

were recognized as legitimate by the international community and the Iraqi people;

Whereas several of Iraq's main electoral blocs have committed to a Code of Conduct meant to ensure fair, transparent, and inclusive elections:

Now, therefore be it

*Resolved*, That the Senate—

(1) reaffirms the United States' strong commitment to building a robust, long-term partnership with Iraq that strengthens Iraq's security, stability, economy, and democracy;

(2) recognizes the United States' clear and enduring interest in partnering with the people of Iraq in building a stable, representative, successful, democratic state;

(3) urges the Administration—

(A) to devote continued, high-level attention and support for the people and Government of Iraq toward these goals, in particular during the critical months after the March 7, 2010 elections;

(B) to work with the international community to provide all necessary support for Iraqi elections, including technical support for Iraq's Independent High Electoral Commission and assistance for domestic and international monitoring;

(4) calls upon all parties within Iraq—

(A) to ensure that the March 7, 2010 parliamentary elections are free, fair, inclusive, and without violence or intimidation; and

(B) to refrain from rhetoric or actions that might undercut the legitimacy of such elections or inflame communal tensions;

(5) urges the countries surrounding Iraq—

(A) to refrain from exercising malign and destabilizing interference in Iraq's internal affairs; and

(B) to allow the people of Iraq to determine their own future;

(6) calls for the timely formation of an inclusive, effective, and representative new Iraqi government after the March 7, 2010 parliamentary elections;

(7) reaffirms that, while United States military forces redeploy from Iraq in the months after the March 7, 2010 elections, the United States must remain engaged in partnering with the people of Iraq to help them in building a stable, representative, and successful democratic state;

(8) expresses gratitude to the men and women of the United States Armed Forces, the Foreign Service, and other Federal Government agencies, for their service, sacrifices, and heroism in Iraq; and

(9) commends the people of Iraq for—

(A) the courage they have shown;

(B) the sacrifices they have endured; and

(C) the hard-won gains they have made in fighting terrorism, finding peace, and building democracy.

#### S. RES. 438

Whereas reading is a basic requirement for quality education and professional success, and is a source of pleasure throughout life;

Whereas the people of the United States must be able to read if the United States is to remain competitive in the global economy;

Whereas Congress, through the No Child Left Behind Act of 2001 (Public Law 107-110) and the Reading First, Early Reading First, and Improving Literacy Through School Libraries programs, has placed great emphasis on reading intervention and providing additional resources for reading assistance; and

Whereas more than 50 national organizations concerned about reading and education have joined with the National Education Association to use March 2, the anniversary of the birth of Theodor Geisel, also known as Dr. Seuss, to celebrate reading: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates March 2, 2010, as "Read Across America Day";

(2) honors Theodor Geisel, also known as Dr. Seuss, for his success in encouraging children to discover the joy of reading;

(3) honors the 13th anniversary of Read Across America Day;

(4) encourages parents to read with their children for at least 30 minutes on Read Across America Day in honor of the commitment of the Senate to building a Nation of readers; and

(5) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

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

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

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### TAX EXTENDERS ACT OF 2009—

##### Continued

Mr. WICKER. Madam President, I ask unanimous consent that Senator BARRASSO and I and others be allowed to enter into a colloquy for the next 30 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WICKER. Thank you, Madam President.

I come from a background of having earlier been in the State senate and then, after that, the U.S. House of Representatives. Sometimes when I was a State legislator and it looked as though we were making a hash of legislation on the senate side, someone would say: Well, let's pass the bill anyway, and we will clean it up in conference. It was always tempting to send it to conference and hope that cooler heads would prevail and we would get a better work product. Sometimes that happened and worked out well, and sometimes it turned out that we didn't clean it up in conference.

I am reminded of that when I hear about what is being discussed and what now seems to be the clear plan for this Democratic majority and President Obama in moving forward with health care legislation. The House has passed a flawed bill with \$½ trillion in cuts to Medicare, with huge mandates to the States, with tax increases—the largest increase, really, in entitlement big government, in my memory—and the Senate has passed its flawed version not only with those flaws I just mentioned in the House version but also special deals: a special deal for Nebraska, a special deal for Florida and Louisiana, and on and on and on. That is where we are now.

The plan now seems to be that this mistaken bill—the flawed bill the Senate passed on Christmas Eve—is now at the desk at the House of Representatives, and leadership over there is tempted to take that flawed product, pass it without any changes whatsoever, and send it to the President for his signature. The plan there is not the

old legislative trick of we will clean it up in conference; the plan is we will clean it up in reconciliation.

As I mentioned, sometimes that works and sometimes it doesn't. The problem with cleaning it up in reconciliation is that if this Democratic scheme goes forward and we do that, we will not only have a bill in conference to be worked out where if a mistake is made we can vote against it in the end, we will have a statute.

The plan is for the President to sign this flawed Senate product with all the taxes, with all the mandates, with all the special deals and purchases, sign it into law, and then hope the Senate can correct all of those mistakes in reconciliation. If that scheme fails, we will be stuck with a very bad product, and it will be the law of the land and up to some future Congress to deal with. Certainly, it will be the key, top, paramount election issue for the next several months.

If the plan works, if the Democratic scheme works, we will still have this. Maybe the "Louisiana purchase" will be taken out, the "Cornhusker kick-back," the "Gator Aid"—all of the special deals, and then we will have the President's additional taxes and additional Federal regulation that he has recently proposed. So when it is all said and done, even at their best, most optimistic predictions, we will have massive funding mandates to the States. We will have a \$½ trillion cut to Medicare. We will have huge tax increases and a large new entitlement program.

The people don't want this. I heard a Democratic Member of the House of Representatives very articulately stating this on television just this morning. He said people must be out of their minds. This is wrong, according to this Member of the House of Representatives, a Democrat who says he has voted against it before, and he is not going to be one of those who is willing to change his mind.

So I don't want to spend the rest of this year with this flawed legislation as the only campaign issue. It may be our only choice. But I can assure everyone within the sound of my voice of this: If this scheme goes through, if the flawed Senate version is signed into law and we have this reconciliation debate, this will be the No. 1 issue, if not the only issue, and there will be devastation for my friends on the other side of the aisle if they persist in thumbing their noses at the American people and defying the clear will of the American people on this issue.

I am glad to be joined by my friend, Senator BARRASSO, a legislator in his own right with considerable experience, and a physician. So I am happy to hear the comments of my colleague from Wyoming.

Mr. BARRASSO. I thank the Senator very much.

I agree exactly with what the Senator has said because my experience has been very similar. I served 5 years in the State senate in Wyoming, and before that I was a physician practicing in Wyoming, taking care of so many families.

Just this Monday I was at the Wyoming Medical Center, the largest hospital in our State. It is a hospital where I have previously been chief of staff. What I hear from the people of Wyoming is, I am sure, what the Senator has heard from the people at home in Mississippi.

They say: Why don't you just stop and start over? It is not just the people from our States. In a recent CNN poll, 50 percent of all Americans say it is time to stop and start over. We do need health care reform, but we don't need this 2,700-page bill with all of the unintended consequences that may come with it, all of the new government boards and commissions, a program that cuts \$500 billion from our seniors who depend upon Medicare for their health care, and raises taxes by another \$500 billion.

The American people are saying stop and start over. They know we have good ideas. They listened to that summit last week that I was able to attend at the White House, and they have heard Republicans say to let people buy insurance across State lines. That will help 12 million more people get insurance today. They say let's deal with lawsuit abuse. That will help cut down the cost of these unnecessary tests which are done as defensive medicine.

The American people understand the value of allowing small businesses to join to help more effectively get down the cost of care. That is why half of all Americans say stop and start over. One in four say just stop. Only one in four Americans say, yes; pass the bill. So three and four do not want what the President seems to be wanting to shove through Congress and shove down the throats of the American people. The American people are incensed. That is what I heard in Wyoming this weekend, and I am sure that is what my colleague from Mississippi heard as well.

So the President made his speech yesterday, which seemed to be a new sales pitch, but it is for the same bill. It is why so many folks have said stop, start over, focus on ideas that we know will work. Give individuals as patients, as citizens, rights to make more choices that affect their own lives. Give them those opportunities. We don't need a government bureaucrat standing between the doctor and a patient. We don't need a government bureaucrat. We don't need an insurance bureaucrat.

I see my colleague, Senator COBURN, is on the Senate floor, another physician who has, as have I, fought against government bureaucrats and insurance company bureaucrats all for our patients because we need a patient-centered health care program, and we need health care reform, but we do not need this massive bill.

I also see my colleague from Florida has joined us. He knows we have positive ideas that will make a difference because we need to be focused also on the cost of care. People like the quality of care they are getting. They like the fact it is available. But the cost is what is affecting us. That is why Warren Buffett just on Monday has said we need to focus on cost. They need to take 2,000 pages of nonsense out of the bill and focus on getting the costs under control. And so many of the ideas that the Republicans have brought forth have focused specifically on that.

So I would ask my colleague from Florida, are there things he has heard as he has visited with his constituents and the people in his State that he might wish to add to this discussion right now?

Mr. LEMIEUX. I appreciate my colleague, Dr. BARRASSO, for referring that question to me.

Certainly, the people of Florida are concerned about this bill. They want their costs to go down. They thought the whole reason we were doing this health care bill was to address the skyrocketing costs of health care, which have gone up 130 percent on average over the past 10 years. But what we find out with this bill is not only does it not lower the cost of health insurance for Americans, some Americans are going to have to pay more.

So why would we undertake this huge enterprise of creating a \$1 trillion new program, multitrillion dollars over time, a program that cuts \$½ trillion out of health care for seniors, and raises taxes by \$½ trillion, why would we undertake all of that if we weren't going to reduce the cost of health insurance for most Americans? That is what they think we are doing. They don't think we are creating some brand new entitlement program. They don't want us to do that. They want us to lower the costs.

So Republicans have put forward proposals, and some of them my colleague just mentioned: allowing insurance companies to sell across State lines, trying to get rid of junk lawsuits.

My wife Meike is pregnant with our fourth child. She goes and sees her doctor in Tallahassee, FL—not a big town. He is paying \$120,000 a year in medical malpractice insurance. That affects not only the cost of care, but it also creates defensive medicine which runs up costs. We have some real, concrete, step-by-step solutions on our side of the aisle that will make things better and reduce the cost of health care.

One thing I have had the privilege of working on with Dr. COBURN is going after waste, fraud, and abuse. In the Medicare system, we know there is \$60 billion a year—\$60 billion—in waste, fraud, and abuse. My State of Florida, unfortunately, is the capital of this health care fraud. I will give my colleagues one statistic that I think says it all.

In Miami Dade County, we have 7 percent of the country's AIDS popu-

lation. Yet reimbursements for health care for AIDS patients in Miami Dade County constitutes 83 percent of what is spent in the entire country. Now, why is that? It is because folks are committing fraud on the system. Health care providers in warehouses and strip shopping centers, or non-existent offices at all—they are not providers; they are just scam artists running the codes, running these medical codes and submitting them to Medicare and Medicaid.

Why shouldn't the first thing we do be to fix the system we have, stop this bleeding of billions of dollars and put it back into Medicare and Medicaid which are programs that are going broke? The President is right. There is a health care emergency in this country, and the No. 1 emergency is Medicare and Medicaid, not creating a new program.

We should make sure that Medicare for seniors is viable. We should stop the waste, fraud, and abuse, and get the money back in Medicare. Then we should do the same thing for Medicaid. Once we have those programs more solvent and we meet the commitments we have already made, then we could take the step-by-step approach on trying to provide lower cost health insurance for people who have it and more access for people who do not.

We have offered solutions, but as we understand it, what is going to happen is they are going to take the Senate bill that was passed on a party-line vote in December on Christmas Eve, send it over to the House, and then try to convince the House Democrats they are going to have a makeup bill that is going to fix their problems and try to send that over here and make us vote on that on a simple majority, which is not what was intended by the rules.

I am new to the Senate, so I want to defer to my colleagues and perhaps the Senator from Oklahoma can speak to this point and whether that is appropriate to do, and also speak to the good step-by-step measures we have to combat the problems with health care.

Mr. COBURN. Madam President, I thank my colleague from Florida, I, along with Senator BARRASSO, attended the summit with the President. If I recall his words, we were going to take 4 to 6 weeks to see if we couldn't work out some compromises to get a bill the American people would accept but we also would accept.

Today marks a week since we had that summit. We had an announcement yesterday that it is time to quit talking, it is time to quit negotiating, and they are going to ram a bill through.

I think there is a big contrast. I appreciate what my colleagues have said. The problem in health care in America is not quality, it is cost. Whatever we do is going to expand the amount of dollars we spend on health care if we add people to it. But if we attack the cost, what we can do is add more people with no increase in cost.

The thing that denies somebody access to health care is not not having an

insurance policy, it is having a cost of the system that is unaffordable, whether you have insurance or not.

Malcolm Sparrow from Harvard said he believes 20 percent of all the billings in Medicare are fraudulent. That is over \$100 billion a year. That is \$100 billion just in Medicare. We have good indications there is \$15 billion in fraud in New York City alone in Medicaid, in one city. Why would we not go after the fraud, which is the second largest component of wasted dollars in health care? Some of it the President has accepted. But the No. 1 cost that does not benefit anybody in this country is defensive medicine, and defensive medicine costs up to \$250 billion a year.

Let me tell my colleagues why it is so bad and it is terrible for us to ignore that issue. It is not just that we spend money doing tests on patients. When we do tests on patients, we put them at risk. Let me give an example.

If you go to any emergency room in this country this summer on a weekend, you will see a kid in there who has gotten hit with a baseball. What the standard is now because of the legal system in this country is that child is going to be exposed to radiation from a CT scan, not because they need it but because the ER doctor needs it.

The standard of care should be, if you have reliable adults around the child and the child has no neurologic damage and neurologic signs, watching to see, an expectation in case some signs show up and then you return. But the legal system in this country has entrapped us where we do hundreds of thousands of CT scans on children that none of them need because they get hit with a baseball. The ones who have true neurologic changes do need it. The vast majority do not. There are billions of dollars in one summertime event that gets chewed up that is not there to take care of somebody at a level which they can afford because we have added that on to the cost, not because a patient needs it, because the system demands it because doctors have to protect themselves against untoward extortion lawsuits. To ignore that as a part of this bill says you are not going to go where the money is to cut the costs.

I will summarize very shortly. It is said that Republicans do not have any plans. We have not said that, the President has. Then when he acknowledges a plan, he acknowledges only one that covers 3 million. We have a plan. I have a plan. Senator BURR has a plan. Senator GREGG has a plan. Senator DEMINT has a plan. Senator ENZI has a plan. They all cover 20 million to 25 million more Americans. They do it by not raising taxes, not stealing money from Medicare, which has a \$37 trillion unfunded liability over the near term. We do all that without increasing the cost. We get a true expansion of coverage without an increase in cost.

What we think would be the right thing to do is to center health care on patients, not the government. This

plan has 898 new government programs. It has 1,695 times where the Secretary of HHS will write new regulations for health care. What do you think the consequence of complying with those regulations is going to be in terms of cost? We are adding more cost into the system that does not go to help anybody get well but become compliance costs.

We believe in patient centered, not government centered. We believe in expanding options available to patients—patients—not expanding government. We believe in increasing access, not increasing taxes on people. We believe in reducing costs, not quality.

The bill we are going to have before us, no matter what the shenanigans are to pass it, does not attack the underlying problem, and that is cost. Until we look at cost, we will never get out of the problems with Medicare, and we will never truly improve access for Americans.

I yield to my colleague.

Mr. WICKER. Madam President, I think Senator LEMIEUX and I agree on this point. We owe a debt of gratitude to our colleagues, our two physicians, for making it clear on national television over the course of 7½ hours last week that Republicans have positive ideas, ideas that will work and, frankly, ideas the American people believe in.

I am astonished that after we had such a clear demonstration of ideas not only that are popular, but ideas that need to be given a chance to work, the whole thrust of that 7½-hour discussion has been cast aside, and we are back at this proposal of passing the flawed bill with all of the mistakes that people on the other side of the aisle agree we have made and signing it into law before we do anything else.

I have some comments I want to make about what Senator COBURN called “shenanigans,” the reconciliation process.

Let me say this: “Never intended for this purpose.” “An outrage.” “A non-starter.” “I will not accept it.” “Ill advised.” “A real mistake.” “Not appropriate.” “Undesirable.” Those are all comments of Democratic Members of the Senate about the concept of cramming this bill through and this procedure I have described and coming back with reconciliation. It is not simply a Republican objection. It is an objection where we have our Democratic colleagues on record.

I hope they will recall their words. I hope there is not some pressure that is going to be issued against my colleagues in the House and in the Senate to do something they do not believe in simply because someone in the White House wants it and is exerting pressure.

The comments I have read were all made by Democrats. I happen to agree with them. We have never under reconciliation attempted something of this magnitude and this substance. It would forever change the legislative

process in the House and Senate of the United States if we begin with health care.

I will be happy to yield.

Mr. BARRASSO. If I may, one of the phrases the Senator used about using reconciliation was “hijacking,” hijacking the system, hijacking the way this works. That specific word was used by then-Senator Barack Obama when he was a Senator and very much opposed to this approach.

One of the other things he has said, when we talk about the \$500 billion being cut from our seniors on Medicare, he talks about a program called Medicare Advantage. That is only a part of the area that is involved. For people on Medicare Advantage—and there are about 10 million of them—they know they are on it, and they like the program. There are some advantages. One is it actually works to help coordinate care. It works with preventive care. Those are things that are very important. But there are also cuts in Medicare for nursing homes, for payments to doctors, for home health care, which is a lifeline for people, for hospice care, for care at the end of someone's life. That is all going to get cut under these \$500 billion of Medicare cuts.

