

for repeal. We made a promise to our constituents that we would vote to repeal this bill on their behalf and that is just what we intend to do.

The importance of a repeal vote becomes more evident every day. Americans view it as an important decision point—a marker that shows we are serious about a return to limited government. On that point, it should be clear where Republicans stand. Every one of us voted against the bill. Every one of us voted for repeal after that. And this week, every Republican reaffirmed his or her commitment to doing it again.

Democrats made a lot of promises about this bill. Virtually every one has proved to be empty. Republicans have made one promise: that we would work to repeal it and replace it with common-sense reforms that lower costs, protect job creation and that people actually want. It is a promise we will keep.

AFGHANISTAN VISIT

Mr. MCCONNELL. Mr. President, we have entered our tenth year of fighting in Afghanistan, and we can never express our gratitude enough to the heroic men and women of our Armed Forces who continue the battle there. Many of them—nearly one-fifth of all U.S. forces in that country—are from units based in Kentucky: Fort Campbell, Fort Knox, the Kentucky National Guard, the Marine Corps and the Reserves.

I recently led a Congressional delegation to the region and spent some time in Afghanistan to see up close the progress our forces are making there in clearing out the Taliban and creating the opportunity for Afghan security forces to assume greater responsibility. During my visit, I had the honor of meeting many of the servicemembers from Kentucky. I told them that we are proud of them, we support them, we thank them for their service, and we pray for their safe return.

Forces in Afghanistan from Kentucky units number more than 18,000 strong. They have seen much military success—but in the process, many have made the ultimate sacrifice for their country.

The 101st Airborne Division, based out of Fort Campbell and known as the Screaming Eagles, endured a particularly hard year, losing more than 100 soldiers since last March. In fact, nearly one out of five American lives lost in Afghanistan in the past year has been lost from the 101st. The men and women who stood beside them honor their sacrifice by continuing the fight.

After a long deployment, many of the soldiers from the 101st are due to return home over the next few months, just as their brothers-in-arms from Fort Knox are deploying. About 3,500 soldiers from the 3rd Brigade Combat Team, 1st Infantry Division and the 703rd Explosive Ordnance Disposal Detachment will arrive in Afghanistan in the next few weeks or are already

there. It is the biggest deployment from Fort Knox since World War II.

Hundreds of servicemembers from the Kentucky Air and Army National Guard are performing critical missions in Afghanistan as well. The 123rd Airlift Wing, the 2123rd Transportation Company, the 20th Special Forces Group and a Kentucky Guard Agricultural Development Team have all recently sent men and women to the fight, some who have served as many as six tours.

It was my honor to meet some of these brave warriors in person this month when I visited the headquarters of the 101st Airborne Division at Bagram Air Base in Afghanistan and also during my stop at Camp Leatherneck in the southern part of that country, the outpost for a number of Kentucky Marines.

These extraordinary men and women leave their loved ones thousands of miles behind and put on their country's uniform every day, with their lives in the balance. They have seen their friends and fellow soldiers and Marines make the ultimate sacrifice, and yet they fight on to accomplish a difficult mission. And they continue to make their country, the Commonwealth of Kentucky, and this Senator very proud.

When we honor our servicemembers, we also honor their families, who endure the long months with a loved one gone and in harm's way. This country would not have the finest fighting force in the world without their sacrifice and support as well.

It is brave servicemembers like the ones I got to meet who keep this country free. When both the Senate and the House of Representatives met in joint session recently to hear the President deliver his State of the Union address, we did so under the cloak of freedom that these heroes provide. America is grateful for their service and their sacrifice.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 12:30 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Tennessee.

(The remarks of Mr. CORKER and Mrs. MCCASKILL pertaining to the introduction of S. 245 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, my remarks may take a little longer than 10 minutes, so I ask unanimous consent that I may deliver my remarks in full.

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

Mr. HATCH. Thank you, Mr. President.

AFFORDABLE CARE ACT

Mr. HATCH. Mr. President, we have come a long way in 1 year.

On December 24, 2009—1 day before Christmas—this body passed a radical overhaul of our Nation's health care system. That is right. The majority passed ObamaCare on Christmas Eve.

