application of the second amendment to the States. But in that footnote, the Court made it quite clear that the prior old cases were decided before it had adopted a different approach to incorporating constitutional rights against the States. It is pretty clear from that they have left this matter open. The judge on the Ninth Circuit found that the question was an open question after Heller.

To say it is ''settled law'' that the second amendment does not apply to the States is not good, in my view. It is not settled law. I would certainly hope, and millions of Americans will be hoping, that the Supreme Court will not rewrite the Constitution; rather, they hope they will declare that the second amendment does apply to the States.

Further, she said it was not a fundamental right. That was not a phrase used by the other two courts which considered this question, and it is gratuitous, in my opinion. The combination of saying it is not a fundamental right, which is important to the ultimate analysis, and her statement that it is ''settled law'' that the second amendment does not apply to the States indicates a lack of appreciation for the importance of the second amendment right and a hostility toward the second amendment.

And similarly troubling were the judge's equivocations as to whether she would appropriately recuse herself from considering this issue that will surely come before her on the Supreme Court. She declined to commit to recusing herself if the Seventh or Ninth Circuit cases came to the Court, even though those cases raise exactly the same issue as the one she decided against gun rights. I would note also that even the Heller case—breathtaking to me—decided by a narrow vote of 5–4 that a right to keep and bear arms provided in the Constitution explicitly applies to bar the city of Washington, DC, from banning all firearms, basically.

In addition to the firefighters case and the second amendment case, both of which involve important issues of constitutional law, Judge Sotomayor handled, in a similarly cursory manner, a very important private property rights case which some have called the most egregious property rights decision in this area since the Supreme Court's infamous decision in the Kelo case a few years ago.

Just 3 years ago, after Kelo was decided, which caused quite a storm of controversy and a great deal of academic writing, Judge Sotomayor's court issued an opinion in which a private property owner found his property, on which he planned to build a CVS pharmacy, taken by condemnation by the city so that another private developer could build a Walgreen's on the same property. The way this condemnation came about should send chills down the spines of ordinary Americans, because the Walgreen developer, who was pursuing a redevelopment plan supported by the city, told the landowner that he could keep his land and build a CVS and they wouldn't condemn it. All he had to do was fork over $800,000 or half ownership in his business. I look at that and I can understand why the landowner thought he was being blackmailed. Judge Sotomayor looked at that and called it business as usual—a simple negotiation. But it is no negotiation when one party possesses the power through the city to take your property, whether you agree or not.

In another curiously short 2-page opinion, Judge Sotomayor's court rejected the landowner's claims, holding that the courtroom doors were closed to the landowner because he had brought his claim too late. The logic was that the landowner had to bring his claim to court months before the extortion occurred. The effect was to violate the Constitution. The Constitution plainly states that property ''shall not be taken for public use without just compensation.'' The Supreme Court has been quite clear that means you can't take private property except for public use.

At Judge Sotomayor's hearing, Professor Ilya Somin, who has written extensively on property matters, said this case was the most anti-property rights case since the infamous Kelo decision decided by a split Court a few years ago. Again, plain constitutional protections were ignored to the detriment of an individual American citizen who was standing up for his constitutional rights.

So in three cases, contrary to the plain text of the Constitution, Judge Sotomayor has ruled against the individual and in favor of the State in the face of seemingly clear provisions of the Constitution, furthering what can be fairly said to be, in each case, a more liberal agenda in America. A liberal or a conservative political belief, a Republican or Democratic political belief does not disqualify someone from serving on the Supreme Court. What does disqualify is when a judge allows such beliefs or ideology or opinions to impact decisions that they make in cases.

Anyone with more than a casual acquaintance with the law would instantly know that each of these three cases presented issues of great legal importance, and each deserved to be treated with great thoughtfulness. Judge Sotomayor surely understood that fact. Yet in each instance her decisions were unacceptably short. It seemed to me the only consistency in them was that the result favored a more liberal approach to government.

