

to rebound. So let's take some good steps today. Let's pass this \$61 billion reduction in spending this fiscal year. It will amount to about \$860 billion over 10 years. It will be a very significant first step. That is what is before us today—not the other issues. We have to decide what we are going to do about funding the government between now and September 30. That is the rest of this fiscal year. Let's take a firm step on that. Let's begin to look at what we are going to do for next year's budget and what we are going to do about our surging entitlement programs that are on an unsustainable course. We can do all of those things and leave our country healthy and vigorous and prosperous for the future. I truly believe that is the kind of thing we need to be doing now.

I am baffled that we don't know why the President is not leading more. He is not talking directly to the American people about why this is important. Is it just a political squabble to be ignored, with the President going to Rio and talking about Libya? Or is it true, as Mr. Bernanke says, we are on an unsustainable path? Or is it true that Mr. Erskine Bowles, the President's own director of the fiscal commission, says that we are facing the most predictable economic crisis in this country's history, and he said it could happen within 2 years? Are we making this up?

The American people get it. They say, What is going on in Washington? You have to get your house in order. That is what this past election was about. People understand we need some action and some leadership, but we are not getting it. I truly believe if we could get together and if we could get a bipartisan effort to look at this \$61 billion—we could disagree on how to reduce that spending; maybe the Republicans have this idea and the Democrats have this idea—let's work all of that out. But let's reach an agreement that actually reduces spending by enough to make a difference. Then the world would say, Wow, now the Congress is beginning to take some steps. That was a nice, good, strong first step. Now if they will stay on that path, maybe the United States is going to get on the road to prosperity again and stay out of this dangerous debt crisis area we are in today and get on the right path to prosperity. This country is ready to grow. It is ready to rebound. It just needs a clear signal from Washington, in my opinion.

America's leaders, those of us in this Congress, have no higher duty, no greater moral responsibility, than to take all appropriate steps to protect the good people we serve from the clear and present danger we face.

It is time to get busy about it, Madam President. I believe if we act strongly and with clarity the American people will not only support it but they will be happy with it, and it will make a positive difference for our country.

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

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

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

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

#### REPEAL OF 1099

Mr. MENENDEZ. Mr. President, later, as we move to the bill on small business, I will be offering, I hope, a second-degree amendment to the amendment offered by Senator JOHANNIS, and I speak today on behalf of middle-class families and on behalf of small businesses.

I wish to start by saying that I fully support—as I have already done in a series of votes—repealing the 1099 reporting requirement, but I strongly believe we have to do so in a manner that does not—does not—increase the burden on our small businesses and employees. The amendment of Senator JOHANNIS certainly helps only small businesses through the repeal of the 1099 provision, but—and this is less well-known—I believe it actually hurts small business employees. It is a double-edged sword. The JOHANNIS amendment risks driving up health insurance costs and cutting health insurance coverage for small businesses.

As you know, the affordable care act provides tax credits to families who earn under \$74,000 per year to help them purchase health insurance. Those tax credits are set at the start of the year. At tax time, when families actually report their annual income, the tax credits are reconciled with their annual household income to ensure they receive the correct amount of assistance. But because income and other family circumstances can change during the course of a year, individuals might end up getting excess tax credits even though the amount of the payment was correct at the time.

For example, a family with an unemployed worker who secures a job at a small business midway through the year—and, hopefully, can do so, as we continue to work on this economy to have it grow—has rightfully received a tax credit while unemployed but could face a stiff tax hike to repay the amount of the subsidy because the family's annual income ends up higher for the second half of the year. This family received the correct amount and did nothing wrong. Let me say that again. These individuals did nothing wrong. While unemployed, these individuals needed those tax credits to be able to get health insurance. That is why we passed this reform, to help those very same middle-class working families in need.

