President Obama believes, and I think many Americans believe that closing Guantanamo is an important national security priority. But it isn't just the President—and President Bush, for example—who want to close Guantanamo. Among those military and security leaders calling for the closing of Guantanamo are: GEN Colin Powell, the former Chairman of the Joint Chiefs of Staff and former Secretary of State; Republican Senators JOHN MCCAIN and LINDSEY GRAHAM; former Republican Secretaries of State James Baker and Henry Kissinger and Condoleezza Rice; Defense Secretary Robert Gates, first appointed by President Bush; ADM Mike Mullen, the Chairman of the Joint Chiefs of Staff; and GEN David Petraeus.

Yesterday, Senator KYL made a statement taking issue with some of

my earlier comments about Guantanamo.

Senator KYL asked: "What is wrong with the prison at Guantanamo?"

Let me respond to Senator KYL's question. What is wrong with Guantanamo is that it is a recruiting tool for al-Qaeda and other terrorists.

That is not just my opinion. That is the opinion of our military leaders, based on their experiences fighting the wars in Iraq and Afghanistan.

Chairman of the Joint Chiefs of Staff Mike Mullen said:

The concern I've had about Guantanamo is it has been a recruiting symbol for those extremists and jihadists who would fight us. That's the heart of the concern for Guantanamo's continued existence.

General David Petraeus said Guantanamo is, "a symbol that is used by our enemies to our disadvantage. We're beat around the head and shoulders with it."

And Defense Secretary Robert Gates said:

Closing Guantanamo is essential to national security. It has become a rallying cry and recruitment tool for our enemies—endangering the lives of our soldiers in the field, diminishing the willingness of American allies to help wage the fight against al-Qaida and undermining the moral authority of the country.

Of course, Senator KYL is entitled to his point of view and I respect him and count him as a friend. But he offers no evidence to support his view, certainly no evidence that compares with those I have quoted here, starting with Gen. Colin Powell.

Not only is Guantanamo a recruiting tool for terrorists in the Middle East. There is evidence that al-Qaida is actually recruiting terrorists in Guantanamo itself. McClatchy Newspapers conducted an extensive investigation and concluded:

Instead of confining terrorists, Guantanamo often produced more of them by rounding up common criminals, conscripts, low-level foot soldiers and men with no allegiance to radical Islam . . . and then housing them in cells next to radical Islamists.

McClatchy found that, "Guantanamo became a school for jihad" and "an American madrassa."

Rear Admiral Mark Buzby, the former commander of Guantanamo's detention facility, said, "I must make the assumption that there's a fully functioning Al-Qaeda cell here at Guantanamo."

Senator KYL also continues to claim that no one was abused at Guantanamo and that there is no connection between the abuses at Abu Ghraib and Guantanamo. I commend him for his reading of the Senate Armed Services Committee Report.

But the Senate Armed Services Committee issued a bipartisan report that reached a different conclusion. Senator LEVIN, the chairman of the Armed Services Committee, and Senator MCCAIN, the ranking member of the committee, found, "Secretary of Defense Donald Rumsfeld's authorization of aggressive interrogation techniques

for use at Guantanamo Bay was a direct cause of detainee abuse there."

Senators LEVIN and MCCAIN also concluded, on a bipartisan basis, that there was a connection between the abuses at Abu Ghraib and Guantanamo. They said:

The abuse of detainees at Abu Ghraib in late 2003 was not simply the result of a few soldiers acting on their own. Interrogation techniques such as stripping detainees of their clothes, placing them in stress positions, and using military working dogs to intimidate them appeared in Iraq only after they had been approved for use in Afghanistan and at GITMO.

And, as I said yesterday, Susan Crawford, a top Bush administration official, concluded that Mohammad Al-Qahtani, the so-called 20th hijacker, could not be prosecuted for his role in the 9/11 attacks because he was tortured at Guantanamo Bay.

For many years, President Bush said that he wanted to close the Guantanamo detention facility, and there were few, if no complaints from the Republican side. But the President never followed through on his commitment.

Now that President Obama has made that same call, we hear this chorus of opposition. I think President Obama has accepted the challenge—the challenge to make certain that these detainees are treated in a responsible way; that those who should stand trial will stand trial for their crimes and war crimes; that those who cannot be brought to article 3 courts in America should be tried before reformed military tribunals that have rules of evidence and procedure more consistent with our values and laws; that some will be returned, like the Uighurs, if they pose no threat, to places where they cannot threaten the United States and that some will be kept in detention because they continue to be a threat to our Nation. That is a responsible course of conduct. It deserves bipartisan support.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

THE SECOND "CAR CZAR" AWARD

Mr. ALEXANDER. Mr. President, this is the "Car Czar" award for Wednesday, June 10, 2009. It is a service to taxpayers from America's new automotive headquarters: Washington DC.

It is the second in a series of "Car Czar" awards to be conferred upon Washington meddlers who distinguish themselves by making it harder for the auto companies your government owns to compete in the world marketplace.

On Monday, I presented the very first "Car Czar" award to the Honorable BARNEY FRANK of Massachusetts for interfering in the operation of General Motors. Congressman FRANK, who is chairman of the House Financial Services Committee, intervened last week to save a GM distribution center in his Massachusetts congressional district. The warehouse, which employs some 90 people, was slated for closing under GM's restructuring plan. But Mr.

FRANK put in a call to GM CEO Fritz Henderson and, lo and behold, the facility has a new lease on life according to the Wall Street Journal. Mr. FRANK, of course, is chairman of the House committee that recently orchestrated paying \$62 billion in taxpayer dollars to give the U.S. Treasury 60 percent ownership of General Motors and 8 percent ownership of Chrysler.

Now, for this second "Car Czar" award, there are many deserving contenders.

For example, this afternoon the Honorable CHRIS DODD, Mr. FRANK's Senate counterpart, is chairing a Banking Committee hearing featuring two of the administration's chief meddlers in Washington-owned car companies: Mr. Ron Bloom, a senior advisor on the auto industry at Treasury and Mr. Ed Montgomery, White House Director of Recovery for Auto Communities and Workers.

Tomorrow, over in the House, the Financial Services Committee will hold a hearing on salaries of workers in companies the government owns.

Another obvious contender for the award is the administration's new Chief-Price-Fixer for the cost of labor, Mr. Kenneth Feinberg who will review and approve how managers of car companies are paid. According to the New York Times article on June 8, Mr. Feinberg is likely not just to tell Government-owned car companies and banks how much to pay people, it is likely "everyone else's compensation will be monitored, too."

But there is time next week to honor all these worthy contenders. Today's "Car Czar" award clearly should go to the Members of the Wisconsin and Michigan and Tennessee congressional delegations, each of whom met today in Washington with GM executives, imploring them to build small cars in our home States. In Tennessee's case, of course, we were talking about the Saturn plant in Spring Hill, recently placed on standby.

In other words, I am giving the "Car Czar" award today to, among others, myself—the senior Senator from Tennessee.

Now, in my own defense, as Mr. FRANK's spokesman said when Mr. FRANK was caught calling GM about the warehouse in Massachusetts—I was "just doing what any other Congressman would do" in looking out for the interests of his constituency. But that is precisely the reason for these "Car Czar" awards. As the Wall Street Journal put it, ". . . that's the problem with industrial policy and government control of American business. In Washington, every Member of Congress now thinks he's a czar who can call ol' Fritz and tell him how to make cars."

But consider for a moment the implications of all 535 of us in Congress regularly participating in such incestuous behavior. It is one thing, as I did in 1985 as Governor, to argue to General Motors to put the Saturn plant in Tennessee right next to the Nissan plant. That was an arm's length transaction.

It is quite another thing for me as U.S. Senator and a member of the government that owns 60 percent of the company, to urge GM executives to build cars in my State. I can pretend I am making my case on the merits: central location, right to work laws, four-lane highways, hundreds of suppliers, low taxes, a successful Japanese competitor 40 miles away. But my incestuous relationship as owner taints the entire affair.

So I will continue to confer "Car Czar" awards—seeking to end the incestuous nature of these meetings and time-wasting hearings—until Congress and the President enact my "Auto Stock for Every Taxpayer" legislation which would distribute the Government's stock in GM and Chrysler to the 120 million Americans who paid taxes on April 15. Such a stock distribution is the fastest way to get ownership of the auto companies out of the hands of meddling Washington politicians and back into the hands of Americans in the marketplace. It is also the fastest way to allow the car company managers to design, build and sell cars rather than scurry around Washington—under oath—answering questions and being instructed by their political owners how to build cars and trucks.

Distributing the stock to the taxpayers also may be the fastest way for Congressmen to get themselves re-elected. According to the Nashville Tennessean, an AutoPacific survey reports that 81 of Americans polled agree "that the faster the government gets out of the automotive business, the better."

Now, here is an invitation for those who may be listening: if you know of a Washington "Car Czar" who deserves to be honored, please email me at CarAward@Alexander.Senate.gov, and I will give you full credit in my regular "Car Czar" reports here on the floor of the United States Senate.

And after you write to me, I hope you will write or call your Congressman and Senators and remind them to enact the "Auto Stock for Every Taxpayer Act" just as soon as General Motors emerges from bankruptcy. All you need to say when you write or call are these eight magic words, "I paid for it. I should own it."

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

HEALTH CARE

Mr. CARDIN. Mr. President, I am glad we are now engaged in the health care debate, but this debate is long overdue. I congratulate the Obama administration for taking on the tough issues. This is not an easy subject in order to reach the type of consensus necessary in order to pass major legislation. There are a lot of special inter-

ests that are going to make it difficult for us to move forward.

I am proud this administration is taking up this issue because we are in a health care crisis in America. I say that because the cost of health care is not sustainable. We spend twice as much as the next most expensive nation in the world per capita on health care—\$2.4 trillion a year, 15 percent of our gross domestic product. Those numbers are increasing dramatically each and every year. The cost of health care is not sustainable.

We had a great deal of discussion here about fiscal responsibility and bringing our budget into balance. President Obama is correct. If we do not deal with the escalating cost of health care, it is going to make it virtually impossible for us to bring our budgets into balance in the future—whether it is a Medicare budget or Medicaid budget or a household's budget. We have to do a better job in reining in the cost of health care. America needs to be competitive internationally. We cannot be competitive internationally unless we find a way to bring down the cost of health care.

Family insurance premiums have gone up threefold in the last 8 years alone—much faster than earnings, three times as fast as earnings. The consequences for Marylanders is that they are going into bankruptcy. You have heard it said that we are only one health incident away from filing bankruptcy in America for many families. They have to make difficult choices: Should I really go see a doctor? Is it really that important, because do I really have the money to lay out? It is not covered by my insurance, or I don't have insurance, what do I do?

We have 46 million Americans today who have no health insurance, and it is very costly in the way they enter the system. They use the emergency rooms. They don't get preventive health care. They spend a lot of money. It increased 20 percent over the last 8 years.

In my State of Maryland, we have 760,000 Marylanders, 15.4 percent of our nonelderly population, without health insurance.

We need to reform our health care system. We need to build on what is right in our health care system and correct what is wrong.

What is right is that we have some of the highest quality health care in the world. I am proud that people from all over the world travel to my own State of Maryland to visit Johns Hopkins University or the University of Maryland Medical Center or NIH in order to get their health care needs met or to train their health care professionals. We want to maintain that edge in America, of leading-edge technology to keep people healthy. We have choice in our health care system. I believe that is good. You can choose the health plan in many cases. You certainly can choose your provider in many cases. That adds competition to quality of care in our system.