So I have come to announce, regretfully, that I cannot support Judge Sotomayor's elevation to our highest Court. She also now sits in a lifetime appointment on the Nation's second highest court, the Court of Appeals. Her experience, however well rounded, and background, however inspirational, are not enough. What matters is her record on the bench and her stated judicial philosophy.

I hope I am wrong, but my best judgment, my decision is that a Sotomayor vote on the Court—the Supreme Court—will be another vote for the new kind of ideological judging, not the kind of objectivity and restraint that have served our legal system in our Nation so well. Thus, I am unable to give my consent to this nomination.

Madam President, I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

## MORNING BUSINESS

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

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

## AMERICANS WITH DISABILITIES ACT

Mr. HARKIN. Madam President, yesterday, July 26, marked the 19th anniversary of the signing of the Americans with Disabilities Act by President George Herbert Walker Bush, on July 26, 1990. Passage of that law was a great national achievement. I remember being there. I was the chief sponsor of the bill. I was at the White House when it was signed. It was a beautiful sunny day. More people were on the White House lawn for the signing of that bill than for the signing of any bill in the history of this country. It was huge. It was a wonderful day. It was one of the landmark civil rights bills of our generation—of the 20th century.

Passage of the original Americans with Disabilities Act was a bipartisan evident. As the chief sponsor of that bill, I worked very closely with Senator Dole. Of others on the other side of the aisle, two come to mind: Senator Orrin Hatch, who worked very closely with us to get it through, and also Senator Lowell Weicker, of Connecticut. Senator Weicker was the first proponent of the Americans with Disabilities Act, but by the time we were able to get it passed, he was no longer in the Senate. But Senator Weicker did yeoman's work in getting it going and pulling everything together before he left the Senate.

We received invaluable support from President Bush and key members of his administration. I mention, in particular, White House Counsel Boyden Gray, Attorney General Richard Thornburgh, and Transportation Secretary Samuel Skinner.

We look back, after 19 years, and what do we see? We see amazing progress. Thanks to the Americans with Disabilities Act, or the ADA as we call it, streets, buildings, and transportation are more accessible for people with physical impairments. Information is offered in alternative formats so

it is usable by individuals with visual or hearing impairments. Need I mention the closed captioning through which one can be watching the words of my speech on television right now? Closed captioning is now going all over the country, not just for speeches on the Senate or House floor but for television programming and important events and weather announcements. Again, it all started after the passage of the Americans with Disabilities Act.

These changes are all around us—curb cuts, widened doorways, accessible buses, accessible trains. You never could get on an airplane before with a seeing-eye dog. Now when you get on an airplane you see people come on with a seeing-eye dog. They are allowed to do that.

These changes are now so integrated into our daily lives it is sometimes hard to remember what life was like before the ADA. After ADA, employers are required to provide reasonable accommodations so people with disabilities have an equal opportunity in the workplace. There were four goals of the ADA, four stated goals in the law: equality of opportunity, full participation, independent living, and economic self-sufficiency.

Last year, again with broad bipartisan support, we were able to pass the ADA Amendments Act, overturning a series of Supreme Court cases that greatly narrowed the scope of who is protected by the ADA. Beginning in 1999 and going to 2000 and 2001, there were a series of cases, the three most important are what we call the Sutton, the Murphy, and the Kirkingburg cases that came before the Supreme Court. In each of those cases, the Supreme Court did not look at the report language and the findings we had made in the Congress on who is covered by the ADA—the fact that mitigating circumstances were not to be taken into account and that there was not a demanding standard to be met. The Supreme Court turned that on its head. They narrowed who was covered by the ADA. They said that mitigating circumstances had to be taken into account and that there had to be a demanding standard for who was covered.

