The Republicans claim they share Democrats' goal of protecting these 7 million students I have talked about from these interest rate increases. We will see. But they insist we should pay for this proposal with unreasonable cuts to preventive health care services for millions of Americans. This is a program that is so vitally important to the health care delivery system in this country. Senators MIKULSKI, HARKIN, and others have worked very hard to maintain this program. It is so essential. Republicans know their proposal would never pass the Senate—never—and President Obama has said he would veto more cuts to crucial preventive health care. But there is already a compromise on the table. Our legislation closes a loophole that allows the rich to avoid paying taxes they already owe. Our proposal is not a new tax. It would simply stop wealthy Americans from dodging the taxes they are required to pay. If Senate Republicans are truly serious about protecting 7 million students, they will work with us to pass this reasonable proposal.

EXECUTIVE SESSION

NOMINATIONS OF AJIT VARADARAJ PAI AND JESSICA ROSENWORCEL TO BE MEMBERS OF THE FEDERAL COMMUNICATIONS COMMISSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 512 and 513; that the nominations be confirmed en bloc, the motions to reconsider be considered made and laid upon the table, with no intervening action or debate; that no further motions be in order to any of the nominations; that any related statements be printed in the RECORD; that the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

FEDERAL COMMUNICATIONS COMMISSION

Ajit Varadaraj Pai, of Kansas, to be a Member of the Federal Communications Commission for a term of five years from July 1, 2011.

Jessica Rosenworcel, of Connecticut, to be a Member of the Federal Communications Commission for a term of five years from July 1, 2010.

Mr. KYL. Mr. President, I rise today to say a few words about the nomination of Ajit Pai to be a member of the Federal Communications Commission. I have supported his nomination and that of his fellow nominee, Jessica Rosenworcel, and am pleased that unrelated matters have finally been resolved and that the Senate has confirmed both nominees.

Ajit is somebody whom many of us have come to know from his years of public service, whether on the Senate Judiciary Committee, at the Department of Justice, where Ajit worked on both antitrust and legal policy matters, or in the general counsel's office of the FCC. I especially appreciate his important work on the Roberts, Miers, and Alito Supreme Court nominations during the 109th Congress, as well as his careful attention to national security matters while at the Department of Justice.

Ajit is the son of immigrants who came to this country seeking opportunity, as did the ancestors of so many of our fellow Americans. They settled in the small town of Parsons, KS, population of 10,000. During his testimony before the Senate Commerce Committee, Ajit shared his memories of the sense of community and the Midwestern values that he learned in Parsons. He worked hard in school, excelled at both Harvard College and the University of Chicago Law School, and built a career in law and policy. Today, Ajit finds himself being confirmed to this position of honor and receiving a unique opportunity to serve his Nation. I am certain that his parents, having come to this country just 40 years ago, are immensely proud of him.

We should all be grateful that individuals like Ajit choose to serve in these important positions, especially in fields where there are also opportunities in private life. He will be a member of the FCC for more than 4 years. I am grateful for his service and appreciate that he and his wife Janine have agreed to make this sacrifice for the good of our Nation.

I am very disappointed that these nominations have been delayed for so long for nongermane reasons. Good men and women simply will not volunteer to serve if they are arbitrarily forced to spend months in limbo, uncertain as to their future.

As an FCC Commissioner, Ajit will be one of five individuals overseeing an agency with 2,000 employees and a budget of $350 million. The Commission has broad regulatory authority over the Nation's communications industry. The communications landscape has evolved dramatically, not just during my lifetime but since I entered the Senate in 1995 and even in the past few years. It is sometimes difficult to remember how we functioned before we had the ability to reach most people on cell phones, to access the Internet from computers in any corner of the globe, or to watch videos of our children and grandchildren on mobile devices. Most Americans were raised in a world in which the television offered just a few channels, there was no cable news, and telephones had rotary dials.

Policymakers should be reminded that many of the technologies that we take for granted today will soon be gone, and we do not really know which technologies will become obsolete and in which direction the Nation's innovators and consumers will take us. Congress and the FCC do not make those decisions, or at least they should not. These decisions should be made by the American people in their capacity as consumers, businessmen, entrepreneurs, investors, and citizens.

