

Last year, we were looking at the Medicare trust fund running out of money in about 8 years. That is untenable. With the changes we have made in the health care reform legislation, I think we pretty much doubled that life to maybe closer to 15 or 20 years, but we still have a problem. With all the money that is defrauded from Medicare, we want to recover as much of it as we can and put it back into the program.

But in any event, the pilot program—which started in three States and expanded to five States—this year we are expanding it to all 50 States.

There is also a provision in the recently enacted health care law—it is called the Patient Protection and Affordable Care Act, it is the health care reform legislation adopted earlier this year—but there is a provision that says to the folks who run health care at the Department of Health and Human Services that they have to expand this program, this cost recovery program, to include Medicare Advantage, to include the Medicare prescription drug program, and also to include Medicaid. As money is recovered from fraud and overpayments and missed payments in Medicaid, that money will be split between the States and the Federal Government.

The sooner the full program is up and operating, the sooner we can recover even more money—I think probably billions of dollars—in additional overpayments.

There is an added benefit to an expansion of recovery auditing. The Recovery Audit Contracting pilot program has identified dozens of vulnerabilities in the Medicare payment system that can lead to additional waste and fraud.

According to the Centers for Medicare and Medicaid Services—that is the entity that oversees Medicare and Medicaid—the contractors hired to recoup overpayments identified ongoing vulnerabilities that could lead to future overpayments totaling about a third of a billion dollars more. So not only did the contractors recover about \$1 billion in overpayments in the 3-year pilot program, they also identified additional problems in the systems they looked at, which, if we will address them, will reduce and avoid errors in the future.

Tomorrow—what is today, Wednesday?—tomorrow, Thursday—I think tomorrow afternoon—the Subcommittee on Federal Financial Management, which I am privileged to chair, will hold a hearing, and that hearing will examine the history and the opportunities for the Medicare Recovery Audit Contracting.

In conclusion, the Improper Payments Elimination and Recovery Act, which again, hopefully, the House will pass today—the Senate has already passed it; and hopefully the President will put his “John Henry” on it later this month—that legislation will allow us to make even greater strides in

curbing waste and fraud in the work of Federal agencies during the years ahead. Given the size of the budget deficits we face, we need to do that.

Enactment of this legislation is not the last step, but it is an important step. I look forward to seeing this important legislation signed into law and to working with my colleagues and with the administration on its successful implementation.

A lot of times people say to us: Why don't you do something about waste, fraud, and abuse? They are convinced that a lot of their money ends up being misspent, improperly spent, overpaid in some case. The people, or entities, businesses, should not get any of this money. Somebody ought to do something about it. With the legislation that will be on its way to the President, hopefully tomorrow, we are going to do something about it. We already are doing some pretty good things about it. We are going to do more, and we need to build on that record.

Thank you very much, Mr. President. The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

#### WALL STREET REFORM

Mr. TESTER. Mr. President, I rise today in strong support of the Wall Street reform conference report. The Senate will make history when we pass this legislation that finally holds Wall Street accountable and finally cleans up the schemes and abuses that nearly brought our entire economy to its knees. Most importantly, this bill ends once and for all taxpayer-funded bailouts of Wall Street banks and investment firms. It finally gets rid of any notion that any private company can somehow be “too big to fail.”

I never bought that argument. In fact, I was the only Democrat in the Senate to vote against both the bailout of Wall Street and the auto industry. I do not believe in bailouts. But I do believe in making sure folks are playing by the same rules.

Our economy went belly up a year and a half ago because there were no referees on the field. With this bill, that is about to change. Big banks will be required to pay for their own liquidation should they fail, and taxpayers will never again be a part of that equation.

The bill also streamlines the regulation of Wall Street, providing the referees the tools they need to get the job done fairly and effectively.

It also ensures that everyone will now be playing by the same rules, and that unregulated entities offering financial products have to live up to the same standards as the community banks and credit unions that serve States such as Montana.

The bill has tough new rules to prevent the spread of risky and dangerous products such as subprime mortgages that torpedoed our Nation's entire financial industry.