Again, we worked on a bipartisan, bicameral basis to straighten out these hearings, to overturn the Supreme Court's findings as a matter of fact, and we did. We did it on a bipartisan basis, both the House and the Senate, and President George Herbert Walker Bush's son, then-President George Bush, was able to sign those into law, and I was able to be down at the White House on that. Again, it was a very poignant moment with both President George W. Bush and his father, President George Herbert Walker Bush, being there for the signing of the ADA amendments. Thanks to that legislation of last year, people who were denied coverage under the ADA will now be covered.

As we celebrate the 19th anniversary of this great civil rights law, it is remarkable to think that many young people with disabilities have grown up taking advantage of these changes, and they have no memory of the way things used to be before the law was passed. I remember recently as I—as we are wont to do as Senators—had my picture taken out here at the front of the Capitol with a group of young people, one of whom was using a wheelchair, I was talking about the upcoming anniversary of the Americans with Disabilities Act. I pointed to the curb cuts so someone could come up and use a wheelchair. I said: You know, those were not there before 1992.

This young person in the wheelchair was astonished to find this out. He assumed they had always been able to move around freely.

As we look around after 19 years, we see a lot of changes—a lot of changes for the good. We see more young people taking advantage of educational opportunities, travel opportunities, families going out to restaurants, traveling with family members who have a disability, schools. We see a lot of wonderful changes that have taken place because of the ADA. But, frankly, there is more work to do. We have not yet reached the promised land of those four goals of the ADA.

At the top of the list is the need to pass the Community Choice Act. This bill has been around a long time. It was first introduced in the 1990s. It was then called MCASSA; that stood for the Medicaid Community Attendance Support Services Act. No one could ever remember what it stood for so we changed the name to the Community Choice Act.

What is this all about? Right now, all over America there are people with disabilities who qualify for Medicaid coverage. They are low income and they have severe disabilities, so they qualify for Medicaid. If they want to get their full coverage for support services, they have to go to a nursing home. If they go to a nursing home, under the law, Medicaid must pay for their support services. If they go to a nursing home, it must pay.

But let's say a person with a disability doesn't want to go to a nursing home, they kind of like to live in their own home, they would like to live with their friends, their family, in the community where they know people. Do they get any support services? None. Medicaid does not have to pay one single dime. If they go to a nursing home, they will pay for it; if you want to stay in your own home and get those support services, Medicaid doesn't have to pay for it. They do not have an equal right to choose where they want to live.

Again, I will say this, some States have applied for waivers, and they have extended these support services to people with disabilities in the community. But it varies from State to State. Some States don't have the waivers, some States do. Even in some States that have waivers—my State of Iowa has one—the waiting lists are long. It will take you 3 or 4 years to ever get up in the queue to be eligible. So it has been a patchwork of different things around the country.

On top of that, in 1999, 9 years after the passage of the Americans with Disabilities Act, a case came to the Supreme Court. We call it the Olmstead case, Olmstead v. L.C. It came out of Georgia. The Supreme Court made an important decision. It said that individuals with disabilities have the right to choose to receive their long-term services and support in the community rather than in an institutional setting. The Supreme Court said they have a right to that.

So this year marks the 19th anniversary of the ADA, it marks the 10th anniversary of that decision of Olmstead by the Supreme Court. Yet people with disabilities still have to go to a nursing home to get their long-term services and supports.

Listen to what the Supreme Court said in 1999:

> Institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.

Changing these assumptions is what the ADA is all about. Again, as I said, some States have done it. But it is kind of a patchwork quilt around the country. The Community Choice Act is focused on increasing the availability of attendant services and supports.

We know from studies done—the most important being done by Dr. Mitch LaPlante at the University of California at San Francisco—we know from studies that for a person with a disability to go into a nursing home to receive those long-term services and support costs three times more than what it does in the community. In other words, it would cost three times as much. So for every one person in a nursing home, you can support three people living in their own homes in the community.

