to be changed to allow States to continue to maintain existing infrastructure projects. The Minnesota Department of Transportation noted that the McCain amendment could have negatively impacted proposed projects to rehabilitate historic bridges that remain in use today as a critical part of Minnesota's road network. Specifically, bridges in Winona and Oslo, Minnesota may have been impacted and possibly Baudette, Minnesota's project as well. The chairman of the Environment and Public Works Committee which has jurisdiction over transportation policy also assured me that no funding in this bill would be used to fund transportation museums.

AMENDMENT NO. 792

Mr. President, I also wish to discuss amendment No. 792 offered by Senator COBURN to the Transportation, Housing and Urban Development appropriations bill. While I agree with Senator COBURN that Federal dollars should not end up in the hands of property owners that put their tenants at risk, I ultimately could not support this amendment because it could have harmed the very families it sought to help.

Before the vote, I was contacted by several affordable housing groups from my home State of Minnesota asking that I oppose this amendment. They were concerned that because of the way this amendment was drafted it could end up forcing the tenants it sought to protect into worse housing conditions, or even onto the street. By suspending payments to properties identified as deficient, it could also have prevented new owners from taking over deficient properties in order to rehabilitate them as they wouldn't have any way of financing the rehabilitation.

The Department of Housing and Urban Development already has the ability to enforce physical standards by suspending payments, seeking appointment of a receiver, and pursuing civil money penalties. I will continue to insist that they use these tools to develop responsive strategies for every troubled property while putting the safety of the tenants first.

WITHHOLDING TAX RELIEF ACT OF 2011

Ms. SNOWE. Mr. President, I rise to express support for the Republican leader's legislation on a critical issue that addresses the burdensome cost of compliance with the Tax Code. Senator MCCONNELL's bill is modeled after bipartisan legislation Senator BROWN and I introduced earlier this year which would repeal the 3 percent withholding on government contractors that was enacted in 2005 and which mandates that Federal, State, and local governments withhold 3 percent of their payments to private contractors, including Medicare provider payments, farm payments, defense contracts and certain grants.

I am deeply disappointed by the fact that the bill received 57 votes on the floor on October 20 but failed to pass the 60-vote threshold. The onerous withholding mandate on government contracts therefore remains before us and must be repealed. The House of Representatives has spoken quite clearly by passing repeal legislation last week by a vote of 405–16 and it is time for the Senate to do the same!

This issue originated as a result of very legitimate efforts to address the tax gap—the difference between what is owed in taxes and the amount that the IRS is able to collect. I believe everyone agrees that Americans should pay their taxes in full and none of us supports tax cheats, yet the issue that Senator MCCONNELL's legislation addresses arises from the means of mandating compliance with the Tax Code, the cost of that compliance compared to the revenue collected, and impact on hiring. The unfortunate fact is that the 3 percent withholding provision will cost far more to implement than will be collected in tax revenue. More importantly, our economy will suffer as this provision would take a significant toll on jobs and growth.

According to the Bureau of Labor Statistics, the average annual unemployment rate for 2010 was 9.6 percent. For 27 out of the past 32 months the unemployment rate has been at 9 percent or above. About 45 percent of the unemployed have been out of work for at least 6 months—a level previously unseen in the six decades since World War II. At a time when 14 million Americans are still unemployed, and have been so for the longest period since record keeping begun in 1948, our government should be taking every possible step to ease the burden on job creators. We need to offer the American people solutions that help to grow jobs, not provisions that prevent it!

Compliance with this law will impose billions of dollars of cost on both the public and private sectors, with a disproportionate impact on small businesses. These compliance costs will far exceed projected tax collections. For instance, just one Federal agency, the Department of Defense, estimated that it would cost over $17 billion in the first 5 years to comply, and the revenue estimate in 2005 projected that only $6.977 billion would be collected over a 10-year window. Even if that DOD estimate is inflated, as some charge, the Congressional Budget Office projects costs of $12 billion just to implement this provision at the Federal level. There are similar costs imposed across all of the Nation's State and local governments, making this provision simply an unfunded mandate on State and local governments. This is a case of spending a dollar to collect a dime, which is counterproductive for addressing the Nation's deficits.

What is worse is that this provision is not going to impact only those who have skirted tax laws—this provision will fall most heavily on innocent parties who have done nothing wrong at all, jeopardizing their cash flow and ability to grow. As ranking member of the Senate Committee on Small Business, I have heard from many businesses across the country that the 3 percent withholding amount will exceed their profit on a given contract and will prevent them from being able to make payroll, forcing them to borrow from banks just to pay their employees. This is not the way to encourage jobs and business growth but rather way to stifle it.