Government does not create innovation or make entrepreneurs, and it should not be in the business of picking winners or losers or trying to shape private investment. The government's proper role in communications, as in other sectors of our economy, is to establish clear and stable rules that encourage competition, that give consumers choice and allow markets to thrive, and that keep bureaucratic preferences and politics to a minimum.

Ajit has made clear that he shares this understanding of his role. I think that we can expect good things from him as a member of the Federal Communications Commission.

I congratulate Ajit on this honor and am proud to have supported his nomination.

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. The Senate resumes legislative session.

RESERVATION OF LEADER TIME

Mr. REID. Would the Chair announce the business of the day?

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

STOP THE STUDENT LOAN INTEREST RATE HIKE ACT OF 2012—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 2343, which the clerk will report by title.

The legislative clerk read as follows:

Motion to proceed to S. 2343, a bill to amend the Higher Education Act of 1965 to extend the reduced interest rate for Federal Direct Stafford Loans, and for other purposes.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. HARKIN. Mr. President, parliamentary inquiry: We are now on the Stop The Student Loan Interest Rate Hike Act of 2012, is that not correct?

The ACTING PRESIDENT pro tempore. The Senate is on the motion to proceed to that measure.

Mr. HARKIN. Mr. President, I yield myself such time as I may consume.

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

Mr. HARKIN. Mr. President, I can't emphasize strongly enough the importance and the urgency of the legislation before us—the Stop the Student Loan Interest Rate Hike Act of 2012—which the majority leader spoke about. On July 1, unless Congress intervenes, the interest rate on Federal student loan debt is set to double from 3.4 percent to 6.8 percent. More than 7.4 million American students, including an estimated 255,000 students enrolled in Iowa colleges and universities, will be required to pay an average of $1,000 more per year of school.

The bill before us is straightforward and it is fully paid for. It keeps the interest rate at 3.4 percent, and the cost is offset by closing a tax loophole that benefits certain high-income professional service providers.

I wish to thank Senator REID for his leadership in advancing this critical legislation. I also thank President Obama for making this legislation an urgent priority and for visiting college campuses across the country to speak out on this urgent problem facing our Nation's students and their families.

In today's global knowledge-based economy, an education beyond high school is no longer an option but a necessity. A worker with a bachelor's degree earns 85 percent more, on average, than a high school graduate. Almost two-thirds of the job vacancies between now and 2018 will require some postsecondary education, and more than half of those jobs will require at least a bachelor's degree.

You can see by this chart, as I said, 63 percent of the jobs will require at least some college education—either some college, an associate's degree or bachelor's degree or more. And that is by 2018. The demand is going to grow even beyond that. These statistics convey a very clear message: Higher education is the key to entry not only to the middle class but to a middle-class life.

Another message is equally clear, and that is America's economic competitiveness and growth depends on a highly educated and highly skilled workforce. That is why the ever-growing mountain of student loan debt is a major concern to me as the chair of the Health, Education, Labor and Pensions Committee, and also a major concern for families all across America who are struggling to get by. It is a shocking fact that total student loan debt has now surpassed total credit card debt for the first time ever, with $867 billion right now in student loans, auto loans at $734 billion, and credit cards at $704 billion. So for the first time ever, American families now owe more on school loans than they do on their car loans or on their credit cards.

Again I want to bring this closer to my own home. It affects Iowans profoundly. Nearly 72 percent of Iowa's college graduates have debt—the fourth highest percentage in the Nation. And those borrowers have an average of $30,000 in student loan debt, which is the third highest level in the Nation.

Over the past 3 years, President Obama and Congress have taken robust steps to improve college affordability and help our students succeed. From the Recovery Act and its unprecedented support for our education systems, to the student loan reforms that enabled us to help more students through larger Pell grants, and most recently our efforts to make it easier for students to repay their loans—this all happened in the last few years—we have made major strides toward the President's goal—and I hope it would be our shared goal—of reclaiming America's standing by 2020 as the country with the highest proportion of college graduates. Needless to say, it will be much harder to reach this goal if Congress allows interest rates to double on July 1.

As I said, more than 7.4 million American students will be required to pay an average of $1,000 over the lifetime of their loan for each year they borrow. Again, if you look at this chart, it shows what is happening. If the interest rate is paid at 3.4 percent, we are looking at about $883 in interest over the life of the average loan. Double that interest rate and it goes to $1,876. That is at 6.8 percent. So the average savings to the average student would be almost $1,000 a year.