You would say: Why aren't we doing that? Because there are about 600,000 people in this country. These are individuals who are on the bottom rung. Let's be frank about it; they are on the bottom rung of the economic ladder. They are poor because they are Medicaid eligible; they have varying degrees of disabilities that, if they do not have their support services, they cannot get out, they cannot go to work. They may be capable of working. After all, we have curb cuts, we have buses that are accessible, we have subways that are accessible, we mandated that employers must make reasonable accommodations—wonderful. But if you can't even get out of your house in the morning, what good does all that do you? So 600,000 people. CBO did a cost analysis and said this would cost about $50 billion over 10 years—$50 billion over 10 years.

That is a lot of money. But, keep in mind, the health care bill we are talking about passing, recent estimates by

CBO put it at $1 trillion over 10 years—$1 trillion over 10 years. So $50 billion, that is about 5 percent. Is that too much to ask to help people on the lowest rung of the economic ladder in our country, to help them take advantage of what is their civil right, what the Supreme Court said they have a right to: a right to live independently, a right to live in their own home, to get those services?

As we all know, civil rights such as this are not self-executing. They require some support from the Congress. Frankly, I must tell you I disagree with the estimate of the CBO because here is what they do not take into account. They don't take into account that many of these people with disabilities who could live in the community if they had these services and support can now get out the door in the morning, get to work, make a living, and pay taxes.

I think of my nephew Kelly. My nephew Kelly was injured in the military. He was serving on an aircraft carrier and got sucked down a jet engine. He lived, but he is a severe paraplegic for the rest of his life.

My nephew Kelly came back out of the military. He had that terrible accident. He was 19 years old, a big strapping kid. He went to school, went to college. Then he lived by himself—he still does. He lives in his own home. He has a van he drives with a lift on it.

He gets up in the morning, goes to work, comes back. How is he able to do this? He has support services. He has someone who comes in his house in the morning, gets him ready; someone who comes in the house at night, gets him ready for bed. He does his own shopping and cooking, but he has to have a nurse there, someone to help him get going. If he did not have that, he would not be able to go to work. But he has that. He is able to go to work, and he is a taxpaying citizen of this country.

There are hundreds of thousands of Kellys around this country who, if they had that support mechanism, could go to work. So when they say it costs $50 billion, I say, well, you are not taking that into account. They are not taking that into account. So as we enter the critical stage in hammering out comprehensive health care reform, we must not miss this opportunity to extend the availability of attendant support and services which so many have been fighting for for so many years.

Every individual with a significant disability deserves the choice about where to live and with whom to live and where to receive his or her essential services. That has a lot to do with employment, and as I look back over 19 years of the ADA, there is one thing that is still lacking: that is employment of people with disabilities.

Recent surveys show 63 percent of people with disabilities are unemployed. They want to work. They have abilities, but they are unemployed. A lot of this is because there are no support services. Much of this has to do with the fact that some employers are not providing reasonable accommodations. Some of it has to do with the fact that there is not an affirmative action program to hire people with disabilities. Some 21 million people with disabilities are not working, are not employed. So we need to do a better job with providing these people with disabilities the opportunity for economic self-sufficiency as we promised in the ADA.

On a closing note, on Friday of last week, President Obama announced the President of the United States will sign the U.N. Convention on the Rights of Persons with Disabilities, an international treaty that identifies the rights of persons living with disabilities and obligates countries to maintain those rights. The convention, after it will be signed, I understand, this week by our Ambassador to the U.N., will go through a process and then it will be referred to the Senate for ratification.

Well, we should take pride in the fact the United States has always been a leader in ensuring the rights of individuals with disabilities. We have made great progress toward the goal of equal opportunity, full participation, independent living, and economic self-sufficiency.

By becoming a party to the convention, the United States will continue its leadership role. So on this 19th anniversary of the ADA, I thank our President, President Barack Obama. I thank him for the statement he made last Friday that he was going to sign this week and for maintaining the leadership role of the United States in ensuring the rights of people with disabilities.

I only hope the convention will get through the process rapidly so we can get it to the Senate, and I hope the Senate can ratify it as soon as possible.