We have to correct what is wrong. The first thing we have to correct is the cost. We have to bring the cost down.

The first way to bring down the costs is for everyone to be in the system to deal with the uninsured. I congratulate our committee for coming forward with proposals that will include every American in our health care system. I think that is the prerequisite to health care reform.

Second, the proposals that are coming forward that recognize the advantage of preventive health care. In 1997 we amended the Medicare bill to include preventive health care services. Well, that has kept our seniors healthier, living better lives, and being less costly to the system itself by detecting diseases at an earlier stage. In some cases we can even prevent diseases by preventive health care.

That is what we need to do. It saves money. Preventive health care services cost in the hundreds of dollars. Surgery related to diseases not caught in the early stages are in the tens of thousands of dollars. It makes sense economically.

President Obama is right to invest in health information technology. That will save money. It also manages an individual's care in a much more effective way. So there are a lot of ways we can bring down the cost of health care. But let me talk about one issue that has gotten a lot of attention on this floor by some of my colleagues who seem to be opposing health care reform before we even have a bill before us, and that is the conversation about a public insurance option. I am somewhat bewildered by this discussion because I do not hear too many of my colleagues suggesting that the Medicare system should be done away with.

Now, the last time I checked, Medicare was a public insurance program. So let me differentiate because I think this point has been misleading on this floor.

When there is a government option, it does not mean the government provides the health care; it means it pays for the health care, as it does in Medicare. The doctors our seniors and disabled population go to are private doctors and private hospitals, as it should be. They have choice, as they should. The public insurance option just provides the predictability of a plan that will always be there.

My constituents in Maryland remember all too well the private insurance companies within Medicare who were here one day and gone the next day. Thank goodness they had the public option available to them in order to make sure they had coverage. Well, that is not true in Part D today. We do not have a public insurance option.

That was a mistake. We need a public insurance option, first and foremost, to deal with cost. We have to bring down the cost of health care. We have 46 million people without health insurance today. Are we going to let them try to

figure out what private insurance to go to without the controls on cost? That is going to add to the cost in this country, not bring it down.

We have to at least have a comparison on a fair competition between public insurance and private insurance. I favor private insurance. But I want to have a public insurance option because I want the people of Maryland and around the Nation to have choice, to be able to choose the plan that is best for them.

They can stay in the plan they have now if they are satisfied with it. We want them to, and we encourage them to. But we want them to have a choice. We want the market to work. That is why the public insurance option has become more and more important.

Let me point out the two programs that we recently changed. Medicare Advantage. Well, Medicare Advantage is the private insurance option within Medicare that our seniors have the option, voluntarily, to join.

Well, when Medicare Advantage started, Medicare Plus Choice, it was a savings to the taxpayers because we paid the private insurance company 95 percent of what we paid the fee-for-service companies within the public option, saving money for the system. It made sense.

Well, guess what. Today we are paying the Medicare Advantage plans, the private plans, 112 to 117 percent of what we pay those who are in the traditional public option in Medicare. In other words, every person who picks private insurance costs the system money.

The Congressional Budget Office, which is a nonpartisan objective scorekeeper, says the Medicare Advantage premium we pay over what we would pay if they were in fee for service costs the system \$150 billion over 10 years. So the public option is not only to offer choice to the people of our country between a plan that they want and it is available to them, whether it is a private plan or a public plan—remember, the providers are going to be private. This is not who provides the benefits; it is who pays for it, who puts together the plan. It will save the system money.

Part D: There is no public option in Part D. Many of us raised that issue back then, that we could have saved taxpayer money and saved Medicare money if we at least tried to keep the private insurance companies honest by having a public plan where we know what is being charged and paid for prescription drugs. Most of it is the cost of medicine. Why can we not have transparency? Why do we have to pay the high overhead costs of private insurance without the competition of a model that could save the taxpayers money and save our system money?

This is not a government takeover, as some of my colleagues have said. Medicare was not a government takeover. Medicare pays for the private doctors and hospitals so the disabled and seniors can get access to health

care in America. I think those who make the arguments, which are basically scare tactics, are not adding to the debate anything that is worthy of this issue. This is a very important issue to the people of our Nation. This is our opportunity to fix our system by improving what is right, building on it, and correcting what is wrong.

But let's strengthen the good parts of our system. Let's strengthen those coverages that people are happy about, the employers who are providing health benefits to their employees, where it is working. But let's correct the runaway costs in our system, and let's provide a reasonable way that those who do not have health insurance can get health insurance.

If we can work together, Democrats and Republicans, this is an American problem. This is about America's competitiveness. This is about American families being able to afford their health care. This is about balancing our budgets in the future so America can continue to grow as the strongest economy in the world. But it starts today in this debate about fixing one of the underpinnings of our economy that is out of whack.

We need universal coverage. We need to have options available that will keep health care affordable for all people in this country and provide quality care for each American. That is what this debate is about.

I applaud our committees that are working on this issue. I applaud all of the Members of this body and the House who are seriously engaging in this discussion.

I think we can all learn from each other. If we work in good faith, we can develop a health care reform proposal that will maintain quality but provide access and affordability to every family in America. That should be our objective. I hope we will all work toward that end.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. KAUFMAN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. KAUFMAN. I ask unanimous consent to speak as in morning business for up to 15 minutes.

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

ASME

Mr. KAUFMAN. Mr. President, I rise to congratulate the American Society of Mechanical Engineers on the 125th anniversary of their codes and standards.

As the only serving Senator who has worked as an engineer—indeed, I have a degree in engineering and worked as a mechanical engineer—I was proud to sponsor a resolution acknowledging the lasting impact ASME codes and stand-

ards have had on our Nation and on other parts of the world.

Now to non-engineers, codes and standards developed by and for mechanical engineers may sound like a lot of jargon and, candidly, like pretty boring stuff.

But as an engineer, I am proud to say that I believe that the nuts and bolts of how to build things, how to create, how to standardize and grow equipment and industries have been at the very heart of the American economic growth-engine for more than a century.

That kind of nuts and bolts thinking and creativity will be what leads America out of this recession and toward sustained economic growth once again.

So I'm pleased that the Senate has joined me in celebrating a success story of American engineering.

This story begins when ASME was founded in 1880. ASME currently includes more than 127,000 members worldwide.

It is a professional organization which promotes the art, science, and practice of mechanical and multidisciplinary engineering and allied sciences.

One of its chief functions since its founding has been the development of tool and machine part standards, along with uniform work practices to ensure mechanical reliability.

This week, ASME will celebrate its 125th anniversary of codes and standards development.

This is a tribute to the dedicated service of technical experts and engineers, whose efforts resulted in internationally accepted standards—standards that not only enhance public safety but also promote global trade.

Its first published performance test code was entitled "Code for the Conduct of Trials of Steam Boilers."

Since then, ASME has developed more than 500 technical standards for pressure vessel technology, electric and nuclear power facilities, elevators and escalators, gas pipelines, engineering drawing practices, and numerous other technical and engineered products and processes.

At present, ASME codes and standards, as well as conformity assessment programs, are used in more than one hundred countries.

Does engineering sound boring to you? Let's hope America's youth don't think so. We need to excite the young minds of thousands and thousands of young Americans about the possibilities of being an engineer, because engineers have always been the world's problem solvers. It is impossible to ignore the effect ASME's codes and standards have had on global development.

During the period of rising industrialization, as machines were expanding in use and complexity on farms and in factories, ASME standards helped to ensure the safety of engineers and workers using these machines.

Today, in our global economy, these codes and standards are continually revised and updated to reflect changes in

technology. As a result, ASME's codes and standards are accepted across the globe and help to advance international commerce. The American Society of Mechanical Engineers has adapted to meet the changes and challenges in the engineering profession. I commend their accomplishments and contributions to the health, safety, and economic well-being of our Nation.

I am pleased that the Senate yesterday approved S. Res. 179.

When I went to college I wanted to be a mechanical engineer, in part because 52 years ago, after Sputnik, the United States was supporting science and engineering on an unprecedented level. America's competitive spirit helped us meet the challenges of those times. Thousands of innovations created myriad new opportunities for growth and development. We can do this again.

The financial crisis should lead to a cultural shift back to the strong foundations of innovation and know-how that have always been the American way. I am glad that the federal government is again investing strongly in supporting the basic scientific, medical, and engineering research that will spur the discovery and innovations to create millions of new jobs and shape a bright American future.

I thank my fellow Senators for joining with me in celebrating one small chapter in the American economic success story, with hope that we can inspire similar successes in the coming years.

BRIAN J. PERSONS

Mr. President, I wish to speak about our excellent Federal workforce.

In my years of government service, I have met so many wonderful people who give so much of themselves for the benefit of us all. That is why I believe it essential for the American people to have confidence in our Federal employees.

Americans need to know that they can place their trust in those charged with carrying out the people's work.

Our government is filled with talented individuals performing their jobs with excellence.

I cannot count—I literally cannot count—the Federal employees who deserve to be praised here in this Chamber, because that number is so great. But I hope to share one story today that is exemplary of our civil servants overall.

The ancient philosophers used to compare the government of a state with that of a vessel at sea.

In order to keep the ship afloat, to keep it headed in the proper direction, it required a captain and crew who were disciplined and responsible. Moreover, everyone on board—down to the lowest rank—had a job to do, and every task was critical.

So it is with government.

Every Federal employee, no matter how large or small one's job, keeps our ship of state afloat and sailing ever onward.

I have not chosen to reference this analogy by chance. Rather, it fits well

with the story of a hardworking and accomplished civil servant whom I wish to recognize today.

I spoke earlier about the effect of engineers on our economy and our communities. The Federal employee I honor today has spent more than a quarter of a century working as a civilian engineer for the Navy Department.

Although today Brian Persons has risen to become executive director of the Naval Sea Systems Command, or NAVSEA, he began his public service as a ship architect at the Long Beach Naval Shipyard. A Michigan native and graduate of Michigan State with a degree in civil engineering, Brian went to work in 1981 for the Navy Department, designing and maintaining the ships of our fleet. Brian distinguished himself in the design division at Long Beach, and he was made a supervisory architect within a few years. While there, he worked on overhauls of surface ships, including the great battleships U.S.S. New Jersey and the U.S.S. Missouri. In 1988, when the U.S.S. Samuel B. Roberts struck a mine in the Persian Gulf, the Navy sent Brian to Dubai to provide analysis and repair options.

Although he was only asked to spend a week in the gulf, Brian remained with the stricken vessel for 45 days until it was again seaworthy.

Describing the experience years later, he said:

I am still amazed at the authority I was given to execute this project. I was lucky to have such an opportunity at such an early stage in my career.

I want our Nation's graduates to know that careers in public service are full of opportunities like the one given to Brian.

Federal employees at all levels get to work on exciting and relevant projects every day.

After his superb performance in Dubai, Brian was given a series of challenging jobs in the NAVSEA Commander's Development Program. Just 10 years after he first began his career, the Navy Department promoted Brian to be the director for maintenance and modernization under the assistant secretary for research, development, and acquisition. In this role, which he held for 5 years, he was responsible for overseeing policy on ship maintenance and modernization as well as the Navy's nuclear, biological, and chemical protection programs.

Brian returned to NAVSEA in 1996 and has worked in various roles there over the past 12 years. For his dedicated service in government, Brian was honored with a Meritorious Presidential Rank Award in 2004 and won the prestigious Distinguished Presidential Rank Award last year. This year, he was appointed as executive director of NAVSEA, its most senior civilian executive.