Now, under current law, we provide a reasonable repayment requirement if the tax credit an individual receives exceeds the amount they should have received because of unexpected changes in income or family status. We don't give them a pass, but we don't expect all families with an annual income of \$70,000 to have \$10,000 in savings to pay the surprise tax bill they will get in April, either. So we set caps on what they would have to pay back depending on what they earn. The JOHANNIS amendment makes harmful changes to these repayments for middle-class families. Under the JOHANNIS amendment, some families could have to pay back as much as \$12,000 in some cases, and that is too high a price. We shouldn't ask small business employees to take that much of a hit. They are the ones who are going to the exchanges to purchase coverage. They are the ones working for the mom-and-pop shop that doesn't offer coverage.

My amendment isn't about these families alone, however, as difficult a situation as they may be in. This amendment is about what the JOHANNIS offset could do to health care costs and coverage for small businesses and for those who make their living from small businesses. This risky offset could drive up premiums and force more individuals to refuse coverage. We are not talking about paying back tax credits; we are talking about driving up the costs on families and small businesses, many who have never even taken a tax credit to begin with.

My amendment would simply direct the Secretary of Health and Human Services to decide the offset in the JOHANNIS amendment and determine its effect on small business. What is so wrong about that—determining its effect on small business? We are trying to help small businesses by eliminating the 1099 provision. Let's make sure we continue to help them and not put extra costs on them. Specifically, we want to determine whether there is an increase in health insurance costs or a decrease in health coverage for small businesses. If the study finds either, then current safe harbor provisions would remain in effect—the same safe harbors we supported in the SGR bill, or the doc fix, in December.

Passing 1099 would not be affected. That would move forward. So the claim that somehow, ultimately, 1099 wouldn't be eliminated is false. The 1099 would not be affected. That would move forward. We would eliminate that responsibility from small businesses. So you can be both for my amendment and the JOHANNIS amendment because it would still repeal 1099.

Let me make it clear. We all want 1099 repealed, and I have voted in a series of ways to do exactly that. My amendment does not in any way affect or delay the repeal of 1099. The only potential change my amendment makes would be to the risky offset in the underlying amendment and only if this study finds that it actually hurts small businesses.

My colleagues on the other side of the aisle have come to the floor arguing that a study would simply delay repeal of 1099; that further studying this risky offset would prolong the 1099 issue; that if we just passed the amendment without protecting small businesses, this bill can go right to the President. Well, we have actually passed 1099 repeal already and shown we have the votes necessary to make this become law. It is not going to the President to become law in this bill because this bill hasn't even cleared the House.

At the same time, I have heard no mention of what this offset could do to small businesses and their health care costs—not one word. I did hear that further studying the impacts it may have on small businesses would only delay repeal of 1099. A simple read of my amendment would be enough to know that is incorrect. My amendment directs a study to be done after—after—repeal of 1099 is signed into law. Let me make it clear. Nothing in my amendment slows down repeal of 1099.

My colleagues on the other side of the aisle are also trying to frame this debate as either you are for or against small businesses. But they are helping and harming them at the same time with the Johannis amendment. With this second-degree amendment, we can have a conversation about helping small businesses and ensuring that small business employees will not get hurt at the end of the day.

Now, we haven't had the Joint Tax Committee determine a revenue score as yet, but it is important to point out that this amendment does not spend—does not spend—an additional dime. It simply protects small businesses from higher health care costs and coverage cuts.

If there is any revenue score associated with it, that would only be due to the study finding that this offset drives up health care costs or drives down health coverage for small businesses. Would we not want to know that?

We are all here supposedly arguing to try to enhance the opportunity for small businesses to have less burdens, to be able to grow, to be able to prosper, to be able to create jobs. Well, we certainly would want to know whether this offset drives up health care costs associated with small businesses or drives down the health care coverage for small businesses.

Why is anyone afraid of that? Why is anyone fearful of that? So to those who may consider opposing my amendment, think of this: On the one hand, if you do not believe this offset will hurt small businesses, there is no harm in voting for it because you believe the study will not show premium increases or coverage cuts. So the offset would remain in place. If you believe my amendment would have a revenue score, then you are assuming the offset hurts small businesses. It is one way or the other, not a gray area.