Lastly, on a more poignant note, I want to pause on this anniversary to remember people who played such a vital role in passing the ADA. Some are no longer with us, such as Justin Dart, who was the person who pulled it through. Justin Dart. We are fortunate that his wife Yoshiko continues to carry on this legacy day after day and week after week and year after year.

We remember Ed Roberts, the father of the independent living movement, whose work and vision continues to inspire powerfully. He is also gone.

Others who are still with us: Pat Wright, my staff director; Bobby Silverstein, who worked so hard and pulled this through. Of course, the one person, when the going got tough, when we did not know if we could get everything pulled together, who worked his magic to bring people on both sides of the aisle together—and herein I speak of Senator TED KENNEDY, the chairman of the committee, the HELP Committee, at that time, and I was chairman of the Disability Policy Subcommittee. But that was under the tutelage of Senator KENNEDY. He was the chairman of the HELP Committee at that time. It was because of his great work we were able to pull people together to get the great compromise to pass the ADA.

I would mention one other person I think might be somewhat responsible who is no longer with us. That is my late brother Frank. I have spoken of him many times as my inspiration for working on disability issues.

Frank became deaf at a young age. He was taken from our home and sent across the State to the Iowa School for the Deaf. At the time, many people called it the State School for the Deaf and Dumb. That is how they referred to people who could not hear, as deaf and dumb.

I remember my brother said to me: I may be deaf, but I am not dumb.

He also said to me one time: The only thing that deaf people cannot do is hear. He fought, not only in school, but after school to be independent and to make his own way in life, and he was able to do that.

I saw how many times he was discriminated against, whether it was getting a driver's license, so many things he was told he couldn't do because he was deaf. They were always trying to hold him back. But he was always pushing, and he was able to carve out a life of independence and dignity for himself. Why did he have to fight so hard for all of this? Why did he have to struggle so much just to get people to accept him for what he was and who he was and not just to look at the fact that he was a deaf man, but that he was a person of great capabilities.

Great ethics. Great work. Very hard. But why did he have to struggle? Then I started looking around and saw all of those people with disabilities in America who just had to overcome almost insurmountable obstacles just to be a contributing member of our society, not to get welfare. My brother was never on welfare in his entire life. He always worked hard. They just want to work and contribute and to be a part of our society. Why did it require extraordinary efforts to do things we just take for granted in our country?

So he was sort of my inspiration and continues to be today. So, yes, we have had our share of frustrations. We have not reached the promised land. We have a 60-percent or more rate of unemployment, and people with disabilities have to go to a nursing home to get support rather than living in the community.

So we do have a ways to go. We have come a long ways, but we do have a ways to go. So we can celebrate this great law, this great civil rights bill, the Americans with Disabilities Act. But now we also have to say we have to take these next steps.

On July 26, 1990, when he signed the ADA into law, President George Bush spoke with great eloquence. I will never forget his final words before taking up his pen. He said: ''Let the shameful wall of exclusion finally come tumbling down.''

Well, today that wall is indeed falling. We have to continue the progress. We have to go forward and not backward. We must enact the Community Choice Act so that people with disabilities can finally have not only independence but they can have full participation and they can have economic self-sufficiency.

Their goal, their home, not the nursing home, has been their cry for many years. We ought to hear that, heed it, and make sure we do not pass a health reform bill unless we have something in it to address this one fundamental flaw in our society that wreaks havoc against people with disabilities in our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. BROWN. Madam President, before Senator HARKIN leaves the floor, I want to express that there is no one in this Chamber, there is no one down the aisle in the House of Representatives, there is no one in this city who has worked harder on issues advocating for those with disabilities than TOM HARKIN.

I heard him make that moving and beautiful tribute to his brother. There is a building on the Galludet campus named after Senator HARKIN's brother.

