

protects them, their family, and their children. They sign up for it every single year. Not a single one has come to the well here and said: I am so opposed to government-administered programs I am going to stop enrolling in the health insurance program for Members of Congress—not a one.

JOB CREATION

Mr. DURBIN. Madam President, I see my colleague from Colorado is on the floor, and he is going to speak to an amendment which is very important. The Republican leader addressed an aspect of it. I will make a brief comment.

If we want to create jobs in this country, we know how to do it. We passed a bill here last week, 74 to 22—a bipartisan bill. What a miracle. A bipartisan bill passes the Senate, a bill that would create 2.6 million, maybe 2.8 million jobs—create and save that many jobs in this economy—a bill that will help the American economy expand in the 21st century. What could it possibly be? It is called the Federal transportation bill. We do it every 5 years. If we do not do it—if we do not build the roads, the bridges, the airports, sustain passenger rail service and Amtrak, make certain we have mass transit and buses around America—our economy starts to contract instead of grow.

We passed this bill with a strong bipartisan vote, thanks to Senators BOXER and INHOFE. A Democrat and a Republican, a progressive and a conservative, came together on the bill. We sent it over to the House of Representatives and they said: Sorry, we are not going to take it up. We will not vote on it. We are going to send you a bill that allows people to create new startups, these new private companies, and we are going to eliminate the regulation that makes sure investors do not get fleeced. That is how we want to create jobs.

Well, that is like hoping America has amnesia. We remember the subprime mortgage mess when a lot of unsuspecting people were dragged into offices and into mortgages they had no idea were going to explode when the balloon burst.

Now, once again, the Republicans have said: The best way to create jobs in the future is to let that happen when it comes to the sale of stock in new companies. I am with Mary Schapiro, the Commissioner of the Securities and Exchange Commission. She has warned us, we need to put protections in this bill. It is not going to create the jobs they talk about. It is going to endanger investors.

I yield the floor for the Senator from Colorado.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. BENNET. Thank you, Madam President. And I thank the Senator from Illinois for his leadership and agree it is vital we pass the transportation bill.

CROWDFUNDING

Mr. BENNET. Madam President, in my townhalls we talk about a lot of things that are very different from what people argue about in this place. One of the issues we talk about is the economy. And we talk about these four lines, as shown on this chart.

The first line is our gross domestic product, the economic output of the United States of America, which is higher today than it was before we went into this recession. A lot of people do not know that. We are producing more than we were producing before we went into the recession.

Our productivity has gone up dramatically since the early 1990s, as we have responded to competition from China and India and other places, as we have used technology to enhance our economic output. We have the most productive economy we have ever seen.

But we also face some very potentially catastrophic circumstances in this economy, one of which is that median family income has fallen for the last 10 years—the first time that has happened in our country's history.

And the other is that we have 23 or 24 million people who are unemployed or underemployed in an economy that is producing what it was producing before the recession happened. That is a structural issue. I have spoken on this floor about the importance of education in that context because the worst the unemployment rate ever got for people with a college degree during the worst recession since the Great Depression was 4½ percent. That is a pretty good stress test of the value of a college education.

The other thing we need to make sure we are doing as a country is continuing to innovate and drive innovation across the United States because it is those companies—the ones that are created tomorrow, the ones that are created next week—that are going to create new jobs in this country. That is going to drive our median family income up instead of down.

That is why I am on the floor today to talk about a bipartisan bill, a bill Senator MERKLEY and Senator BROWN and I have worked on, on crowdfunding. It is an amendment that I hope will come to the floor. I hope we can get to a vote. Over the past months, we have worked together in a bipartisan way on a crowdfunding proposal that would allow crowdfunding to thrive but would also create an appropriate level of oversight and investor protection.

We have done something very unusual in this town: we took time to listen to people. We listened to crowdfunding platforms, entrepreneurs, and investor protection advocates. Many of them support this bill and have endorsed this bill. We worked hard to incorporate their ideas. As a result, we have a bipartisan amendment that has the support of both businesses and consumer advocates. That is something which does not happen frequently in this town.