In addition to his work as an engineer and a manager, throughout the years Brian has served as a role model for those working with him, including a number of colleagues from tradition-

ally underrepresented minority groups, whom he has mentored as they sought leadership positions in the Department.

This is truly the kind of service and mentorship we need to promote among engineers and other science professionals. Engineers can play an important role in bettering our communities and promoting education among our students.

I am glad we were able to include funding for service opportunities of this kind in the Serve America Act earlier this year. I call again on my colleagues and on all Americans to join me in recognizing the contributions of Brian Persons and all of the engineers, scientists, and technicians who continue to ensure that our ships of state remain seaworthy and on a forward course.

I honor their service and that of all our hard-working Federal employees.

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

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

The legislative clerk proceeded to call the roll.

Mr. WICKER. 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. WICKER. I ask unanimous consent to speak as in morning business for up to 10 minutes.

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

HEALTH CARE REFORM

Mr. WICKER. Mr. President, of all the complex issues the United States will deal with in this Congress, none will be more important than health care reform. Of all the momentous decisions we will make over the next few months, none will be more consequential or long-lasting than the votes we may take regarding the one-sixth of the American economy which comprises our health care system. If we get it right, we could devise a program that makes health care more accessible and affordable, provides health coverage to millions of Americans who are currently without health insurance, relieves Americans from worry about the effect changing jobs will have on their health care, saves lives through an increased focus on prevention and wellness, saves money by curbing the out-of-control growth in government health care programs, keeps patients and families in control of their health care choices, and makes doctors the decisionmakers on treatment options.

We have a great opportunity before us to improve the American health care system, but we run a perilous risk if we do not act wisely and carefully. We can fix our broken health care system by making it more accessible and affordable for Americans, and we can do so without jeopardizing quality, individual choice, and personalized care.

The American people need us to act on this issue, but they do not need or

want us to act rashly. We do not need to enact a Washington takeover or a scheme that would inevitably lead to a government takeover of one-sixth of our gross domestic product.

I recently spoke with a resident of a country that is a major U.S. ally. He espoused the benefits of his country's government health care program, explaining in particular detail how the program works there. But then I posed a question: What happens in your country if you get cancer? He smiled and said: If I get cancer, I am going to the United States. He is going to the United States. It was a very telling answer that points up a profound truth: There are many things we need to fix about American health care, but there are a number of things we do right. There are a number of things right about our system, and we don't need to risk losing those things that today give Americans the highest quality health care system in the world.

Nine out of ten middle-aged American women have had a mammogram—90 percent of American women—compared to less than three-fourths of Canadian women. More than half of American men have had a prostate test compared to less than one in six Canadians. Nearly one-third of Americans have had a colonoscopy compared to less than 5 percent of Canadians. These are statistics we need to be proud of as compared to our Western allies.

In addition to this focus in America on prevention, we also spend less time waiting for care than patients in Canada and the United Kingdom. Canadian and British patients wait about twice as long—sometimes more than a year—to see a specialist. We don't need health care reform that moves us in that direction. Mr. President, 827,429 people today, at this very moment, are waiting for some sort of procedure in Canada, and 1.8 million people in England are waiting for a hospital admission or outpatient treatment. They are having to wait for that in England.

We Americans also have better access to new technologies such as medical imaging than patients in Canada or the United Kingdom. Americans are responsible for the vast majority of all health care innovations. The top five U.S. hospitals—only five top U.S. hospitals—conduct more clinical trials than all the hospitals in any other single developed country. Only the top five outrank any other country in the world in clinical trials. We ought to be proud of that. We ought not to enact any program that would jeopardize that type of innovation.

Since the mid-1970s, the Nobel Prize in medicine or physiology has gone to American residents more often than recipients from all other countries combined. We get results based on our innovation and our research in the United States of America.

All these numbers translate into one very important fact: Americans have a better 5-year survival rate than Europeans for common cancers. For exam-

ple, in the area of colon cancer, we have a 65-percent, 5-year survival rate in America, compared to only 50 percent in the United Kingdom. For prostate cancer, we have a 93-percent survival rate for 5 years in the United States; only 77 percent in the United Kingdom. In breast cancer, 90 percent of Americans who suffer from breast cancer have a 5-year survival rate; only 82 percent in the United Kingdom. For thyroid cancer that figure is a 94-percent, 5-year survival rate and only 75 percent in the United Kingdom.

Put another way, breast cancer mortality is 52 percent higher in Germany with their government-run system than in the United States, and breast cancer mortality is 88 percent higher in the United Kingdom with their government-run health care system. Prostate cancer mortality is 604 percent higher in the United Kingdom and 457 percent higher in Norway. Is there a genetic predisposition for the people of Norway to die of prostate cancer or of German women to have breast cancer? I don't think so. I think these numbers, these stubborn facts reflect that our American system of innovation and detection and treatment is a good thing, and as we improve and fix our system, we need to be careful to maintain that type of quality.

There are broken parts of our system, to be sure, but my point today is to urge this body to consider the consequences of all the options we will consider. There is no question we need to make health care more affordable and we need to expand access. Republicans support providing affordable access to coverage for every American, and we can do that without a Washington, DC, takeover of health care. What we cannot afford the risk of doing is eroding the quality of care in pursuit of our goals this year. The surest way to destroy quality is to hand the reins of health care over to the Federal Government.

I recently had the opportunity to discuss health care with a member of the British House of Commons. That member of Parliament said: Whatever you do, do not do what we did in the United Kingdom.

A Washington takeover of health care would result in a stifling of innovation. I am convinced it would result in long waits. As we consider a so-called public option, a public plan, we need to ask ourselves: Will it lead, as I believe it will, to a one-size-fits-all Washington takeover of health care and inevitably mean that our citizens will be denied and delayed the health care we need? We need to be careful as we answer that question. I regret to say the plan I see taking shape on the other side of the aisle would result in either a politician or a bureaucrat making your health care decisions instead of you and your doctor. I urge my colleagues to protect innovation and to protect quality.

I am convinced we can protect the doctor-patient relationship and make

health care more affordable and accessible for all without jeopardizing the quality I have spoken about this afternoon. I believe all of us in this body want a solution that works for Americans. There is common ground to be found that would continue the opportunity for the United States to be that world leader in quality. Congress and the American people need to pay close attention as we proceed this summer and this fall on one of the most important debates in our time.

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

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

OBSTRUCTIONISM

Mr. REID. Mr. President, I wanted to say this to the occupant of the Chair personally, but I will take the opportunity to say it now. The presentation the Senator made on the floor regarding health care was stupendous, terribly impressive. I am going to take much of what the Presiding Officer said today and use it in the information I give people in Nevada and the presentations I am making on the floor. It was very good.

As the health care debate has heated up this week, Republicans have once again rolled out one of their standard, stale talking points: They question the efficiency of our government. When all else fails, all they do is berate the government.

But if Republicans want to have an honest debate about how our government operates, I think one of the first things I would suggest is that they should start looking in the mirror at themselves.

Today, Republicans are wasting more taxpayer time and more dollars for no good reason. The tobacco bill on the floor right now is both responsible and overdue. After making us wait out all the 30 hours of procedural time before even moving to the bill—Mr. President, the 30 hours isn't all of it. To get to that point, you have to file cloture, which takes 2 days, and then we have the 30 hours—a total waste of time. Republicans are now making us wait another 30 hours before we can vote on this bill. So it is 30 hours just to move to it, and then 30 hours once we are on it.

Let me reiterate how important the bill we are wasting time on not doing is to the American people. Every day, 3,500 Americans try a cigarette for the first time, and the vast majority of them are children. Nationwide, 3½ million high schoolers smoke; 3½ million boys and girls in high school smoke. That is more kids than participate in athletics in our schools who are smoking. Tobacco companies make money hand over fist by marketing and selling their poisonous products to our kids.

The bill before the Senate takes smart steps to keep our children and families healthier and keep the tobacco companies honest. It will make it harder for those companies to sell tobacco to children; help those who smoke overcome their addictions; it will make tobacco products less toxic for those who cannot or do not want to stop.

We have tried in good faith since last week to reach agreement with Republicans on amendments to this bill. Our floor staff has given the Republican floor staff a finite list of both Democratic and Republican amendments that we wanted to vote on as we consider the bill. With rare exception, the amendments were germane. If not germane, they were arguably germane. But no. These amendments included three from Senator HAGAN, and one each from Senators COBURN, ENZI, BUNNING, and LIEBERMAN.

Unfortunately, despite repeated efforts to move forward, our Republican colleagues have said no every time.

Republicans are also slowing down our government in another way. In the few short months since President Obama took office, Republicans held up many of his nominees for crucial positions. There are 25 being held up right now, as we speak. Let me give you a few of them. We have had to have cloture votes this year on the Secretary of Labor; the Deputy Attorney General, the No. 2 person for a massive Justice Department; the Deputy Secretary of the Department of the Interior, which is like the Chief of Staff for the Department of the Interior; two members of the Council of Economic Advisers; and, incredibly, America's Ambassador to Iraq, Chris Hill. They held him up for a long time. Every time I spoke to Secretary Gates, he wanted to know where his Ambassador was, somebody to run that country—at least American interests in that country.

Today, they are holding up 25 or more qualified and noncontroversial nominees, including Rand Beers, nominated to be Under Secretary of the Department of Homeland Security, a pretty important position; Cass Sunstein, nominated to head the Office of Management and Budget's Information and Regulatory Affairs division. You could go to any law school in America today and ask them to name the top 10 academics in law schools, and Cass Sunstein's name will be one of the 10 on everybody's list. But he is not good enough for the Republicans to get him cleared; Hilary Chandler Tompkins, nominated to be the Solicitor for the Department of the Interior. That is the lawyer there. They have 70,000 employees. Secretary Salazar thinks it is a good idea that he has a lawyer there. They are not going to allow that; William Sessions, nominated to be Chair of the U.S. Sentencing Commission. Listen to this one. We have been told the reason he is not going to be approved is because he is from Vermont, and Senator LEAHY is chairman of the Judiciary Committee. They want to

embarrass a friend, the chairman of that committee, Chairman PAT LEAHY; Harold Koh, nominated to be the State Department's legal advisor. Just like the Interior Department, the State Department, Secretary Clinton wants a lawyer there, in that huge, most important office. But no. Robert Grove, nominated to be Director of the Census—no.

I have only mentioned five. There are 20 others. The Republicans recklessly refuse to confirm our new Ambassador to Iraq. Listen to what they are doing now. They are holding up LTG Stanley McChrystal, an eminently qualified soldier, whom President Obama and Secretary Gates chose to be our new commander in Afghanistan. I met him in my office the other day. This is a man with the military in his blood. His father was a great general. His father won five Silver Stars fighting for our country around the world. Stanley McChrystal is an expert in counterinsurgency, which we need so badly in Afghanistan. But, no, we are not going to get him approved—at least for now.

Republicans are so opposed to everything, they even oppose putting people in some of the most important positions in our government. We believe—the majority, Democrats—that those who have been chosen to serve our country must be able to get to work without delay.

Republicans across the country agree with that, also. But we have 40 Members of this body—Republicans—who don't represent Republicans across this country. Republicans, if given a chance, wouldn't they approve LTG McChrystal? Of course they would. And the other people I mentioned. We believe those who have been chosen to serve our country must be able to get to work without delay. President Obama was elected. Shouldn't he have the people he wants to work with him? Perhaps those listening think this is how the Senate always operates. The occupant of the chair is a new Senator. This isn't how it used to operate.