Galludet is the university for the deaf in Washington, DC. I am fortunate to sit on the board of that university, recommended by Senator HARKIN, for whom I will always be grateful, that institution that has lifted up so many people, and his brother was a big part of that. Senator HARKIN is a big part of the success of that institution and advocating for the rights of the disabled.

### UNITED STATES-CHINA STRATEGIC AND ECONOMIC DIALOGUE, SED

I rise now to speak about the United States-China Strategic and Economic Dialogue, the so-called SED, which began early today in Washington. Dozens of Chinese officials descended on our city over the weekend. They are now negotiating, discussing, and engaging in strategic and economic dialogue with comparable officials in our Federal Government.

Secretary of State Clinton and Treasury Secretary Geithner are leading these talks for the Obama administration. The challenges they face are daunting. The issues that frame our relationship with China, which range from global security and fundamental human rights to trade and investment to energy and global warming policy, are critical to the future of our Nation and to the world.

I think we all agree a strong middle class makes a strong economy. We also agree the middle class, to put it mildly, is not faring well in this financial crisis. The official unemployment rate of the United States is 9.5 percent. My State is 11.1 percent. It has climbed 2 percentage points in the past 5 months.

China is one enormous export platform, and the United States, its biggest customer, has stopped buying. Morgan Stanley economists report that exports account for 47 percent of the economics of China and other East Asian nations, while in the United States consumption accounts for 70 percent of our GDP. As revenues flow out of the United States and into China, more than $200 billion every single year, China becomes our biggest lender. This unbalanced economic relationship breeds risk. It is rooted in our Nation's passive trade relations with China.

My State of Ohio is one of the great manufacturing States in this country, as it has been for about a century. We make solar panels and wind turbines, we make paper and steel and aluminum and glass and cars and tires and polymers and more. Look around today. I am sure you will find something you use that is made in Ohio. But let's look at a typical Ohio manufacturer and compare that to a Chinese manufacturer.

The Ohio manufacturer abides by a minimum wage to ensure workers are paid for and not robbed of talents. An Ohio manufacturer abides by clean air and workplace and product safety standards, helping to keep his or her workers healthy and productive and to keep customers safe. The Chinese manufacturer has no minimum wage to maintain. The Chinese manufacturer is allowed to pollute the environment, is allowed to force workers to use dangerous and faulty machinery.

Food and product safety are not a must for the Chinese manufacturers; lax enforcement makes it look more like an option. The Ohio manufacturer pays taxes, pays health benefits, pays Social Security.

The Ohio manufacturer typically allows family leave and gives WARN notices when there is going to be a plant closing. The Chinese manufacturer allows child labor. The Ohio manufacturer receives no government subsidy. The Chinese manufacturer receives subsidies often for the development of new technologies or for export subsidies.

The Chinese manufacturer benefits from China's manipulation of its currency, which gives, many economists think, a 40-percent cost advantage—a 40-percent cost advantage.

In addition to all of the other cost advantages of product safety, worker safety, minimum wage, paying into Social Security, Medicare, all of that, the Ohio manufacturer is investing in clean energy. The Ohio manufacturer is investing in new technologies and efficiencies to create more sustainable production practices. The Ohio manufacturers are part of the movement to make our country more energy efficient.

They will do their part to reduce carbon emissions but not at the expense of jobs if China and other countries do not take comparable action. Yet when the Ohio manufacturer petitions for relief and says it can compete with anyone, but only when it is a level playing field, or that it can emit less carbon but the Chinese competitors should bear similar costs on similar timelines, what does the Chinese Government say?

They call it protectionism.

Amazingly, that Chinese Government, when it labels behavior protectionism, has allies in the United States, all kinds of allies right here in Washington, DC. It had allies certainly in the Bush White House. It has allies among newspaper publishers certainly in this city. It has allies among Ivy League economists and among too many Members of the House of Representatives and the Senate. So when China labels anything we do to protect our workers, our environment, our families, our security, the chorus of protectionism from our own Nation's media and from many Ivy League economists and many political leaders sounds almost as loud as Chinese accusations of protectionism.