I hope we will have a chance to vote on it. I will urge my colleagues on both sides of the aisle to see this as a real opportunity to take one step—not a huge step but one important step—forward to filling this gap we see, to creating an economy again where rising economic output also means rising wages, and that rising economic output also means growing jobs. This crowdfunding amendment is a chance to do it. It is bipartisan.

I have some letters of support, and I ask unanimous consent that they be printed in the RECORD.

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

NATIONAL SMALL BUSINESS ASSOCIATION,

Washington, DC, March 15, 2012.

Hon. HARRY REID,
*Majority Leader, Hart Senate Office Building,
Washington, DC.*

Hon. MITCH MCCONNELL,
*Minority Leader, Russell Senate Office Building,
Washington, DC.*

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: The National Small Business Association (NSBA) supports the Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012 (CROWDFUND Act, S. 2190), which would promote entrepreneurship, job creation and economic growth by making it much easier for small companies to raise capital and get new ideas off the ground. This legislation represents a reasonable effort to accommodate differing points of view and to move this important idea forward.

Representing over 150,000 small-business owners across the nation, NSBA is the country's oldest small-business advocacy organization and greatly appreciates your leadership on such an important issue for America's entrepreneurs and small-business community.

This legislation creates a crowdfunding exemption allowing a company to raise up to \$1 million with reasonable per investor limits. It also pre-empts state level registration requirements, which is critical if crowdfunding legislation is to have a meaningful positive impact. Furthermore, it adds additional regulations designed to safeguard investors.

Under current law, equity markets are largely closed to entrepreneurs and small businesses because they are generally only permitted to raise capital from people with whom they have a pre-existing relationship or through investment bankers who demand a large share of the company for their services. Even private placements (usually Regulation D offerings) involve high legal fees and generally require that the offering be limited to accredited investors (those with incomes over \$300,000 or a residence exclusive net worth over \$1 million).

The costs associated with starting and growing a business are significant. According to the Bureau of Labor Statistics (BLS), from March 2009–March 2010, only 505,473 new businesses were created in the United States, the lowest rate of growth since the BLS started compiling data. This bill would facilitate job creation, incentivize entrepreneurs, and promote long term economic growth.

Despite our general support for S. 2190, there are a few areas where we hope this legislation could be further improved as it moves forward:

We would hope and recommend that the \$1 million annual limit could be increased to \$2

million in conference. There are many small business ideas that require more than \$1 million to get off the ground.

Although we regard most of the investor safeguards as reasonable, there are a few provisions that we believe should be amended, as they may increase legal risk and administrative costs considerably. In particular, the provision requiring an explanation of the valuation method used by the issuer creates substantial legal risk and uncertainty since in retrospect almost any valuation method will prove incorrect. It is not clear what "valuation" would meet this requirement and protect issuers from litigation risk given the fact that any valuation is going to prove wrong either on the upside or, more relevantly, on the downside.

In addition, the provisions granting the Securities and Exchange Commission almost unfettered discretion to issue additional regulations governing crowdfunding could prove highly problematic. The legislation should contain a provision limiting this discretion and requiring the Commission to consider the costs of any additional regulation and its likely impact on the crowdfunding marketplace.

Small businesses are America's economic engine and are the most dynamic and innovative sector of the U.S. economy. They comprise 99.7% of all domestic employer firms, employ approximately 50% of all private sector employees, and have created roughly 65% of America's new net jobs over the past 17 years.

NSBA is pleased to support the Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012 (CROWDFUND Act, S. 2190) and thanks Senators Merkley, Bennet, Brown and Landrieu for their tireless efforts to improve small-business capital access. We look forward to working with you to address the concerns outlined and, ultimately, together help to enact this critical piece of legislation.

Sincerely,

TODD O. MCCracken,
President.

SoMoLend,
Cincinnati, OH, March 16, 2012.

Senator JEFF MERKLEY,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR MERKLEY: It is with great pleasure that I, on behalf of my company, SoMoLend, write to you today in support of your most recent compromise bill with Senators Brown and Bennett. As a platform that has been developed to eventually allow peer to peer lending (debt only), we applaud your efforts to allow for new small business borrowing opportunities while also protecting the lender and borrower.