My focus over the last several months has been to make sure this bill is right for Montana and right for rural America. After some hard work, I think we did just that. This Wall Street reform bill is good for Montana's community banks, and it benefits small businesses.

Even in this era of bitter partisanship, the Senate unanimously passed an amendment I offered to make sure banks only pay their fair share for Federal deposit insurance. Right now, smaller community banks are paying for 30 percent of this insurance, even though they account for only 20 percent of all bank assets. That does not make sense, and this bill fixes that problem.

This conference report also includes a provision I drafted requiring the Consumer Financial Protection Bureau to consider the impact of all rules on community banks and credit unions and the rural customers they serve before any of those rules are made.

The legislation ensures that community banks will not be punished for the bad behavior of the mortgage brokers who offer risky mortgages. Those banks will be able to maintain the community-based regulators they currently have, and in the case of State chartered banks, the same lending limits they currently have.

Additionally, this bill ensures that community banks will be able to continue to provide the same mortgage products—including those specific to farmers and rural Americans—to their customers.

For small businesses, this legislation makes it easier for investors to help get new small businesses up and running while protecting investors from schemers. It exempts small public companies from costly additional compliance and regulation under Sarbanes-Oxley.

This bill is a win for Main Street. It holds Wall Street accountable and preserves the critical role community banks have in strengthening communities, creating jobs, and building small businesses. That is important because Montana families rely on their community banks to finance and grow their businesses and farms, help pay their bills, and put their kids through school.

This is a strong bill. It ends taxpayer-funded bailouts. It begins a new era of strong commonsense regulation to put the sideboards on our fast-moving financial industry, without taking away the fundamental tools it needs for healthy competition and growth, which strengthens this economy.

Let me be clear. Our work on this legislation does not end today. I will continue to remain vigilant to ensure this legislation is implemented and enforced in the way it was intended. We simply cannot afford to do nothing and let our financial industry go by the wayside ever again.

With that, I thank you, Mr. President.

I suggest the absence of a quorum.

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

The assistant bill clerk proceeded to call the roll.

Mr. SESSIONS. Mr. 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.

#### KAGAN NOMINATION

Mr. SESSIONS. Mr. President, the week before last, we had the hearing on Elena Kagan for her nomination to the U.S. Supreme Court, which is a tremendously serious and important position. Five members of the Supreme Court—not just nine but only five—can redefine the meaning of words in our Constitution and really alter, in many ways, the very structure of our government. We have seen activist judges that I think have tended in that direction, and it is dangerous and harmful because judges are given lifetime appointments. They are not accountable to the public. They are protected. Even their salaries are not reducible while they serve in office. So we have to know and believe they will be neutral, impartial, unbiased, and will render judgments based on the law and the facts and not on any preconceived commitments they may have had.

Ms. Kagan is now the Solicitor General of the United States. She has taken some sort of leave of absence in recent weeks since this nomination occurred, but she holds that title. The Department of Justice Solicitor General represents the U.S. Government in Federal court, usually before the Supreme Court, and in important cases before the courts of appeals and often is involved in setting legal policy for the United States and helping to advise on that. So it is important that the American people know, before she is confirmed—if she is confirmed—that she has not been involved in matters that would bias her and cause her not to be able to serve impartially under the law and under the Constitution of the United States. That is an important question.

The day before yesterday, I believe, the Wall Street Journal had an editorial entitled “Kagan and ObamaCare” in which it raised questions about the objectivity she might bring to the Court and whether she had been involved legally in the discussions or drafting the ideas concerning the development and promotion of the health care reform bill so massively affecting health care in America. It raised the question: Should she recuse herself if that comes up, if she has been involved in that? I think that is a very important question.

The seven Republican members of the Senate Judiciary Committee wrote yesterday and asked Ms. Kagan to give detailed explanations as to what extent she may have been involved in any dis-

cussions regarding the promotion or legality of the health care reform bill. I think we are entitled to that. It is an important matter.