Earlier this year, Energy Secretary Chu noted that unless other countries also bear comparable costs for carbon emissions, the United States will be at a disadvantage. In other words, if we deal with our carbon emissions by stronger environmental laws on American manufacturing, and China doesn't, Secretary Chu understands that will encourage more industry to move from the United States, where everything produced contains an environmental cost, to China where many things produced contain little environmental cost. The response to Secretary Chu from the Chinese official? He called it an excuse to impose trade restrictions and practice protectionism. Chinese officials are quick to call the United States protectionist, despite all the protections it affords its manufacturers. These labels, launched when Congress considers import safety legislation—remember the toys at Halloween and Christmas and Easter that came from China that had lead-based paint on them at levels far in excess of what we consider safe, remember the drug ingredients put into prescription drugs that killed many people in Toledo with the drug Heparin and all over the country, those ingredients came from China—or the ''Buy American'' provisions are used by trading partners to influence our debates about public policy. Of course, Chinese officials are all too often joined, whenever we in this body insist on food safety, pharmaceutical safety, worker safety, environmental protections, by American CEOs, Ivy League economists, newspaper publishers, and too many people who sit in this Chamber.

Meanwhile, the United States has the world's most open economy. That is why I believe today's strategic economic dialog, the SED, is so important. China's industrial policy is based on unfair trade practices. It involves direct subsidies, indirect subsidies such as currency manipulation, and copyright piracy and hidden subsidies such as lax standards and sweatshop labor. In total, it results in the loss of millions of American jobs.

The Economic Policy Institute estimates that 2.3 million jobs were lost between 2001 and 2007 due to the trade deficit with China. Those were during our good economic times. During that economic time, the first 7 years of the Bush administration, not only did we lose 2.3 million jobs—many of them because of Chinese trade policy—in addition to that, 40,000 manufacturing concerns in our country shut down. China's policies are depressing wages and income levels worldwide, while its exploitation of environmental, health, and safety standards is killing Chinese workers and citizens and adding to our climate change challenges. The health of our economy, the strength of our middle class, depend on how Congress and the Obama administration engage with China on these issues.

I am hopeful the Strategic and Economic Dialogue begins a new chapter between two great nations, China and the United States. But Congress cannot sit idly by as we debate climate change or trade or manufacturing or any other policies that affect the middle class.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

## TAX INCREASES ON HIGHER INCOME AMERICANS

Mr. HATCH. Mr. President, I rise today to express my alarm about the possibility that this Congress will raise tax rates on higher income Americans in order to partially finance the cost of health care reform. Even though some of our colleagues on the other side of the aisle may not currently see the serious damage to our economy and our society that such a proposal could create, I want to spend a few minutes explaining why such a course of action would be a grave mistake.

We began hearing talk of raising taxes on the so-called wealthy last year during the presidential campaign. Then-candidate Obama made a number of promises regarding taxes. Perhaps most prominent among these were the following three pledges: He would cut taxes for small businesses and companies that create jobs in America; he would cut taxes for middle-class families, and no family making less than $250,000 per year will see their taxes increase; and families making more than $250,000 will pay either the same or lower tax rates than they paid in the 1990s.

I have been around this town for a long time, and I have seen a lot of presidential candidates make lots of promises. It is easy to greet such pledges with a degree of skepticism. However, I have seldom, if ever, seen promises regarding tax cuts and tax increases made more prominently, more clearly, or more often than those made by the President when he was on the campaign trail last year.

And yet, it was only a matter of a few weeks before the promise to keep tax rates below the 1990s level for higher income families was broken. In his budget outline for fiscal year 2010, which was released on February 26, 2009, the President included a proposal to partially pay for health care reform. This proposal would lower the value of itemized deductions for families with incomes over $250,000.