It was not this body's finest moment. It was not the administration's finest moment. And I expect that this debate will go down in history for its persistent lack of attention to the considered views of ordinary Americans—Americans who rejected ObamaCare's giant new entitlement expansions and the job-killing taxes haphazardly cobbled together to pay for them.

It did not have to be this way. In the midst of the greatest fiscal collapse since the Great Depression, Americans wanted Democrats, who controlled all of the levers of power in Washington, to focus on job creation. Instead, like teenagers set loose when mom and dad leave town, they did what they wanted to, and focused on a government takeover of the Nation's health care system.

Surprising only the most ideologically driven, support for ObamaCare cratered during the townhall meetings of August 2009. The message was loud and clear. Our health care system, and in particular the government policies that contribute to unsustainable inflation in the health care sector, might be in need of reform. But the solution to our problems is not additional government regulation and control of health care delivery by Washington bureaucrats. And the solution is most definitely not to be found in the billions of dollars in new taxes, most of which will be passed through to American families in the form of higher premiums.

For those who did not deliberately put on blinders, the wishes of their constituents were obvious.

Stop the push for ObamaCare and move onto fixing the economy.

But the Senate did not listen.

Instead, prodded ahead by an administration that saw the great liberal dream of government-run health care slipping, the long march continued.

First, the Democratic majority cut short the Finance Committee's bipartisan negotiations.

Then, heads down, the majority plowed forward on the floor, allowing virtually no meaningful amendments.

And before going home for Christmas, it passed the most sweeping reform of the Nation's economy in over 70 years without a single Republican vote.

Every Democratic senator supported the bill.

Not one Republican did.

When ObamaCare passed the Senate, its proponents assumed it was on the

glidepath to enactment. But the American people had a different idea.

Our national unemployment rate was 10.2 percent—the highest in 26 years.

The American people understood that at a moment of historic economic challenges, the last thing the country needed was another budget-busting entitlement and sky-high taxes.

And just about 1 month later, this message was delivered again. In a new shot heard across the world, our colleague, the junior Senator from Massachusetts, SCOTT BROWN, was elected in a very clear referendum on the Democrats' health care bill.

The verdict of the American people, if the previous summer's townhalls left any doubt, was now crystal clear.

The push for ObamaCare must end.

Yet, the administration refused to yield.

They thought the people would eventually come to embrace the elegance of ObamaCare. If only the messaging was better, Americans would appreciate all of the good things that Washington politicians and bureaucrats had to offer them.

So after taking time to regroup and weigh their options, Democrats decided to defy the American people yet again.

A little over a year ago, the President hosted a summit at the White House and began his final push for his federalizing of American health care.

The resulting display was ugly. Americans, already revolted by the deals cut in this Chamber to secure the bare number of votes needed to pass the bill, now witnessed historic arm twisting and desperate efforts in the House to deny the obvious—that ObamaCare represented an unprecedented intrusion of the Federal government into the lives of citizens and clearly was a massive burden on taxpayers.

And so it passed.

And ObamaCare became law.

And the administration set about writing the thousands of pages of regulations that would govern how American businesses provide health benefits to their employees.

Fast forward to November of 2010.

The American people did not forget their snubbing by self-proclaimed progressive Democrats who in fact ignored the will of the people at every opportunity during the ObamaCare debate.

At voting booths across the country, they made clear to those congressmen and Senators who provided the votes for this job-destroying health care bill that such high-handed, illiberal behavior was not acceptable in a democratic republic.

Fast forward one more time.

Yesterday, barely 13 months after ObamaCare passed the Senate, and less than one year since it became law, the entire scheme was struck down in Federal court.

In a triumph for both personal liberty and the American Constitution, the individual mandate was found unconstitutional and ObamaCare was struck down.

Not part of ObamaCare.

All of ObamaCare.

Not surprisingly, the administration and its special interest allies responded with the same derision toward ordinary American citizens that has been on display throughout this debate. Instead of acknowledging the obvious—that ObamaCare represents a massive departure from any traditional understanding of limited government—White House officials went on the attack, calling the decision outside of the mainstream and ridiculing its reasoning.

Really?

Millions and millions of Americans believe that provisions essential to the operation of ObamaCare are unconstitutional intrusions on personal liberty that vastly expand the power of the Federal government.