Specifically, we appreciate the language that lifts the financial limits on investment to be robust enough to support the borrower industries we serve. Additionally, the new disclosure/regulatory requirements are robust enough to provide guidance to a new industry, but will also benefit the crowd-funding industry in the long-term (as compared to a possible race to the bottom with a "no regulatory" approach). Finally, we believe the disclosure/regulatory requirements will provide adequate information to investors, advising of risk but also deterring fraud. Again, this has long-term benefits to the industry as a whole.

We also recognize a shift from your original bill and thank you for removing the requirement for audited and reviewed financials for businesses raising small amounts of money, as this requirement would have been so cost-prohibitive that it would have served as a disincentive for small business participation.

While I believe that your legislation is much stronger than previous bills, I do still have concerns regarding requirements that do not adequately consider the different role debt plays in the capital structure, and hope that we have the opportunity to address these differences in the rule making process (we appreciate your guidance in drafting potential legislative history to this effect). We also believe that the current requirements still take a one size fits all approach, and we ask that the rule makers consider the cost/benefit of additional disclosure for very small offerings. In addition, the existing requirement for portals to belong to a national securities association provides a potential obstacle to our industry (time/cost), with no real benefit, since existing associations do not have any specific rules for crowd funding sites. We do realize, however, that our industry will need to quickly form its own self-regulatory association.

We believe that rule making should permit portals/issuers to rely on investor representations to comply with funding limits. Finally, the rule making process with the Securities and Exchange Commission will take time—we believe that someone should address what occurs in transition.

Overall, we are very supportive of your most recent legislation, and we are happy to help in any way to assist in advocating its passage.

Please let me know if I can do any more to be of assistance, and we look forward to working with your team to create an exciting new opportunity for small business access to capital.

Sincerely,

CANDACE KLEIN,
Founder/CEO.

FUND DEMOCRACY,
March 14, 2012.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.

Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: I am writing on behalf of Fund Democracy to express my support for the Capital Raising Online While Deterring Fraud and Unethical Disclosure Act of 2012 ("CROWDFUND Act"). As the Act's title suggests, an exemption from registration requirements for very small securities offerings creates significant potential for fraud and unethical conduct. The CROWDFUND Act addresses this concern by providing significant regulatory relief to very small issuers without unreasonably compromising the investor protection provisions on which the federal securities laws are grounded and the long-term success of the U.S. securities markets has been based.

In particular, I note the substantial improvements over the crowdfunding exemption contained in Title III of the Jumpstart Our Business Startups Act ("JOBS Act") recently approved by the House. The JOBS Act's crowdfunding exemption, aptly referred to by Columbia Law School Professor John Coffee as the "The Boiler Room Legalization Act," removes fundamental investor protection measures that are essential to the successful operation of the U.S. securities markets.

Most notably, the JOBS Act would grant broker-dealers who act as intermediaries in crowdfunding offerings a complete exemption from registration as brokers. Such an exemption is grossly overbroad and removes an entire regulatory structure for precisely the kind of small offerings where experience has demonstrated a high risk of fraud. In contrast, the CROWDFUND Act provides a

reasonable alternative to broker registration by permitting crowdfunding intermediaries to be lightly regulated as "funding portals." These portals would continue to be subject to essential investor protection rules while relieving them of regulation that is unnecessary in the crowdfunding context.

Furthermore, the CROWDFUND Act requires that issuers provide appropriately limited financial disclosures depending on the size of the offering, whereas the JOBS Act provides a one-size-fits-all blanket exemption from providing any financial information for offerings of up to \$1 million. The CROWDFUND Act also provides regulators with 21-day advance notice of crowdfunding offerings. In contrast, the JOBS Act allows for notice with the making of the first offer, at which point regulatory action will often be too late.

Notwithstanding the CROWDFUND Act's significant improvements over the JOBS Act's crowdfunding exemption, I remain concerned regarding the potential for fraud in crowdfunding markets. I strongly encourage the reconsideration of the \$2,000 investment limit as applied to low-income individuals and recommend that investments not exceed the greater of \$500 or 5% of income. I also encourage a thoroughgoing re-evaluation of the operation of the crowdfunding exemption in practice following the delivery of each of the SEC reports required in Section 6 of the Act.