When this proposal is combined with the President's promise to allow the 2001 tax cuts to expire for families making over $250,000, we are looking at effective tax rates well above those paid by higher income families in the 1990s. Thus, the President broke his pledge within weeks of Inauguration Day.

While it is true that none of the health care reform proposals introduced so far in Congress includes the limitation on itemized deductions, this presidentially preferred offset proposal has been discussed in the Senate as a possible way to finance health care reform.

More importantly, the health care reform package that has been reported by two House committees and is working its way through a third includes an offset that is even more blatantly in violation of the President's pledge. This is a surtax on the adjusted gross income of single taxpayers earning more than $280,000 and of families earning more than $350,000.

This surtax starts at a rate of 1 percent at the lowest thresholds, but it is set at 5.4 percent for income in excess of $1 million. This new surtax has been projected by the Joint Committee on Taxation to raise $544 billion over 10 years. I know we are getting far too accustomed to seeing scores in the hundreds of billions of dollars, but let me say that number again: $544 billion. That is over half a trillion, with a T. For those who might be watching or listening at home, that is 544 followed by nine zeroes.

Whether at the 1 percent level, at the 5.4 percent level, or somewhere in between, this surtax also starkly violates the President's pledge to not increase tax rates above their 1990s levels. In fact, when combined with the phaseout of itemized deductions, which the President has also proposed bringing back from the grave, this surtax could increase the top marginal income tax rate to more than 46 percent. When State taxes are added, the top rate in many States would likely exceed 50 percent.

Some may say that this surtax is not the President's idea, and that it therefore should not be blamed on him. Well, it may have not been his idea, but I have not seen the White House repudiate it in any way. All indications from 1600 Pennsylvania Avenue are that the President supports this huge new tax increase.

Do I bring this matter to the attention of my colleagues today merely because I am irritated to see the President violating one of his campaign promises? No. As I mentioned earlier, I have seen a lot of campaign promises made and a lot of campaign promises broken.

Perhaps it is because I am worried about the estimated 12,900 Utah tax filers or the just over 2 million Americans who would be affected by this surtax. After all, some are saying, this is just over 1 percent of taxpayers, and after all, they are rich, and they can afford it, right?

Well, yes, I am concerned about them. A tax on adjusted gross income is unfair, and it is discriminatory. If we wish to raise tax rates we should do it in a straightforward and transparent way. A tax based on gross income provides for few or no deductions, and it jolts our long-established differential between ordinary income and income from capital. It is a raw revenue grab justified on the socialistic idea that these people earn more than the rest of us so they should be forced to share it with those less fortunate than they are.

But this also is not my primary reason for bringing up this matter today.

I bring this to the attention of the Senate for two reasons. First, high tax rates on upper-income earners, particularly when combined with the ever-increasing progressiveness of our tax system, are destructive to the economy and to our society.

Second, a good share of these higher income taxes will be paid by small businesses which will harm job creation. Today I want to talk about the problems of too much tax progressivity. In a subsequent floor speech, I will address the issue of how this tax will hurt small businesses and job creation.

We often hear from those on the left that our tax system is not progressive enough. Essentially, proponents of a more progressive tax system believe that the Internal Revenue Code taxes lower income taxpayers too much and higher income taxpayers too lightly. In essence, they believe the so-called wealthy among us are not paying their fair share of taxes.

However, the facts simply do not support this viewpoint. According to data released by the IRS for 2006, which is the latest year available, the highest-earning one percent of income earners received 22 percent of all the income in America. This sounds like a great deal of income concentrated into the hands of a few, and it is.

One would think and hope that an equitable tax system would require this top one percent of income earners, who are earning 22 percent of all income, to pay at least 22 percent of all the income taxes. If they paid exactly this amount, ours would be considered a proportional tax system. If they paid less, we would call it a regressive tax system. If the top earners paid more than the proportion that they earned, the tax system would be considered progressive.

I do not know anyone who truly believes that a completely regressive tax system is fair. No one should be asked