I might add that the 255,404 borrowers in Iowa will save an estimated total of $254 million with this bill in front of us.

With today's tough economy, and given the very high unemployment rate among young Americans, it is absolutely unacceptable to ask middle-class families to shoulder sharply higher student loan interest payments. We must not allow this to happen.

If we look closer at the characteristics of students who will be impacted by this interest rate hike, we see that it affects middle-class families and vulnerable students from disadvantaged backgrounds at the very time when they are under enormous financial strain. If we look at who gets the subsidized loans, from this chart we can see, by family income, dependent students, their family income is less than $60,000 a year.

If we look at the independent student loan borrowers, their income is less than $50,000 a year, and 89 percent of them earn less than $50,000. Of the dependent student loan borrowers, 60 percent are from families who earn less than $60,000. I might also add that 7 out of 10 of those independent students here reported under $30,000 a year in income.

So allowing the interest rate to double would also disproportionately affect minority students who account for 40 percent of these borrowers. So 40 percent of these borrowers are minority students. This bill, again, would prevent the interest rate from doubling on July 1 for those borrowers.

So with the bill before us, we are considering a pragmatic and fiscally responsible solution to this problem that will keep interest rates low for more than 7.4 million students. Again, the bill is fully paid for, and we offset the cost by raising revenues in a way that will provide a solution to a long-standing problem in the Tax Code that has been subject to widespread abuse.

Now, let me just define how this measure is paid for. For many years we have seen avoidance of properly owed Social Security and Medicare taxes by some subchapter S stockholders who can declare that a portion of their income is effectively profit and therefore not subject to Social Security or Medicare taxes. This is not supposed to be a choice that is made at the whim of the taxpayer. It should be based on objective facts. The offset in this legislation does just that. It creates a bright-line test for a small share of subchapter S shareholders—basically, those engaged in professions such as doctors, lawyers, accountants, consultants and lobbyists—whose financial gains they have come from the work they do.

It is narrowly tailored to cover only those subchapter S organizations in which there are three or fewer stockholders, and only for those earning $250,000 on joint filings. With this bright-line test, the Medicare and Social Security trust fund will receive the funds that are properly owed, which are not received today because they are counted not as income but as profits.

My friends on the other side of the aisle have proposed a different offset to pay for keeping the interest rate at 3.4 percent. The bill that passed the House of Representatives and the legislation proposed by Senator ALEXANDER of Tennessee would offset the cost of this bill by eliminating the Prevention and Public Health Fund which was created by the Patient Protection and Affordability Care Act.

In short, rather than put an end to a widespread abuse of the Tax Code, my friends on the other side of the aisle are proposing that we eliminate the sole dedicated source of Federal funding for critical investments in preventing disease and keeping women and children and elderly families healthy. They want to eliminate the Prevention and Public Health Fund.

Many of my Republican colleagues have acknowledged the critical importance of investing in prevention and wellness, which makes the use of this offset that is eliminating it all the more troubling. Preventing disease, expanding access to screenings, encouraging people to stop using tobacco—these used to be bipartisan goals strongly supported by a vast majority of Republicans and Democrats alike. So in the affordable care act we created the prevention fund, with the express goal of ramping up our investments in these prevention and wellness initiatives, again, with Republican support.

Here are quotes from two Republican leaders. Senator KYL, on July 12, 2010, just a few months after we passed the affordable care act, said:

> One of the things we did in the health care legislation was to provide a lot of different incentives for preventive care, for screening to try to help people avoid illnesses on the theory that it would be a lot cheaper if we didn't do a lot of treatment that was unnecessary.

I couldn't agree more.

The Republican leader, Senator MCCONNELL, said in an op-ed the same year, 2010:

Congress should be able to work together on our practical ideas that the American people support, such as . . . encouraging wellness and prevention programs that have proved to be effective in cutting costs and improving care.

That was less than 2 years ago, right after passage of the health reform law. But now Republicans are making outrageous partisan attacks on the prevention fund. I find this deeply disturbing and disappointing. It is not hard to imagine the message gurus, those who hone messages, telling Republicans: Here is all you have to do. Just smear the prevention fund by calling it a slush fund.