They understand that the justification for the individual mandate by ObamaCare's proponents essentially removes any limits on the power of the Federal government to regulate personal and economic decisions.

Twenty-six states participated in this challenge to ObamaCare.

Thirty-two Members of this body, including myself, signed an amicus brief challenging the constitutionality of ObamaCare.

But, according to the administration's narrative, we are the ones who are out of the mainstream.

This administration came into office buoyed by the good will of the American people and carrying banners of bipartisanship.

Two years later, after the politically disastrous decision to overhaul one-seventh of the Nation's economy with virtually no Republican support, they are blaming the victim.

After a Federal judge looked at this tough issue and determined that key elements of ObamaCare represented an unprecedented and unconstitutional expansion of the national government, the problem remains—as it always is for liberals—the people.

Their views are just not sophisticated enough to grasp ObamaCare's consistency with a government of limited and enumerated powers.

The Democrats continue to think that if only they focus group ObamaCare better, they will get the messaging right.

The American people will learn to love it.

I don't think so.

The American people get it. I know my constituents in Utah do.

In an article yesterday in "Politico", Patrick Caddell and Douglas Schoen highlighted the reasons for the public's deepening disdain for ObamaCare. According to them, it is possible that no major piece of legislation "has created the continued, vehement public opposition that health care has provoked since the Kansas-Nebraska Act of 1854."

In their view, "[t]here is one big underlying factor that continues to cause

many Americans to oppose the health care bill: Its passage was anti-democratic. If the Republicans' campaign slogan of 1854 was the Crime Against Kansas, in 2010 it would be the Crime Against Democracy."

Americans know that the Senate bill was 2,074 pages long.

They know it authorized 70 government programs.

They know it delegated regulatory power to the Obama administration 1,697 times.

They know it cut \$465 billion from Medicare at a time when it already faced a \$38 trillion unfunded liability.

They know the bill took from one already unsustainable entitlement to pay for a brand new entitlement.

They know it raised taxes by over \$550 billion, repeatedly violating the President's pledge not to raise taxes on middle class families.

They know ObamaCare will destroy 695,000 American jobs at a time when millions of Americans are looking for work.

They know the Medicaid expansions threaten to bankrupt the States, with CBO estimating that the Medicaid expansion will cost American taxpayers \$435 billion over 10 years.

They know the total cost of ObamaCare is \$2.6 trillion.

And they know we can not afford it.

To borrow from Justice Scalia, the American people despise ObamaCare because the American people love democracy and the American people are not fools. They know that this law was enacted in a totally partisan manner, and over the loud opposition of a majority of Americans.

And they know that the partisans promoting ObamaCare were not, and are not, forthright when they say it is budget neutral.

ObamaCare cuts \$155 billion from hospitals.

It cuts \$202 billion from 11 million seniors on Medicare Advantage.

It cuts nearly \$15 billion from nursing homes.

It cuts nearly \$40 billion from home health agencies.

It cuts nearly \$7 billion from hospices.

But these cuts don't go toward strengthening Medicare, a program with catastrophic unfunded liabilities. Rather, Democrats poured the savings from these cuts back into a brand new entitlement program.

Furthermore, so-called comprehensive health care reform managed to neglect the pressing need for a permanent doc fix. Yet, CBO's most recent estimate is that a long-term doc fix freezing Medicare payment rates at 2011 levels would raise the deficit by \$249 billion, not counting an additional \$53 billion in debt service obligations.

Not surprisingly, an Associated Press fact check of the President's State of the Union address concluded: "the idea that Obama's health care law saves money for the government is based on some arguable assumptions."

That might qualify for the understatement of the year so far.

The likelihood that ObamaCare will not, as its advocates claimed, save the government money was confirmed again at a hearing last week by the CMS Chief Actuary Richard Foster. He testified that the law will not likely hold costs down, and that contrary to the President's mantra, everyone will not be able to keep their insurance coverage if they like it.

In response, the White House political operation attacked the Administration's own nonpartisan professional expert, stating in a blog post: "Once again, we disagree . . . History shows that it is possible to implement measures that will save money for Medicare and the Federal government."

Who are you going to believe?

The chief actuary at CMS or a White House political operative?