Mr. COBURN. Will the Senator yield?

Mr. BARRASSO. Absolutely.

Mr. COBURN. The one problem with the \$500 billion worth of cuts, if you read what the CBO said about that, they said it is highly unlikely Congress will ever effectuate those cuts. If that is true, then that means there is \$500 billion in costs that are not accounted for. So, one, either you are going to undermine the trust fund and actually lessen the available funds for seniors today or you are not, and you are using a ruse and saying we are going to charge this to our children and grandchildren.

Having been in this body for 5 years, this body will not make those cuts. It will not do it.

I want to make one other point. It is this: We recognize there are difficulties in health care. We recognize that the No. 1 difficulty that is keeping somebody from getting care is the cost of care. This bill does nothing for that. I would go back and worry that when the President said we will look at this for 4 to 6 weeks and now we are less than a week later and he is ramming this through, what is it the American people want us to do? Do they want us to create another entitlement system when every entitlement system we have today is bankrupt and in creating that steal from the bankrupt entitlement systems we have today or do they want a commonsense approach that will go after the cost, that will lessen the cost of care for everybody in America because we will never solve the problem with Medicare and its unfunded liabilities and address the costs.

I see the Senator from Arizona is here, and I am glad he has shown up.

Mr. MCCAIN. Madam President, now that my two favorite doctors are on

the floor, I wish to refer them to and ask a question of both of them about a statement that the President just gave. He said:

I believe it's time to give the American people more control over their own health insurance. I don't believe we can afford to leave life-and-death decisions about health care to the discretion of insurance company executives alone. I believe that doctors and nurses like the ones in this room should be free to decide what's best for their patients.

By the way, I hope from now on our doctors will wear white coats on the floor. It would be impressive to me. But that is neither here nor there.

Isn't it true that on page 982 there is created a new board of Federal bureaucrats—the Independent Payment Advisory Board, it is called—required to make binding recommendations to reduce the costs of the Medicare Program? How does that work if the President is saying give the American people more control and there is an independent payment advisory board that is making binding recommendations, I ask my two doctor friends.

Mr. COBURN. There are three very worrisome provisions in this bill. One is the Medicare Advisory Board that the Senator from Arizona just talked about that will decide what gets paid for and what does not, and Congress will either have to agree to it or agree to some other cuts.

The second is the Cost Comparative Effectiveness Panel which says: We do not care what is best for you, this is the cheapest; therefore, this is what you are going to get, which ignores the doctor-patient relationship in terms of what is best for you as an individual patient.

Finally, the Task Force on Preventive Services, which we saw during the debate in December, had recommended women under 50 not get mammograms because it was not "cost-effective." When you look behind that data, it is 1 to 1,480 versus 1 to 1,460, versus 60 years and above, versus 40 to 50.

What happens is, you now have three government agencies that are going to step between the doctor and the patient when it comes to Medicare and Medicaid in this country, and actually it will fall over and they will mandate it on your own private coverage. That is very inconsistent in terms of saying you want doctors to be in control of health care but you have a bill that has three organizations in it that are designed to allow bureaucrats to make the decision on what your care is going to be.

Mr. MCCAIN. Madam President, I ask Dr. BARRASSO, if these provisions were operative at this time, how would that have affected his practice?

Mr. BARRASSO. Well, it would have affected me in several ways. It would have affected my life in that my wife Bobbi is a breast cancer survivor. She had a screening mammogram when she was in her forties—something this Task Force on Preventive Services says was unnecessary. If it hadn't been

for that screening mammogram, her cancer would not have been detected. And by having the screening mammogram, which the American Cancer Society and others recommend for women in this country, and following the guidelines of the cancer society as opposed to this new government-mandated guideline, her cancer was detected. She has had three operations, several bouts of chemotherapy, and is alive today, a breast cancer survivor, 6 years later, because she did what scientists and what those who know what is best for patients recommended as opposed to what a government panel might have recommended trying to focus on their cost-effectiveness.

Mr. MCCAIN. So a patient comes to you with a certain orthopedic requirement that requires a certain level of treatment, and what does that do to you as a physician, as well as the patient?

Mr. BARRASSO. It puts the government between you and your patient, which is what you never want to have happen. As Dr. COBURN said, that is the wrong approach. It is not the way medicine has ever been practiced in America. It is not the way patients want it; it is not the way doctors want it. We don't want bureaucrats, whether government or insurance company bureaucrats, between doctors and patients.

As we saw at the health care summit on Thursday of last week, the President kept talking about covering people, health coverage, but he wants to put 15 million more people on Medicaid—a program where half the doctors don't see them because the government pays so little; a program where the Mayo Clinic, which the President has held up as a model for health care in America, says: We can't continue to see Medicaid patients from a number of States because we lose too much money. And now they have said the same with regard to Medicare. So when they are talking about \$500 billion of cuts to Medicare, the Mayo Clinic, on January 1, said they can't handle additional Medicare patients because last year they lost, they said, \$800 million by taking care of Medicare patients because the government pays so little.

Mr. MCCAIN. On the issue of coming between the doctor and the patient, this legislation, the 2,733 pages, has 159 new boards, bureaucracies, and programs created—159.

When the President says you will be able to choose your health care, how in the world does that in any way comport with the fact that it requires every American to buy health insurance whether they want to or not, which, to me, raises a fundamental question, a constitutional question. Where in the Constitution does it say that we require every American to have a health insurance policy?

Finally, I would say there were a lot of impressive statements made during the Blair House meeting. I thought, frankly, Dr. BARRASSO gave one of the most impressive ones I have heard. The

perspective from practicing physicians is something that has all too often been absent from this debate.

I know my colleague paid attention when Congressman PAUL RYAN gave his statement as far as the budgetary implications and the costs to Americans. It has been reprinted in the Wall Street Journal this morning. In 5 or 6 minutes, I think he encapsulated what this legislation does in laying out, in his view, a true 10-year cost of \$2.3 trillion. He points out the gimmickry, and one of them, of course—the elephant in the room—is that you have 10 years of tax increases for \$½ trillion and 10 years of cuts and \$½ trillion to pay for 6 years of spending. Now, where in the world would you have a program that you pay for 10 years in taxes and cuts in benefits and have 6 years of benefits? So the true cost, the true cost over 10 years without the budget gimmickry is \$2.3 trillion, and things such as \$72 billion in claims and money from the CLASS Act—the list goes on and on.

So what I would ask Dr. BARRASSO—we all trust the Congressional Budget Office. There is no doubt we all trust these people and their estimates, but their estimates are only as good as the proposals that are given to them. And I might add—again, I would request Dr. BARRASSO's comments on this—that the President's proposal that was online was really an 11-page statement, and the Congressional Budget Office said they could not give a cost estimate because they didn't have sufficient information. So it is very clear, when you delay revenues until the year 2016, that obviously has budgetary impacts.

Finally, I would ask Dr. BARRASSO to talk about this so-called doc fix which has been counted in the budget as reducing cost, and everybody knows we are not going to cut physician payments for treatment of Medicare patients. I think that would be an important one for Dr. BARRASSO to discuss because I think it really encapsulates the kind of budget gimmickry that has gone on in the formation of this legislation.

Mr. BARRASSO. Madam President, I ask unanimous consent to continue for an additional 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BARRASSO. Madam President, if I could, several things. There is a wonderful PAUL RYAN op-ed in today's Wall Street Journal, and I would recommend it to anyone to look at that because he specifically points out that the President's own chief Medicare actuary says the Senate and House bills are bending the cost curve up, making the costs go up, which is what you hear if you go to a town meeting in Arizona or in Wyoming. When you ask people: If this bill passes, will the cost of your own care go up, the hands go up. When you say: Well, how about the quality; will the quality of your care go down? Again, the hands go up. So that is a

continual concern of people all across America, which is why three-quarters of Americans have told CNN it is time to either just completely stop or stop and start over and only one-quarter of Americans support this proposal, because they realize this is going to do that.

The Senator from Arizona mentioned, and it was interesting, the 11 pages from the President. The gimmicks are still there. They may have taken out one of the gimmicks, but the spending gimmicks are there, plus the Louisiana purchase, the special carve-out for 800,000 people in Florida who are on Medicare Advantage. They are protected, but there are another 10 million Americans who will lose their Medicare Advantage.

Then the question came up of what we refer to as the "doc fix." The way the numbers are moved around—

Mr. McCAIN. For the benefit of our colleagues, could the Senator explain exactly what the doc fix means and how we got to it?

Mr. BARRASSO. Right now—and we just passed a 1-month extension the other night—Medicare is supposed to cut the fees for all doctors across the country by 21 percent. Seniors know Medicare underpays right now. As one of my colleagues in the State senate in Wyoming used to say, government is the biggest deadbeat payer because they do not even pay enough to cover the cost of the care that is delivered in our hospitals. With ambulances, they do not cover enough to pay for the gas to fill up the ambulances to go the long distances we have in Arizona or in Wyoming.

But right now, to deal with some promises that were made years ago, the fees for physicians should be cut 21 percent, according to Medicare. A number of years ago, they were supposed to cut it by 1 or 2 percent, and they said: Well, we will not cut it, but next year we will cut it by 4 percent and then next year 8 percent and then 10 percent. Well, now they have continued to kick the can down the road enough so that this year they are supposed to cut the fees for physicians by 21 percent.

Mr. McCAIN. Which could not happen.

Mr. BARRASSO. It could not. According to the President's budget numbers and the way this bill is written and the financial gimmickry, they want to cut physician fees for Medicare by 21 percent and keep them frozen for the next 10 years. So it is cut and freeze for 10 years, and they use that as one of the additional financial gimmicks.

Well, if you do that to the doctors in the country, who are already reluctant to see Medicare patients because the payment is so low—the Mayo Clinic said they are not going to see new Medicare patients because the reimbursement at today's rates is so low—if you drop them 21 percent additionally at a time when the Congressional Budget Office says one-fifth of the hos-

pitals and one-fifth of the doctors' offices in this country will be unable to continue to be solvent 10 years from now if this bill goes into place—we know without a question that we cannot allow that to happen. Congress knows that, the doctors know that, the American people know it. Everybody knows it except, apparently, the people writing the health care bill, who say: Oh, this is actually going to save money in the long run. When people look at this in an honest way, they know this is going to drive up the cost of care and make the quality of care for our American citizens go down.

Mr. McCAIN. Madam President, I ask unanimous consent to have printed in the RECORD the Wall Street Journal piece authored by Congressman PAUL RYAN.

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

[From the Wall Street Journal]  
DISSECTING THE REAL COST OF OBAMACARE  
(By Paul D. Ryan)

(The following are remarks made by Congressman Paul Ryan of Wisconsin, the ranking Republican on the House Budget Committee, about the cost of the House and Senate health-care bills at President Obama's Blair House summit on health care, Feb. 25.)

Look, we agree on the problem here. And the problem is health inflation is driving us off of a fiscal cliff.

Mr. President, you said health-care reform is budget reform. You're right. We agree with that. Medicare, right now, has a \$38 trillion unfunded liability. That's \$38 trillion in empty promises to my parents' generation, our generation, our kids' generation. Medicaid's growing at 21 percent each year. It's suffocating states' budgets. It's adding trillions in obligations that we have no means to pay for.

Now, you're right to frame the debate on cost and health inflation. And in September, when you spoke to us in the well of the House, you basically said—and I totally agree with this—I will not sign a plan that adds one dime to our deficits either now or in the future.

Since the Congressional Budget Office can't score your bill, because it doesn't have sufficient detail, but it tracks very similar to the Senate bill, I want to unpack the Senate score a little bit.

And if you take a look at the CBO analysis—analysis from your chief actuary—I think it's very revealing. This bill does not control costs. This bill does not reduce deficits. Instead, this bill adds a new health-care entitlement at a time when we have no idea how to pay for the entitlements we already have.

Now let me go through why I say that. The majority leader said the bill scores as reducing the deficit \$131 billion over the next 10 years. First, a little bit about CBO. I work with them every single day—very good people, great professionals. They do their jobs well. But their job is to score what is placed in front of them. And what has been placed in front of them is a bill that is full of gimmicks and smoke-and-mirrors.

Now, what do I mean when I say that? Well, first off, the bill has 10 years of tax increases, about half a trillion dollars, with 10 years of Medicare cuts, about half a trillion dollars, to pay for 6 years of spending.

Now, what's the true 10-year cost of this bill in 10 years? That's \$2.3 trillion.

[The Senate bill] does [a] couple of other things. It takes \$52 billion in higher Social

Security tax revenues and counts them as offsets. But that's really reserved for Social Security. So either we're double-counting them or we don't intend on paying those Social Security benefits.

It takes \$72 billion and claims money from the CLASS Act. That's the long-term care insurance program. It takes the money from premiums that are designed for that benefit and instead counts them as offsets.

The Senate Budget Committee chairman [Kent Conrad] said that this is a Ponzi scheme that would make Bernie Madoff proud.

Now, when you take a look at the Medicare cuts, what this bill essentially does [is treat] Medicare like a piggy bank. It raids a half a trillion dollars out of Medicare, not to shore up Medicare solvency, but to spend on this new government program.

[A]ccording to the chief actuary of Medicare . . . as much as 20 percent of Medicare's providers will either go out of business or will have to stop seeing Medicare beneficiaries. Millions of seniors . . . who have chosen Medicare Advantage will lose the coverage that they now enjoy.

You can't say that you're using this money to either extend Medicare solvency and also offset the cost of this new program. That's double-counting.

And so when you take a look at all of this; when you strip out the double-counting and what I would call these gimmicks, the full 10-year cost of the bill has a \$460 billion deficit. The second 10-year cost of this bill has a \$1.4 trillion deficit.

[P]robably the most cynical gimmick in this bill is something that we all probably agree on. We don't think we should cut doctors [annual federal reimbursements] 21 percent next year. We've stopped those cuts from occurring every year for the last seven years.

We all call this, here in Washington, the doc fix. Well, the doc fix, according to your numbers, costs \$371 billion. It was in the first iteration of all of these bills, but because it was a big price tag and it made the score look bad, made it look like a deficit . . . that provision was taken out, and it's been going on in stand-alone legislation. But ignoring these costs does not remove them from the backs of taxpayers. Hiding spending does not reduce spending. And so when you take a look at all of this, it just doesn't add up.

I'll finish with the cost curve. Are we bending the cost curve down or are we bending the cost curve up?

Well, if you look at your own chief actuary at Medicare, we're bending it up. He's claiming that we're going up \$222 billion, adding more to the unsustainable fiscal situation we have.

And so, when you take a look at this, it's really deeper than the deficits or the budget gimmicks or the actuarial analysis. There really is a difference between us.

[W]e've been talking about how much we agree on different issues, but there really is a difference between us. And it's basically this. We don't think the government should be in control of all of this. We want people to be in control. And that, at the end of the day, is the big difference.

Now, we've offered lots of ideas all last year, all this year. Because we agree the status quo is unsustainable. It's got to get fixed.

It's bankrupting families. It's bankrupting our government. It's hurting families with pre-existing conditions. We all want to fix this.

But we don't think that this is the . . . the solution. And all of the analysis we get proves that point.

Now, I'll just simply say this. . . . [W]e are all representatives of the American people. We all do town hall meetings. We all

talk to our constituents. And I've got to tell you, the American people are engaged. And if you think they want a government takeover of health care, I would respectfully submit you're not listening to them.

So what we simply want to do is start over, work on a clean-sheeted paper, move through these issues, step by step, and fix them, and bring down health-care costs and not raise them. And that's basically the point.

Mr. MCCAIN. Finally, Madam President, I find it incredibly cynical to tell the American people that the cost of this reform is going to be I believe \$371 billion less than we all know it actually will be.

I ask Senator BARRASSO, if those cuts were ever enacted, what is the prospect of any of the overwhelming majority of doctors just saying: I am not going to treat Medicare patients.

Mr. BARRASSO. We are going to see that. We will see that across the board. I was at our hospital in Wyoming on Monday talking to physicians who take care of everyone, and they have great concerns because they say at that rate they can't afford to keep the doors open, if the Medicare cuts go through, the cuts the President says will have to go through if, in fact, he wants to hold up the numbers he continues to talk about.

Mr. MCCAIN. Well, I hope we will continue to be on the floor. Again, we need to talk about what the President said during his campaign about many things but including what I saw this morning on FOX News where he said you shouldn't govern with 50-plus-1 votes, that he was in opposition to that. I am sorry he does not remain in opposition to that.

I thank Dr. BARRASSO and the Chair, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Madam President, we are now on a bill to extend tax cuts, to extend certain payments for unemployment insurance, COBRA subsidies, and so forth. This is a jobs bill. This is a safety net extenders bill. This is not a health care bill.

Four Senators just spoke—I think there were four; six of them altogether—basically being very critical of the health care reform bill we passed in the Senate, very critical of the President's effort to pass health care reform. I think some of the misstatements made deserve a response.

The Senator from Mississippi called the Senate health care bill a massive tax increase. The Senator is simply mistaken. That is not correct. The health care reform legislation is, in fact, a major tax cut. It is not a tax increase but a major tax cut. The Senate passed a health care bill that provided more than \$400 billion in tax cuts for Americans to buy health insurance—\$400 billion in tax cuts. Those were tax credits given to Americans to buy health insurance. That sounds like a tax cut to me. This is the largest tax cut for individuals since the record tax cuts of 2001.

The junior Senator from Wyoming said: We need to stop and start all over again. Anyone who has paid any attention to the debate on health care reform for any amount of time knows the opportunity to pass health care reform comes around about once in a generation. It doesn't happen all the time. In fact, I think it was Teddy Roosevelt who first attempted to pass health care reform. So it has been 67 years.