The idea of protecting small businesses in this manner has precedent. I have a history working across the aisle to support small businesses, including cosponsoring a Republican amendment to the Wall Street reform bill which requires regulators to ensure new rules do not harm small businesses. We thought it was a good idea then to protect small businesses in the event new rules might unfairly impact them. I strongly believe we should come together now to protect small businesses if this risky offset drives up health care costs on small businesses or forces cuts in their coverage.

I would just simply ask, who in the world, especially during these fragile economic times, would want to do anything that could raise costs on small businesses? Let's protect them and the 1099 repeal by supporting my second-degree amendment.

Now, I listened to my colleague from Nebraska with whom I have worked on some bipartisan efforts on housing for the disabled. We get along very well. I respect him, and actually I supported 1099 repeal as one of the 20 Democrats who voted for his amendment in November and other issues such as housing for the disabled. So it is with some regret that we find ourselves in a different view.

There have been questions raised about the sincerity of our opposition to the manner in which the offset is included in the Senator's amendment. The Senator from Nebraska says an almost identical offset was passed unanimously by the Senate just 4 months ago. I think our definitions of "almost identical" are very different.

Yes, it is true we made changes in the payback tax to pay for the doc fix in December, but that provision was very different from the one we are debating today. The one today, unlike before, removes protections we included in December in the doc fix to protect families from unlimited tax liability which could be as high as \$12,000. I mean, you are talking about taxing these families, through no fault of their own. What family of three making \$74,000 annually, gross, can afford an unexpected \$12,000 tax bill in April? I cannot think of many. But that is exactly what could happen under the Senator's amendment.

That was not the case—not the case—in the provision that was enacted at the end of last year in the doc fix. We provided a phaseout that would have avoided this clip and thus tax shock on middle-class families.

The Senator from Nebraska also said my second-degree amendment was just a delay tactic. That simply is not true. I and 80 of my colleagues have already passed 1099 repeal in the Senate this year. So to question our support for 1099 repeal would be misleading.

My understanding is that the Johannis proposal is an amendment to the small business bill we are debating, which has not passed the House. So this amendment we are debating today

would not go directly to the President for his signature. It still needs to go through the whole process of the House. We are not delaying anything in that regard.

Finally, the only way there would be any revenue shortfall—I say to those who would make the assertion that our amendment creates a revenue shortfall, well, then, what you have to be saying, if you make that statement, is you believe the savings from the Johannis offset comes from increasing premiums and reducing coverage on those who earn it through making our Nation's small businesses run. That is not a proposition I think they want to assert.

So I will come back to the floor later to offer this second-degree amendment. And because it works to both repeal 1099 and ensure there is not a tax on our small businesses and small business employees or a diminution of health care coverage, I am sure we will get the support of our colleagues.

I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### SBIR/STTR REAUTHORIZATION ACT OF 2011

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 493, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 493) to reauthorize and improve the SBIR and STTR programs, and for other purposes.

Pending:

McConnell amendment No. 183, to prohibit the Administrator of the Environmental Protection Agency from promulgating any regulation concerning, taking action relating to, or taking into consideration the emission of a greenhouse gas to address climate change.

Vitter amendment No. 178, to require the Federal Government to sell off unused Federal real property.

Inhofe (for Johannis) amendment No. 161, to amend the Internal Revenue Code of 1986 to repeal the expansion of information reporting requirements to payments made to corporations, payments for property and other gross proceeds, and rental property expense payments.

Cornyn amendment No. 186, to establish a bipartisan commission for the purpose of improving oversight and eliminating wasteful government spending.

Paul amendment No. 199, to cut \$200,000,000,000 in spending in fiscal year 2011.

Sanders amendment No. 207, to establish a point of order against any efforts to reduce benefits paid to Social Security recipients, raise the retirement age, or create private retirement accounts under title II of the Social Security Act.

Hutchison amendment No. 197, to delay the implementation of the health reform law in the United States until there is final resolution in pending lawsuits.

Coburn amendment No. 184, to provide a list of programs administered by every Federal department and agency.