The average American citizen might not have a Ph.D. in economics. But Americans do understand that massive new entitlement programs do not save money. In their guts, they know that former CBO director Doug Holtz-Eakin is right when he concludes that repeal of this flawed law would actually reduce the deficit by \$300 billion.

Ultimately, all we want is a vote on repeal.

Last week, some of my Democratic colleagues came to the floor to advocate for rules changes that would have substantially limited the rights of the minority to debate.

The filibuster, they insisted, is an affront to democracy and majority rule.

Well, let them put their money where their mouths are.

All we are asking for is an up or down vote on repeal of ObamaCare.

This is what the people want.

Ultimately, you have to ask why the Democratic majority would deny us this vote.

I think I know the answer. It has a great deal to do with members of the caucus who know their constituents hate this law. Yet, these Members are torn between two masters. On the one hand are their conservative constituents. And on the other are the liberal interest groups who supported the government takeover of the Nation's health care system.

Unfortunately, the people again stand to lose in this calculus.

I understand that the conventional wisdom is that my colleagues and I are pursuing a symbolic act.

The guardians of the conventional wisdom opine that attempts to repeal ObamaCare might make for good theatre, but are senseless exercises.

In my view, this attitude demonstrates a profound lack of respect for the citizens of a democratic republic.

Over time, given the power of ideas and an engaged citizenry, initially symbolic acts have a way of becoming law. It might not happen overnight, but citizens—exercising their constitutional rights of petition and redress—have a way of reminding even the most

hardened of partisan politicians that their job is to represent their constituents.

I have no doubt that some scoff at our efforts to repeal this bill.

But I rest easy knowing that I am standing with my fellow Utahans and the people of this country whose distrust of ObamaCare grows as they learn more about it.

I look forward to the day when ObamaCare is finally repealed. It may not be next month. It may not be next year, but it will be repealed. If we are smart, we will make it next month or in the very near future. When it is, it will be a triumph for our Constitution, a triumph for personal liberty and, most importantly, it will be a triumph for the American people to persevere in their resistance to this law.

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

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

Mr. DURBIN. Madam President, it is interesting that we face one of the toughest economic recessions in modern history and a world in turmoil, as many countries are challenging their leadership and assessing the future, and the focal point of the Republican legislative effort appears to be the repeal of health care reform.

If you look at what the American people think about this, they don't agree. They think that if there are ways to improve the bill, we should do it; that if there are changes we can make in the bill to make it more effective, we should. But the notion that we would repeal this law and walk away from the basic provisions in it is not acceptable by the majority of the people.

The House Republicans, new to the majority this year, decided they needed to keep faith with their followers and repeal health care reform as their highest priority. As the whip in the Senate who counts votes on this side of the aisle, I sense that we are not going to repeal this law, nor do I think we should.

It appears Republicans want us to spend some time debating whether health care reform is good for America. I welcome that debate because, as you know, when we reflect on what we have achieved so far, in a little over 1 year, with this health care reform and what is to follow, it strikes me as unusual that there are people who want to walk away from all that. The important starting point in this debate is government-administered health care. If you listen to the other side—the Republicans—the issue they object to the most is the fact that the government has some hand in this health insurance industry. They call it government-run health care. Those who would take the

time to read the bill—and I have—will realize that at the end of the day, the only entities offering health insurance in America are private companies, aside from Medicare and Medicaid. So what the Republicans are objecting to is a government effort to extend the availability of private health insurance to more and more Americans.

I know every single Republican and Democratic Senator is protecting their own families with government-administered private health insurance. The very thing they are condemning in the health care reform bill is the source of their own personal health insurance for their families. You see, Members of Congress are part of the Federal Employees Health Benefits Program, a program that covers 8 million Federal employees and their families. My wife and I, each year, have an open enrollment where we can choose from nine different private health insurance companies in Illinois. We pick the plan we like the best. At our point in life, we have more coverage than younger people might, and more money is taken out of my paycheck because of that decision, but it is our decision to pick this private insurance company in a plan administered by the Federal Government.

As the Republicans stand and criticize the notion of extending this availability of options to more Americans, they are criticizing the same insurance plan they are using to protect their own families. If it is good enough for a Member of the Senate, should it not be good enough for most Americans? The insurance exchanges we are creating will offer the option for people to choose from private health insurance plans in the future. That, to me, is a good thing. It has certainly been good for my family, in terms of the Federal Employees Health Benefits Program.