In conclusion, I applaud the CROWDFUND Act's reasonable balancing of the costs of raising capital for the smallest issuers, and the benefits of adequately protecting both investors and the integrity of the U.S. securities markets.

Sincerely,

MERCER BULLARD,
President and Founder.

THE STARTUP EXEMPTION,
Miami Beach, FL, March 14, 2012.

Senator HARRY REID,
Senate Majority Leader, Hart Senate Office
Bldg., Washington, DC.

DEAR SENATOR REID: We began this process over a year ago with the goal of creating a system under which entrepreneurs can raise capital to create jobs. We understand there are major differences between the House and Senate versions of the Crowdfunding bills and we desire for the Senate Banking Committee to have a chance to work these issues out there so that both Houses of Congress can pass this legislation.

In January 2011, we proposed the regulatory framework, which is the basis for all the Crowdfunding bills currently under consideration in Washington, DC. After a year of dedicated work we are comforted by the fact that the Senate, House and President understand how important capital is to our nation's entrepreneurs for innovation and job creation. The passage of the House Crowdfunding Bill (H.R. 2930), coupled with the President's very strong leadership and support was a great demonstration of bipartisanship. The active debate in the Senate, further reinforces the commitment to updating securities regulations that were written at a time when we didn't have the technology to better enable the free flow of information and investor protection. Once legalized, Crowdfund Investing (CFI) will allow a limited amount of community-based capital to flow into the hands of our nation's job creators and innovators, while providing prudent investor protections.

We are three successful MBA entrepreneurs having raised in excess of \$100M in venture and private equity capital and deeply understand the capital markets, and their risks and rewards. In drafting our framework, we worked hard to balance the interests of the

entrepreneur, investor, intermediary and regulator. We endorsed H.R. 2930, as it is aligned with our framework. Since then, we worked closely with the Senate to understand their concerns and work on a bill to include provisions that can yield bipartisan support while creating an regulatory environment in which a Crowdfund Investing industry can grow and succeed.

It is with this in mind that we write to suggest that if you consider the House version of the bill you consider adding the following crucial components:

1. Crowdfund Investing intermediaries that are SEC-regulated to provide appropriate oversight

2. All or nothing financing so that an entrepreneur must hit 100% of his funding target or no funds will be exchanged

3. State notification, rather than state registration, so the states are aware of who is crowdfunding in their states. This ensures they retain their enforcement ability while creating an efficient marketplace.

Senators Merkley, Bennett, Brown and Landrieu should be commended for their thoughtfulness in crafting a bipartisan compromise bill. Passage of Crowdfund Investing legislation this session will create the American jobs and innovation that our economy so desperately needs. Please consider taking up this bill.

Sincerely,

SHERWOOD NEISS, JASON BEST &
ZAK CASSADY-DORION,
Co-founders.

MARCH 15, 2012.

Senator HARRY REID,
*Senate Majority Leader, Hart Senate Office
Building, Washington DC.*

DEAR SENATOR REID: I write to express support for the bipartisan CROWDFUND Act recently proposed by Senators Merkley, S. Brown, Bennet and Landrieu.

CrowdCheck, Inc. was formed to support entrepreneurs seeking crowdfunding by giving them a way to establish their legitimacy in a field that many have predicted will be vulnerable to fraud, and to give investors a tool to recognize and avoid fraud. Our founders include several business lawyers, and I am a securities lawyer with three decades of experience helping companies comply with SEC disclosure requirements. I thus understand the burdens such regulations can impose on entrepreneurs, and also the information investors need to make an informed investment decision. I am therefore pleased to see the careful balance in the bill between investor protection and burden on the entrepreneur.

While we have some concerns with respect to interpretation of certain provisions in the bill, we look forward to working with the sponsors of the bill to address these. We therefore urge you to support this bipartisan effort to pass the CROWDFUND Act.

Sincerely,

SARA HANKS,
CEO, CrowdCheck, Inc.

Mr. BENNET. It moves this ball down the field. I hope it establishes a model for how we can work together to make sure that we are actually addressing things I am hearing about in the townhalls and that we are driving wage growth and job growth here in the United States.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi.

Mr. WICKER. Madam President, are we in morning business?

