We already have $1.8 trillion in Federal debt. Yet the majority keeps on spending on new government programs that intervene in the markets and our personal lives. Where will it stop?

The Center for Disease Control has devised programs focused on weight loss and obesity, smoking and tobacco, drinking and alcohol, injury and accident prevention. These programs receive hundreds of millions of taxpayer dollars each year. But the health reform bill being considered by the HELP Committee adds billions more for prevention on top of these programs.

This reckless spending by the majority is irresponsible. The majority should focus on whether the existing programs achieve the stated objectives. The Federal Government does nothing to measure effectiveness of prevention programs and has not a single metric for program performance. Before we create a new Federal entitlement program costing billions, we should first measure the effectiveness of our current programs.

I can tell you what is working. Employers all over the country are creating innovative, voluntary programs to promote healthier lifestyles and bring down costs. However, instead of removing hindrances to more employer prevention and wellness programs, the majority's first instinct is to create another government entitlement program and set up roadblocks to employer innovation.

I would now like to take a moment to put all of this in perspective. Today is Tuesday, June 23, and another day has passed without the Senate having a complete health care reform bill to consider. We don't yet know what the majority will propose for their so called ''government plan'' or how it will be paid for. What we do know is that a Congressional Budget Office preliminary estimate believes that the incomplete bill will cost over $1 trillion but cover only one-third of those current uninsured. So I dread the Congressional Budget Office cost estimate of a complete bill. Some fear that the final price tag for covering all Americans Auld cost taxpayers as much as $3 trillion.

We have a real problem here. Every day that goes by without the key elements of the majority's bill being available for consideration leads to another day where millions of Americans will become uninsured. This is an absolute disservice to our constituents and an embarrassment.

The President of the United States and the majority continue to allege that we will enact health care reform before we leave for the August recess. We are now approaching the July recess. We do not have an estimate or the language, much less the estimate, of two vital, important parts of any health care reform legislation: what will be the role of the employer and what will be the government mandate or the government role, and, finally, how much all this will cost the taxpayers.

So we are talking about one-fifth of the gross domestic product of this Nation, and we are expected, in a few short weeks, to enact overall health care reform with still the Members on this side of the aisle not being informed as to what the plan is, much less have a serious debate. There are meetings of the committees going on and discussion and nice things said about each other. I always enjoy that. But the fact is, we have not gotten down to the fundamental challenges of health care reform in America.

The days are growing shorter and the time is growing short. We cannot enact health care reform and fail. We cannot do that. The sooner the better that we get the full perspective of what is the proposal of the administration and the other side and how much it costs and what the fundamental issues are that are being addressed—such as employer mandates and government mandates. They are certainly not clear not only to us but to the American people.

We have to communicate to the American people how we are going to fix health care. We can't do that unless we have a complete plan to consider and present to them, as well as to Members on this side of the aisle.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized.

SOTOMAYOR NOMINATION

Mr. CORNYN. I would like to use the next 10 minutes or so to address the nomination of Judge Sonia Sotomayor to be the next Associate Justice of the U.S. Supreme Court. I spoke last week a little bit on this nomination and the constitutional responsibility of the Senate to conduct a fair and, I believe, dignified hearing that will be held, now, on July 13, just a couple of short weeks from now. As I said then, and I will say it again, she deserves the opportunity to explain her judicial philosophy more clearly and to put her opinions and statements in proper context. I think every nominee deserves that. But I don't think it is appropriate for anyone—this Senator or any Senator—to prejudge or to preconfirm Judge Sotomayor or any judicial nominee.

This is an important process, as I said, mandated by the same clause of the Constitution that confers upon the President the right to make a nomination, and it is the duty of the Senate to perform something called advice and consent, a constitutional duty of ours. It should be undertaken in a responsible, substantive, and serious way.