There are other parts of the health care reform bill the Republicans want to repeal, which I know the American people think are very valuable. Right now, young adults up to the age of 26 would lose their insurance coverage through their parents' health plans if the Republicans prevail. This would affect 47,200 people in Illinois and 1.2 million nationally. Who are these young people, age 25? They are graduates of college looking for jobs. They are finished with their education and maybe had student health insurance and they are looking for a job and maybe the first one they find doesn't offer benefits. So mom and dad say: Don't worry. We still have you under the family health insurance plan.

That is part of the health care reform bill these people—the Republican side of the aisle—want to repeal. I remember going through this with our kids, as I am sure others do. You called them after college and said: Jennifer, how are you doing?

I am fine.

Do you have health insurance?

Dad, I don't need that yet; I will get it later. At which point you say: Girl,

you have to have it, even if we have to pay for it. We know we are just one diagnosis or accident away from needing health insurance. That worry is relieved for those through the age of 25 under health care reform and would be repealed by the Republicans.

How about lifetime limits? People with private insurance coverage, if the Republicans have their way and repeal this measure, would find themselves suddenly vulnerable again to having lifetime limits placed on how much insurance companies will spend on their health care. This affects 7½ million people in Illinois and 165 million nationally.

I talked to a retired firefighter in Chicago. He happened to be a man who volunteered and went to New York on 9/11. He came down with leukemia. I said: How are you doing?

He said: I'm feeling good. I'm getting a lot of treatment, and it's working, but I'm worried. I'm not old enough to qualify for Medicare yet, and I have a \$1 million limit. I had no idea I would come down with cancer, and I have already spent \$150,000. If I need additional medical care, it will be taken out of my savings if I go past this limit.

We eliminate the limits on health insurance policies. Repeal of the law will reestablish those limits.

How about rescissions? Insurance companies, if the Republicans have their way and repeal our Affordable Health Care Act, would once again be allowed to cut off someone's coverage unexpectedly when they are in an accident or become sick because of a simple mistake on their application. That would leave 612,000 people in Illinois and 15.9 million nationally at the risk of losing their insurance at the moment they need it the most. One of the worst abuses of the insurance industry would become legal again if the Republicans have their way and repeal affordable health care.

How does this work? Well, I can tell you what happens. We have seen it. People have contacted our office. The most notorious example was a woman who said when she needed coverage for a surgery, the health insurance company went through her application and said: You failed to disclose a preexisting condition. We rescind the policy.

She asked: What preexisting condition?

You had acne as a teenager.

Think about it. Would you ever put that down as a preexisting condition when you are applying for health insurance? It was enough for the health insurance company to turn her loose and refuse to cover her.

Also, nearly 7.5 million residents in Illinois and 165 million nationally would not know if they are receiving value for their health insurance premium dollars because the Republican repeal of health care would remove the requirement that insurers spend at least 80 to 85 percent of premium dol-

lars on actual health care—not on bonuses, not on salaries, not on advertising, and not on administrative expenses but actually on health care. It is an effort to have the States monitor these health insurance companies and make sure when the rates go up the money being collected is actually going to health care. That would be eliminated if the Republicans have their way in repealing the Affordable Health Care Act.

How about preventive care? Nearly 1.8 million seniors in Illinois who have Medicare coverage and 44 million nationally would be forced to pay a copay to receive important preventive services such as mammograms and colonoscopies, and they wouldn't receive a free annual wellness visit. We know what happens when a person doesn't have a lot of money and is in their senior status and they are faced with the possibility of getting a test. They put it off. The longer you put it off, unfortunately, it is more likely something bad will occur. The Republican repeal of health care would mean that this preventive care currently offered under the bill for Medicare recipients would be eliminated.

Then there is the doughnut hole, or the gap in coverage, for Medicare prescription drugs for which 109,421 seniors in Illinois and 2.7 million nationally would see significantly higher prescription drug costs if the Republicans are successful in repealing health care. Last year, these beneficiaries received a one-time, tax-free \$250 rebate to help fill the gap for prescription drugs in the doughnut hole coverage gap.