We are on the cusp of passing major health care reform now. We all know health care reform must pass. Why? To address the Draconian cost increases that families, companies, and budgets are facing; to reform the health care insurance industry. If we do not do it now, don't reform health care now, believe me, this country is going to be digging itself into a pretty deep hole.

This comes along once in a lifetime. So a call to stop and start over again in reality is a call to kill health care reform. That is what that is. When you hear anybody saying let's stop and start all over again, really what they want to do is kill health care reform. That is the whole point of it all. Stopping and starting all over again sounds to me like nobody has paid any attention to where we are.

This Senator does not like to be partisan at all. Most Senators don't like to be partisan. But the fact is, the other side of the aisle never presented a comprehensive health care reform proposal. There was never an alternative. In my judgment, it was a disservice to the American people that the other side did not present anything that could be called comprehensive health care reform so we could debate it. The proposal offered by the Finance Committee and offered by the HELP committee, merged together into one, that was basically the Democratic version. There was an opportunity to debate that as well as debate the one offered by the other side, but they didn't ever offer one. Instead, what did they do? They just picked and tried to find holes and criticize.

It is easy to criticize; anything can be criticized. If you are halfway intelligent you can make any criticism that is inaccurate sound pretty good. That is basically what has happened, a constant barrage of criticism and very little good-faith effort to try to find a common solution.

There was an effort a while ago when Senator GRASSLEY and I and Senator ENZI, Senator CONRAD, and Senator SNOWE worked hard to try to find a solution. We worked for days and months. Frankly, to be totally candid about it, the other side decided it was better politics just to kill health care reform than it was to try to find a solution. That is why the three Republicans I was working with, frankly, had to withdraw. They withdrew because there was so much political pressure on them from their leadership to kill the bill.

Senator SNOWE stayed with us for a while, but even—I don't want to put

words in Senator SNOWE's mouth or try to speak for her. She can decide what she wants. But even she came under tremendous pressure not to find a solution.

Any effort to start all over again is really a very thinly veiled call to kill health care reform.

Instead of passing health care reform, the Senator from Wyoming said he wanted a series of ideas. One idea he talked about is to allow people to buy health insurance across State lines. I am sure he did not really mean this, but if he thinks that is the sole solution to health care reform, I think most Americans who were denied coverage because of preexisting conditions, who face all kinds of problems from the health insurance industry, wouldn't agree with that. But, nevertheless, I might say the bill that passed the Senate does allow insurance to be sold across State lines—maybe not quite as freely as the opponents on the other side of the aisle would prefer, but we do allow insurance to be sold across State lines. Why? Because we want competition. We want people to choose. People should have the ability to choose what health insurance plan they want.

There is very little competition now. In many States maybe one or two companies dominate. There is very little competition. That is not right. Allowing insurance companies to sell across State lines will allow more competition, allow people a better choice, but it should be done in a way that is fair to the American public.

One of the big problems is, if companies are allowed to sell across State lines willy-nilly without some protections, I will tell you what is going to happen. It is going to be a race to the bottom. Insurance companies are going to race to find the State that has the lowest standards, and that is where they will set up and then they will sell across the country.

What that means is somebody who resides in a State that has pretty high standards but finds the only policies being sold are those sold by companies registered in a State with low standards is going to have very low-quality insurance.

What we want is fairness, evenhandedness, some balance so people are able to buy insurance freely and have their choice to buy insurance; which is to say, the basic approach the majority has taken in health insurance reform is to basically maintain the current system.

Today we spend about \$2.4 or \$2.5 trillion on health care. That is a total figure—about half public and half private. The half public is Medicaid, Medicare, Children's Health Insurance. That is about half. The other half is private; it is commercial insurance. That is the way it should be. That is our American way. We are not Canada. We are not Great Britain. We are not Sweden. We are not Japan. We are America. In America we have a system which is basically 50-50: half public, half private.



This legislation before us today maintains that allocation, maintains that ability for people to continue to buy private insurance. It maintains the ability for people to have more—in fact more choices, more competition, more opportunity to buy insurance, especially when the exchanges are set up.

I say to my good friend from Wyoming, who says: Gee, here is an idea. Why not let people buy insurance across State lines, we do that. We do allow people to buy across State lines, but that is after we have a level playing field. We want to make sure insurance sold across State lines is quality insurance, not insurance that is of very low quality. We also allow in the major legislation insurance to be sold across State lines when the exchange is set up.

The Senators from Wyoming and Oklahoma talked about something else. They talked about tort reform. I must say, when the Senator from Oklahoma, one who talks about tort reform, speaks—first of all, he said our bill ignores tort reform. That is not true. Our legislation does not ignore tort reform. Frankly, we begin with a series of steps. We begin to build, State-by-State, programs to try out some of the best ideas to address lawsuit reform in which, basically, States have the ability to try different measures. They can try courts, health courts; they can try something similar to workers comp or they can set up a system similar to tort reform—lawsuit reform in the State of Michigan. It is called “sorry works.” If it is a bad outcome, the hospital, the physician goes to the patient and says: I am sorry, it didn’t work out. They have a long talk about it and negotiate out a settlement. If they reach an agreement, that is great. If they do not, then the statements used by the physician, if there is a subsequent suit, cannot be used. We do begin to go down the road of lawsuit reform in the major bill.

The Senator also talked about people joining to buy insurance in associations. I might say, again, our bill allows that. Our bill allows that and much more. When you hear people talk about the bill to join in association health plans, it is important to also point out to people that is quite restrictive. First of all, it is restrictive in the sense it is available only to members of that association. It is not available to other people. I think we want to make sure we set up pooling arrangements so all Americans have the availability of pooling.

In addition, who joins associations? The companies join them. What about the employees? The employees—the companies might be members of an association, pooling, but it might not be in the best interests of or what the employees want. It really cuts out employees.

The pooling we allow in our underlying bill is real pooling. It is honest-to-goodness pooling. Frankly, the real pooling will occur when the exchange

is set up because then companies will be able to sell across lines in the insurance exchange and also where a lot more people will be involved, which will enable us to have the same benefits of pooling.

I might also say a point about the exchange. Right now, if you get on your computer, if you want to find the lowest airline ticket, what do you do? You go to Orbitz or you go to Expedia; you go to Travelocity, to these various outfits, and you look around and say: Oh, I like this fare. Oh, no, wrong day.

So you can shop online. That is basically what we are talking about in the insurance exchange. Just like Orbitz, just like Expedia, you get online and you can shop and you can find the right fares. It is going to be easier because we are requiring insurance forms to be standardized and much more simplified so people can understand the choices they are pursuing and make the choices they want.

I just want to make clear the Senate knows when the Senator from Wyoming talks about associations, he is really talking about pooling. Our underlying bill has pooling, and I think even better pooling.

The Senators from Oklahoma, Mississippi, and Wyoming expressed shock at the prospect of health care being addressed in a budget reconciliation process. The Senator from Oklahoma said the reconciliation process means “ramming it through.”

What my colleagues fail to remember is that this body has used budget reconciliation 22 times. This is nothing new. And 17 of those times it was the Republican Party, controlling either the Congress or the White House, when reconciliation was used. Most of the time that we had reconciliation bills they included measures on health care. Health care is no stranger to the reconciliation process. I want to make that clear. Health care is no stranger to the reconciliation process.

I am not talking about just minor provisions in health care. The budget reconciliation was the process by which the Republican Senate passed the COBRA health insurance bill—under reconciliation, the Republican Senate passed it. COBRA, after all, stands for Consolidated Omnibus Budget Reconciliation Act of 1986.

The Senate used that process, reconciliation, to create the Children’s Health Insurance Program in 1997. That was a very significant health insurance program created under reconciliation in 1997. So health care is no stranger to this reconciliation process. It is actually the exception when Congress has done health care reform outside of reconciliation. That is the real truth.

The Senator from Arizona questioned the constitutionality of requiring people to buy insurance. My colleagues want health care to be thrown out if these charges are true. The fact is, the vast majority of scholars who have considered the matter said the com-

merce clause and revenue clause in the Constitution give the Congress ample authority to address the responsibility of people to buy insurance. This has been addressed many times.

Certainly, somebody can trot out a law professor or somebody who can make a contrary claim. But our committee, the Finance Committee, looked at this issue very thoroughly. We searched out lots of law professors. We had to find out if this is constitutional, and the weight, the far weight of constitutional scholarship is, in fact, this is constitutional.

So when the Senators stand here and say it is not constitutional—they are entitled to their own opinions. That is fair. That is why we debate. But I might say, when one studies literature and quizzes constitutional law professors, the vast majority, the balance of opinion is that this is constitutional.

I might add that most States require people to buy auto insurance right now. Is that unconstitutional? Is that unconstitutional for the State to require purchase of liability insurance if you want to operate a car? I don’t think so.

The Senator from Wyoming said our bill would bend the cost curve. He said the bill would raise health care costs. That is not true. Flatly, simply, categorically, positively not true. The nonpartisan Congressional Budget Office says the underlying bill would reduce the Federal Government’s commitment to health care in the second 10 years—reduce. That does not sound like costs are going up.

Our bill, according to the Congressional Budget Office, would also cut costs for the taxpayer. First of all, the CBO said the legislation, the health care legislation reduced the deficit by \$132 billion in the first 10 years and between \$630 billion and \$1.3 trillion in the second 10 years. That is a cut—cut deficits.

Let me just make a point there. We have large budget deficits, as the rest of the world knows. They have to be reduced.

Health care reform is a step toward reducing our fiscal deficits. It is a very significant step. As Peter Orszag said, the once head of the Congressional Budget Office, now head of OMB: The path to reducing our fiscal deficit situation is through health care reform.

We need health care reform to get budgets—family, company, and government—under control. To repeat, our bill, according to CBO, would cut costs to taxpayers, reduce deficits by \$132 billion the first 10, the point I just made, and then about \$1 trillion in the next 10.

To summarize, our bill provides real cost control. That is what is needed, real cost control. Our bill reforms incentives for the Tax Code to encourage smarter shopping for health insurance.

I might say, if this side over here wants us to stop and start all over again, what is going to happen? It means all those people today—and

there are millions of them—who are denied quality health insurance because of a preexisting condition will be unable to get good health insurance.

Basically, those who say, stop and start over are saying: We want you who cannot get good health insurance because of a preexisting condition to continue to not get good health insurance because of a preexisting condition. That is basically what they are saying. That is not right. That is not right at all.

It reminds me, too, of a fellow in my home State of Montana. A few years ago, I was talking to him and he said: MAX, I feel just awful. I have a small construction firm, I have six or seven people in my firm, and there is one person who has been with me for 20 or 30 years. My insurance company informed me my premiums are now going to go up 40 percent. I asked why. Because one of your long-time employees has a preexisting condition, and you have to either let him go—and then your rates will only go up 20 percent—or if you keep him, your rates are going to go up 40 percent.

That put this fellow, the owner of the firm, the guy I was talking to, in an untenable position. So what did he do? He shopped around. He looked and looked to try to find another insurance company that would not raise his premiums so much. Finally, he found one. His rates went up but not a full 40. I have forgotten how much they went up. But it was wrong for him to be in that position because he was not going to fire that person who was such a good person who had been with him for such a long period of time.

So our bill would begin reforming the way the government pays for health care. Right now the government pays for the number of services performed; our bill will begin to help the government pay for quality—a very important point. I think this is the real game changer, this is what is going to make a difference over time, is how we pay for health care. About 5, 6, 7 years from now, when these provisions kick in, we are going to be very happy we took the first step because that is what is going to make a big difference.

So I say my colleagues on the other side of the aisle threw a whole lot of criticisms at our bill just now, but because you say something does not mean it is true. Frankly, that is why I thought it important to stand and set the record straight because what they are saying is not true.

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

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

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Madam President, we have before us a number of issues. On

the floor today is a jobs bill. It is a critically important bill because so many Americans are out of work, and we are trying to find ways to keep families together while they are unemployed, but also to provide health care, which is one of the first casualties of losing one's job. This bill also tries to help several States facing disasters by providing assistance on an emergency basis. It extends tax relief to individuals and businesses and helps workers to plan for their futures by helping businesses afford their pensions. It is a good bill. It should pass. Yesterday we had a series of amendments filed, eight different amendments. There are others that will be pending soon. I hope this particular bill will not be filibustered by the Republican side of the aisle. There ought to be at least bipartisan agreement that if we allow amendments on both sides and everybody gets their chance, at the end of the day we will actually vote for the bill. I am afraid, though, that we are facing another filibuster such as the Bunning filibuster on unemployment.

What that does is drag this out additional days, additional weeks. While the people of this country are impatient, if not angry, with Congress, unfortunately these filibusters from the other side of the aisle just add to the frustration. I hope the Republican leadership will join us now in a bipartisan effort to help create jobs. We need to have help for small businesses. Most of us understand that is the engine that will help bring us out of the recession. These small businesses, if they can stay in business and add an employee, can make a significant difference in terms of whether this recession is long or short. I hope the Republicans will decide to work with us in good faith on this jobs bill. It is in the best interest of all Americans, regardless of party. If we are going to get our country moving again—and we get moving again—we have to stop these filibusters such as the one that tied us up for 5 or 6 days over the weekend and literally cut off the unemployment checks for thousands of Americans who are out of work through no fault of their own.

We also have to look at the issue which is perhaps one of the major challenges facing us between now and the next few weeks, and that is the issue of health care. Yesterday the President came forward, after his health care summit, and said to Republican leaders: We will accept four major provisions you brought up at the health care summit in a good-faith effort to bring you into this conversation so that we can have a bipartisan bill, a good dialog, and a bipartisan vote.

Unfortunately, the President's gesture did not lead to this kind of Republican cooperation. It is never too late. I hope some will still consider joining us. I think they should understand the President believes, as I do, that there are good ideas coming from the other side of the aisle and that the sooner we can bring them into one bill for the good of the country, the better.

Only this morning, I received an e-mail from a member of my family. She told me about a situation in Texas where one of the workers at an office where she knows some people was diagnosed with a serious cancer and is now facing an extraordinary effort to save her life. Chemotherapy and radiation are going to be her lot in life for some time as she struggles with this dread disease which has affected the lives of so many of us and our families. It is going to cost about \$5,000 a week for the therapy she needs to save her life.

She was notified not only of this diagnosis and the need for this extraordinary care, she was also notified that her health insurance had been canceled. It is a situation which, sadly, faces too many people. People who have paid their health insurance premiums for a lifetime find out when they need this health insurance the most, it is canceled for a variety of reasons. One of the most common is the argument of the insurance company that one has a preexisting condition which they failed to disclose. I saw a list recently of preexisting conditions. It is a very long list. It includes things which most people would be surprised to read. Did you have acne as a teenager? Is there an adopted child in your household? Things such as this are used by insurance companies to deny coverage to people. The health care reform bill we are working on wants to put an end to these outrageous practices by health insurance companies. It makes it clear that to deny coverage for a preexisting condition is going to become a thing of the past. I would say that any and all of us should take heart in knowing that protection will be there for us when we need it.

It also will stop health insurance companies from putting limits on the amount of money they will pay out. We know what happens when you pay \$5,000 a week for cancer therapy. It runs into large amounts of money, and some insurance companies at some point just walk away from you.

We also try to expand the coverage of young people under health insurance. My wife and I raised three children. When they reached the age of 24, our family health insurance no longer covered them. We want to extend that to age 26. That will mean many young people who are coming out of college—out of work and looking for a job—will at least have the health insurance protection of their family while they are looking for their first job and their own health insurance protection. I think that is reasonable.

When some argue, as we have heard from the other side of the aisle, that we are really going too far and too fast when it comes to health insurance, I would say these basic facts I have given you are the realities that face Americans, and if we do not deal with these health insurance injustices, if we do not deal with this unfairness, then, frankly, we will continue to pay huge amounts for health insurance and it will not be there when you need it.



This week, the mayor of a downstate city in Illinois—Kankakee—told me that this city of 28,000 people, with 200 employees and an annual budget of \$20 million, 10 percent of which goes for the health insurance for their employees, was rocked to learn they are not only facing a recession, which has cut back on city revenues, but they face an 83-percent increase in their health insurance premiums next year. They are going to try to negotiate with the health insurance company, increase the copays and deductibles individuals have to pay, cut the coverage. That is their only way out of this terrible situation.

But they are not alone. Blue Cross and Blue Shield's Anthem policies for individuals in California recently announced they were going to increase annual premiums by 39 percent. Another friend of our family was notified yesterday her insurance premiums are going up 35 percent next year.

How long can families and businesses deal with this? The answer is, not long at all. And the larger question is, What are we going to do about these health insurance companies? Most companies in America—virtually all companies in America, save two categories—are bound by antitrust laws. What it means is, if you make an automobile or provide a service, you are bound by laws in terms of fair competition. There are two exceptions. One exception is organized baseball. Do not ask me why, but it is. And the second one is insurance companies.

It started back in the 19th century when insurance companies said: We are not national companies. We are regulated and chartered by States. We do business in States. Therefore, national antitrust laws should not apply.

Then, in the 1940s, someone took note of the fact that insurance companies were now doing business across State lines and therefore involved in interstate commerce and should be subject to antitrust laws. A law was passed, which started here in the Senate, called McCarran-Ferguson, which exempted insurance companies from antitrust law.

What it means is that insurance companies—like no other companies in America—can literally collude and conspire on the premiums they charge. They can legally sit down and decide how much they will charge for life insurance, casualty insurance, medical malpractice insurance. It is legal because of this McCarran-Ferguson exception. They can also parcel out territory: Insurance company A is going to take over Los Angeles; insurance company B will do New York; insurance company C will focus on Chicago—perfectly legal under current law but perfectly wrong.