How many times have I heard that: the prevention fund is a slush fund? I have heard it in committee, I have heard it on the floor, I have seen it in print, Republicans calling the prevention fund a slush fund. Well, this is shameful. That term ''slush fund'' is a malicious untruth. Nothing could be further from the truth. The truth is the prevention fund has been a giant step forward for public health in our Nation.

Typically, prevention and public health initiatives are an afterthought. This means important community-based interventions often go unsupported. The prevention fund is making it possible for us to make national investments in evidence-based programs that promote physical activity, improved nutrition, and reduced tobacco use. Well, these are the investments we make.

This prevention fund, which Republicans want to eliminate, invests $226 million to reduce chronic diseases, including diabetes and heart disease. That minimizes the $440 billion a year in health care costs from heart disease alone. It invests $93 million for antitobacco education and support campaigns to minimize the fact that over 6 million kids will die from smoking if the current rates persist. It invests $190 million for childhood immunization programs, again, to minimize the $3 billion a year in unnecessary health care costs right now.

I might just add the lead editorial in today's New York Times said, ''No Longer Just 'Adult Onset'.'' That is the head of it. I will not read it all, but I think there are a few pertinent paragraphs in the Times editorial. It starts off by saying:

A study of diabetes in overweight and obese youngsters bears an ominous warning about future health care trends in this country. It found that Type 2 diabetes, a new scourge among young people, progresses faster and is harder to treat in youngsters than in adults. The toll on their health as they grow older could be devastating.

This new study was published in the New England Journal of Medicine. Reading further:

Some experts suggest that young patients at risk of diabetes need to be detected earlier and treated more aggressively. But the long-term goal should be prevention of obesity and of diabetes.

Congressional Republicans, meanwhile, are bent on dismantling health care reforms that could greatly assist in curbing the obesity epidemic. The Republican-dominated House last month narrowly passed a bill that would eliminate a Prevention and Public Health Fund, established under the reform law, in part to pay for lowering the interest rate on subsidized student loans for this year.

The fund is already providing grants to state and local governments to help pay for programs to fight obesity and prevent chronic diseases, including diabetes, in the community, the workplace and among minority groups that have high rates of obesity and diabetes. Killing off this program would be hugely costly to Americans' health and future health care costs. There is no explanation for this move, except for the usual anti-health care reform demagoguery.

I ask unanimous consent to have printed in the RECORD a copy of the full editorial.

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

NO LONGER JUST ''ADULT-ONSET''

THE VIRULENCE OF TYPE 2 DIABETES IN CHILDREN IS YET ANOTHER REASON TO FIGHT CHILDHOOD OBESITY

A study of diabetes in overweight and obese youngsters bears an ominous warning about future health care trends in this country. It found that Type 2 diabetes, a new scourge among young people, progresses faster and is harder to treat in youngsters than in adults. The toll on their health as they grow older could be devastating.

These findings provide more evidence of why the country must get the obesity epidemic under control—to improve health and to curb soaring health care costs.

Only two decades ago Type 2 diabetes was called ''adult-onset diabetes'' because it was seldom found in young people, who suffered primarily from Type 1, in which the patient's immune system destroys cells that make insulin, a hormone needed to control blood sugar levels. Type 2—thought to be brought on by obesity and inactivity in many people—has increased alarmingly and accounts for almost a fifth of newly diagnosed cases in young people.

Obesity increases the risk of many chronic diseases. And some 17 percent of American children from age 2 to 19 are now considered obese, roughly half the rate of obesity among adults.

The new study, published in The New England Journal of Medicine, tested three ways to attain durable control of blood sugar in youngsters between the ages of 10 and 17. None worked very well. Almost half of the 699 youngsters had to add daily shots of insulin within a few years to lower their blood sugar. Metformin, the standard drug used to treat Type 2 diabetes in children, failed to control blood sugar in more than half of the children. When lifestyle changes, including one-on-one counseling on how to lead a healthy life, were added to metformin, the results were only marginally better.

When a second drug was added, the results were significantly better. But the two-drug treatment still failed in 39 percent of the recipients, and the added drug, Avandia, has been linked to heart attacks and strokes in adults.

The findings are especially ominous because poorly controlled diabetes can lead to heart disease, stroke, blindness, amputations and kidney failure. The longer one has the disease, the greater the risk, so the fact that children are starting so young bodes ill for their futures.