Let me put these delays into context. In the first 4 months of the Bush administration—the second Bush administration—I am sure it was the same in the first Bush administration—when the Senate was controlled by the President's party, and we were in the minority, there wasn't a single filibuster of a Bush nominee—not one. But in the first 4 months of the Obama administration, Republicans have filibustered eight of his nominees. Those are the ones we had to file cloture on. I have indicated that there are many others. With the constraints we have in the rules of the Senate, I cannot file cloture on every one of these. Those filibusters in the first 4 months of Senator Obama's administration are twice as many as President Bush faced in his first 4 months.

I hope people who are listening or watching understand this: We are not berating Republicans in Oregon or in Nevada or across the country. What I

am saying is the Republicans here in the Senate—40 of them—are not being fair to our President and our country.

Last year, after Republicans held up the work of the Congress more than any other time in history—remember, we had 100 filibusters last year—the American people rejected the Republican status quo. They said no to Republicans' just-say-no strategy. I would hope they would learn that the American people don't like this—Independents, Democrats, and Republicans don't like it. We want to work together.

Take health care. They have seats at the negotiating table. We want to work with them. Energy, the same thing. There is no question the American people are taking notice, and they are fed up with petty partisan games. There is no question that these reckless tactics have consequences.

Republicans delay and delay and delay to their own peril. The truth is that all Americans suffer. It is time that the Republicans let us get to work and allow President Obama to have his nominees, and let's get this bill off the floor. Every day we wait, 3,500 more people are subject to being addicted to tobacco.

I suggest the absence of a quorum.
The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BURRIS. 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. BURRIS. Mr. President, I would like to speak for about 3 or 4 minutes.

The PRESIDING OFFICER. The Senator is recognized.

HEALTH CARE REFORM

Mr. BURRIS. Mr. President, for far too long, this Nation's broken health care system has limped along badly and in need of serious reform. Many in Washington have lacked either the foresight or the political will to take on this issue. For those who have tried, it has been almost impossible to get anywhere. Even today, the President's health care proposal is under attack from both the right and the left. I think we need to do better. Controversy should not drown out conversation.

The time has come to cast aside the constraints of partisanship, stop bickering, and start talking about real change. The American people have had enough. It is time to get to work.

The facts are plain: tens of millions of Americans are uninsured and underinsured. Many of these are children. Even employer-sponsored coverage is in jeopardy. Businesses are being drained by skyrocketing costs, and many have cut benefits. High premiums, rising copayments, and expensive prescription drugs are driving American families to the brink.

Can we stand by and watch as unreasonable health care costs cripple families who are already struggling? No, we cannot.

Can we allow this crisis to deepen, leaving more and more hard-working Americans behind? No, we cannot.

It is the solemn duty of this Congress to follow President Obama's lead and enact swift, responsible reform. We can cut costs and improve coverage. We can make the system smarter and less wasteful. We can empower individuals and families to make important decisions, not giant corporations or government bureaucracies. We can and we must make quality, affordable health care available to every single American.

While I support the role insurance companies play in our health care system, I strongly believe a public option should also be available. This would restore accountability to the system and increase competition, driving prices down and making good coverage, private or public, more affordable for everyone.

American businesses and families have waited far too long for meaningful health care reform. The time to act is now.

Some of my colleagues have been working to fix our broken system for many years. Senator KENNEDY has been a leader on this issue throughout his career. This is the moment he and many others have been working toward. We must seize this opportunity to reform health care in America. I urge my colleagues to work with President Obama, as well as Senator KENNEDY, to make sure everyone has access to quality, affordable coverage.

Mr. President, I yield the floor, and 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. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

SOTOMAYOR NOMINATION

Mr. SESSIONS. Mr. President, I wish to assure our Members, the American people, and Judge Sotomayor that our committee is going to do its best to have a hearing on her confirmation that would be worthy of the serious responsibility we have and that the American people will feel is fair. I hope they will say it is the best hearing we have ever had.

I have to tell you, though, things are moving faster than I would like to have seen them move, and it does cause some difficulties for us. As I discussed on the floor yesterday, the Republican members of the Judiciary Committee are deeply concerned about this process being moved this rapidly. Yesterday, Chairman LEAHY unilaterally announced that the hearings would begin on July 13, some 48 days from the announcement of this nomination. I won't go into a lot of detail, but I would note that in the recent three Supreme Court nominees, Justice

Breyer's hearing was 60 days after the announcement, Justice Roberts'—the one that has been most cited and was the shortest—was 55, and Justice Alito's was 70. And I would note that Justice Roberts had 370 cases, whereas Judge Sotomayor has 3,500-plus cases to review. So I think, to quote Senator SCHUMER and Senator LEAHY in remarks they made previously, it is better to do it right than to do it too fast.

I would note that late last week, the White House sent her answers to the questionnaire we send to all the nominees, requiring a good deal of information, and that is done on a bipartisan basis. Those answers were sent forward with great fanfare. In a press release from the White House Counsel's Office, the Obama administration proclaimed that they set a record by completing the process in just 9 days. But this is a confirmation process, not a confirmation race. I think the White House should focus more on having thorough and complete answers to the questionnaire, not on entering the "Guinness Book of World Records" for the fastest response from a Supreme Court nominee.

We know now that Judge Sotomayor omitted or failed to include key information and has provided incomplete and sometimes contradictory responses to the questionnaire. The responses are not satisfactory. So today all seven Republican members of the Judiciary Committee, who have been through this—most of them—for some time and seen these issues develop before, have written to ask that the nominee fulfill her duty to provide clear and complete answers to our questions in order to obtain quite a bit of information that is now not available and should have been included.

Mr. President, I ask unanimous consent to have that letter printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 10, 2009.

Hon. SONIA SOTOMAYOR,
Office of the Counsel to the President,
The White House.

DEAR JUDGE SOTOMAYOR: Thank you for providing your questionnaire, assembled materials, and June 6, 2009 questionnaire supplement to the Judiciary Committee. Committee staff are reviewing your questionnaire responses and attachments and have noted a number of apparent omissions. In addition, we believe that some of your responses are incomplete. In view of these concerns, we would respectfully ask that you revisit the questionnaire and provide another supplement as soon as possible. If you believe that your questionnaire is fully responsive, we would appreciate an explanation to that effect.

To assist you in completing your questionnaire, below are some of the potential omissions detected to date:

(1) Question 6 asks for your employment record. Although you indicate that you were a member of the board of directors of the State of New York Mortgage Agency, it appears that you also served on the Adminis-

tration and Personnel Committee (or the Program Committee) and as a member of the board of Community Planning Board #6. In addition, you indicate that you served as a member and vice president of the board of directors of the Puerto Rican Legal Defense & Education Fund; however, in response to Question 25, you indicate that you served as First Vice President. Please clarify your response and supplement as necessary.

(2) Question 12(a) requires lists and copies of materials written or edited. You have been widely described as an editor of the Yale Law Journal and as Managing Editor of the Yale Studies in World Public Order. However, you have not provided any copies of materials from either publication. Please provide the Committee with copies of any materials you edited during your tenure as an editor of both law reviews.

(3) Question 12(b) requires copies and or/descriptions of certain reports, memoranda, or policy statements prepared by specified organizations. You have stated that "As a member of various court committees, I have prepared and contributed to numerous reports and memoranda on court issues, which relate to internal court deliberations and are not available for public dissemination." However, the question is not limited to publicly available reports. Please provide such reports and memoranda.

(4) Also with respect to Question 12(b), you initially omitted a report concerning the death penalty that you drafted during your time on the Board of the Puerto Rican Legal Defense & Education Fund. We would appreciate confirmation that a thorough review of those records has been completed, given the initial omission, and that you have provided all relevant documents to the Committee in response to this question.

(5) Question 13(g) requires a brief summary of and citations for all opinions where decisions were reversed by a reviewing court or where the judgment was affirmed with significant criticism. For opinions not officially reported, copies are requested. Although you indicate with respect to *Bernard v. Las Americas Communications, Inc.*, that there was no formal opinion, you make no such representation with respect to the *United States v. Gottesman* opinion or the *United States v. Bauers* opinion—yet it does not appear that copies of these opinions have been provided. Please clarify your response.

(6) Question 16(d) asks about trial experience and requires "opinions and filings" for cases going to verdict, judgment, or final decision. For three cases you have indicated that "The Manhattan District Attorney's Office is searching its records for information on this case." Please provide us with this information as a supplement to the questionnaire.

(7) Also with respect to Question 16(d), you state: "I tried an additional 14 cases during my time as an assistant district attorney, from 1979 to 1984. The Manhattan District Attorney's Office is searching its records for further information on these cases." Please provide us with this information as a supplement to the questionnaire.

(8) Question 16(e) asks about appellate practice. Nominees are asked to provide copies of briefs and (if applicable) oral argument transcripts. You state: "I have requested the briefs and any available transcripts from these cases from the Clerk of the Court of the Second Circuit on May 30th and will forward to the Committee as soon as I receive them." Please provide us with this information as a supplement to the questionnaire.

We are also concerned that some of your responses fail to provide the Committee with the information to which it is entitled in reviewing your nomination.

(1) In response to Question 11(b), you state that you are a member of an organization,

the Belizean Grove, that discriminates on the basis of sex. However, you indicate that you "do not consider the Belizean Grove to invidiously discriminate on the basis of sex in violation of the Code of Judicial Conduct." Please explain the basis for your belief that membership in an organization that discriminates on the basis of sex nonetheless conforms to the Code of Judicial Conduct.

(2) Question 12(d) requires a list of speeches, remarks, lectures, etc., given by the nominee or, in the absence of prepared texts/outline/notes, then a summary of the subject matter (not a topic or a description). We believe that numerous entries in your list do not provide a "summary" of your remarks; instead, they set forth general topics. For example:

"I spoke on Second Circuit employment discrimination cases";

"I spoke at a federal court externship class on Access to Justice";

"I spoke on the United States Judicial System";

"I participated in a symposium on post-conviction relief. I spoke on the execution of judgments of conviction";

"I spoke on the implementation of the Hague Convention in the United States and abroad";

"I participated in an ACS Panel discussion on the sentencing guidelines";

"I participated in a roundtable discussion and reception on 'The Art of Judging'";

"I contributed to the panel, 'The Future of Judicial Review: The View from the Bench' at the 2004 National Convention. The Official theme was 'Liberty and Equality in the 21st Century.'"

This list is not exhaustive.

In addition, we are concerned about the fact that you have failed to provide a draft, video, or transcript for more than half of your speeches, remarks, lectures, etc. According to your questionnaire, you have identified 191 occasions responsive to the questionnaire. For 98, you stated that you could not locate any record, for one you stated that you gave a standard speech, for two you cross-referenced a different speech, for 81 you provided a draft or video, and for eight you provided news clippings instead of a draft, transcript or remarks. We are particularly troubled because there may well be transcripts available for certain remarks: for example, a transcript of the 2004 panel entitled "The Future of Judicial Review: The View from the Bench" was available online.

Please advise us of the process you undertook to search for these speeches, and for those that you are unable to provide to the Committee, please provide a more thorough explanation of the content of each speech.

Although you have provided a great deal of information to the Committee, and we appreciate your efforts, it is important that your information be complete to permit the Committee to properly evaluate your record in the short time that has been provided.

Thank you for your attention to this matter. We look forward to your receiving your supplemental answers as soon as possible.

Sincerely,

JEFF SESSION.
CHUCK GRASSLEY.
JOHN CORNYN.
JON KYL.
TOM COBURN.