To allow this sort of thing to occur is to fly in the face of our free market capitalism and competition. I am heartened by a vote that took place just a week or so ago in the House of Representatives where the vote to re-

peal the McCarran-Ferguson Act received more than 400 votes—435—a strong bipartisan voice.

I spoke to Senator Patrick Leahy of Vermont, the chairman of our Senate Judiciary Committee, this morning and said: I hope you will call this bill soon in the Senate. We need to repeal this antitrust exemption for health insurance companies and medical malpractice carriers to stop this collusion when it comes to pricing and this allocation of markets which we do not allow for any other businesses. I think if we do that, it is going to create a more competitive atmosphere, so insurance companies will compete with one another. Consumers win if there is real competition. Currently, it is perfectly legal to stifle competition in insurance, to limit the availability of insurance, and to dictate prices by industry, not by company. That has to come to an end. I hope we can either include it in health care reform or pass it separately. We need to do that.

Another element on which we need to focus is these increased costs. How do we start to bring down the costs of health insurance? For those who suggest premiums are going to drop precipitously in the passage of this bill, they are just wrong. What we are trying to do is to slow the rate of growth, the steep climb in prices. We want to try to flatten it out. There are many reasons to do it. We know as a government we cannot deal with our deficit as a nation as long as health care costs are skyrocketing for Medicare and Medicaid and Veterans' Administration care and so many other areas where we provide health care. We also understand that States face the same budgetary pressures, and the increasing costs make it difficult for them, as well as for local governments, not to mention the impact on businesses and families.

We now estimate that some 50 million Americans have no health insurance. They are not the poorest of the poor—those people are covered many times by Medicaid—and they are not the fortunate ones like Members of Congress who have the best health insurance in America. Many times, they are people who get up and go to work every single day and their small businesses cannot afford to pay the premiums and, of course, their children at home who may be denied coverage just because the parent works in a place where health insurance is not available.

There are things we can and should do about this. This health care reform bill, when it is signed by the President, will say immediately that there will be a tax credit available for all businesses with fewer than 50 employees that offer health insurance to their employees. We understand a lot of people work for these small businesses. If the owners of the businesses are really trying to provide basic coverage for their employees, we want to help them. We want the Tax Code to help them. The same thing

is true for individuals. If the amount of health insurance premium you need to pay exceeds a certain percentage of your income, you will be eligible for a tax credit.

The critics of this bill talk about how much it costs. Well, it is an expensive undertaking, but more than half of the money that is raised for this bill is used in tax breaks and tax cuts for businesses and individuals to help pay for their health insurance, trying to get people through this difficult time so they have coverage and can afford to pay for that coverage. That is an essential part of what we are trying to do with this health care reform bill.

We also create insurance exchanges. The idea behind an exchange is to bring together private insurance companies—private companies—that will compete with one another for your business. We know how this works in Congress because those of us who are Members of Congress are under the Federal Employees Health Benefits Program. For over 40 years, this program has offered to Federal employees and Members of Congress the option of health insurance bought on an exchange.

I think we are the luckiest people in America when it comes to health insurance. As Federal employees and Members of Congress, each year we have open enrollment. My wife and I take a look at the private plans available through the State of Illinois and choose what we think fits us best. We have nine different choices of private health insurance companies—companies that are competing for our business. If we do not like the way we were treated last year by our insurance carrier, come September we will change, and we can pick another carrier and see if the coverage is better.

This is something every Member of Congress currently has, but when we went to the health summit, some on the other side of the aisle argued that the creation of these exchanges was too much government. Well, if it is not too much government for their health insurance and my health insurance, why is it too much government when it comes to the people of this country? They are entitled to competition and choice from private insurance companies, just as we are as Senators and Members of the House of Representatives.

One other criticism that was said: Well, you know what is wrong with this bill, this bill will not allow us to buy insurance across State lines. Now, that is a way we can save some money.

That does not tell the story. This bill does allow the purchase of insurance across State lines, multistate compacts, multistate efforts to offer insurance, but with one important element: we establish in this bill the minimum standards for coverage.

Incidentally, that is exactly what we do with the Federal Employees Health Benefits Program. If you want to be one of the companies competing for the business of Senators, you have to offer

certain minimum protection. Some of it is based on State law, some by national standards. Why do we do that? Because many people cannot sit down and carefully go through every line and every page of an insurance policy and try to imagine whether the coverage is adequate.

I recall, years ago when I was an attorney working in the State senate in Springfield, IL, a case came to my attention where health insurance was being sold to expectant mothers—family health insurance—but it excluded coverage for newborn infants for the first 30 days. Think about that for a second. If you and your wife have a baby and the baby has an immediate, costly medical problem, this health insurance plan excluded you, would not pay for it. So we said, as a matter of law in Illinois, if you are going to cover mother and child, you cover that baby from the moment of birth. That is part of the law. Maybe you can buy a health insurance plan somewhere in America that does not have that coverage, but what is going to happen when you have that sick baby and huge medical costs? You may end up in bankruptcy court. You may end up on a government health insurance plan.

So we try to establish basic minimum standards for the health insurance that is offered across America. I think that is the only right way to deal with this issue that challenges us.

We also expand coverage for uninsured people in America. There are 50 million uninsured people in America. We would provide coverage for over 30 million of those 50 million people. These are people who literally have no health insurance at all. What happens when they get sick? They go to the hospital or to the doctor and they are treated. Who pays for it? The cost is shifted. The hospital cannot collect from them because they cannot pay for it, so the hospital increases the cost for those who are paying, those who have health insurance. We estimate the average family pays \$1,000 a year in extra premiums—almost \$100 a month—just to cover the uninsured. If we bring more people into insurance coverage, fewer charity cases will be at the hospital, fewer dollars in cost will be transferred to the policies of the rest of us who have health insurance. It is a good thing to bring more and more people under this tent of coverage.

The Republican proposal takes a look at those 50 million uninsured Americans, and instead of covering 30 million, as we do, they cover 3 million. That is a far cry from 30 million. If our bill passes, it will mean that the largest percentage of Americans will have health insurance in our history. That is a good thing for our Nation. It is a good thing for our medical system.

We also, in our bill, try to move forward to encourage new innovative and productive medical practices. One of them is wellness. We have met with companies that have come to us and said: When we incentivize our employ-

ees to be mindful of their weight, the food they eat, their cholesterol, their blood sugar, their blood pressure, and to stop smoking, it makes a dramatic difference. They feel healthier, they live longer, and they need less medical attention.

So we are creating incentives for wellness. For example, one of the things we do is provide, under Medicare, a free annual exam for every senior citizen so they will be able to come in and be checked out, so little problems will not become big problems. I think that is sensible and responsible.

We have to move toward more primary care. Across America, we have community health clinics. These clinics are primary care clinics in cities and small towns across America. For many people, they are the only source of primary medical care. This bill we will pass—I hope we will pass—will double the number of those clinics and increase the number of people working there. Is it a good idea? Well, it certainly sounds good. But it is also economically smart. Where do sick people go today if they have no health insurance and they do not have a regular doctor on their child has a fever of 106 degrees? We know where they go. They go to the emergency room and they wait in a queue and eventually get treatment and it costs a fortune, dramatically more than it would cost if they went to a local clinic or primary care physician. So we are trying to provide good care, affordable care, cost-efficient care, and reduce some of the costs within the system. I think that is a move in the right direction.

The same thing is true when it comes to Medicare. Some of our critics on the other side of the aisle have said: They are going to cut hundreds of billions of dollars out of Medicare, and the simple answer is, yes, because we believe there is money there that can be saved without compromising in any way the basic benefits of the Medicare Program. This program for seniors and the disabled across America has been a godsend for over 45 years. People live longer and they are healthier and they are more independent because Medicare is there. Social Security and Medicare have given to this modern retired generation things that others just dreamed of. There was a time—and I can remember it in my own family—when your grandparents, after they had quit working either because of retirement or because of physical health problems, ran out of money, and what did they do? They moved in with the family. It was not unusual. It happened in our family and others. Along came Social Security which said: We are going to have a check for you, a monthly check. You will not get rich on it, but you will be able to get by on it, in most cases, and you can live in your own place, independent, the way you want to. Medicare said: We will help pay for your health care bills as part of this. Right now, if we do nothing to Medicare, in a matter of 9 years it goes broke. It

starts running in the red. Doing nothing is not an option. So our bill, the health care reform bill which we passed in the Senate and which the President supports, will add another 10 years of solvency to Medicare. That is essential.

How do we achieve this by making savings within Medicare? One of the ways is to look at how care is provided. I took a look at the average Medicare cost per recipient in some of the major cities in America. In my hometown of Springfield, IL, with two great hospitals and great doctors, it is about \$7,600 a year for every Medicare recipient. If you go up to Chicago, it is \$9,600 a year. Over in Rochester, MN, at the Mayo Clinic it is in the range of \$7,600, \$8,000 a year. But if you go down to Miami, FL, the average is \$17,000 a year for each Medicare recipient. I will concede Miami may be a little bit more expensive than the other cities I mentioned but twice the cost? I don't think so.

There are savings we can find in the Medicare system and still provide quality care that seniors need and are entitled to. We have to find ways to do that. If we don't enter into this conversation, in very short order, we are going to see the Medicare system basically facing insolvency. That is one of the real realities we face.

How are we going to reach this goal politically? That has become a major item of discussion. The President made it clear yesterday he feels that after the supermajority vote in the Senate for health care reform, we need to move this to conclusion and it should face an up-or-down vote. Let me translate what that means. It means, if the House enacts the Senate health care reform bill, they can also turn to something called reconciliation. Reconciliation is a process that is used in both the House and the Senate to deal with budgetary questions. We have not invented it. It has been around for decades and it has been used some 22 different times. That, to me, is an indication that reconciliation is an accepted practice and procedure in the modern Congress. We have seen as well that the Republicans have used it more than half those times for issues that are important to them; issues important to many of us. Children's health insurance was enacted through reconciliation. The COBRA program for health insurance for the unemployed was enacted through reconciliation. President Bush's tax cuts were enacted through reconciliation. In addition, Newt Gingrich's Contract With America, parts of it were enacted through reconciliation. So we know it has been used.

Some of the people on the other side have argued it is unfair to use it to modify any basic health care reform. It is interesting the critics of the reconciliation process have voted for it many times. Out of the 17 opportunities to vote for reconciliation since he has been in the Senate, the Republican leader, Senator McCONNELL, has voted 13 times out of 17 for reconciliation.

Senator GRASSLEY has had 20 occasions to vote for or against reconciliation. He has voted for it 18 times. Senator MCCAIN, 13 votes on reconciliation, he voted for 9 of them. Senator KYL, 11 opportunities to vote for reconciliation, and he voted for them every time. So these Republican Senators who are now saying there is something flawed or wrong or sneaky about this process have used it over and over to achieve legislative goals.

I have voted for it myself. We had some provisions relating to reform of student loans, for example, that I thought were good for families of students across America. Through reconciliation I voted for it. There is nothing sinister about it. It was right there. What it basically means is this: Under reconciliation, you can bring a bill to the floor and it cannot be filibustered. We all know what a filibuster means. We just went through one with the Senator from Kentucky, Mr. BUNNING, who put a hold on a bill, and for 5 days we couldn't vote for unemployment benefits for people across this country. Eventually, the Senator agreed to a vote and we moved forward on it. So that kind of procedure is allowed in the Senate.

It takes literally days, if not weeks, to work our way through the deadlines and schedules to get to a final vote. Reconciliation says we are going to set the delay tactics and obstruction aside and we are going to have a majority vote. We bring the issue to the floor, 20 hours of debate are equally divided, and then any Senator can offer an amendment for a vote. That can be abused too. I hope it isn't if we move to reconciliation. But at the end of the day, there is a majority vote, up or down. Fifty-one votes will be necessary, I believe, for this to pass, and we will see if we move forward on health care reform in this country.

I hope we do move forward. I hope, if we can't get cooperation on the Republican side of the aisle to tell us they will not use filibusters and delays and obstruction to help do reform, that we do it through the reconciliation process.

Health care reform and the cost of health care is an issue in my home State of Illinois which is topical. A recent press release is entitled "Illinois consumers to pay up to 60 percent more" on individual health insurance policies. Individual health insurance policy premiums are soaring in the State of Illinois. It says:

Consumers in Illinois who lose their jobs and have no other option but to buy their own health insurance will get socked this year with premium increases of up to 60 percent, according to state records.

That group of consumers has been growing, as the recession has created more uninsured Americans looking for ways to protect themselves and their families. Now, Illinois consumers will get a glimpse into just how wide-ranging rate increases among individual health plans can be. The data, obtained by the Tribune, also provide a window into the overall trend of premium increases at large and small employers.

For the state's more than half-million consumers in individual health plans—

We are a State of 12 million—

base rates will go up from 8.5 percent to more than 60 percent, according to state data. Base rates do not take into consideration health status, gender, age, place of residence and length of a policy—all factors that could affect the premiums further.

The individual insurance market is relatively small compared to consumers who get their insurance through their employers, but it has become the fastest growing group in this economy.

I might add, that is going to happen as fewer and fewer businesses offer health insurance and people are on their own, people who might have their own medical history or history in the family that precludes an opportunity for this health insurance protection.

The Illinois director of insurance, Mike McRaith, says:

This information is important because the individual market is where an increasing number of people fall when they lose their jobs and become unemployed. Individuals need insurance more and more and they are struggling to hang on to it now more than ever. Because fewer people are employed and fewer employers are offering health insurance, we would expect to see increased applications for individual health insurance.

When we hear from the other side of the aisle that we need to start over on this debate, it basically means to put an end to it. We are not going to start over. We have been at this for 15 months. We have had the most lengthy committee hearings in our history. The Senate Committee on Health, Education, Labor, and Pensions accepted 150 amendments from the Republican side of the aisle—150. Yet not a single Republican Senator would vote for the bill when it came out of committee. We have tried our best to not only have open and transparent hearings and an amendment process but to engage the other side of the aisle to bring forth their best ideas so we can try to put them together and do a package that does address the needs in America. But for those who say start over, end it, put it behind us, how do you ignore the obvious? The cost of health insurance is going through the roof. People know it, businesses know it, families know it, and we know it as a government. If we don't address this issue and address it openly and honestly, it will just get worse. That is something families understand and I think we all understand.

We have talked about jobs through the bill before us on the floor today. I happen to think health insurance is an important part of this conversation. When I met with some unemployed people in Chicago a couple months ago, I asked each one of them, and they were struggling to continue the health insurance for their family. I remember one mother who said: My problem is this. If I lose the health insurance I had where I worked, if I can't make these COBRA payments to keep up this health insurance and I am dropped, I don't think they are ever going to insure my diabetic son.

That is the reality of what people face. They lose costly health insurance, and they may never be able to find replacement. That reality needs to be addressed, and we can address it.

I sincerely hope many of my Republican colleagues will accept President Obama's invitation to join us in this effort. We can do this together, and we should. If we do it together, it will be a stronger bill and a better bill, but we can only invite our colleagues to the prom so many times and be turned down until we stop asking. This invitation was sincere yesterday. The President brought up four major elements Republicans have asked for and said we will include all of them in our health insurance reform bill. I hope they will join us in this effort. If they do not, we owe it to the American people to move forward, to make certain we are ending discrimination against people because of preexisting conditions; to make certain we are starting to bring down costs and increase choice and competition for small businesses and individuals; to bring into the coverage and protection of health insurance 30 million more Americans than we have today; to give Medicare another 10 years of longevity; to bring down the deficit in the process as health care costs start to come down. All these positive issues argue we need to get this job done.

I look forward to working toward that goal and getting it done in a matter of weeks and not months.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii.

AMENDMENT NO. 3337

Mr. INOUE. Madam President, so often when Members come to the floor to offer simple amendments and describe their normal objectives, it sounds too good to be true. In my years in the Senate, I have found that when things are too good to be true, they usually are.

The amendment from the Senator from Alabama seeks to constrain discretionary spending at levels agreed to in last year's budget resolution. He says his intent is to cap spending for the next 4 years. We all understand that discretionary spending is likely to be frozen this year, as the President has proposed, but this proposal goes way beyond what the President of the United States recommended.

The President has proposed a modified spending freeze which caps non-security-related spending. The President allows growth in Homeland Security, but this amendment does not assume growth. The President does not put a cap on emergency spending, but this amendment would. The President has requested more than \$700 billion in this budget for Defense, including the cost of war. This amendment only allocates \$614 billion. Specifically, this amendment only allows \$50 billion for the cost of overseas deployments. As such, it fails to fully cover the cost of the wars in Afghanistan and Iraq.

If we want to support our men and women deployed overseas, we will need

to get 60 votes. Does the Senate really want national defense to be a hostage to a 60-vote threshold?

The critical flaw in this amendment is that it fails to do anything serious about deficits. It fails to address the two principal reasons our fiscal order is out of balance. It is a fact that the growth in the debt has resulted primarily from unchecked mandatory spending and massive tax cuts for the rich. This amendment fails to respond to either one of these two problems. In short, the amendment is shooting at the wrong target.

Moreover, this amendment also wants to raise the threshold on discretionary spending increases to a 67-vote approval, allowing one-third of the Senate to dictate the majority. We already have a threshold of 60 votes required to increase spending for emergencies above the budget resolution. I, for one, cannot believe the Senate wants to let a mere one-third of the Senate dictate to the other two-thirds whether an emergency is a bona fide one. This is the wrong direction for this institution.

Mandatory spending has run wild in the last few years. Tax cuts for the rich have constrained revenues. But neither tax cuts nor tax increases nor mandatory spending would be subject to 67 votes.

The Senator from Alabama says this approach worked to balance the budget in the 1990s. That is only partially correct, and it is critical that my colleagues understand the difference.