Medicare beneficiaries who fall into the doughnut hole in 2011 will be eligible for 50 percent discounts on covered brand-name prescription drugs. Without this law, the burden of high prescription drug costs will hurt millions of Medicare beneficiaries across the country. That is the reality.

What the Republicans would do with the repeal of health care is to say to seniors on fixed incomes: Turn to your savings; pull more out of your savings for the prescription drugs your doctor tells you that you need to stay well. We are filling that gap, that hole. They want to go back to the old days when seniors were on their own.

There is the Early Retiree Reinsurance Program, where 279 employers in my State and 4,748 nationally wouldn't receive help from this program. It is a program that provides businesses, schools, unions, State and local governments and nonprofits much needed financial relief to help early retirees and their families continue to have quality affordable health care coverage.

Who are these people? One was in my family. My brother retired from working for a major corporation before he reached the age of 65. He had a heart attack and needed surgery and couldn't get insured. He had to wait until he was qualified for Medicare. This plan allows early retirees to find insurance

before they qualify for Medicare and provides an incentive for that to happen. The repeal of this law by the Republicans would basically eliminate that program.

So when they stand before us and tell us they are just doing the right thing—what Americans really want—I am afraid that isn't the case. Most Americans want us to keep health care reform—change it, modify it, if necessary, but not repeal it—because when we repeal it, these basic things I have described will be in trouble.

What about this court case yesterday in Florida? It is getting a lot of attention today. A judge in Florida issued a decision in a case filed by 25 Republican attorneys general and Governors striking down the Affordable Health Care Act. This ruling is out of the mainstream of judicial reasoning in its treatment of precedent and in the type of analysis employed. I don't think it is likely to be upheld.

Twelve Federal judges have already dismissed challenges to the constitutionality of the health reform bill, and two judges in the Eastern District of Michigan and Western District of Virginia have upheld the law. In one other case, a Federal judge in the Eastern District of Virginia issued a very narrow ruling on the constitutionality of the health reform law's individual responsibility provision and upheld the rest of the law.

The ruling yesterday in Florida issued by Judge Vinson in the Northern District is a plain case of judicial overreaching. The judge declared the entire law was null and void, even though the only provision he found unconstitutional related to the individual responsibility provision. This decision is at odds with decades of established Supreme Court law which has consistently found that courts have a constitutional obligation to preserve as much of a statute as can be preserved.

Under this view of the law, the estimated 4 million seniors who fall into the Medicare prescription drug coverage gap I mentioned earlier will pay higher prices for prescription drugs. If the judge from Florida has his way, 44 million seniors on Medicare will be denied access to preventive care, up to 4 million small businesses will not be eligible for tax credits to make health care more affordable, and new provisions that prevent insurance companies from denying coverage and the like will not become part of the law.

History is on our side when it comes to this measure, Madam President. Tomorrow, the Senate Judiciary Committee, at my request, is going to hold a hearing on the constitutionality of the Health Care Reform Act. It is the first congressional hearing on this issue. As a person who is aspiring to be the chairman of the Constitution Subcommittee, I asked this be the first subject we take up. The reason I am still aspiring is we haven't closed all of the negotiations about funding of committees, so nothing has become formal yet, but it is likely to occur.

What we will look at tomorrow is article I, section 8 of the Constitution. That is the article that specifically cites the powers that Congress—the Senate and the House—have. It is spelled out. In the course of spelling it out, it cites, among other things, that we have the power to tax, and we have the power related to provisions relating to commerce. It came to be viewed in the courts as interstate commerce—commerce between the States or between the United States and other nations.

Those who are arguing that the health care reform bill is unconstitutional first argue that the health care insurance industry is not commerce. If the health care insurance industry—which offers industry across State lines to millions of Americans—is not commerce, and it affects 18 percent of our economy, then I don't know what commerce might be. I think that position is particularly weak.

When it comes to the individual responsibility, or individual mandate system that is in the bill, the question is being asked of the court: Why is this necessary? Well, here is why it is necessary. If we say to insurance companies they don't have to insure anyone with a preexisting condition, then of course they are going to exclude people. But if we tell them they have to insure everybody, even those with preexisting conditions, then the obvious question is, when will a person buy insurance?