Last Thursday I raised three issues I will reiterate briefly with regard to Judge Sotomayor's record. I would like to hear more from her on the scope of the second amendment to the Constitution and whether Americans can count on her to uphold one of the fundamental liberties enshrined in the Bill of Rights: the right to keep and bear arms. I would also like to hear more from Judge Sotomayor on the scope of the fifth amendment and whether the government can take private property from one person and give it to another person based on some elastic definition of public use. And, I want to hear more from her on her thoughts on the equal protection clause of the 14th amendment of the Constitution, which reads in part:

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Obviously, the third issue is going to be very much in the news, probably again as soon as next Monday, when the Supreme Court hands down its decision in the Ricci v. DiStefano case, a case in which Judge Sotomayor participated on the panel before her court of appeals. That case, as you may recall, involves firefighters who took a competitive, race-neutral examination for promotion to lieutenant or captain at the New Haven Fire Department.

The bottom line is, the Supreme Court could decide the Ricci case in a matter of days, and the Court's decision, I believe, will tell us a great deal about whether Judge Sotomayor's philosophy in that regard, as far as the Equal Protection Clause is concerned, is within the judicial mainstream or well outside of it.

The Ricci case is one way the American people can get a window into Judge Sotomayor's judicial philosophy. Another way is to look at some of her public comments, including speeches made on the duty and responsibility of judging.

The remarks that have drawn the most attention are those in which she said:

> I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.

As I said before, and I will say it again, there is no problem—certainly from me, and I do not believe any Senator—if she is just showing what I think is understandable pride in her heritage, as we all should as a nation of immigrants. But if the judge is talking about her judicial philosophy and suggesting that some people, some judges, because of their race, because of their ethnicity, because of their sex, actually make better decisions on legal disputes, then that is something Senators will certainly want to hear more about, this Senator included.

Judge Sotomayor has made other public remarks that deserve more scrutiny than they have received so far. For example, in a speech in 2002, Judge Sotomayor embraced the remarks of Judith Resnick and Martha Minow, who are two prominent law professors who have each proposed theories about judging that are far different than the way most Americans think about these issues. Most Americans think the people elect their representatives, Members of the House and Senate, to write

the laws, and the judges, rather than rewriting those laws, should interpret those laws in a fair and commonsense way, without imposing their own views on what the law should be.

Most Americans think that when judges impose their own views on a case, when they substitute their own political preferences for those of the people and their elected representatives, then they undermine Democratic self-government and they become judicial activists.

Professors Resnick and Minow have very different ideas than I think the mainstream American thinks on what a judge's job should be. Their views may not be controversial in the ivory tower of academia. Academics often encourage each other to engage in provocative theories so they can write about them and get published and get tenure.

But the American people generally do not want judges to experiment with new legal theories when it comes to judging. They have a more commonsense view that judges should follow the law and not the other way around.

So where does Judge Sotomayor stand on some of these academic legal theories, which I think are far out of the mainstream of American thought? I am not sure. But in her 2002 remarks she said this:

> I accept the proposition that as [Professor] Resnick describes it, ''to judge is an exercise of power.''

And:

> as . . . Professor Minow . . . states ''there is no objective stance but only a series of perspectives—no neutrality, no escape from choice in judging.''

If I understand her quotes correctly, and those are some things I want to ask her about during the hearing, that is not the kind of thing I think most Americans would agree with. They do not want judges who believe that there is no such thing as neutrality in judging because neutrality is an essential component of fairness. If you know you are going to walk into a courtroom only to have a judge predisposed to deciding against you because of some legal theory, then that is not a fair hearing. And we want our judges to be neutral and as fair as possible when deciding legal disputes.

The American people, I do not think, want judges who believe they have been endowed with some power to impose their views for what is otherwise the law. Americans believe in the separation of powers, the separation between Executive, legislative and judicial power and that judges should, by definition, show self-restraint and respect for our branches of government.

I hope Judge Sotomayor will address these academic legal theories during her confirmation hearing. I hope she will clarify what she sees in the writings of Professors Resnick, Minow, and others whom she finds so admirable.

I hope she will demonstrate that she will respect the Constitution more than those new-fangled legal theories and that she will respect the will of the people as represented by the laws passed by their elected representatives and not by life-tenured Federal judges who are not accountable to the people.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, will the Chair please let me know when I have consumed 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator will be so notified.