In the 1990s, our budget summits produced an agreement to cap discretionary spending. But they also decreased the mandatory spending and increased revenues at the same time. It was only by getting an agreement in all three areas at the same time that we were able to achieve a balanced budget.

Let's be clear. Many of our colleagues on the other side of the aisle are happy to put a cap on discretionary spending, but they do not want to put policies in place to make certain we have enough revenues to reduce the deficit.

Any honest budget analyst will tell you we will never achieve a balanced budget just by freezing discretionary spending. We could eliminate all discretionary spending increases for defense, other security spending, non-defense, and still not balance the budget.

Moreover, if we freeze discretionary spending without reaching an agreement on mandatory spending and taxes, we will find it very difficult to get those who do not want to address revenues to compromise.

I wish to remind my colleagues that the administration has just announced it will create a deficit reduction commission to help us get our financial house in order. It will look at both revenue and spending and find the right balance to restore fiscal discipline. They will make their recommendations

to the Congress, and the majority leader has committed that the recommendations of that commission will be brought to the Senate for a vote.

The commission will certainly not focus solely on discretionary spending. If we are going to cap discretionary spending, then we must have similar controls on revenues and mandatory spending.

The commission has been created precisely for this reason. Rather than rushing to address only one small portion of the issue, the Senate should await the judgment of the deficit reduction commission which will cover all aspects of the problem.

As chairman of the Appropriations Committee, I agree everyone should tighten their belts. The problem with this amendment is that all the tightening will be done on a small portion of spending, while revenues and mandatory spending will still be unchecked.

Each of us was elected to serve our constituents, but we do not necessarily agree on the best way of doing that. We have some Members who want to hold down government spending, and so they do not seek earmarks or other program increases on behalf of their constituents. I do not agree with them, but I respect their views.

We have others who believe the best way to represent their constituents is to seek earmarks on their behalf. But those who seek earmarks or other programmatic increases from the committee should recognize that funding those programs puts pressure to increase government spending, not cut it.

I, for one, believe it is inconsistent to insist on getting earmarks for our constituents and supporting other spending increases while at the same time mandating that we cut spending for discretionary programs.

Chairman BYRD once stated on the Senate floor that sooner or later every Member comes to the Appropriations Committee for help.

I note that last year, the Appropriations Committee received requests for earmarks from more than 90 Members of this body. The Senator from Alabama was among those seeking earmarks. For fiscal year 2010, the Senator requested earmarks totaling more than \$400 million.

I ask my colleagues: How is the Appropriations Committee supposed to live within the tight constraints of these proposed spending limits over 5 years and still satisfy those earmarks?

I would also point out that like many other Senators, the Senator from Alabama has come to the floor on several occasions to seek additional billions of dollars in support of building a fence along our southwest border. The total cost of that fence is estimated to be around \$8 billion. It would be virtually impossible to provide the billions required for this fence under the terms of the amendment offered by the Senator.

Other Senators have supported large program increases, such as adding \$2.5 billion to continue the C-17 program. I

have strongly supported continuing the C-17 program, but all Members should realize if the Senate wants to cut discretionary spending programs, such as the C-17, they are unlikely to continue to be funded.

We cannot have it both ways. We simply cannot get the funds we believe are essential for our constituents or support our programs which we believe are of national importance, such as the border fence or the C-17, at the same time as we cut discretionary spending. Each and every Member should think about the need for funding for their States, their constituents, and the Nation before they vote on this amendment.

The Senate rejected this flawed plan just 6 weeks ago. This amendment has not gotten any better in that intervening period. It is still shooting at the wrong target, and it fails to address the real causes of our deficits and national debt. It is not the same as the President's plan. Therefore, I urge my colleagues, once again, to vote no.

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

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will call the roll.

Mr. BROWN of Massachusetts. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Massachusetts.

Mr. BROWN of Massachusetts. Madam President, I was hoping I could address an amendment I have on the Senate floor today.

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

AMENDMENT NO. 3391

Mr. BROWN of Massachusetts. Madam President, I come to the floor of the Senate today to give my first speech as one of the Senators from Massachusetts.

First, let me say I am deeply honored to have been elected and to serve in this great and historic Chamber. In addition, I am pleased to have the opportunity to address my colleagues and the American people and other folks here watching us for the first time about legislation that I am offering. It is called the immediate tax relief for America's workers amendment.

Families in Massachusetts and across this great Nation are suffering through these tough economic times. One year after Congress passed the stimulus package, Americans are still struggling to pay their bills, to save money for college, and to buy groceries to put on their kitchen tables. But in Washington, the Federal Government is driving up our debt and creating government waste on projects that, in my opinion, do not create enough private sector jobs or provide immediate relief for the American workers.

The hundreds of billions of dollars that we have spent and continue to spend on the stimulus package have not created one new net job. Most

Americans believe Washington is not using the money effectively enough, especially while many Americans are suffering and needing immediate and real relief.

In fact, the Federal Government right now is sitting on approximately \$80 billion of so-called stimulus funds that are either unused or unobligated to specific projects as of this date. That \$80 billion in taxpayer money is stuck in what I consider a virtual Washington slush fund potentially used for special interest projects or so-called pork projects to which many of us personally object.

I believe and others believe it is time to put this money back to work immediately and put it into the pockets of hard-working Americans and American families so they can get what they need, so they can provide for their families, they can save for their future, and put real money back into the struggling economy.

Providing an immediate across-the-board tax relief for working families is not complicated economic policy. I think it is simple and common economic sense. Leaders on both sides of the aisle, from Presidents John F. Kennedy to Ronald Reagan, have often called for across-the-board tax cuts to put money immediately into people's pockets to help stimulate the economy. I also believe this is a perfect opportunity to do the very same thing. I believe individual citizens know better. People up here watching, they know better how to spend their own money than we do.

The immediate tax relief for America's workers amendment I am proposing would cut payroll taxes and have across-the-board tax relief for almost 130 million American workers. That number again, 130 million people in the American workforce, including more than 3 million people in Massachusetts, would have immediate relief.

Madam President, 130 million workers will receive that immediate and direct tax relief. By turning the estimated \$80 billion in unobligated stimulus moneys, accounts, over to the American people, our workers would see their payroll taxes reduced by almost \$100 per month, up to \$500 per person, \$1,000 per couple within a 6-month period. It could be implemented within 60 days.

Some people in Washington may not think \$100 or \$500 or \$1,000 is a lot of money, but I can tell you; I know the value of a dollar. The people in my State know that is real money, that is money that can be put into their pockets immediately and spent to pay for oil, food, medical bills, everyday basic needs. The American people need this relief and they deserve it. Families would immediately get the help they need to pay their bills, and we would put real money back into the economy, helping start a true recovery.

Unlike tax cuts of years past, this one is paid for entirely. It will not increase the deficit and could be imple-

mented, as I said, within 60 days. It would be paid for by using the roughly \$80 billion in unused and unobligated stimulus funds that are currently sitting in a slush fund in Washington, DC. In my opinion, it does nothing—nothing—right now to stimulate the economy that is struggling, as we know it.

Not to do this, I believe, would be a mistake and a disservice to the people who pay the bills, and those are the American taxpayers.

Let me be clear: My amendment would not add one penny to our Federal deficit. Also, let me remind my colleagues in this Chamber that bipartisanship is a two-way street. It is not just a one-way street. The Senator has commented to me, as others have, that she appreciated my effort to reach across the aisle last week and help pass a jobs bill the majority leader was pushing to put people back to work not only in Massachusetts but in your State—in your State and every State in this country. I took some heat for it, but I held firm and looked at the bill with open eyes, as I told the majority leader and the minority leader and all my colleagues I would do. It wasn't perfect, but I felt it was a good first step.

So that effort of bipartisanship was evident with me last week. Many of my colleagues came up to me and said: What a nice new tone you set, Senator. We are proud you are here. We are happy to see that bipartisanship. Well, let me say that when I see a good idea, I plan on supporting it, whether it be a good Republican idea or a good Democratic idea. As long as it puts people back to work, as long as there is a way to get it paid for and it makes good sense for my State and the people of this country, I plan on voting for it, regardless of what special interest groups say, regardless of my party, and regardless of what anyone else says.

Here is our chance to show the American people the partisan bickering is now over. We can help them right now. We can actually have a bipartisan effort on this very important bill that will put money immediately into people's pockets in 60 days—up to \$1,000 per couple. I know many people who could use that money right now. With so many people struggling, I personally don't feel it is time anymore for political gamesmanship. The time is now to do the people's business. I have always felt we can do better. The fact that I am here has sent a very strong message across this country. The people in my State and throughout the country who supported me in record numbers are saying: You know what, SCOTT, we can do better. When you get to Washington, work across party lines, get the engine going a little bit, and let's get the people's business done. So this is my first amendment—this amendment to the jobs bill—and it makes fiscal sense and it is something that has been done in the past. JFK and Ronald Reagan called for across-the-board tax cuts and it worked.

We have tried a whole host of other things—targeted tax breaks, a little here, a little there—so why don't we give it back to the American people and see what they can do with \$1,000, see what they can do to stimulate the economy. Let's give them a chance. When the immediate tax relief for America's workers amendment comes to a vote, my colleagues will have a very clear choice: They can support a measure that will immediately put money back into their constituents' pockets and into the economy or they can go along with the business-as-usual approach in Washington and leave the \$80 billion in unused stimulus money in that slush fund to be used years from now.

The money we are talking about is not allocated. It is hanging out there. It is unlikely we are going to put it back to reduce the deficit, so let's put it to work within 60 days so people can use it when the summertime comes, and they can go out and do whatever they want with it. We can go and create more of a bureaucracy, if we want, or more government jobs, but I have confidence in the American people that they will do what they have always done. They have always reached down and tightened their belts. They have made a difference. They are the folks who will help us get out of this struggling economy.

I am not going to point any fingers. I am not going to say it is their fault or their fault. I don't care whose fault it is. The bottom line is, I was sent for a reason—to deliver a message from the people of Massachusetts and the hundreds of thousands of people who supported me. The message is: We can do better. Let's get the economy going.

This is a simple amendment, and I am hopeful we are going to get bipartisan support. I can tell you it would be very easy to use procedural points of order to try to delay this particular amendment and allow it to get lost in the shuffle. That is very easy to do. We can do a procedural point of order to delay action on the economic emergency facing American workers. But, by golly, I am not going to do it. I am going to do everything I can do every single day to make sure I put as much money back into the American people's pockets to do what they do best—to save and to take care of their families. They can do what they have done for years; that is, to help stimulate this economy. After all, that is what the Chair was sent here to do and the rest of my colleagues were sent here to do. The people watching in the galleries and the people on TV expect us to do that, to get back to work and solve the problems.

Let's move on. This is a great opportunity to do that. I am hopeful I am going to get some support. I believe there may be others speaking, so I respectfully yield the floor.

THE PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I appreciate the remarks of the junior

Senator from Massachusetts. He has come off the campaign trail, where he talked to thousands and thousands of people all over his State and heard from, I would guess, millions from around the country. We should listen to some of the things he is telling us because it strikes me that we, too often in this body, are a bit insulated, and we fail to see that people are asking us to make some changes in what we do when we think we have to continue to operate the way we have been operating.

But that is not what I am hearing at my townhall meetings. I don't know that anybody in this body, if they are listening in their townhall meetings, are hearing business as usual is what the people want us to do. What I am hearing is a great concern and expression of regret, and in some cases frustration and anger, over the amount of money we are spending and how recklessly we are doing it. I guess that is what I am here to talk about.

The bill Senator CLAIRE MCCASKILL and I are offering is a bipartisan bill. It had quite a bit of Democratic support last time. We came within just a few votes of reaching 60 votes and passing it, and I am hopeful today, with the alterations we have made, it will appeal to some of my Democratic colleagues and they will be able to support it now. I believe it will take quite a positive step in how we fund our government and how much debt we run up.

In the 1990s, an idea was placed into law that said the budgets we pass should have statutory language and should be made a part of statutory law. So we did that in the 1990s. We began to see, shortly after the passage of that, a containment of the surge and growth in spending. The growth was far more modest and, as a result, by the end of the 1990s we had a surplus.

President Clinton claimed great credit for that. I think sometimes he fails to recall the Congress acted, and ultimately it is Congress that has the power of the purse. No money can be spent that we don't authorize and appropriate. Nothing can be spent by the President or any other Cabinet person that Congress hasn't authorized and appropriated to be spent. Those are the facts.

This legislation would put what we call caps or limits on discretionary spending. That does not include entitlement spending, so not counting Social Security and Medicare and those kind of things. It is the discretionary accounts we have in the Senate. This amendment would put some limits on them—the limits we chose for the fiscal year 2011 through fiscal year 2014. This is the 2010 budget resolution we are now under, which was passed by our Democratic majority and supported by the President of the United States. It is his projections and our projections—the Congress's projections—for spending growth in the next 4 years. The budget resolution we passed allows for a 2-percent increase per year in both

defense and nondefense spending. The caps in the amendment are exactly those we voted for in last year's budget.

Currently, we are not standing firm with the budgets we pass. We know that is a problem for us and we need to discipline ourselves. We have learned that from 1991 through 2002, the statutory caps on spending helped us contain spending. We did not surge discretionary spending as much as had been the case earlier. When it ended in 2002, the spending started back up again. Not only did it start up, it has now reached a level of growth the likes of which the country has never seen before. Last year, our total deficit for the year was \$1,400 billion. This year it is going to be \$1,400 billion or \$1,500 billion when we end. We have never had anything like this before. How much we are spending and how little we are paying for what we spend is a stunning development.

This legislation would not impact the bills that have already passed. Some say: Well, you might try to contain the stimulus bill we passed. No, that has already passed and wouldn't be covered. None of the other bills that have passed would be covered. Indeed, as part of our discussion with our colleagues in the Senate about their concerns with the legislation the last time we voted on it—a few weeks ago—we exempted this year, and we are spending pretty substantially this year—well above our budget. So we had people say: Well, JEFF, I am concerned about this year. I want to spend more this year. But next year we have to get this house in order. Well, we are well into this year already, so my decision would be: OK, that is a request I will accept, and Senator MCCASKILL agreed. So now we are asking that this limit be placed beginning next fiscal year, instead of this fiscal year.

It is very similar to the plan proposed by President Obama in his State of the Union Message and his fiscal year 2011 budget. In fact, President Obama actually went further in saying he wanted to see a freeze on a lot of these accounts. Our bill would allow a 1-percent to 2-percent increase in spending in these accounts. He is saying a freeze would be better. So, JEFF, are you saying you want to spend more than the President? No. I think we should try, and I would be supportive of trying to maintain the freeze the President suggested. But I would say, based on our history and what we have seen from statutory caps, if we pass caps with this 1- to 2-percent increase, then we might be able to at least stay within that because last year our increases were 8 percent or more in spending. We all know we have to do better, and our budget says we will do better. So this amendment would give some strength to that.

The legislation specifies spending for defense and nondefense programs consistent with the budget resolution. It contains a \$10 billion-per-year emer-

gency fund, which fits in with the budget resolution. We have set aside \$10 billion this year, and we should do at least that amount each year to ensure we have resources available if a genuine emergency arises and we need to respond to an emergency. So we would set that aside. This amendment requires a two-thirds vote of 67 Senators to waive the annual caps or the emergency \$10 billion fund. That is stronger than we have had before. We have had a 60-vote cap. But we know we are spending at a very reckless rate. Contrary to what people say, we have had bipartisan support for all kinds of emergency spending, and there is usually 90 or 100 votes for hurricanes, earthquakes or similar things. At any rate, we think the 67 votes would say to this Senate that we are serious and there should be a legitimate reason that can be defended to waive the budget to spend more money. Also, it would say why don't we find money elsewhere within our budget, through efficiencies and other ideas, to contain that growth in spending and pay for some of it first before we send it to the credit card and add it to the debt?

This amendment does not apply the caps to spending for any military action. I know Senator INOUE and others have raised the question will it deny soldiers in the field support. The caps would not apply to any military action in which the Congress has provided a declaration of war or authorization to utilize military force. That is, I think, the appropriate way to handle it. This amendment would be exempting those kinds of situations.

This is similar to what the President has called for and what Congress did throughout the 1990s with bipartisan support. This amendment has been evaluated by some of the best budget minds in America, independent groups that are respected. These experts understand the nature and problems of our Congress and how we tend to break our budgets instead of staying within them. They are terribly concerned about our spending; they are issuing reports, and many of them have endorsed us.

One of the best known groups is the Concord Coalition. They endorse the amendment. The Committee for a Responsible Federal Budget that includes former OMB, Office of Management and Budget, officials and Congressional Budget Office officials. They work together for responsible Federal budgets, and they support it. Citizens Against Government Waste; the National Taxpayers Union; the Heritage Foundation; Alice Rivlin, who was the first head of the Congressional Budget Office and was the head of the Office of Management and Budget under President Clinton and is now a Brookings Institute senior fellow—she supports it. As does Douglas Holtz-Eakin, former Director of the CBO under President Bush, who has spoken out on these issues.

This amendment is supported by a majority of the members of the Senate



Budget Committee the last time it was considered, and it gives the Budget Committee more ability to make sure their budget is not abridged and broken.

What about some questions and answers? Will this bill prevent the Federal Government from responding to legitimate purchases? The answer is no, it will not. We have \$10 billion set aside anyway; it is set aside right upfront. The amount is included in our budget resolution from last year and that money can be utilized for any emergency.

Second, the emergency appropriations, for example after the 9/11 attack; the 2004 tsunami; Hurricane Katrina—all passed with overwhelming support in the Senate, 93-votes-plus each and every time. So this is far above the 67 votes. Not a single emergency natural disaster bill since the emergency designation was created in 1990—and there have been quite a few—has gotten less than 67 votes. To say it will deny us the right to respond to a legitimate emergency is incorrect.