ORRIN HATCH.

Mr. SESSIONS. Mr. President, the judge has provided our committee with a good deal of information. We also appreciate that the judge has already once recognized that her quick questionnaire was incomplete. The issue was raised, and she provided the com-

mittee with additional information on June 6 which really should have been in the first response. However, we are still concerned with several aspects.

As I have already said, the minority leader reiterated this morning that members of the Judiciary Committee and the full Senate need a complete and thorough record in order to make informed judgments on this nomination.

This is a lifetime appointment. It is our one chance in Congress to get it right. A Justice on the Supreme Court, if not faithful, has the power to actually alter the Constitution in addition to faithfully follow it, and sometimes I think that is what they have done.

We need to know what kind of judges we are going to get. Does this judge understand that he or she will be under the law, subordinate to the law, one who must faithfully follow the law or do they believe they are above the law and have the freedom and the ability to interpret it in new and novel ways which might seem to further some agenda he or she might have, if they are on the bench? I think the American people are concerned about that. I think they are right to be concerned about that. Decisions have been rendered, in my opinion, that are not faithful to the Constitution, not required by the Constitution.

Those are things we need to talk about and do it in a fair way and do it at a high level. There is no need to be personal about it.

The oversights and errors in this questionnaire are the product of trying to rush through a nominee with one of the most lengthy records in recent history, maybe ever, to the Supreme Court, in one of the shortest timeframes in history.

I think we should try to get it right. I believe a fair and thorough process, in the best spirit of this Chamber and in the best interest of this Nation, is what we should look forward to. I want to see we get the complete record and get back on the right track. I believe we can do that and it is important we work at it.

I promise, as I said, to do what I can, and I believe we will have a very fair and objective hearing. But it is also important that we are fair to the American people. They are depending on us to carefully scrutinize anyone who comes up for confirmation. We cannot do that without a complete questionnaire.

There are a number of things I raised the other day, yesterday, about the shortfall. I will briefly make a point or two. The letter sets forth in some detail quite a number of areas we set forth. It is eight different items and some other comments that we believe are inaccurate and we call for additional information. There are some significant matters there.

When the judge supplemented her initial questionnaire on June 6 by providing us with a report concerning the death penalty article she drafted dur-

ing her time on the board of the Puerto Rican Legal Defense Education Fund, she had initially omitted that from the report. We would appreciate confirmation that a thorough review of those records has been completed, given the initial omission, and that she has provided all the relevant documents to the committee in response to this question.

There are other questions of writings, reports, and speeches. Question 12(a) requires the nominee to provide copies of materials written or edited. Judge Sotomayor has been widely described as one of the editors of the Yale Law Journal and, as managing editor, Yale Studies in World Public Order. However, we have not received any copies of either publication that she has edited. We need to see copies of those materials.

The questionnaire also requires copies of reports, memorandums, and policy statements prepared by specified organizations. The judge responded:

[a]s a member of various court committees [she has] prepared and contributed to numerous reports and memoranda on court issues, which relate to internal court deliberations and are not available for public dissemination.

I don't think those are the kind of documents that are secret. I think they can be obtained, and I believe the questionnaire calls for all of those.

Paragraph 12(d) talks about a list of speeches and lectures providing the text of those speeches or, if that is not available, outlines or notes and, if not that, a summary of the subject matter involved in the speeches. About a third of those speeches have not been prepared and the summaries are inadequate. I will give an example. This was a response to one of them:

I spoke on Second Circuit employment discrimination cases.

There is no summary of what it was about, no outline or other information on that speech.

Another one:

I spoke at a federal court externship class on Access to Justice.

Another one:

I spoke on the United States Judicial System.

Another one:

I participated in a symposium on post-conviction relief. I spoke on the execution of judgments of conviction.

Another one:

I spoke on the implementation of the Hague Convention in the United States and abroad.

It goes on. There are several others. But those are inadequate responses, probably as a result of rushing the questionnaire through. I hope the nominee will go back and see, first of all, if she can find the written speech she gave and provide us a copy of it. That would be helpful as we review these matters because there have been some questions about speeches that the nominee has made.

I will not take any more time. I will let the letter speak for itself. I tried to

call the judge earlier this afternoon, but she will not be available until sometime later, to tell her this is coming forward. I believe her staff may have already been notified of it, the White House Counsel's office.

These are not little bitty matters. They are important matters. If we are going to move forward in a record-breaking timeframe, the least we can expect is complete and full answers to these questions. It is appropriate that we insist this questionnaire be properly and completely answered. I hope and believe it will be. Certainly that is what our request is.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERTS. 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. ROBERTS. I ask unanimous consent that I may proceed for about 12 or 13 minutes as in morning business.

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

HEALTH CARE

Mr. ROBERTS. Mr. President, I rise today to talk about health care reform. What else in regard to the interests of the American people and what we are doing here?

As the Republican leader, Senator MCCONNELL, has pointed out in several floor speeches over the past week or so, the desire for health care reform on both sides of the aisle is one that unites this Chamber across both political and geographic boundaries.

Our system of health care produces some of the best care in the world and it is the driver of a substantial share of the medical innovations that have wiped out diseases, improved our comfort, and extended our time on this Earth.

However, this system is not truly accessible to everybody, and that is the problem. That is what this entire debate boils down to: your ability to have access to a doctor, to go see the doctor of your choice when you need to see that doctor.

Solving this problem of access is exceedingly complicated, partly because it evidences itself in so many diverse ways all across the country, so many geographical areas. For example, in our rural areas in Kansas, we are struggling with attracting and retaining doctors and keeping the doors open to our hospitals, to our pharmacies, and clinics. We talk about recruiting athletes. My goodness, the business of recruiting doctors and health care professionals is equally as competitive.

In our urban areas such as Kansas City and Wichita, our providers face very different challenges which are just as daunting and which threaten a patient's ability to access health care.

On top of that, although some 250 million Americans have health insur-

ance, somewhere in the neighborhood of 27 to 47 million, depending on who you are counting and who is talking, do not. That makes accessing health care expensive and very challenging for them.

In addition, the government-run Medicare Program, which is on the verge of bankruptcy, by the way, does not pay doctors and pharmacists and ambulance drivers and nurse clinicians—pardon me, clinical lab folks and home health care providers and almost every health care provider that you can name—they do not pay them enough to cover their cost. Unless these providers have a non-Medicare population to recoup their losses, they cannot stay in business and their patients lose out—a de facto rationing of health care.

As a member of both the Finance and HELP Committees, and the cochair of the Senate Rural Health Care Caucus, I am able to participate and have been participating, along with staff, in this complex and very difficult effort. We must reform our health care system into one that guarantees meaningful access for all Americans, and guarantees that patient-doctor relationship. However, this effort to date has been a tale of rhetoric versus that of reality, the promise of cooperation contrasted with the unfortunate but real fact of partisanship, something I do not like to say.

Let me explain. President Obama, who ran as a "postpartisan" candidate, has made many overtures to Republicans indicating a desire for this process to be bipartisan. He just met with some members of our leadership and obviously the leadership on the other side of the aisle as of today.

Others in the Senate have declared their goal to be a bill that attracts upward of 70 votes. Is that possible? I would hope so. It could be. That would be a tremendous victory for the Senate of the United States and the American people.

But the reality is something very different. Today in the HELP Committee, the Health, Education, Labor and Pensions Committee, we have just begun the process of walking through a 615-page bill that we are scheduled to mark up next Tuesday.

This bill does not have one single Republican contribution, as far as I can tell. Moreover, it is incomplete, with many details missing. For example, the small detail of how much it will cost. There is no cost estimate to this bill of 615 pages, just going through it as of today, going to try to mark it up next Tuesday.

Come on. That is not the way we should be doing business. The Finance Committee has conducted a parallel and I think, quite frankly, a better process so far, and I wish to thank Chairman BAUCUS and Ranking Member GRASSLEY and their staffs for their efforts. But we still have not seen a detailed proposal or cost estimate, and we are being pushed to mark something up in the next few weeks as well.

I want everyone to understand why process is important. Health care reform is important, to be sure. Getting things done obviously is important. But so is process. It is not because I do not want health care reform, nor is any Member in this body in a position to say they do not want health care reform. I want every single Kansan, every single American, to be able to see the doctor of their choice when they want to, especially when they have to.

I speak today because this health care reform bill will likely involve one of the biggest, most important votes that I or any one of my colleagues will cast during the time we are privileged to serve in the Senate of the United States. This health care reform bill will affect the lives of every single American. It will reform a system that drives one-sixth of our economy, over 16 million American jobs. It will have consequences for medical science and innovation that improve the lives of not only those of us in this great country but all across the world. When people are really sick, they come to the United States.

This bill will spend upwards of \$2 trillion—\$2 trillion—our children and grandchildren will have to some day repay. If we are going to do this, we cannot afford to get it wrong. For this reason, I initiated a letter about a week ago on behalf of all of my Republican colleagues on the Senate Finance Committee and on the HELP Committee. I asked the chairmen of those respective committees, the distinguished chairman, Senator DODD, who is now serving in Senator KENNEDY's absence, to give this process the time and the careful consideration it deserves. That was the message of the letter: Give us the time and the very careful consideration this vital issue deserves.

It seems to me our requests have been extremely reasonable. First, please provide us with your detailed plan with enough time for us to read it, to understand it, and get feedback from our constituents back home, the people the bill will affect.

We have done this in the Finance Committee. Goodness knows, I do not know how many panels we have had, how many walk-throughs, how many slide presentations. Boy, that is tough in the afternoon to turn the lights off as Senators and try to pay attention to fact after fact after fact and suggestion after suggestion after suggestion and policy objective after policy objective on each day as we go through the legislative swamp, to try to get this from here.

Our requests, again, I think—I want to say it again. First, you should provide us with your detailed plan with enough time for us to read it, understand it, get feedback from our constituents back home, the people the bill will affect. The reason I said that twice is that every day we had one of these slide shows, every day we had a

PowerPoint, every day we got more information, our office would send it back to the providers of health care in Kansas, much in the same fashion as members of the committee would send to it their people, and say: Hey, is this going to work? These are the people who actually do provide the health care.

I know the arguments that say: Well, now, wait a minute. We need to cut out fraud, waste, and abuse, and we need to be much more cost conscious. We need better practices in regard to better medical practices. We need a lot of things to either suggest or to incentivize or to maintain what the health care providers do.

But in the end result, if that person is sick, they are going to have to see a doctor, and they are going to have to see a nurse or some health care provider. So in the end result, we better at least be doing something that the providers say, yes, this makes common sense or you are going to see either one of two things: You are going to see a political revolt when they say, no, we are not going to go down that road or else you are going to see a continuation of rationing where providers say: No, I am not going to take part anymore in the Medicare Program, because I am not getting reimbursed up to cost.

You can have the best government program in the world, you can have the best government card in the world. But if you cannot find a doctor who provides service or a home health care provider who will provide service, or any provider who will provide that service well, where are you?

Second, I would like to see provided the cost estimates from the Congressional Budget Office and the Joint Tax Committee. Let us know how much all of this is going to cost. That is extremely important. We are hearing anything from \$1 to \$2 trillion.

Then, lastly, how will it be paid for? I know we are into an era now where basically we have the printing presses rolling, and we have an Economic Recovery Act and we have many facets of that, we have the stimulus, the omnibus, we had the President's budget and we had TARP, and we had four different other acronyms under TARP, and we did not worry too much about the pay-fors and who was going to pay for it. We let the printing presses roll, because nobody wanted to see economic Armageddon.