This 3 percent withholding provision would increase the tax and regulatory burdens on our businesses, precisely the wrong policy potion for these troubled times. We have the opportunity now to repeal this provision and we need to take that step to help the jobs picture. It is vital to note that it is not just workers who would suffer under this provision but Medicare recipients as well. Maine has the oldest population in the Nation and I know all too well how fragile are the finances of our seniors who depend on this vital program. This provision would deduct 3 percent from payments to Medicare providers and instead send the cash to the IRS. Why would we want to give these precious dollars to the tax man rather than doctors? This new problem would give doctors one more reason to turn away Medicare patients. And that is to say nothing of the cost to CMS of setting up the accounting systems that would implement this withholding scheme.

In the American Recovery and Reinvestment Act, ARRA, Congress delayed for 1 year the implementation of this mandate in recognition of the exorbitant expenditures that will be necessary to implement accounting systems and hire new compliance employees at a time when the those resources were desperately needed for productive uses. The IRS itself recently recognized the enormous burdens that this provision will put on government agencies and as a result issued an administrative delay, meaning the 3 percent withholding provision now becomes effective after 2012. And even the President, in his recent Jobs Act proposal, called for further delay of any implementation of this provision. If the Congress, the IRS, and this administration all recognize that the costs of this provision outweigh the benefits, then it is time to act to repeal it.

As a result of the IRS regulatory delay, this provision goes into effect at the end of 2012, but people and businesses already are expending valuable resources in anticipation of having to comply with this pernicious provision. At a time when the American people are extremely frustrated with the partisan gridlock and Congress inability to pass meaningful legislation, we had an opportunity to pass a bipartisan bill that would provide small businesses with much needed certainty and relief. The Senate failed to grasp that opportunity on October 20 but we cannot stop fighting to defend small businesses from its implementation. We

must act soon, and we must act completely, to end the three percent withholding provision entirely. I urge my colleagues to support this legislation.

NATIONAL BREAST CANCER AWARENESS MONTH

Mr. BLUMENTHAL. Mr. President, I rise today to recognize October as National Breast Cancer Awareness Month. This disease affects people everywhere of all walks of life, taking the lives of approximately 40,000 women in our country each year. In Connecticut, over 3,000 new cases of breast cancer will be diagnosed this year.

The epidemic incidence of breast cancer reminds us of the need for vigilance and vigor in fighting it. I applaud the various advocacy and fundraising organizations that have fought on behalf of the millions of individuals affected by breast cancer. These organizations have been instrumental in raising awareness of breast cancer throughout the health community, public, and Congress. Their work in promoting vital prevention activities and critical funding within government agencies for breast cancer has saved millions of lives, and I thank them for all they have done in the fight against breast cancer.

It is important to remember this month, and always, how critical preventive care is in the fight against breast cancer. I strongly encourage individuals to speak with their doctors about breast cancer to determine what steps they should take to protect themselves. Early detection can significantly lower the risk of death from breast cancer, and I hope women will be reminded this month to seek the preventive care they may need.

While progress has been made on this issue, we must continue to fight against breast cancer. I know my colleagues and I can agree that this this fight is a national priority, and I look forward to working with them on this issue in the coming years.

20TH ANNIVERSARY OF THE APPOINTMENT OF JUSTICE CLARENCE THOMAS

Mr. HATCH. Mr. President, on October 20, I paid tribute to the 20th anniversary of Justice Clarence Thomas' appointment to the Supreme Court. I entered into the RECORD following my remarks letters from several of his former clerks giving their own reflections. I ask unanimous consent to have printed in the RECORD today letters from three other clerks: John Eastman, Jeffrey Wall, and Chris Landau.

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

CHAPMAN UNIVERSITY,
Orange, CA, October 12, 2011.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: I was honored to serve as a law clerk with Justice Clarence Thomas during the Supreme Court's October 1996 Term. The Justice's mentorship, foresight, and depth of understanding of the principles of the American Founding ensured that my service with him would be one of the highlights of my professional career, no matter where that career would lead in the fullness of time. So I am particularly grateful for the opportunity to provide a letter for the Congressional Record commemorating the twentieth anniversary of his confirmation and appointment as Associate Justice of the Supreme Court of the United States.