I see my friend Dr. BARRASSO on the floor, who has been a great expert in our debates on health care reform. He has repeatedly explained how this legislation will impact health care throughout America. As a physician, he understands that, and he has been able to explain it to us in ways that any of us should be able to understand. In fact, he gave us some very serious warnings about the fact that the promises made for this legislation were not legitimate, weren't real, weren't accurate, and in study after study and report after report that has come out, Senator-Dr. BARRASSO has been proven correct. The warnings he gave us that it is not going to reduce costs and that other difficulties will arise have been proven true—too much, in fact—and it is a matter of real seriousness.

So I guess I wish to say that a judge should recuse himself or herself if their impartiality might reasonably be questioned on any matter that came before them.

I believe Dr. BARRASSO has raised previously his concern about what it really means if the U.S. Government tells an individual American citizen who is minding his own business that he has to have an insurance policy. I will recognize him at this point and ask him to at least share his thoughts on that important issue and why he believes having a fair judge on the Supreme Court is important.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. BARRASSO. Thank you very much, Mr. President.

I come to the floor today with my friend and colleague because I have just gotten back from a week of traveling all across the State of Wyoming, a beautiful State this time of year. People are out and at parades. I had a chance to visit at several senior centers. The question that continued to come up was, Can the government force me to buy health insurance?

A lot of people in Wyoming carry their copy of the Constitution with them. They carry it in their breast pocket. They carry it with them. It is in the pickup truck. It is with them all the time. They continue to look to the 10th amendment, which says:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The people quote that. It just makes sense to the people of Wyoming that Washington should not be able to come into their communities, into our State, into their homes, and say: You must buy this product.

So when I see the number of States—20 now—that have filed suit against the Federal Government because of a new health care law, a law that I think is going to end up, if it is not repealed and replaced, being bad for patients,

bad for payers, the taxpayers in the country and the people who pay their own health care bills as well, and bad for providers—it is a bill that I think is bad medicine, to the point that Senator TOM COBURN and I, the other physician—there are only two physicians who practice medicine in the U.S. Senate, and I have been taking care of people and their families in the State of Wyoming since 1983—we have come up with a report called “Bad Medicine: A Checkup on the New Federal Health Care Law.”

There are people who say: I don't like this. Now we have a nominee to the Supreme Court who is very likely, if this works its way to the Supreme Court, to have an opportunity to make a ruling, a ruling for the people of the United States, on whether this body—this Senate, this House—has a right to tell the American people what product they must buy, whether it is health insurance, whether it is cars, whether it is the kind of cereal they eat for breakfast in the morning. The American people are very concerned.

So I come to the floor also with this editorial from Tuesday, July 13, this editorial entitled “Kagan and ObamaCare,” because the fundamental question is, Should this nominee recuse herself if she is, in fact, confirmed by this body? One might say: Well, when would someone recuse themselves from making a decision? Because, after all, she has been serving in this administration, serving this President, serving the President who has promoted such a piece of legislation that forces American citizens, forces the citizens of this country to buy a product.

The editorial says:

Recusal arises as a matter of judicial ethics if as a government official she expressed an opinion on the merits of the health-care litigation. This is what she would have to render a judgment on were she to be confirmed for the High Court.

It goes on:

It is also the question on which she is likely to have participated given her role at the Justice Department.

I would have to turn to my colleague who is the ranking member of the Judiciary Committee.

It says as well that:

The Solicitor General is the third ranking official at Justice, its senior expert on Constitutional issues, so it's hard to believe she wouldn't have been asked at least in passing about a Constitutional challenge brought by so many states. The debate about the suit was well underway in the papers and on TV. The matter surely must have come up at Attorney General Eric Holder's senior staff meetings, which the Solicitor General typically attends.

The editorial goes on to say:

We doubt Ms. Kagan would have stayed mum about the cases in internal Justice councils on grounds that Mr. Obama might later nominate her to the Court. At the time the Florida suit was filed on March 23, she was only one of several potential nominees whose names were being floated by the White House.

So here we have this, and that is when you get back to that opening