If we don't have a responsibility on individuals to buy insurance, two things will occur: They will wait until they are sick to buy insurance, which completely destroys the risk model that insurance companies use, or they will present themselves, as they do today, to many hospitals for coverage and care, the cost of which is passed on to other people. So the individual responsibility section says: If you don't have insurance coverage, then you have to pay a tax penalty. And that is what many are objecting to. You cannot eliminate exclusions for preexisting conditions and not move more and more people into the risk pool at an earlier stage. If people can wait until the last minute to get into the risk pool, then the insurance model is destroyed. That is why it is in there.

I think we will find, ultimately—and I hope we do—from the Supreme Court that what we have passed is entirely consistent with the regulations or powers given to Congress under article I, section 8 of the Constitution to deal with issues of commerce. Secondly, I think we will find that the imposition of a tax in this health care reform bill is clearly enumerated in the powers given to Congress to levy taxes, and what we have done is necessary and proper to reach the goal where we eliminate discrimination because of preexisting conditions in health insurance plans.

That debate is ahead of us, but it is a debate we need to take up. I am

happy to talk about the health care reform bill because I think it is moving in the right direction. It is not perfect—it can be improved—but if the Republicans want to repeal it, they are in for a fight because the important provisions we have to protect families and businesses need to be protected.

What we want to bring up as soon as we can—when we get beyond this debate on health care repeal—is the reauthorization of the Federal Aviation Administration. We have been struggling with this issue for a long time, and we believe this bill, which our majority leader HARRY REID has asked to bring to the floor, creates and protects more than 280,000 jobs by modernizing the air travel infrastructure and reducing costly delays. I think this is an important step forward not just to create jobs—and we need them very badly—but also to make certain our airplanes and airliners and all those who are serving us at the airports have a safer environment, establishing new standards for safety when it comes to the operation of our airlines.

I think this is a critical issue, and I hope we can move to it soon. I am sorry we are going to be diverted into a debate on health care reform. But as I said, I think it is a welcome debate. It is time we brought some of these facts before the American people so they understand health care reform has real value to families and businesses across the United States, making health care insurance more affordable and more accessible.

Madam President, I yield the floor, and 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.

Mrs. BOXER. I ask unanimous consent that the order for the quorum call be rescinded.

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

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:32 p.m., the Senate recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. DURBIN).

FAA AIR TRANSPORTATION MODERNIZATION AND SAFETY IMPROVEMENT ACT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 223, which the clerk will report by title.

The legislative clerk read as follows:

A bill (S. 223) to modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. KLOBUCHAR). Without objection, it is so ordered.

Mr. ROCKEFELLER. Madam President, I ask unanimous consent that the Senate proceed to a period of debate only on the FAA authorization bill for the purposes of opening remarks from the chairman—that being me—and ranking member—that being Senator HUTCHISON—of the Commerce Committee.

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

Mr. ROCKEFELLER. Madam President, I wish to thank the majority leader for bringing this bill to the floor so promptly—the first bill of this year, the 112th Congress. The Air Transportation Modernization and Safety Improvement Act reauthorizes the Federal Aviation Administration. It has been postponed 17 times over the last 4 years, to the consternation of all of us who care about this subject. There are three Commerce Committee members in the Chamber right now, and we are all frustrated about getting it done. So it is the first piece of legislation.

The bill which I introduced and which we are considering is the text of the FAA reauthorization bill that was approved by the whole Senate last year by a vote of 93 to nothing. All of the matters of safety and air traffic control systems and all the rest of it that we talk about are all incorporated already in this bill. Although the Senate and the House of Representatives informally conferred, it was not productive, and we were unable to come to a final resolution, so here we are once again. I thought that beginning this year's consideration of the FAA reauthorization bill with the legislation that did pass unanimously last year would signal a commitment to bringing forward a bill that had broad bipartisan support—at least last year. It wasn't that long ago. There are some new Members, and some issues still stand out. We didn't resolve all of them.

I wish to say at the beginning that this is a monumentally important bill. I would also say that I recognize without rancor that there are a lot of Members of the Congress who don't really keep up with aviation because they kind of take it for granted. It is highly technical and not always interesting but always important—always important. It employs 11 million people, just for a start. It is a vastly important bill, and we are vastly behind where we should be, and this bill will help us move forward.