The ACTING PRESIDENT pro tempore. We are.

ORDER OF PROCEDURE

Mr. WICKER. Madam President, I rise to speak on the second-year anniversary of the Patient Protection and Affordable Care law. I will be joined shortly by a few of my colleagues. I ask unanimous consent that at that point we engage in a colloquy.

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

HEALTH CARE

Mr. WICKER. Madam President, on Friday of this week 2 years will have passed since President Obama signed the Patient Protection and Affordable Care Act into law. This is actually a sad anniversary because more than enough time has gone by to reveal the failures of this massive, burdensome piece of legislation.

The fact that 26 of our 50 States—more than half of the States—are part of the legal challenge currently under review by the Supreme Court points out the inevitable truth: This is a law that simply does not work.

The case that will be heard in a few days will be one of the most consequential Supreme Court cases of my lifetime—consequential not only because it deals with this massive, burdensome piece of legislation but because the implications go so much further. The Supreme Court case will decide the scope of the commerce clause. Indeed, my colleagues, if the Supreme Court decides this law can withstand constitutional scrutiny, then this large, massive Federal Government can, in fact, do almost anything, and there will be hardly any limitations under the Constitution and the Bill of Rights on the power of the U.S. Federal Government.

Americans are right to be disappointed with Obamacare, and they are right to want it repealed. And regardless of the outcome of the Supreme Court case, this Congress can decide and, as a matter of fact, the people of the United States will have a chance in November, as we do every 2 years, to decide.

A recent Gallup poll shows that twice as many Americans think the law will make things worse for their families than those who believe it will make things better. Seventy-two percent of Americans believe the individual mandate is unconstitutional.

The truth is that Americans deserve affordable, high-quality health care, not a 2,700-page, big-government piece of legislation that taxes, spends, and regulates. The President's health care law has not lowered the cost of health care as promised. It has not created jobs as promised. It has not reduced the deficit as promised. So this week we mark the anniversary not with progress but with bitter realities.

President Obama, in his joint session speech to Congress in 2009, asserted that his plan “will slow the growth of health care costs for our families, our

businesses, and our government.” In fact, last week the nonpartisan Congressional Budget Office and Joint Committee on Taxation updated their outlook of the health care law's impact on the Federal budget. Not surprisingly, their latest analysis says Obamacare will cost even more than anticipated. And the anticipated costs were high, indeed, but they say the health care law will cost nearly \$1.8 trillion over the next decade or double the estimated cost that accompanied the bill when Democratic supermajorities passed it in 2010. This is hardly the relief President Obama promised.

During his campaign, the President said the plan would reduce health care premiums by an average of \$2,500 per family. Instead, premiums have grown by nearly that much since he was elected.

I see I am joined by two of my colleagues, the distinguished Senator from Wyoming and the distinguished Senator from Kansas.

There are a number of other promises we are talking about today, and I know we don't impugn motives around here—that is against the rules—but one has to wonder, did advocates of this massive law actually believe these promises or were they simply duped and misled? And I don't know which is worse, but I know that my colleague Dr. BARRASSO, himself a physician who is on the front line of this issue, has given this a great deal of thought, so at this point I ask him to join in this colloquy.

Mr. BARRASSO. Madam President, I stand here with my friend and colleague from Mississippi because he and I both attended, in his home State of Mississippi, a meeting at a hospital where we met with doctors, also met with patients, and met with people from the community while the debate and discussion was being conducted about this health care law. At the time, people were asking all sorts of questions because they had heard the promises. Would this actually lower the cost of insurance by \$2,500 a family? That is what people wanted. That is what they expected. The other question: Will I really be able to keep the care I have and the doctor I have if I like it?

Now here we are a couple of years later, the second anniversary of this health care law being passed, and I am here with my friend and colleague from Mississippi, and it just seems to me that the questions that were asked by his constituents, by the doctors in those communities who take care of the patients, by the patients, the hospital administrators whom we talked to that day in his home State of Mississippi—it does seem that many of these promises have been broken.

The costs seem to go up higher than had this health care law not been passed at all. The numbers and the statistics we are hearing now from the budget office on the cost seem to be much, much higher than what the