Question: Would the Sessions-McCaskill bill prevent Congress from funding the missions in Iraq and Afghanistan? As I said, this threshold of 67 votes would not apply in cases “of the defense budget authority if Congress declared war or authorizes the use of force.”

In addition, all emergency war supplementals for the global war on terrorism have received far more than 67 votes anyway.

Question: Would the Sessions-McCaskill bill prevent Congress from caring for veterans? That has been raised a good bit. The fiscal year 2010 budget resolution incorporates significant increases in funding for veterans, an 11-percent increase in fiscal year 2010, which built on large increases in fiscal years 2008 and 2009. In addition, a significant amount of veterans spending is mandatory. Entitlements and mandatory spending would not even be covered by this, just as Social Security and Medicare is not covered by it. Veterans programs have always enjoyed wide support in the Senate and I don't think there is any doubt that legitimate concerns for veterans would be properly addressed. It should be paid for whenever possible but, if we cannot do that, if we have a crisis for our veterans, I have no doubt there will be 67 votes to take care of the veterans' needs. In fact, the emergency supplemental for veterans' health care that came up in 2005 received 99 votes. Veterans funding, I think most of our Members believe, ought to displace less priority items.

There is a myth out there that the sponsors are saying this will balance the budget by focusing on nondefense discretionary spending and this is a small part of the budget. It is not the biggest part of the budget. And it is not going to balance the budget in itself. But the facts are this. First, the amendment caps growth in both de-

fense and nondefense discretionary spending. Second, the sponsors have never claimed the amendment would balance the budget. We have to do a lot more than this. The President himself estimates that his 3-year freeze he proposed—spending not related to defense or veterans or foreign affairs—would result in a \$250 billion savings over 10 years and that is real money.

This legislation has the potential to save hundreds of billions of dollars. If the choice is between 8 and 10-percent increases, as we have had in the last couple of years, and the 2-percent or so increase that would be allowed under this budget, it would save a lot more than \$250 billion over a period of time.

I want to say how much I appreciate the support and leadership by Senator McCaskill on this matter. When we voted before, all Republicans but 1 and 17 Democrats voted for the legislation. I expect there is at least one more vote with our new Senator from Massachusetts. We have changed it to apply to next year and not this year. That should attract more support. I am hopeful that we could pass this. I think it would send a message to our colleagues and to those who appropriate the money here, that we are serious about staying within the budget limits. We are saying to the President, not only do we support you but we are going to create a mechanism where it is going to be harder to spend more than you proposed. We will send a message to the financial markets, which are wondering what we are doing here.

If you read the financial pages, people make statements on Wall Street that indicate they have no confidence we are going to reverse the trend we are on. In fact, the trend is so stunning it puts us on the road to tripling the national debt in 10 years—from 2008 with \$5.8 billion in public debt held by people all over the world, including governments such as China, to 2013 with \$11 trillion, to 2019 with \$17 trillion—doubling in 5 years, tripling in 10 years.

I think we can do better. There is a lot of blame to go around and all of us deserve some of it. But we are in a position where I think we can make a difference today. This legislation, I believe, is a good step and would send a message throughout the world, to the financial markets, that Congress is beginning to take firm steps that would contain the growth of spending.

I am pleased to see my colleague from Missouri here. She has been a champion on this and integrity in spending in all areas. She challenges waste, fraud, and abuse. She understands more than most in our body that the money we have extracted from the American taxpayer should be spent very carefully in order to guarantee we get a quality benefit from it.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Missouri.

Mrs. McCASKILL. At the risk of predicting bipartisanship is going to break

out at every corner of this place, I saw my friend was on the floor and I wanted to take a minute to come and talk about what this amendment represents on several levels. First, it is truly a bipartisan effort. My friend from Alabama, with whom I have worked closely on this amendment, is right. There is plenty of blame to go around and we spend a whole lot of time on the blame game on this floor. This is a moment we can get beyond that. This is a moment we can support our President, we can speak to fiscal accountability, which many of my friend who are in my party and many of my friends in the other party like to talk about. But there is the talk and then there is the walk. We have a lot of talk about fiscal accountability but so often we kind of do not want to walk the walk. This is a moment we can walk the walk.

The President wants to do this. In fact, as my friend pointed out, the President's spending freeze goes further than this amendment. It goes further than what we are proposing to do. This is not an unreasonable amendment. In fact, it leaves out emergency spending, which we have talked a lot about this year. It leaves out this year because of the kind of critical economic situation in which we find ourselves. It leaves out wartime spending for those conflicts the Congress has authorized. But everybody else is in the pool. Everybody else is in. We have to look at, over the board, the kind of spending freezes where 1 to 2 percent is enough in light of the deficit we are facing.

We are so close to passing this. We are so close. I am not sure if we succeed in passing it that confetti is going to drop from the sky or balloons are going to come down, but they should, because it will be a moment, maybe the first moment in a long time, that the American people, if they were paying close attention, would think to themselves: You know, maybe they get it, just maybe they get it.

If we fail to pass this modest, appropriate path to fiscal responsibility—if we fail to pass this, then I don't blame the people for whom I work. I do not blame them if they shake their heads in wonderment. What is it going to take? How much money are we going to pretend we have, year after year, handcuffing the greatness of this Nation? Because if we are honest about it, this Nation has been great for many reasons: our values, the strength of our military, but at the end of the day, this Nation has been great because we were an economic power. We were the country everyone looked to about how we did our economy, how we promoted entrepreneurs, how the free market lifted all boats. We will not be able to survive in economic greatness if we do not figure this out.

In fact, if we look over our shoulder right now, there are a couple of big guys coming up on us and they hold our debt. They hold our debt.

I know I have some fence sitters particularly on my side. I say to all the

fence sitters, this is not as aggressive as the President has laid out. Support your President. Freeze spending at a reasonable level, leaving out emergencies, leaving out wars that we have in fact signed off on in Congress, and let's get busy showing the American people once and for all that we get it.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3389

Mr. BURR. Madam President, at 2 o'clock, I believe we are going to have a series of votes, roughly somewhere around 2 o'clock. One of them is going to be on amendment No. 3389, an amendment that I offered yesterday but chose not to speak on yesterday. I would like to take about 5 minutes just to share with my colleagues what the content of this amendment is.

In simple terms, it is a sales tax holiday amendment. I think we all agree, there is no partisan difference, that our economy is shut down; that we are in a period of anemic growth; and that with anemic growth there is no hope of re-inflating employment. We are almost at a point where we need a shock and awe in our economy, something that gives confidence back to consumers, and, more importantly, to manufacturers of goods.

We have experienced, over the last several months, a replenishment of inventory of purchases that were made in the fourth quarter, predominantly because of the holidays. What we have seen since then is a decline in, or a stagnation of, retail sales. Once we get past this replenishment period, we are going to see manufacturers who look at their workforce, not with the intention of growing it but potentially of possibly shrinking it if things do not grow with the outlook.

I think we are at a point that there is not one silver bullet. I think it takes things such as tax credits to employers that help provide an avenue to bring on somebody new, but it requires something to go out the door.

So I think we have neglected in many ways two areas: one, the access to credit—and there are some bright minds in a bipartisan way working on that here—but also what do we do to stimulate economic activity.

Practically every State in the country, one time a year, at back-to-school time, announces they are going to have a sales tax holiday for the weekend limited to those items that are back-to-school items. Forget the fact that the week before there were probably 50 percent off signs, and nobody went to the store and took advantage of the 50 percent off for backpacks and pencils and paper.

All of a sudden, the no sales tax sign goes up for 2 days, and it is a mass con-

sumer frenzy to try to buy those products while there is no sales tax. I cannot explain why. I can tell you it works.

In 2001, when we were in an economic downturn, we introduced something similar.

So what does my amendment No. 3389 do? It establishes a national tax holiday to provide a needed economic boost for small businesses and for consumers. The legislation would allow States to voluntarily choose to participate and suspend collection of sales taxes for a 10-day period to encourage greater sales.

The Federal Government, unlike in 2001, would share with States the economic cost that would be incurred in lost tax revenue during the tax suspension. The Federal share would be 75 percent of the taxes lost at the State and local level. This is cost sharing. We are going to ask the States to share at 25 percent in hopes that the increase in sales will more than make up for the 25-percent cost that States have incurred in the program.

This sales tax holiday would run for 10 days beginning the first Friday 30 days past enactment of the legislation. Now, why is that important? It is important because starting on the first Friday we get two weekend cycles in the 10-day sales tax holiday.

In my household it does not matter what day of the week it is, we will buy regardless. But there are many Americans who, because of their work schedules, because of their family schedules, the weekend is the only time they have access to do it. This legislation, I believe, would provide increased consumer confidence but, more importantly, stimulate economic activity, stimulate economic activity with tax credits for employers that begin to hire back, and match that with the capital that is needed by small businesses in the way of loans. I think all of a sudden we have a formula that we can turn this economy in the right direction. It may not be a plan to sustain it, but I think what we have to overcome is the lack of confidence of the American consumer right now.

The legislation would require the States to notify the Secretary of the Treasury within 30 days of enactment. Let me say for States, no later than 45 days after the end of the holiday, the Secretary of the Treasury would pay the participating States their 75 percent. Actually in the law it would say: You have 45 days to pay back. Hopefully, it would not be another Cash for Clunkers disaster that we had where the dealers were not reimbursed for the money they had out.

Again, let me just say, tax holidays have a successful track record at the State level. They have provoked strong retail consumer reaction. While they are still somewhat of a new phenomena, surveys and case studies are showing, and have shown, most shoppers view the sales tax holiday favorably. It is an important motivation to them to shop.

What do I have to go on to offer this legislation? I have actually talked to retailers. I have listened to them. I have asked them what would change this overnight. Without exception, they all point to one thing: Do a tax holiday and you will drastically change the number of people coming in our stores. You will drastically change how much they purchase.

This is not a tool where I am trying to create grotesque purchasing in this country. But I am trying to say to the American people, if we want to turn the economy around, if we want to start re-inflating employment, it all starts with creating retail activity. We have an opportunity through this legislation to begin to create the retail activity that puts on a path to recovery.

I hope my colleagues in the next hour or so will consider this piece of legislation. I pay for it with unobligated stimulus money. Therefore, I readily expect a point of order on the Budget Act. So the likelihood is, we will not vote on this amendment, but we will vote on waiving the Budget Act. If we waive the Budget Act, that will tell you that we would then agree to this language, and then it would be up to the House to determine whether we have come up with a successful way to stimulate retail activities.

I thank my colleagues for their consideration.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BAUCUS. Madam President, I ask unanimous consent that at 2:30 p.m. today the Senate proceed to vote with respect to the following amendments, with no amendments in order to the amendments on this list, prior to a vote in relation thereto; that prior to each vote listed here there be 2 minutes of debate equally divided and controlled in the usual form; and that after the first vote in the sequence, succeeding votes be limited to 10 minutes each; further, that the debate time until 2:30 p.m. be equally divided and controlled between the leaders or their designees: Stabenow amendment No. 3382, Brown amendment No. 3391, Burr amendment No. 3389, Sessions-McCaskill amendment No. 3337; further, that upon disposition of these four amendments, the Senate then proceed to executive session to consider Executive Calendar No. 609, the nomination of William Conley to be U.S. district judge for the Western District of Wisconsin; that once the nomination has been reported, the Senate then proceed to vote on the confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid upon the table, no further motions be in order, the President

be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

Mr. BAUCUS. Madam President, I yield such time as he desires to the Senator from Massachusetts.

AMENDMENT NO. 3403

Mr. KERRY. I thank the chairman of the Finance Committee and the manager of this bill.

I wanted to take just a few moments to talk about an amendment I have filed to extend the TANF emergency fund; that is, the Temporary Assistance to Needy Families Fund. I hope I can work with the majority leader, who is already working with us to work through some of the difficulties in terms of the overall funding levels, to hopefully have a vote on this at the earliest possible time.

We have the opportunity to extend a proven program that provides genuinely desperately needed assistance to the Nation's poorest families and their children, the people who are the most vulnerable to an economic downturn. I am joined by Senator SPECTER in offering this amendment to extend the Temporary Assistance to Needy Families Fund, the TANF as we call it, the emergency contingency fund, which was included in last year's economic stimulus legislation.

I am glad to say this policy is supported by Majority Leader REID, by Chairman BAUCUS, Senator SCHUMER, Senator FEINSTEIN, Senator SPECTER, and others. It is my understanding this amendment is fully offset. Senate Finance Chairman BAUCUS and Majority Leader REID have been integral to the development of this amendment. I am very grateful to them and their staff for the assistance they have given us and for their help on this important issue.

This is not the moment in our economic recovery effort to walk away from the neediest families in the country, from a successful program that has bolstered the safety net and created jobs for the unemployed. What my amendment does is simply extend a program that is already working, and working effectively. It extends a program that was specifically put into the economic stimulus package because it is so critical, so sustaining in support for these neediest families at a level where it is even harder to get jobs and break back into the recovery.

According to the Center on Budget and Policy Priorities, more than 30 States are currently using TANF emergency funds to create subsidized jobs. By this summer, these programs are going to have provided subsidies for more than 100,000 jobs. That number could grow substantially with more time and more money.

Let me just share with colleagues sort of the breadth of these kinds of things, some of the examples of the job placements that have been made and created by the TANF emergency fund

range from administrative jobs: project management secretary, legal secretary, data entry clerks, merchandise listers, dispatchers, marketing sales, and so forth; construction: painters, laborers, installers, land development, general laborers, surveyors, and so forth; customer service: porters, cashiers, housekeeping, front desk clerks; food service: restaurant managers, catering managers, food preparation, food delivery; health care: medical billing, medical record clerk, receptionist, and so forth. There are maintenance jobs, production jobs, human service positions. It covers the full range of the American economy, and it makes a difference in communities to people's, literally sustainability, and to families being able to hold together and stick together.

Some States are using the TANF fund to extensively help offset higher basic assistance costs and to extend a variety of short-term emergency aid to struggling families, such as heating assistance, housing assistance, domestic violence services, and transportation help.

This amendment maintains the current policy of reimbursing States for 80 cents on every dollar spent on subsidized employment or basic assistance or short-term or emergency aid.

The amendment aids a fourth category of programs that can receive emergency funds, and those are work programs. As families continue to struggle to find jobs with the high unemployment that we are facing, this category has been added in order to give States new options for bolstering employment and job preparation.

Finally, this amendment would provide States with a maximum allocation for fiscal year 2011 equal to 25 percent of the State's annual TANF block grant.

I am pleased to say that Massachusetts has been one of the top five States in using these emergency funds. We have currently used 65 percent of our available funds. It does not mean we are using someone else's funds; those are the funds available to us. But it shows you that where the need is important and necessary what a difference it makes.

We are on track to draw down 100 percent of the emergency funds that are allowed under the Recovery Act by September of this year. We are using this fund to maintain key existing safety net programs for cash assistance, emergency housing, rental vouchers, job programs, and family services. This basic assistance helps the economy because the families receiving it spend virtually every cent of it in their local economy to immediately meet their basic needs.

A 1-year extension of the TANF emergency fund could provide us with an additional \$60 to \$108 million to accommodate the 10-percent TANF caseload increase we have seen since the start of the recession. I believe this is a fundamental continuation of the so-

cial contract that exists in this country where we have all come to understand that communities are sustained, an enormous difference is made in the lives of children particularly but in families, the neediest families in our country, many of whom have the hardest time finding jobs because they are at the bottom end of the entry level of job levels in many cases, and those are the jobs that have been lost the fastest and the quickest and they are the slowest to come back in many cases.

I am pleased to say this legislation is supported in a bipartisan way from bipartisan organizations, including the National Governors Association, the National Conference of State Legislators, the American Public Human Services Association, and the National Association of State TANF Administrators.

This fund has caused both direct job creation and has provided an enormous amount of necessary activity in local communities. A vote against this amendment would leave an awful lot of folks unemployed, low-income parents without work opportunities or without the vital assistance of basic necessities. I hope all colleagues will support the amendment when the time comes.

I suggest the absence of a quorum and ask unanimous consent that time under the quorum call be divided equally between both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Virginia.

AMENDMENT NO. 3342

Mr. WEBB. Mr. President, I rise to speak about amendment No. 3342 which I have offered with respect to the legislation in question. There has been some confusion among my colleagues about what exactly is contained in this amendment which I introduced with Senator BOXER as an individual standalone bill previously and introduced in similar format here on this legislation.

I emphasize to my colleagues that this is a carefully drafted, one-shot amendment designed to give the American taxpayers a place on the upside of the recovery of the financial system that they, quite frankly, enabled. This amendment would provide a one-time 50-percent tax on bonuses that are above \$400,000 of any initial bonus paid to executives of financial institutions that received a minimum of \$5 billion in the TARP program. It is only for income that was generated through work in 2009 and compensated in 2010. This is a one-shot matter of fairness to balance out the rewards these financial institutions received which were enabled by the contributions of the American

taxpayer in the TARP program. We have had estimates that this amendment will recover for our economic system somewhere between \$3.5 and \$10 billion. I again emphasize that the American taxpayers did not create this economic crisis. They were required to bail out those people who did create it. They deserve to share in the upside, in the rewards they themselves enabled.

Paul Krugman, who is a Nobel Prize-winning economist, wrote in July of 2008 about his concern at the very inception of this economic crisis that we were moving toward a tendency in this country to socialize risk and individualize reward. In other words, whenever we create a situation where there is an economic challenge, the American taxpayers at large are expected to absorb the risk. But then when the reward comes in, only the executives, the people who were managing the financial system, are able to actually get the rewards.