Could we have done it better? I think so. But that is yesterday's decision. So we should identify how this will be paid for or are we not going to pay for it. Are we simply going to go ahead—there has been some discussion about some aspects of it that you would not pay for. There are other aspects that we need to go into, because they involve probable tax increases, and now is not the time to be increasing taxes, especially on the small business community, despite the need for health care reform.

I think asking for these details is absolutely fair. I think it is necessary under the circumstances. In fact, I would be ignoring my responsibilities to my constituents in Kansas if I did not demand these conditions be met.

Every single Republican member of the Finance Committee and HELP Committee signed the letter. Every single one expressed a desire to work with our colleagues to achieve bipartisan health care reform.

That brings me back to today's HELP Committee walk-through of 615 pages of an incomplete draft, the rushed HELP and Finance markup schedule, Tuesday, and then in about a week or two, the arbitrary floor debate deadlines that we hear from leadership. I hope our letter will slow this hurried dash to an imaginary finish line. Slow it down. Slow it down. I know it is extremely important that we pass good health care reform legislation. It is also extremely important to prevent bad legislation from passing and get America saddled with it for about 20 or 25 years. I wish at the end of every committee room, if in fact the bill gets to committee, the committee of jurisdiction, that we can hold appropriate hearings, we would have a sign that says, "Do no harm." And then right below it perhaps we could put "whoa," until everybody can slow down and read it in regard to process, and cost, and specifics of the bill, and trying to work together to get a good product.

There is no reason why the Senate should rush through a bill that has this much at stake. So time out. Time out. Time. Slow down. Give us the details. That is all we are asking for. The people of this great Nation deserve nothing less. Let's get health care reform and let's get it right.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. THUNE. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. THUNE. I ask unanimous consent to speak as in morning business.

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

PAY-GO

Mr. THUNE. Mr. President, there is a disturbing pattern emerging in Washington, DC, which I don't think is being lost on the American people. We have seen, since the beginning of this year, with the new administration coming into power, the new Congress taking control of the leadership in both the House and Senate, an enormous amount, an unprecedented amount of spending, borrowing, and taxing. To bear that out—this information has been used before—if you actually look at the numbers, you have to go back a long ways in American history, go back to the foundation of our country,

go back to 1789, and you take it up to today, 2009, 220 years of American history, the total amount of debt that has been accumulated over that period of time, literally since the Presidency of George Washington through the Presidency of George Bush will be equaled in the next 5 years.

We will double the amount of Federal debt, public debt in this country in the next 5 years. We will triple it in 10 years. We are borrowing and spending money around here on a spree that literally is without precedent in American history.

It should be of concern to all Americans for the obvious reason. They have a share of that debt. In fact, according to USA Today, if you just take the amount of debt that has been accumulated since the beginning of this year, with the passage of the stimulus bill, with the new appropriations bill that passed, an 8.3-percent increase over the previous year, which was twice the rate of inflation, and all the other spending that is going on with the various bailout programs and whatnot, the average family's share of the debt this year alone is \$55,000. The average family's share of the Federal debt is \$55,000 per family in debt accumulated just since the beginning of this calendar year.

The amount of borrowing is without precedent. The amount of spending that is being done is without precedent. All under the guise of this is an emergency, and we have to react this way. But I think as more of this spending and more of this debt accumulates, the American people have become more convinced that the spending isn't solving the problem it was supposed to solve, which was we were going to create jobs, get the economy growing and expanding again. We haven't seen any of those effects.

What we have seen, of course, is more debt, more interest, and a bill that we will hand to future generations that is not fair to them because we should not be penalizing future generations and pushing them because we haven't been able to live within our means.

The most recent response to that by the administration was yesterday. They came out and announced they are going to implement pay-go. So we are going to have pay-go regulations or pay-go policies now in place with respect to the Federal budget and the way we operate in Congress. Incidentally, even when pay-go was in effect, it was not very effective because much of the budget, much of the spending that occurs in Washington is outside the realm or outside the net of pay-go.

In fact, if you look at what pay-go does in terms of its design, it exempts all discretionary spending, would allow all current entitlement programs, such as Social Security, Medicare, and Medicaid, to continue to grow on autopilot. It affects only new entitlements or tax cuts that may be created in the future. Pay-go also allows expiring entitlement programs to be extended without offsets but not expiring tax cuts.

So it is clearly biased in favor of higher spending and higher taxes. In fact, if it does not apply to discretionary spending and if, in fact, it does not in a meaningful way apply to entitlement reform—in other words, it simply puts sort of a cap on how much entitlements can grow, but it doesn't get at the fundamental issue that these programs continue to grow unabated—it is simply one thing: a statutory excuse to raise taxes. That is essentially what pay-go is.

The new administration came out with the news bulletin yesterday that this is somehow a bold, new step and that they are going to attack and take on this deficit and this debt we have. Of course, what they didn't tell us is—sort of the expression we use in my part of the country—it is like closing the barn door after the horse is already out of the barn because we have already got all this spending this year that wasn't covered by pay-go. The stimulus bill, which was \$800 billion in new borrowing, was outside of pay-go. In fact, over the past several years now that the Democrats have been in power in the Congress, they have consistently violated the pay-go standard, about 15 times, to the tune of about \$882 billion in all this new spending that was done outside of pay-go.

So now it is like all of a sudden coming to the conclusion and realization that now we are going to get serious about deficits, now we are going to get serious about spending, now we are going to somehow clamp down on all these new programs that are out there. Somehow, at least rhetorically, subscribing to pay-go as a concept is going to be the solution and the answer to that.

I think we all know better than that. As I mentioned, pay-go has been routinely sort of ignored in the past. Even if it were to apply, as I mentioned earlier, it does not capture much of the spending that goes on here in Washington. It is simply nothing more than a statutory excuse to raise taxes.

Having said that, I mentioned before much of the spending that has already occurred here in Washington. Yet the big-ticket items are still looming out there on the horizon in the future. By that I mean health care reform, which is a big priority of the administration. We are starting to see more details, get a little bit of a glimpse of what that might entail.

We know, for one thing, based upon the statements that have been made by the President and by the Democratic leaders in the Congress, they want it to include a government plan, purely and simply. They want a government plan, which means one thing; that is, that the government takes over health care in this country. Because you cannot maintain a private insurance program, you cannot maintain a private-sector delivery system, a market-based health care system in this country if you are going to have a government plan.

The government plan is where everybody, according to studies that have

been done, eventually would end up going. They would gravitate there. More and more small businesses either would be forced to pay fines, if they did not have insurance themselves or offer insurance. The suggestion is—and I think it is a fair one based upon the analysis that has been done by a lot of the independent outside groups—you will see more and more small businesses giving up their health care coverage and having their employees move and transition into the government plan. The government plan will become the repository for all the employees who are currently covered in employer-provided health care plans in this country.

So the government component of this will continue to grow, and eventually you will have a system that very much models or is very similar to what we see in other places around the world. Some people talk about Canada, some people talk about Europe and all these great systems. But the reality is, a lot of the people in those countries come to the United States. The reason they come here is because we have the highest quality care and because they can get access to it.

The one thing that happens when the government runs health care is the government decides what procedures are covered. The government decides what treatments are going to be part of the coverage. The government will decide how soon you can get access to those treatments. What you find in other countries around the world are long lines, long waits, and that is fairly typical of the countries I mentioned.

The thing that makes the American system so unique in all the world is its dependence upon and its foundation upon a market-based system. It has led to incredible innovation. It has led to incredible research and development, new treatments, new therapies, and has provided all kinds of opportunities for people of this country to receive health care, and, frankly, as I mentioned before, for people from other countries who come here to get their health care.

So why we would want to throw out that part of our health care system that is so good and replace it with a government-run system—which, frankly, again, the government is going to get in the middle of the decision between the consumer of health care or the patient and their provider, the physician, and make those decisions. It seems to me that is not a model we want to emulate in the United States.

As I said, we have a system that needs reform. We have flaws in the way our current system works. But the fact is, it is the very best health care system in the world, and I think it would be a big mistake for us to go down a path that shifts and moves more and more people into a government-run, government-controlled system, where the government decides what procedures are going to be covered and how soon you are going to have access to them.

I think it does one thing: It obviously would lead to a rationing of health care. By that I mean, simply again, that the government would have to try the clamp down on costs, limit the access of people to have certain types of therapies, certain types of treatments, and I think you would find less and less choice available in health care in this country. That is what I think a government-run system would give you in the end.

Most of us on this side have laid out a number of proposals, alternatives to a government-run system. Everybody says: Well, come up with a plan of your own. We have a number of them out there. We have a Coburn-Burr plan that has been introduced. Senator GREGG from New Hampshire has a plan that has been introduced. There is a Bennett-Wyden bill, which is a bipartisan bill, that has been introduced out there. But there are a number of alternatives that have been put forward by Republicans.

To date, we have only seen little sort of generalities about the Democrat plan. All we simply know is they are going to insist upon a government-run component to that. Again, it simply is nothing more and nothing less than a government takeover of health care, which is going to lead to all kinds of outcomes that I do not think most people in this country are prepared for and, frankly, if they had the opportunity, would not support.

But they have entrusted us with the responsibility to look for ways to make health care more affordable in this country. There are lots of good suggestions which, as I said before, Republicans are putting forward. But it is going to be very difficult if the bright red line that is put forward by the Democrats in the Senate and in the House of Representatives is a government-run program, a government-run plan or else. I certainly am not going to subscribe to that sort of a solution for America's health care system. Nor do I think it is going to be in the best interests of patients and consumers around this country or providers, for that matter, to do that.

So health care debate is one debate that is out there. The reason I raised that issue is because it ties back into my point earlier that the amount of spending and borrowing and taxing that is going on here is—if you look back at what has already been done, it is enormous, it is enormous by any comparative standard in American history. But the big-ticket items are still out there because the health care plan, as we understand it—again, it has only been conceptual. We have not seen the details emerge from any of the Democrats' ideas. They are starting to roll more of it out. But one thing is clear: It is going to have a huge price tag. We are talking about anywhere from \$1 trillion to \$1.5 trillion to \$2 trillion. Of course, if they are going to adhere to the newly announced pay-go standard, that means this new entitlement program has to be paid for.

So where does that \$1.5 trillion or \$2 trillion come from? Well, obviously, it is going to come from some revenues raised from some part of our economy. That means a lot of hard-working Americans are going to see their taxes go up to finance this new government takeover of health care, which is going to give them fewer options, and get in the way of the patient-doctor relationship and cost them a lot more in the form of higher taxes.

I think even though much of the spending I have already referred to is in our rearview mirror—all that is left is to pay the bill for that. We still have to pay the bill. We are borrowing, which means somebody is going to pay the bill. We are going to hand off the bill to the next generation of Americans because, obviously, when you borrow \$1 trillion, someday it has to be paid back. In the meantime, when you continue to rack up that kind of borrowing and when you continue to do all the other things we are doing in our economy in terms of interventions, whether it is with regard to financial institutions or auto manufacturers—you can kind of go down the list—insurance companies now that the government actually has an ownership interest in that—we are acquiring enormous amounts of exposure and debt for the taxpayers of this country.

The health care plan is going to be another \$1.5 trillion or \$2 trillion on top of that. When you borrow that amount of money, you do have to pay it back. By the way, I should mention, too, the interest on the amount of debt we are going to rack up in the next 10 years alone is about \$5 trillion. Think about that. That is just to pay the finance charge on the debt we have in this country. Think about the enormous burden that places on the American taxpayers and the American economy.