HEALTH CARE

Mr. ALEXANDER. Mr. President, this morning one of our bipartisan breakfasts occurred which we have here every so often. Senator LIEBERMAN and I and other Senators organized it. 16 Senators there attending this morning's breakfast. The Presiding Officer is often a participant in those meetings. At this morning's breakfast we discussed health care. As we listened to the chairman, ranking member, and other senior members of the Finance Committee one of the things we said is that we agree on about 80 percent of what needs to be done.

But one of the areas where we do not agree is cost. Another area is whether a so-called government-run insurance option will lead to a Washington takeover of health care. A lot of us are feeling like we have had about enough Washington takeovers: our banks, our insurance companies, our student loans, our car companies, even our farm ponds, and now health care.

Government-run insurance is not the best way to extend coverage to low-income Americans who need it. The chairman of the Finance Committee indicated that his bill would be paid for. But on the Health, Education, Labor, and Pensions Committee, on which I serve, that is not the case. The bill is not even finished yet, and already, as the Senator from New Hampshire has pointed out, in the 5th through the 14th year, 10 years, it would cost 2.3 trillion new dollars, raising the Federal debt to even further unimaginable levels.

Let me mention an aspect of cost which is often overlooked. Federal debt is certainly a problem, but as a former Governor, I care about the State debt and State taxes. The States do not have printing presses, they have to balance their budgets. So when we do something up here that puts a cost on States down there, they have to raise taxes or cut programs.

We know the programs they have to cut: education, and health care programs, both are important to people in Illinois and people in Tennessee.

The Medicaid Program in the Kennedy bill that we are considering would increase Medicaid to 150 percent of the Federal poverty level, which sounds real good until you take a look at the cost.

In Tennessee alone, if the State had to pay its share of the requirement, about one-third, that would be $600 million. It would be another $600 million if, as has been suggested, it is required that the State reimburse physicians up to 110 percent of Medicare. So that is $1.2 billion of new costs just for the State of Tennessee.

The discussion has been that the Federal Government will take that over for a few years and then will shift that back to the States. Well, my response is that every Senator who votes for such a thing ought to be sentenced to go home and serve as Governor of his or her State for 8 years and figure out how to pay for it or manage a program like that.

In our State, we talk about money. Up here, a trillion here, a trillion there. But $1.2 billion in the State of Tennessee equals to about a 10-percent income tax on what the people of Tennessee would bring in. We do not have an income tax. So that would be a new 10-percent income tax.

So one of my goals in the health care debate is to make sure we do not get carried away up here with good-sounding ideas and impose huge, unfunded mandates on the States, which, according to the tenth amendment to the Constitution, we are not supposed to. But we superimpose our judgment upon the Governors, the legislators, the mayors, the local politicians who are making decisions about whether to spend money to lower tuition or improve the quality of the community college or provide this form of health care or build this road or bridge. That is their decision. And if we want to require something, we should pay for it from here.

I am going to be very alert on behalf of the States and the citizens of the States to any proposal that would shift unfunded mandates on State and local governments. I hope my colleagues will as well.

My suggestion to every Governor in this country is, over the next few days, to call in your Medicaid director, ask that Medicaid director to call the Senate and say: Tell us exactly how much the Kennedy bill and the Finance Committee bill will impose in new costs on our State if the costs are shifted to the States. Then when we come back at the first of July, we can know about that cost.

The ACTING PRESIDENT pro tempore. The Senator has used 5 minutes.

Mr. ALEXANDER. I thank the Chair very much. So my interest is not just in additions to the Federal debt but not allowing unfunded mandates to the States.

I ask unanimous consent to have printed in the RECORD an article from the New York Times from June 22, 2009, showing what condition the States are in. Almost all are in a budget crisis and not in any position to accept this.

I also would like to thank the Senator from Arizona for allowing me to go ahead of him so I can go to the committee and offer an amendment.