I also want to express my sincere thanks to you, for your extraordinary efforts in advancing Justice Thomas's confirmation in the U.S. Senate twenty years ago. What a difference twenty years makes! Back then, even after the scurrilous efforts to derail the confirmation failed, there was a sustained effort to belittle the unbelievable accomplishments of this truly great man. Instead of taking American pride in the Justice's phenomenal rise from the depths of poverty to one of the highest offices in the land, a true Horatio Alger story if ever there was one, some of our fellow citizens continued their efforts to discredit. Justice Thomas was merely the ''puppet'' of Justice Antonin Scalia, we were told, because the two voted together roughly ninety percent of the time. (I never saw a similar claim that Justice Ginsburg was merely the ''puppet'' of Justice Stevens because of similarly high vote agreement, and I'm still waiting for the ''puppet'' charge to be applied to Justice Kagan, who this past year agreed with Justices Sotomayor and Ginsburg 94% and 90% of the time, respectively). The New York Times called him the ''cruelest'' Justice early in his tenure on the bench because of an opinion he authored faithfully adhering to the Constitution's text in a case involving an assault on a prisoner. One federal appellate judge even went so far as to claim that no Supreme Court decision decided by a 5–4 vote with Justice Thomas in the majority should be deemed binding precedent!

And yet, despite all this, the Justice persevered, building over the years such a coherent and profound body of law that even some of his most vocal critics from the early years have had to concede that they were wrong. This past summer, the New Yorker Magazine acknowledged that in ''several of the most important areas of constitutional law, Thomas has emerged as an intellectual leader of the Supreme Court.'' His concurring opinion in the 1997 decision of Printz v. United States invited a long-overdue consideration of whether the Second Amendment conferred ''a personal right to 'keep and bear arms,''' an invitation that the Court accepted and vindicated a decade later in the landmark case of Heller v. District of Columbia. His concurring opinion in Simmons v. Zelman-Harris, the 2002 Ohio school vouchers case, has created a virtual cottage industry in legal scholarship assessing his contention that the Establishment Clause was primarily a federalism provision, and thereby not as susceptible to being incorporated and made applicable to the States via the Fourteenth Amendment as the other clauses of the First Amendment, certainly without a more thorough analysis than had previously been provided by the Court.

But the Justice's most profound intellectual leadership on the Court has involved his commitment to our nation's founding principles. He has been at the forefront of the effort to revive the idea that the federal government is one of only limited, enumerated powers, and that it is the solemn duty of the Court to serve as a check against a Congress bent on ignoring the limits on its own power, in order to protect the cause of liberty. Even more important than his dedication to limited government, though, has been his devotion to the natural rights political theory of the Founders on which the idea of limited government is grounded, particularly as espoused in the Declaration of Independence. The Justice has famously disagreed with Justice Scalia about the role of the Declaration in constitutional interpretation, finding that the principles espoused there are not only relevant but binding. In the 1995 case of Adarand Constructors, Inc. v. Pena, for example, Justice Thomas objected to the federal government's use of racial preferences in government contracting, stating that there ''can be no doubt that the paternalism that appears to lie at the heart of this program is at war with the principle of inherent equality that underlies and infuses our Constitution.'' The citation he provided for that simple but important proposition—paragraph two of the Declaration of Independence (''We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness'').

When he nominated Justice Thomas to the Supreme Court, President Bush asserted that he was the most qualified person in the country for the job. Many disparaged the President's statement at the time, as so patently false that even the President himself could not possibly have believed it. Instead, it was said, the President was merely claiming that Thomas was the most qualified conservative African-American with judicial experience who could be nominated to fill the seat from which the first African-American to serve on the high Court, Thurgood Marshall, had just retired. And in that category of one, Thomas was the most qualified. Quite apart from the fact that the very idea of race-based allotments of seats on the Supreme Court runs counter to Justice Thomas's deep devotion to a color-blind constitution, the derogatory interpretation of the President's claim has, happily, been thoroughly debunked by the Justice's own jurisprudence. At a time when our understanding of the Law has been infected with a morally relativistic legal positivism, Justice Thomas's revival of the Declaration's recognition that there is a higher law that governs the affairs of man, that our inalienable rights to life, liberty, and the pursuit of happiness come not from any government but by our Creator, and that the sole legitimate purpose of government is to secure those rights, has proved beyond measure that the President was correct.

And increasingly, the Court is following his lead. As the New Yorker magazine recognized, ''the majority has followed where Thomas has been leading for a decade or more. Rarely has a Supreme Court Justice enjoyed such broad or significant vindication.''

The American founding was one of the great episodes in all of human history. The United States of America became a beacon of hope to the world, a shining city on a hill lighting the path of freedom for all. We had lost that wonderful legacy for a time, but we have begun to reclaim it, in no small part because of the efforts of Justice Clarence Thomas, of those who taught him, and of those who learned and continue to learn from him. Please join me in thanking Justice Thomas for his dedication to our nation's founding principles, congratulating him on this 20–year milestone, and wishing him Godspeed for the next twenty years as he continues his efforts on and off the bench on behalf of the principles of liberty.

With utmost respect and admiration,

JOHN C. EASTMAN,
Henry Salvatori Professor
of Law & Community Service.