What generally happens in a case such as that is, when you borrow that much money, there is a lot more pressure out there, and the people who are buying that debt are, at some point, going to start demanding a higher interest rate. When interest rates go up, with the higher return on their investment, generally inflation follows with it. So you have all kinds of economic problems that are created by the level of borrowing we have already incurred. And we are going to add a new health care entitlement on top of that. It literally is breathtaking the amount of intervention we are seeing in the private marketplace today.

I talked about some of the spending and some of the borrowing that has been done. But in the taxes that are going to be associated with health care—and I could go down a list. There is a three-page list of the various, what we call pay-fors or ways of raising revenue to help finance health care. But there is also another big tax looming on the horizon, and that is the carbon tax, what we call the national sales tax on energy. If this climate change bill,

which is currently moving through the House of Representatives, reaches the Senate, and if it does, in fact, pass the Congress this year, that, too, will entail an incredible amount of taxation, because there is no way in this country you can attach, essentially, a cost to carbon per ton and force companies that emit to buy the credits that would be associated with that without them passing it on. They are going to pass it on. Everybody admits that. The President has admitted that. The leadership on the other side has admitted that. All the utility companies in the country will tell you that.

A carbon tax, a national sales tax on energy, would hit places such as where I am from in the Midwest the hardest because we are, by and large, proportionately more dependent upon coal-fired power than are many other areas in the country. We have a sparse population, which means we have a “higher carbon footprint,” which means people in the Midwest, in States such as mine, are going to pay way more for energy under any kind of a climate change bill or what we call a cap-and-trade bill or cap-and-tax bill.

However you want to refer to it, there is no way of getting around the fact that it is going to cost an enormous amount every single year for families in this country, for businesses in this country, for industrial users, for school districts. I have seen the statistics from school districts in my State, from commercial users, from residential users about what those costs are going to be. They are stunning.

So that is another tax that is still out there. Add that to the health care tax that will come with whatever health care bill is passed through here, and the amount of taxation is going to start to rival the amount of spending and borrowing that is going on in Washington.

But it brings me to my final point, and that is what I am concerned about and what I am starting to hear more and more from people in my State of South Dakota—in many cases unsolicited—who come up to me and raise this issue of the amount of government ownership of our private economy. We are seeing, again, unprecedented levels. If there is one bedrock principle in American history, it is the adherence to the ideals of private enterprise.

In recent months, however, the United States has substantially deviated from this historical pattern, and the Federal Government now owns substantial shares of major U.S. corporations. We own—the taxpayers; I mean you and I and all of us here—we are now shareholders in a lot of major U.S. corporations. The taxpayers—the Federal Government—own 79 percent of AIG, 75 percent of General Motors, 10 percent of Chrysler, 36 percent of Citibank, 80 percent of Freddie Mac and Fannie Mae. And it goes on and on and on.

So we have all this spending, borrowing and taxing and now, on top of

that, increasing the amount of government ownership of America's private economy. If there is one thing Americans are clear on, it is that the government should not be taking over bigger and bigger shares of the American economy.

There was a survey recently by Rasmussen that said 75 percent of Americans agree the Federal Government should not take over the U.S. banking system. That was a poll done in February. More recently, 60 percent say that the bailout loans given to GM and Chrysler were a bad idea. That was an April 21 poll. A new poll, done on May 31, just recently, shows that 67 percent of Americans are opposed to providing General Motors with \$50 billion and giving the government a 70-percent ownership interest in GM. Mr. President, 56 percent of voters said it would be better to let GM go out of business. None of us want to see that. But I think none of us, at least most Americans do not want to see the government owning more and more of American companies. The Federal Government is inevitably going to use that ownership stake to push its own agenda.

In a moment of extreme candor, former Labor Secretary Robert Reich declared that if the government is an active shareholder, they should “push management to take actions that are not necessarily geared toward higher shareholder return.”

Think about that statement. The government owns more and more of American businesses. They should “push management to take actions that are not necessarily geared toward higher shareholder return.” In other words, the government should use its newly acquired power in formerly private companies to further its own agenda.

Both the political process and the free markets are going to be distorted if that happens. In fact, in the New Republic, Noam Scheiber recently wrote that “government ownership invariably politicizes management decisions which could be a fiasco.” The article notes that a coalition of unions is lobbying against providing bailout dollars to Principal Financial Group because of its opposition to “card check.” You find more and more of these pressures on now because the government has a bigger and bigger stake in the government dictating day-to-day management decisions in American business. That is not a path I would argue we want to go down.

The Economist commented on the government-forced Chrysler bankruptcy:

In its haste it has vilified creditors and ridden roughshod over their legitimate claims over the carmaker's assets. At a time when many businesses must raise new borrowing to survive, that is a big mistake. . . . The Treasury has also put a gun to the heads of GM's lenders.

In a recent Bloomberg article, Bradley Keoun warns of some of the problems that Citigroup—and other banks

incur in accepting bailout money—may encounter as a result of the partial government ownership. Among them he cites government pressure for stricter compensation rules, directives to focus on “State-approved social objectives,” instead of increasing earnings, scrutiny of advising or being forced to “exit risk-taking businesses that are profitable competitors.”

I think there is plenty of thought out there from people who understand the economy and the importance of the private market, its tradition, its contribution to the success of the American economy, and the prosperity we enjoy today, as well as lots of anecdotal and other evidence that when the government gets into these particular situations where it is trying to influence the day-to-day decisions of private business in this country, those who are trying to manage our private businesses in this country, leads to all kinds of fiascos and disaster.

I would mention one other point and that is, according to Bloomberg, after demands from lawmakers, Citigroup consented to support cramdown legislation, even though this policy was opposed by others in the banking industry.

It is pretty clear these types of interventions into the private marketplace, into the free market economy in this country, lead us down a path that is not good for the American taxpayer, not good for the American economy, and that it stifles innovation and entrepreneurship. In fact, I would argue it kills the entrepreneurial spirit in this country to have government taking bigger and bigger ownership interests, bigger and bigger ownership stakes in the American economy, and further dictating the decisions, the day-to-day decisions which American businesses make that are designed to grow their companies, to get a better return for their shareholders, to become more profitable, to make America more prosperous, to raise our standard of living, and to deliver more benefits to their employees—all these things that have driven this economy and made it the envy of the world. I don't think we want to go down a path or stay down a path that gets us deeper and deeper into ownership of the private economy.

I am going to be introducing and filing a piece of legislation tomorrow which addresses this issue and which provides an exit strategy for the Federal Government and for the taxpayers to begin to get out of all these ownership interests they have in the American economy, and I will have the opportunity on the floor to talk more about that at a later time. But this afternoon, I wished to touch on these issues as we begin the debate which has sort of captured this city and the Congress and the administration and I think very soon will engage the American public over health care reform and the trillions of dollars of new taxes and revenues that are going to be necessary

to finance the proposal the new administration has for health care reform and how that takes us even further down the path of government intervention and a level of nationalization of our private economy—in this case health care—and that pattern that just seems to be continuing and which I think more and more Americans are reacting to and more and more Americans, I believe, are going to become engaged in.

Members of Congress on both sides are going to be hearing from their constituents about what they perceive to be a real threat to the long-term viability, the long-term prosperity, and the long-term protection of the taxpayers' interests.

I hope they will become more engaged. I certainly hope we will be able to defeat proposals that come before the Senate that call for greater governmental ownership, greater governmental intervention, greater expansion of governmental powers in Washington that will limit the choices of Americans, limit their access to health care opportunities, health care therapies, health care treatments that all too often are lost, I believe, in a system where the government rations care.

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

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

MCCRISTAL NOMINATION

Mr. REID. Mr. President, in my office a few minutes ago, I received a call from Admiral Mullen, the Chairman of the Joint Chiefs of Staff. I wrote down what he asked and what he said. He said: Senator, there is a sense of urgency that General McChrystal be able to go to Afghanistan tonight.

There is no commander in Afghanistan.

Admiral Mullen said—and I wrote it down: Admiral McChrystal is literally waiting by an airplane. It is 2 o'clock in the morning Thursday in Afghanistan. Dawn will soon be breaking and our troops will not have a commander there.

Is this what the minority wants? Why can't they come and approve this man to go defend us in Afghanistan? I am without words to try to explain my consternation at the fact that General McChrystal, one of our most eminent, prominent, outstanding, qualified soldiers, a man whose father won five Silver Stars, a man whose record is one of being the leading person in our military to do counterinsurgency—that is what he is an expert in doing.

Let's get the man approved tonight so he can leave in an airplane and get over there and take care of his men and women.

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

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

GUANTANAMO

Mr. MCCONNELL. Mr. President, it wasn't that long ago that the Senate voted almost unanimously to oppose bringing any terrorists at Guantanamo to the United States. But earlier this week, the administration ignored the will of the American people as expressed through that Senate vote by transferring a Guantanamo detainee named Ahmed Ghailani to New York. The purpose of the transfer is to try Ghailani in a U.S. civilian court for his role in the African embassy bombings of 1998. The administration's decision raises a number of serious questions.

First, Ghailani has already admitted that he attended a terrorist training camp in Afghanistan and assisted those who planned and carried out the embassy attack, but says he did so unintentionally. In a U.S. civilian court, if you're found not guilty, you're allowed to go free. So if we are going to treat this terrorist detainee as a common civilian criminal, what will happen to Ghailani if he's found not guilty? And what will happen to other detainees the administration wants to try in civilian courts if they are found not guilty? Will they be released? If so, where? In New York? In American communities? Or will they be released overseas, where they could return to terror and target American soldiers or innocent civilians?

Second, if Ghailani isn't allowed to go free, will he be detained by the government? If so, where will he be detained? Would the administration detain him on U.S. soil, despite the objections of Congress and the American people?

Third, why does the administration think a civilian court is the appropriate place to try Ghailani? Congress enacted the military commissions process on a bipartisan basis as a way to bring terrorists to justice without disclosing information that could harm national security. Some have complained that the previous administration moved too slowly on military commissions, but a lot of that delay was due to the constant legal challenges that were leveled against the process, including by some in the current administration. In fact, Ghailani's case was already being handled by the military commissions process—to the point that a judge had established a trial schedule for him. I ask unanimous consent that the trial schedule be printed in the RECORD.

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

UNITED STATES OF AMERICA V AHMED KHALFAN GHAILANI (A/K/A "PUPT", "HAYTHAM", "ABUBAKAR KHAFLAN AHMED", "SHARIF OMAR")

SCHEDULE FOR TRIAL, AMENDMENT ONE

4 MARCH, 2009

1. The following trial schedule is ordered. Times when listed are local Eastern United States.

a. 1 June 2009: Discovery completed.

b. 15 June 2009: Discovery Motions due to the military judge and opposing counsel. If counsel intend to submit more than ten (10) discovery motions, counsel shall inform the military judge and opposing counsel of the total number of law motions which counsel intend to present NLT 1200 hours, 8 June 2009. If appropriate, the military judge will advise counsel of a revised schedule to present the motions.

d. Week of 6 July 2009: Hearing in GTMO re: Discovery Motions.

e. 20 July 2009: Law Motions due to the military judge and opposing counsel. In general, law motions are those which require no evidentiary hearing to determine. If counsel intend to submit more than ten (10) law motions, counsel shall inform the military judge and opposing counsel of the total number of law motions which counsel intend to present NLT 1200 hours, 13 July 2009. The military judge will advise counsel of a revised schedule to present the motions.