This particular reward in this one-shot tax proposal has come about largely as the result of government intervention, as the result of working people having to put their money forward in order to bail out a financial system that had gone wrong. As a result, I believe, as a matter of equity, the reward should be shared with taxpayers who made it possible.

For those who had to vote on the TARP program on October 1, 2008, it was a very difficult vote and a defining moment in the Senate. We need to remind ourselves of what was going on at that point. We were called on a mass conference call in the Senate by the Secretary of the Treasury and Chairman Bernanke telling us that if we did not move \$700 billion forward without a hearing, on an emergency basis, the world's economic systems were going to go into cataclysmic free fall.

I, like a lot of Members, struggled with that vote. I talked with as many people as I could across the philosophical spectrum of how the economy should work. I finally decided in favor of moving that money forward. At the same time, I laid down a set of principles. One is that we should look at executive compensation. Another is that we should look at reregulating the financial sector, on which Chairman BAUCUS has taken the lead. Another is that it would be vital, in terms of fairness, that we include the American taxpayer on the upside of any recovery. In other words, if the taxpayers were going to have to put money in when these troubled assets or toxic assets—whichever term people would like to use—couldn't find a value and were clogging up our economic system, clogging up our liquidity, once that situation was cleared and a value was placed on these amounts and the economy started to recover, a portion of that benefit should go to the taxpayers who had to put the money out.

There has been some talk about how with these companies—and we are only talking about 13 companies that got \$5

billion or more—TARP money has been paid back. In some cases, a good bit of this money has been paid back. But I wish to make two points.

The first is, any moneys that were paid back were received at the earliest in midyear last year, 2009, meaning that taxpayer assistance to these companies was very much in effect. Quite frankly, among the 13 companies included in our amendment, most of the money has not been paid back.

I have had some questions here on the floor about whether this amendment discriminates against New York. Quite frankly, two of the largest companies with respect to bailout commitments are based in DC and in my own State of Virginia. This has nothing to do with regional disagreements or class envy of any sort. It is just a matter of how we ought to deal fairly with the way our taxpayers, our working people, had to step forward.

A second point in terms of the TARP money being paid back is that the extent of our government's obligation to these bailout companies is astronomical. It is beyond the \$700 billion. This goes to Paul Krugman's point which he has made consistently since 2008 about continually socializing risk that is enabling these rewards and not giving a benefit to the people who largely took the risk.

The billions of dollars in bonuses being paid out are a direct result not only of the TARP bailout but also of generous Federal Reserve policies over the last year. We have seen near-zero interest rates, a discount window, and we have had the toxic assets bought by taxpayers. At the same time, these firms were able to borrow cheaply, to lend at a higher rate, to charge fees, and to leverage their bets into purely financial transactions.

If you examined a quarterly report to the Congress that came out in July of last year, they indicated that the true potential amount of support the Federal Reserve was providing these programs was in the neighborhood of \$6.8 trillion. So these risk takers, these people who were managing at the top level in these companies did so at a time that they had enormous backup from the American taxpayer.

Andrew Cuomo, attorney general of New York, wrote a letter in January of this year to TARP recipients. In this letter, he made a couple of very important points that go to the intent of our legislation.

I ask unanimous consent to have the letter printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. WEBB. He writes:

... the Office of the New York Attorney General has been conducting an inquiry into various aspects of executive compensation at many of our nation's largest financial institutions ... [including] a review of compensation practices at the 2008 TARP-recipient banks.

He makes a very valid point at the end of his letter. And here, he is writ-

ing to a company that had paid back the initial TARP money.

He writes:

... when you received TARP funding, your firm took on a new responsibility to taxpayers. While your firm has now paid the TARP money back—

Again, not all have; most of the money has not been paid back—

it is not clear that your firm would have been in the same position now had you not received that TARP money.

We have all struggled with this issue. There have been many different approaches. In fact, Chairman BAUCUS has been out front on this issue in a number of different ways. I have in front of me the Compensation Fairness Act of 2009, which Chairman BAUCUS introduced last March, which was one attempt to address this issue of windfall profits bonuses. This legislation was sponsored by Senators GRASSLEY, SCHUMER, MENENDEZ, and others. Our bill is much narrower than this bill. This bill would tax bonuses of more than \$50,000. Our bill taxes bonuses of more than \$400,000. This bill would have taxed institutions that received more than \$1 million. Ours requires \$5 billion. This bill was retroactive and recurring in terms of the taxes. Ours is a one-shot, just on this 2009 amount of money that came in as a result or the benefits that came in as a result of our taxpayers stepping forward and putting \$700 billion into the TARP program. Senator BROWN of Ohio has introduced legislation that would put a windfall profits tax on any bonus higher than \$25,000.

Our amendment was inspired and designed based on a couple of previous writings and pieces of legislation, the first being the Baucus legislation, which was the starting point for it. The other was, I think, a very powerful article written in the Financial Times—one of the most conservative economic newspapers in the world—last November, by Martin Wolf. I am going to read some excerpts from this article. First, he said:

Windfall taxes are a ghastly idea. ... So why do I now find the idea of a windfall tax on banks so appealing? Well, this time, it does look different.

First, all the institutions making exceptional profits do so because they are beneficiaries of unlimited state insurance for themselves and their counterparts. ...

Second, the profits being made today are in large part the fruit of the free money provided by the central bank, an arm of the state. ...

Third, the case for generous subventions is to restore the financial system—and so the economy—to health. It is not to enrich bankers. ...

Fourth, ordinary people can accept that risk takers receive huge rewards. But such rewards for those who have been rescued by the state and bear substantial responsibility for the crisis are surely intolerable. ...

Fifth, ... "Windfall" support should be matched by windfall taxes.

His proposal, which inspired the specifics of our amendment, was that there could be a "one-off windfall tax on bonuses," a one-time windfall tax

on bonuses to equal the playing field in terms of this unique situation our country found itself in.

I wish to say to my fellow Members and to other people who are doing the hard work of keeping our economy strong, I respect what it takes to take on risk and get a reward. I respect the entrepreneurship that has strengthened our country throughout its history. But we also need to remember the working people in this country strongly and rightly believe they have borne the brunt of this economic crisis, and they just as strongly and rightly believe they are becoming the last to be rewarded, as we begin to recover from it.

Our taxpayers, our working people, rescued a financial system that was on the verge of collapse because of massive acts of bad judgment by the very companies that are now reaping huge bonuses from the government's intervention. It is not too much to ask those who have been fully compensated, and who have received in excess of a \$400,000 bonus on top of their compensation, that they pay a one-time tax and share that excess on top of their \$400,000 bonus in order to help make their rescuers a little more secure.

Mr. President, I yield the floor.

#### EXHIBIT 1

STATE OF NEW YORK,  
OFFICE OF THE ATTORNEY GENERAL,  
New York, NY, Jan. 11, 2010.

Re executive compensation investigation.

BANK OF AMERICA CORP.,  
New York, NY.

DEAR MR. LIMAN: As you know, the Office of the New York Attorney General has been conducting an inquiry into various aspects of executive compensation at many of our nation's largest financial institutions. Our inquiry has included a review of compensation practices at the original 2008 TARP-recipient banks.

Last year, this Office conducted a review of bonuses to allow the public, and the industry, an opportunity to review all relevant information concerning compensation practices. This year, both the amount of bonus packages and the construction of such packages is relevant information to our inquiry.

Pursuant to our ongoing inquiry, please provide this Office with a detailed accounting regarding executive compensation at your firm for 2009. In particular, it is vital that you immediately provide us with any and all information concerning your firm's bonus pool and distribution information for the 2009 year.

In particular, please provide this Office with the following information:

1. A description of all bonus pools for 2009, including a description of the process by which the pools were or will be established.

2. A description of your bonus program to include cash, stock and other incentive breakdowns, vesting periods, clawback provisions, and any other provisions to tie compensation to performance and/or the long-term health of your firm, as well as a description of how the 2009 bonus structures differ from 2008.

3. A description of the process by which the bonus pools were or will be allocated and distributed, including any documents reflecting discussion of the allocation and distribution process and the justification thereof.

4. A description of how, if at all, the calculation and plans for allocation of the

bonus pools have changed as a result of your firm's receipt of TARP funds and/or your firm's repayment of TARP funds.

5. For the years 2007, 2008, and 2009, a description of the bonuses awarded to employees receiving more than \$250,000 in compensation. For this request, please include the allocation between cash and non-cash compensation and please provide a listing by amount of the 200 top bonuses awarded by your firm.

6. For 2009, the total value of bonuses awarded;

7. A description of how your bonus pool would have been impacted had you not received TARP funding in 2008 and/or 2009.

8. A chart and description of your institution's rate and/or magnitude of lending over the last 3 years—2007, 2008, and 2009. Please also include the relevant sizes of the businesses to which there has been lending.

9. For 2009, the number of employees who received any bonus with a value equal to or greater than (i) \$1 million, (ii) \$2 million and (iii) \$3 million. "Bonus" includes cash, deferred cash, equity, options, restricted stock, performance or time vesting stock and performance priced options, restricted stock units, restricted stock award, stock appreciation right or any similar type of grant or award. Please include for each bonus the cash and non-cash allocation.

10. Identify all compensation consultants retained as part of the 2009 compensation process.

11. The number of employees employed at your firm on December 31, 2009.

We have copied the Board of Directors on this letter because we believe they should be involved in the response to our requests as the firm's top management likely has a significant interest in the compensation issues raised by our requests.

As we informed your firm last year, when you received TARP funding, your firm took on a new responsibility to taxpayers. While your firm has now paid the TARP money back, it is not clear that your firm would have been in the same position now had you not received that TARP money. Accordingly, we also ask that the Board inform us of the policies, procedures, and protections the Board has instituted that will ensure Board review of all such company expenditures going forward.

As recent government actions have created new issues of public accountability and as private sector financial institutions are grappling with the consequences of these actions, we believe the need for full disclosure and transparency are essential and this reporting will assist in that effort.

We ask that you provide the requested information by February 8, 2010.

Very truly yours,

ANDREW M. CUOMO,

Attorney General of the State of New York.

MR. BAUCUS. Mr. President, I ask unanimous consent that the time in all quorum calls prior to the vote at 2:30 p.m. be charged equally to both sides.

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

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

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

#### AMENDMENT NO. 3358

MR. COBURN. Mr. President, I am going to spend a few minutes talking

about an amendment I have, No. 3358, which has already been pending, but I think, first, it is important for us to know that last year we borrowed \$4 billion a day in this country. Mr. President, 43 cents out of every \$1 the country spent at the Federal level was borrowed.

What does that mean? What that means is that over the next 10 years we are going to be paying \$4.5 trillion in interest on the additional \$9.8 trillion we are projected to spend that we do not have.

It was less than 3 weeks ago that this body passed a statute. Here is what the statute said: If you do not have the money to spend, then you have to cut something if you are going to spend new money.

As of last night, in the 3 weeks since we passed that bill, this body has said: That does not count. Time out. We are going to spend \$120 billion over the next 10 years, but we are not going to pay for it.

That is why when that bill came through, to tell America we were going to finally get some fiscal discipline, we, as a minority, voted against it, because we knew it was not true. As a matter of fact, one of our newer Members wanted to vote for it, as I had in the past when I first got here because I believed what it meant was real.

The fact is, the pay-go rules are a ruse. Pay-go means: American people, you pay, and we will go spend it. Even more than that: What you don't pay, we will go spend anyhow and we will charge it to your children and your grandchildren.

So this amendment I am proposing to be a part of this tax extenders plan would require three things. It would require the Secretary of the Senate to post on the Web site the following three things: the total amount of spending, both discretionary and mandatory, passed by the Senate that has not been paid for. We have this big hullabaloo saying we are going to pay for it and then as soon as the hard choices come of getting rid of something that is a lower priority, we will not do it; we just charge it on the credit card. So this amendment would require us to post on our Web site all the spending we are doing that wasn't paid for. In other words, we are not going to tell America one thing and do another without at least being transparent in knowing we are complicit in not following our own law we passed that said you have to do this.

The second thing it would require is the total amount of spending authorized in new legislation as scored by the CBO. Because what routinely happens here, and what I have been rejected on over the last 5½ years, is that if you want to start a new program that is well intended to help people, one of the things we ought to do is get rid of the ones that aren't helping people, the

ones that aren't efficient, the ones that are a lower priority. In other words, we ought to have to do what every American family has been doing for the last 2 or 3 years as we have gone through this economic constriction, which is make hard choices. They put priorities on things. The fact is, we are going to have \$120 billion inside of 3 weeks that we refuse to prioritize. We are just going to spend another \$120 billion.

Finally, the third component of what I am asking for in this amendment is for us to put on the Senate Web site any new government programs we create. What are the new programs we create? That is transparency.

So this amendment is not a gimmick. It is not to try to make people look bad; it is to try to make sure the American people know what we are doing and can see what we are doing. It is also to make sure the American people know when we say one thing and then do another. It is to make sure the American people can see that the Senate has passed \$120 billion worth of unpaid-for programs that we, in fact, directly charged to the next two generations, after we have passed a pay-go rule saying we will never do this. It is about credibility. It is about character. It is about honor. It is about fessing up, if you don't have the courage to make hard choices.

So it is very simple. Some of my colleagues think it is a gimmick. I don't think it is a gimmick. It is about being transparent with the truth about our lack of courage to make hard choices.

Ultimately, what is going to happen is the world financial system is going to force us into making hard choices. We all know that is coming. We are going to have a \$1.6 trillion deficit this year. Forty-five cents out of every dollar we spend we are going to borrow against our children. When does it stop? When do we start making the difficult choices we were sent to make?

So my hope is that my colleagues will support this amendment and we will, in fact, be honest and transparent with the American people about what we are doing and how we are doing it and how we don't even follow our own rules. There is a Senate rule on pay-go, a budget rule, but now there is a statute. What we have done is, we have conveniently voted in the Senate that we are not going to honor the statute, we are not going to make the hard choices, and we are going to go on and spend the future of the generations who follow.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

#### NOMINATION OF WILLIAM CONLEY

Mr. KOHL. Mr. President, it is my pleasure to rise in support of William Conley's nomination to be district court judge for the Western District of Wisconsin. If confirmed, Mr. Conley will replace Judge Barbara Crabb, who is taking senior status after more than 30 years of distinguished service on the court.

Bill Conley will make an outstanding addition to the Federal bench. He rose from humble roots in the small town of Rice Lake, WI, to graduate with distinction from the University of Wisconsin. He went on to the law school at UW, graduating cum laude and Order of the Coif. Following law school, he clerked on the Seventh Circuit Court of Appeals for Judge Fairchild.

Bill Conley's career has prepared him well to be a Federal judge. He has practiced law for 25 years at the venerable Madison firm of Foley & Lardner. Throughout his career, he has earned a reputation as a skillful lawyer and top-notch litigator. He has represented a variety of national and international companies before State and Federal courts and has served as a mediator and arbitrator and helped parties resolve their disputes outside court.

One of Bill Conley's greatest strengths is his frequent representation of clients before the court to which he has been nominated. From this experience, he has gained a keen understanding of the court as well as the fairness and impartiality the administration of justice requires.

While managing a busy legal practice, Bill Conley has remained committed to using his legal talent for the benefit of the local community. He has devoted hundreds of hours to pro bono legal work, representing refugees, indigent defendants, and others who would otherwise not be able to afford legal representation. He has also been active with the Remington Center for Criminal Justice at the University of Wisconsin, as well as the Wisconsin Equal Justice Fund.

Despite the many hours his work demands, Bill Conley makes time for his family and is a devoted husband, father, brother, and son. In sum, he possesses all the best qualities we look for in a judge: legal acumen, diligence, humility, and integrity.

Bill Conley's nomination was the result of the work of the nonpartisan Wisconsin Federal Judicial Nominating Commission. For the past 30 years, Senators from Wisconsin, regardless of party, have used the Commission to select candidates for the Federal bench. This process ensures that a judge's qualifications are always our primary consideration and that politics are kept to a minimum.

Bill Conley's nomination proves, once again, that the process we use in Wisconsin ensures excellence. So it is no surprise that the American Bar Association found him to be "unanimously well qualified" and that the Judiciary Committee approved of his nomination without dissent.

When considering nominees for lifetime appointments for the Federal courts, we must satisfy ourselves that these nominees have substantial legal experience, are learned in the law, have the respect of their peers, and, most important of all, will be fair-minded and do justice without predisposition or bias. William Conley's experience

and qualifications convince me he well exceeds these requirements.

I am confident Bill Conley will be a Federal judge we can be proud of and that he will serve the people of Wisconsin well.

Thank you very much. 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. BARRASSO. 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. BARRASSO. Mr. President, I ask that I be allowed to speak as in morning business.

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

#### NOMINATION OF ARTHUR ELKINS

Mr. BARRASSO. Mr. President, I rise today because the Senate Committee on Environment and Public Works will soon be meeting to discuss the nomination of Mr. Arthur Elkins to be the inspector general at the Environmental Protection Agency. I support Mr. Elkins moving out of committee, and to date he has truthfully answered all the questions I posed to him. Before the full Senate votes, I do have some additional questions based on a report I am releasing today.

As ranking member of the Subcommittee on Oversight in the Senate Environment and Public Works Committee, I care a great deal about ensuring oversight over the agencies within our jurisdiction, the most important of which is the EPA. Over the last few months, the minority on the subcommittee has compiled a report. The report is entitled "The Status of Oversight: A Year of Lost Oversight." This report details the severe lack of oversight by the majority of the committee and the administration.

When the majority created the Subcommittee on Oversight, it was stated that they planned "to use the subcommittee to explore ways to restore scientific integrity in the EPA, and other Federal agencies focused on the environment, and to strengthen environmental protections by once again making the regulatory process more transparent." I agree. One year later, as my report details, there have only been two subcommittee hearings, and, as the report concludes, "The result of this is that the majority has let a year go by where they have failed to pursue their stated goals."