Note 1: Motions will have as their underlying legal premise no more than one legal basis. If there is more than one legal basis, then there should be more than one motion. Law motions include motions relative to sentencing.

Note 2: Motions, response, and reply due dates are a No Later Than date. Counsel for both sides are advised that any motion, response, or reply which is ready for submission prior to the due date should be submitted when completed. The efficient and proper process of motion practice will NOT be enhanced by delivering multiple motions, responses, or replies to the Commission or opposing party at the last possible moment.

e. Week of 3 August 2009: Hearing in GTMO re: Law Motions and Witness Production issues or any unresolved matters.

f. 10 August 2009: Defense Requests for Government Assistance in Obtaining Witnesses for use on the merits. See R.M.C. 703.

Note: The Government response to any witness request will be due within five business days of the submission of the request. Any Defense motion for production of witnesses in conjunction with a motion will be due to the court and opposing counsel within five days of receipt of a denied witness request.

g. Week of 24 August 2009: Hearing re: unresolved Witness Production Motions and/or any unresolved matters.

h. 31 August 2009: Evidentiary Motions due. Evidentiary motions due to the military judge and opposing counsel. In general, evidentiary motions are those which deal with the admission or exclusion of specific or general items or classes of evidence. If counsel intend to submit more than ten (10) evidentiary motions, counsel shall inform the military judge and opposing counsel of the total number of evidentiary motions which counsel intend to present NLT 1200 hours, 24 August 2009.

Note 1: Generally, see Paragraph "e", Notes 1 and 2 above.

Note 2: Defense witness requests associated with any motions should be submitted to the trial counsel in accordance with R.M.C. 703 simultaneously with the filing of the motion (or Defense response in the case of a Government motion) in question. The Government response to any witness request will be due

within five days of the submission of the request. Any Defense motion for production of witnesses in conjunction with a motion will be due to the court and opposing counsel within five days of receipt of a denied witness request.

i. Week of 14 September 2009: Hearing in GTMO regarding Evidentiary Motions.

j. 23 September 2009: Requested group voir dire questions for Military Commission Members due.

Note: The military judge intends to conduct all group voir dire questioning of the members per R.M.C. 912. The military judge's group voir dire will take counsel's requested questions into account as appropriate. The military judge will also conduct the initial follow-up individual voir dire based on responses to the group questions. Counsel will be permitted to conduct additional follow-up voir dire.

1. 24 September 2009: Proposed members instructions due.

m. 5 October 2009: Assembly and Voir Dire for Panel Members.

n. 9 October 2009: Beginning of trial on the merits lasting potentially as late as 13 November 2009.

2. Counsel should direct their attention to the Rules of Court, RC 3, Motions Practice, and specifically Form 3-1, 3-2, and 3-3, for the procedures I have established for this trial. All motions, responses and replies shall comport with the terms of RC 3.6 in terms of timeliness. Any request for extension of any response or reply deadline associated with this hearing will be submitted before the deadline for the reply or response.

3. Requests for deviations from the timelines for hearings or for submission of motions established by this order must be submitted not later than 20 days prior to the date established, except for law motions for which requests for deviations from the due date must be submitted within 7 days prior to the date established.

4. Monthly Status Conferences will be scheduled throughout the pendency of this action or as needed under the circumstances. Counsel should anticipate the fluidity of the process of this action and be vigilant to alterations. Counsel requiring hearings or conferences not specifically anticipated herein should make a written request as soon as practicable in order to maintain the efficient and fair administration of justice. Court hearings designated as "during the week" is for planning purposes and actual hearings dates are commensurate with logistical, courtroom accessibility and transportation availability.

BRUCE W. MACKENZIE,

CAPT, JAGC, USN Military Judge

Mr. MCCONNELL. This schedule would be well underway if the administration had not suspended all military commission proceedings several months ago. Now we will have to start the process for Ghailani over again in civilian court.

The administration made the right decision by reconsidering its position on military commissions and deciding to resume their use. So why did the administration decide to stop the military commission proceedings against Ghailani that were being conducted in the modern, safe, and secure courtroom at Guantanamo and move him to the U.S. to try him in civilian court? Is it because the Administration doesn't think that by deliberately targeting innocent American civilians Ghailani violated the law of war? Does it think he should be treated as just another domestic civilian defendant?

Fourth, how will the administration ensure that trying Ghailani in a U.S. court doesn't damage our national security? As we've seen in the past, trying terrorists in the U.S. has made it harder for our national security professionals to protect the American people.

During a previous trial of suspects in the African embassy bombings, evidence showed that the National Security Agency had intercepted cell phone conversations between terrorists. According to press reports, this revelation caused terrorists to stop using cell phones to discuss sensitive operational details.

And during the trial of Ramzi Yousef, the mastermind of the 1993 World Trade Center attack, testimony given in a public courtroom tipped off terrorists that the U.S. was monitoring their communications. As a result, these terrorists shut down that communications link and any further intelligence we might have obtained was lost.

On the question of Guantanamo, it became increasingly clear over time that the administration announced its plan to close the facility before it actually had a plan. If the administration has a plan for holding Ghailani if he is found not guilty, then it needs to share that plan with the Congress. These kinds of questions are not insignificant. They involve the safety of the American people. And that is precisely why Congress demanded a plan before the administration started to move terrorists from Guantanamo. The American people don't want these terrorists in their communities or back on the battlefield. But that is exactly where Ghailani could end up if he is found not guilty in a civilian court. Before it transfers any more detainees from Guantanamo, the administration needs to present a plan that ensures its actions won't jeopardize the safety of the American people.

Finally, earlier today, the Senate majority whip came to the floor and claimed there is evidence that al-Qaida may be recruiting terrorists within Guantanamo. I am glad to see that the majority whip appears to be acknowledging the FBI Director's concerns that Guantanamo terrorists could radicalize the prison population if they were transferred into the United States. The fact that these terrorists might be able to recruit new members and conduct terrorist activities from behind bars is an important one. I also find it preposterous that the majority whip would assert that because I and others—including, by the way, members of his own conference—want to keep dangerous terrorist detainees away from American communities, we will enable terrorists to escape justice. Keeping these terrorists locked up at Guantanamo, and trying them using the military commissions process, is the best way to deliver justice while protecting the American people.

Mr. President, I yield the floor.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. McCONNELL. I have yielded the floor. The Senator can feel free to make a statement.

Mr. DURBIN. I was hoping to ask the Senator from Kentucky a question.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. McCONNELL. Mr. President, I understand the majority leader was asking about clearing some military promotions earlier today. I wanted to indicate—and I see the assistant majority leader is here—we are clear with those and never had an issue with these particular promotions. Therefore, I suggest that we call them up and confirm them immediately.

Unless there is an objection from the other side, and having notified the other side, I ask unanimous consent that the Senate proceed to executive session to consider the following military promotions: Calendar Nos. 192, 193, and 194. I further ask unanimous consent that these nominations be confirmed en bloc, the motions to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

IN THE AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be general

Lt. Gen. Douglas M. Fraser

IN THE ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be general

Lt. Gen. Stanley A. McChrystal

IN THE NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be admiral

Adm. James G. Stavridis

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

The Senator from Illinois.

GUANTANAMO

Mr. DURBIN. Mr. President, I want to make my comments about the minority leader's statement on the floor while he is still here. If he is willing to stay, we can engage in a dialog on this issue. I think it is time we do come to

the floor together, along with the Republican whip, and at least make it clear what our positions are on some of these issues related to Guantanamo because it has been a matter of concern and a lot of comment on the floor of the Senate over the last several weeks.

I was going to ask the Senator from Kentucky, the minority leader, whether I understood him correctly when he said he believed that this individual, Ahmed Ghailani, if found not guilty in a court in the United States, would be released in the United States to stay here in a legal status. I wish to ask the Senator, if that is what he said, what is the basis for that statement?

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, I can only repeat what the President's spokesman himself said. I am responding to the question propounded to me by the Senator from Illinois. It is my understanding the President's spokesman yesterday refused to say what would happen to Ghailani if he were found not guilty. So there is some confusion about that.

Mr. DURBIN. There is no confusion. This is such a leap to argue that if this man, who is not a resident of the United States—if I am not mistaken, he is Tanzanian—that somehow if he is found not guilty in the courts of the United States, he is qualified to be released into our population. That is a statement—I don't know anyone could draw that conclusion. He would have no legal status to stay in the United States unless we gave him one.

By what basis does the Senator from Kentucky suggest that this man, who may have been involved in the killing of 12 Americans among 224 other people, is going to be released by President Obama into our communities and neighborhoods?

Mr. McCONNELL. Is the Senator asking me a question?

Mr. DURBIN. I am.

Mr. McCONNELL. Let me say I am only quoting the President's spokesman. He says he doesn't know what would happen if Ghailani is released.

Let me say to the Senator from Illinois, let's assume that he is sent back to the country from which he came. I ask, in what way is America safer if this terrorist subsequently, under this hypothetical release in the United States, goes back to his native country from which he potentially could launch another attack on the United States?

Mr. DURBIN. I say in response, my colleague from Kentucky is gifted at the political craft. He has decided not to answer my question but to ask a question of me.

I say first that his assertion that this man, Ahmed Ghailani, if found not guilty would be released in the communities and neighborhoods of America cannot be sustained in law or in fact. He made that statement on the floor. That is the kind of statement that has been made about these Guantanamo detainees.

I don't know what will happen to Mr. Ghailani if he is found not guilty. It is conceivable that he could be charged with other things. It is conceivable he could face a military tribunal. It is conceivable he may be subject to detention.

I will say this with certainty. President Obama will not allow dangerous terrorists to be released in the United States in our communities and neighborhoods. I hope everyone on both sides of the aisle would agree with that.

I also wish to ask, if the Senator from Kentucky is critical of President Obama for announcing that he was going to close Guantanamo before he had a plan, why didn't we hear the same complaint when President George W. Bush announced he was going to close Guantanamo before he had a plan? Is the difference partisan?

Mr. McCONNELL. I say to my friend from Illinois, he has made this point before, and I answered it before. I will answer it again.

I was against it when President Bush was in favor of it. I have been consistently against closing Guantanamo all along the way, no matter who the President was. At least you could say this about President Bush: He didn't put a date on it before he had an idea what he was going to do with them. And that is the core issue here.

Mr. DURBIN. The core issue is for 7 long years, the Bush administration failed to convict the terrorists who planned the 9/11 terrorist attacks—for 7 years. And for 7 long years, only three individuals were convicted by military commissions at Guantanamo, and two of them have been released. So to argue that the Guantanamo model is one that ought to be protected and maintained, notwithstanding all of the danger it creates for our servicemen overseas to keep Guantanamo open, is to argue for a plan under the Bush administration that failed to convict terrorists, failed with military tribunals and through the courts of this land.

I have to say that as I listen to the argument of the Senator from Kentucky, it is an argument based on fear—fear—fear that if we try someone in a court in America, while they are incarcerated during trial, we need to be afraid. There was no fear in New York for more than 2 years while Ramzi Yousef was held in preparation for trial and during trial because he was held in a secure facility.

Today we are told by the Department of Justice that there are 355 convicted terrorists in American prisons. I ask the Senator from Kentucky, does he believe we should remove them from our prisons, those already convicted, currently serving, such as Ramzi Yousef?

Mr. McCONNELL. I say to my friend from Illinois, maybe we found an area of agreement. He is critical of the Bush administration for not conducting military tribunals more rapidly. I agree with him. I think they should have been tried more rapidly. But that