Over the last year, my colleagues and I have requested a series of investigations and hearings into key matters related to whistleblowers being silenced, data being manipulated, and shadow czars holding meetings where nothing is put into writing to avoid Freedom of Information Act requests. We have asked for these hearings and investigations because we believe the public needs to have trust in their government.



At the beginning of this administration, Environmental Protection Agency Administrator Lisa Jackson herself stated unequivocally: "The success of our environmental efforts depends on our earning and maintaining the trust of the public we serve."

As this report demonstrates, this administration and the majority have shown little interest in pursuing these matters. Let me read to you the findings and recommendations of the report: In 2009, the Senate Environment and Public Works Committee majority chose not to conduct oversight over the relevant agencies within the executive branch. The lack of any oversight over the activities of the Federal agencies weakens the system of checks and balances and invites the potential for larger abuses. Action must be taken to investigate oversight issues from the last year, and further coordination within the committee regarding the oversight jurisdiction and responsibility is needed.

I believe that finally receiving a nominee for inspector general at EPA gives the public another opportunity to get to the truth about the issues raised in this report.

In his answers to my questions to date, Mr. Elkins has signaled that he is absolutely willing to chart a new course from where this administration and the majority have taken us.

When I asked: Do you believe it is the responsibility of the EPA inspector general to investigate instances where whistleblowers are silenced by their superiors at the Agency, he said yes.

When I asked: Will you pursue those instances, he said yes.

When I asked: Do you believe it is the responsibility of the EPA inspector general to investigate and report instances where scientific procedures at EPA are circumvented, he said yes.

When I asked: Will you investigate instances where agency employees are smeared publicly in the press by higher-ups in an agency or in the administration simply for providing their best advice and counsel, he said yes.

All of these things are not hypotheticals; they all occurred over the last year. My colleagues and I in the minority have asked for investigations into each of these instances by the majority and the administration. The response we have received each time has been a resounding no.

If the administration and the majority refuse to provide proper oversight, then someone else has to. That is why I plan to share this oversight report with Mr. Elkins, the nominee to be inspector general at the EPA. Before a floor vote, I will seek confirmation that he will give the matters I raise in this report due consideration. I am confident based on his response so far that he will answer in the affirmative. If so, we will have the sea change at the EPA that will restore the public's confidence in that Agency.

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

The PRESIDING OFFICER. Will the Senator withhold?

Mr. BARRASSO. I will.

AMENDMENT NO. 3382

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 3382 offered by the Senator from Michigan, Ms. STABENOW.

Ms. STABENOW. Mr. President, I am pleased to speak on behalf of this amendment which was cosponsored by Senators HATCH, SCHUMER, CRAPO, SNOWE, SHERROD BROWN, ENZI, RISC, and COLLINS.

This focuses on companies that continue to face significant challenges in raising capital for new investments. It would allow struggling companies that do not benefit from other incentives, such as the NOL carryback and others, to utilize existing AMT credits based on new investments they make in this year for equipment and so on to create jobs.

It encourages companies to invest and to allow companies to be able to receive a badly needed source of capital. This is very important for companies that will be in a position where they are not making a profit but are continuing to invest, to maintain their workforce, or grow their workforce, and need to be able to have a source of capital.

This is dollars they would be receiving at some point anyway, because when they become profitable, they are able to use the credits. We are going to allow them to use a portion, just 10 percent of those credits, to be able to invest in equipment—

The PRESIDING OFFICER. The Senator's time has expired.

Ms. STABENOW. And facilities to create jobs here.

I want to thank many businesses: the U.S. Chamber, the National Association of Manufacturers, the Association of Manufacturing Technology, the Equipment Manufacturers, Motor and Equipment Manufacturers, and many businesses that are in America working to make things, to bring back jobs. This is on behalf of all of them, and I would ask colleagues for their support.

The PRESIDING OFFICER. Who yields time in opposition?

Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 3382) was agreed to.

AMENDMENT NO. 3391

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate prior to a vote in relation to amendment No. 3391, offered by the Senator from Massachusetts, Mr. BROWN.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN of Massachusetts. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BROWN of Massachusetts. Mr. President, providing immediate across-the-board tax relief to working families is not complicated economic policy. It is simple and makes economic sense. Under my plan, almost 130 million workers will receive immediate and direct tax relief. If we took the estimated \$80 billion in unobligated stimulus accounts today, money that is sitting there unused, in what I consider a stimulus slush fund, and gave it back to the American people, our workers could see their payroll taxes lowered by nearly \$100 per month, saving them more than \$500 over a 6-month period, and working couples could receive a tax cut worth more than \$1,000.

This has been done before. JFK and Ronald Reagan called for across-the-board tax cuts to stimulate the economy and we can do that now. I moved last week for a bipartisan effort to get Washington working again. I reached out across party lines and made a sincere effort to stop business as usual to get the jobs done that the American people are demanding.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, as a former President used to say, "There they go again." There they go again trying to cut back the Recovery Act. There they go again trying to scale back what CBO says is a proven success in creating jobs. They tried it with the Bunning amendment Tuesday, they tried it with the Thune amendment yesterday, they tried it with the Bunning amendment yesterday, they tried it with the Burr amendment yesterday. Each time the Senate rejected their attempt to raid the Recovery Act, and we should do the same again today.

The nonpartisan Congressional Budget Office said the Recovery Act created between 1 and 3 million full-time equivalent jobs. That is real job creation. Now is not the time to be scaling back job creation. I urge that we do not adopt this amendment.

I raise a point of order against section 103(d) of the pending amendment pursuant to section 403 of S. Con. Res. 13, the concurrent resolution on the budget for fiscal year 2010.

Mr. BROWN of Massachusetts. I move to waive the applicable section of the Budget Act with respect to my amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 44, nays 56, as follows:

[Rollcall Vote No. 40 Leg.]

## YEAS—44

Alexander	Crapo	LeMieux
Barrasso	DeMint	Lincoln
Bayh	Dodd	Lugar
Bennett	Ensign	McCain
Bond	Enzi	McConnell
Brown (MA)	Graham	Murkowski
Brownback	Grassley	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Snowe
Cochran	Isakson	Thune
Collins	Johanns	Vitter
Corker	Kerry	Wyden
Cornyn	Kyl	

## NAYS—56

Akaka	Gillibrand	Nelson (FL)
Baucus	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Klobuchar	Schumer
Burr	Kohl	Shaheen
Byrd	Landrieu	Specter
Cantwell	Lautenberg	Stabenow
Cardin	Leahy	Tester
Carper	Levin	Udall (CO)
Casey	Lieberman	Udall (NM)
Conrad	McCaskill	Voinovich
Dorgan	Menendez	Warner
Durbin	Merkley	Webb
Feingold	Mikulski	Whitehouse
Feinstein	Murray	Wyden
Franken	Nelson (NE)	

The PRESIDING OFFICER (Mr. FRANKEN). On this vote, the yeas are 44, the nays are 56. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained and the emergency designation is removed. The Senator from Montana.

Mr. BAUCUS. Mr. President, I raise a point of order that the pending Brown amendment violates section 201 of S. Con. Res. 21, the concurrent resolution on the budget for fiscal year 2008.

The PRESIDING OFFICER. The point of order is sustained and the amendment falls.

## AMENDMENT NO. 3389

Mr. BAUCUS. Mr. President, I believe the next amendment is the Burr amendment.

The PRESIDING OFFICER. Yes, there are now 2 minutes evenly divided before a vote with respect to the Burr amendment.

The Senator from North Carolina.

Mr. BURR. Mr. President, I will be very brief, and we can get on with this.

My amendment is very simple. In the spirit of trying to restart this economy, get Americans back to work, what this amendment does is create a 10-day tax holiday. It is voluntary for any State that wants to participate. It would start 30 days after enactment on the first Friday so that we incorporate two weekends of sales.

We introduced this in 2001 to handle the economic downturn. States do it every year for back-to-school time. It is proven to generate retail activity. Right now we need a shock and awe to this economy if we want to get Americans back to work.

I urge my colleagues to support this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, as Yogi Berra once said: "It's déjà vu all over again." That is where we are. We have had this amendment—not this precise amendment but many similar to it—many times, taking Recovery Act funds out.

Just to remind my colleagues, CBO says there are 1 million to 3 million jobs the stimulus bill has created. There is more yet in the recovery package to continue to create more jobs. Now is not the time to cut back on a proven job creator. Therefore, I urge that we do not adopt this amendment.

Mr. President, I raise a point of order that the pending Burr amendment violates section 201 of S. Con. Res. 21, the concurrent resolution on the budget for fiscal year 2008.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(G)(3) of the statutory Pay-As-You-Go Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The yeas and nays resulted—yeas 22, nays 78, as follows:

[Rollcall Vote No. 41 Leg.]

## YEAS—22

Bennett	Graham	McCain
Bond	Grassley	McConnell
Brown (MA)	Hatch	Murkowski
Bunning	Inhofe	Snowe
Burr	Isakson	Thune
Chambliss	Johanns	Vitter
Coburn	LeMieux	
Collins	Lugar	

## NAYS—78

Akaka	Durbin	Menendez
Alexander	Ensign	Merkley
Barrasso	Enzi	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (NE)
Begich	Franken	Nelson (FL)
Bennet	Gillibrand	Pryor
Bingaman	Gregg	Reed
Boxer	Hagan	Reid
Brown (OH)	Harkin	Risch
Brownback	Hutchison	Roberts
Burr	Inouye	Rockefeller
Byrd	Johnson	Sanders
Cantwell	Kaufman	Schumer
Cardin	Kerry	Sessions
Carper	Klobuchar	Shaheen
Casey	Kohl	Shelby
Cochran	Kyl	Specter
Conrad	Landrieu	Stabenow
Corker	Lautenberg	Tester
Cornyn	Leahy	Udall (CO)
Crapo	Levin	Udall (NM)
DeMint	Lieberman	
Dodd	Lincoln	
Dorgan	McCaskill	

Voinovich  
Warner

Webb  
Whitehouse

Wicker  
Wyden

The PRESIDING OFFICER. On this vote, the yeas are 22, the nays are 78. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained. The amendment falls.

## AMENDMENT NO. 3337

There is now 2 minutes, evenly divided, on the Sessions amendment.

The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, this amendment is one of those opportunities where we get to walk the walk. There is an awful lot of talk about how we have to do something about spending. There is a lot of misinformation out there about this amendment.

First of all, it exempts emergencies. It exempts mandatory spending, such as UI and COBRA. It exempts our wars. It exempts emergency spending. It is less aggressive than the President's spending freeze that he has laid out for next year. It does not apply until the next fiscal year.

This is the moment we can walk the walk instead of just talking the talk and show the American people we get it. Two percent is not unreasonable in terms of increases every year when we look at the pile of debt we have to deal with in the coming decades.

I urge the adoption of the amendment.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, this amendment says one thing and does another. It says it will help control Federal spending, but it leaves mandatory spending off the table when that is the area of rampant growth over the past decade.

It also circumvents the Deficit Reduction Commission, which was created a few days ago to look at both spending and revenues by prematurely cutting discretionary spending, and it may require the Appropriations Committee to cut more than \$100 billion from national defense.

I urge my colleagues to once again reject this amendment.

Mr. President, the pending amendment deals with matters within the Budget Committee jurisdiction. Accordingly, I raise a point of order that the pending amendment violates section 306 of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(G)(3) of the statutory Pay-As-You-Go

Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 59, nays 41, as follows:

[Rollcall Vote No. 42 Leg.]

#### YEAS—59

Alexander	DeMint	McConnell
Barrasso	Ensign	Murkowski
Bayh	Enzi	Nelson (NE)
Begich	Graham	Nelson (FL)
Bennet	Grassley	Pryor
Bennett	Gregg	Risch
Bond	Hagan	Roberts
Brown (MA)	Hatch	Sessions
Brownback	Hutchison	Shaheen
Bunning	Inhofe	Shelby
Burr	Isakson	Snowe
Cantwell	Johanns	Tester
Carper	Klobuchar	Thune
Chambliss	Kyl	Udall (CO)
Coburn	LeMieux	Vitter
Cochran	Lieberman	Voinovich
Collins	Lincoln	Warner
Corker	Lugar	Webb
Cornyn	McCain	Wicker
Crapo	McCaskill	

#### NAYS—41

Akaka	Feinstein	Merkley
Baucus	Franken	Mikulski
Bingaman	Gillibrand	Murray
Boxer	Harkin	Reed
Brown (OH)	Inouye	Reid
Burr	Johnson	Rockefeller
Byrd	Kaufman	Sanders
Cardin	Kerry	Schumer
Casey	Kohl	Specter
Conrad	Landrieu	Stabenow
Dodd	Lautenberg	Udall (NM)
Dorgan	Leahy	Whitehouse
Durbin	Levin	Wyden
Feingold	Menendez	

The PRESIDING OFFICER. On this vote, the yeas are 59, the nays are 41.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Mr. DURBIN. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

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

#### EXECUTIVE SESSION

#### NOMINATION OF WILLIAM M. CONLEY TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to consider the following nomination:

The assistant legislative clerk read the nomination of William M. Conley, of Wisconsin, to be United States District Judge for the Western District of Wisconsin.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. DORGAN) is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 43 Ex.]

#### YEAS—99

Akaka	Ensign	McConnell
Alexander	Enzi	Menendez
Barrasso	Feingold	Merkley
Baucus	Feinstein	Mikulski
Bayh	Franken	Murkowski
Begich	Gillibrand	Murray
Bennet	Graham	Nelson (NE)
Bennett	Grassley	Nelson (FL)
Bingaman	Gregg	Pryor
Bond	Hagan	Reed
Boxer	Harkin	Reid
Brown (MA)	Hatch	Risch
Brown (OH)	Hutchison	Roberts
Brownback	Inhofe	Rockefeller
Bunning	Inouye	Sanders
Burr	Isakson	Schumer
Burr	Johanns	Sessions
Byrd	Johnson	Shaheen
Cantwell	Kaufman	Shelby
Cardin	Kerry	Snowe
Carper	Klobuchar	Specter
Casey	Kohl	Stabenow
Chambliss	Kyl	Tester
Coburn	Landrieu	Thune
Cochran	Lautenberg	Udall (CO)
Collins	Leahy	Udall (NM)
Conrad	LeMieux	Vitter
Corker	Levin	Voinovich
Cornyn	Lieberman	Warner
Crapo	Lincoln	Webb
Casey	Lugar	Whitehouse
Conrad	McCain	Wicker
Dodd	McCaskill	Wyden
Durbin		

#### NOT VOTING—1

Dorgan

The nomination was confirmed.

Mr. LEAHY. Madam President, the Senate has finally taken action on the nomination of Judge William Conley to be a U.S. district court judge in the Western District of Wisconsin. Judge Conley was reported by the Senate Judiciary Committee without objection last year, on December 10. That is almost 3 months ago. He has waited for this day for some time.

I had hoped that Mr. Conley's confirmation process would resemble those of Judge Christina Reiss of Vermont and Judge Abdul Kallon of Alabama. Those nominees received relatively prompt consideration by the Senate, and they should serve as a model for Senate action. Sadly, they are the exception rather than the rule. They show what the Senate could do, but does not. Time and again, non-controversial nominees are delayed.

The Senate is far behind where we should be in helping to fill judicial vacancies. Vacancies have skyrocketed to more than 100 and more have been announced. We need to do better. The American people deserve better.

As with so many other nominations before the Senate, Judge Conley has waited an extraordinary amount of

time to be confirmed. Instead of time agreements and the will of the majority, the Senate is faced with delays by Senate Republicans. Earlier this week we had to overcome Republican objection and a filibuster to obtain a vote on the nomination of Judge Barbara Keenan. She, too, was confirmed unanimously, 99 to zero. Yet Republicans would not agree to schedule a vote on her nomination. She was forced to wait four months after being reported by the Senate Judiciary Committee, and the Senate was required to end the Republican filibuster.

In addition to Judge Keenan and Judge Conley, there are 17 additional judicial nominations on the Senate Executive Calendar, all of which have been considered and favorably reported by the Senate Judiciary Committee. Thirteen of those judicial nominations received unanimous or strong bipartisan support in the Judiciary Committee. They should all be considered without further delay. Debate and votes should be scheduled on all of the judicial nominees being stalled. Those opposed by a minority should be debated and then receive a vote.

Only 16 Federal circuit and district court judges have been considered by the Senate so far during President Obama's 13 months in office. By this date during President Bush's first term, the Senate had confirmed 39 judicial nominees.

I remain very concerned about the new standard the Republican minority is applying to many of President Obama's district court nominees. Democrats never used this standard with President Bush's nominees, whether we were in the majority or the minority. In 8 years, the Judiciary Committee reported only a single Bush district court nomination by a party-line vote. That was the nomination of Leon Holmes, who was opposed not because of some litmus test, but because of his strident, intemperate, and insensitive public statements over the years. During President Obama's short time in office, not one, not two, but three district court nominees have been reported on a party-line vote. I hope this new standard does not become the rule for Senate Republicans.

In December, I made several statements in this chamber about the need for progress on the nominees reported by the Senate Judiciary Committee. I also spoke repeatedly to Senate leaders on both sides of the aisle and made the following proposal: Agree to immediate votes on those judicial nominees that are reported by the Senate Judiciary Committee without dissent, and agree to time agreements to debate and vote on the others. I reiterated my proposal earlier this week and do so, again, now: I urge Senate Republicans to reconsider their strategy of obstruction and allow prompt consideration of all 18 judicial nominees currently awaiting final Senate consideration. There is no need for these nominations to be dragged out week after week, month after month.