Some experts suggest that young patients at risk of diabetes need to be detected earlier and treated more aggressively. But the long-term goal should be prevention of obesity and of diabetes.

Congressional Republicans, meanwhile, are bent on dismantling health care reforms that could greatly assist in curbing the obesity epidemic. The Republican-dominated House last month narrowly passed a bill that would eliminate a Prevention and Public Health Fund, established under the reform law, in part to pay for lowering the interest rate on subsidized student loans for a year.

The fund is already providing grants to state and local governments to help pay for programs to fight obesity and prevent chronic diseases, including diabetes, in the community, the workplace and among minority groups that have high rates of both obesity and diabetes. Killing off this program would be hugely costly to Americans' health, and future health care costs. There is no explanation for this move, except for the usual anti-health care reform demagoguery.

MORE TIME FOR JUSTICE

STATES NEED TO EXTEND THE TIME FOR VICTIMS TO BRING CLAIMS AGAINST SEXUAL ABUSERS

Hawaii significantly strengthened its protections against child sexual abuse last month when Gov. Neil Abercrombie signed a measure extending the statute of limitations for civil lawsuits filed by child victims. At least as important, it opens a one-time two-year window to allow victims to file suits against their abusers even if the time limit had expired under the old law.

Like similar laws in California and Delaware, the Hawaii measure recognizes some wrenching realities. It can take many years, even decades, before child abuse victims are emotionally ready to come forward and tell their stories in court. But by then, they may be barred from suing by the statute of limitations. For example, many suits against the Catholic Church have been blocked because the church's covering up for pedophile priests made it hard for victims to come forward until long past the time limit for bringing civil claims.

Hawaii's new law allows child victims to bring suits up to the age of 26 (it was 20), or three years from the time the victim realizes the abuse caused injury. The law's leading opponent was the Roman Catholic Church, which has been working hard to defeat statute of limitations reform across the country.

Lobbying by the church recently succeeded in blocking reform in Pennsylvania. But lawmakers in Massachusetts seem ready to follow Hawaii's example by passing similar reforms.

In New York, Gov. Andrew Cuomo has not yet indicated that he would support a measure sponsored by Margaret Markey in the Assembly to lift the statute of limitations for one year for civil lawsuits involving child sex abuse. After that year, an accuser would have 10 years after turning 18 to make a claim, instead of five years, which is the current law. Mr. Cuomo has voiced concern about fading memories and missing evidence, but those concerns need to be balanced with justice for victims and the need to stop abusers.

Like measures in other states, the Markey bill requires that a victim obtain a certificate from a mental health professional to show there is a reasonable basis to believe the abuse occurred before a suit can go forward.

Getting the measure through the State Senate would be an uphill climb; previous attempts have failed, and Republican leaders have again vowed to stop it. Cardinal Timothy Dolan has made defeating statute of limitations reform one of his top legislative priorities. Mr. Cuomo's strong leadership will be needed if New York is to match Hawaii's accomplishment any time soon.

Mr. HARKIN. I don't know that I can make it any more clear than the New York Times editorial, and there is not the time to mention all of the ways this fund is already making Americans healthier. But I want to mention several representative investments that are happening, again, right now.

I mentioned those right here, the $226 million for diabetes and heart disease, the $93 million for antitobacco education, the $190 million, again, for childhood immunization programs.

I might just go back to that first on the heart disease because heart disease disproportionately affects women. Most people don't know that. I think most people would say the No. 1 cause of death in women today might be breast cancer. Not so. The No. 1 cause of death for women in this country is heart disease. Some 42 million women in America are currently living with some form of heart disease, and the World Health Organization estimates that a staggering 80 percent of heart disease, diabetes, and stroke could be prevented just from changes in smoking, nutrition, and physical activity alone. That is what this prevention fund is doing right now.

Moreover, this investment by the prevention fund isn't only saving lives, but it is saving money. Right now, heart disease costs our Nation about $440 billion a year. We can reduce those costs.

I might also mention smoking. Cigarette smoking also kills an estimated 173,000 women every year. If current smoking rates persist, more than 6 million kids will die from smoking.

The new national antitobacco ad campaign called Tips From a Former Smoker is being supported by this prevention fund. I think many of us probably have seen these ads. They are extremely powerful and effective ads, and they are going to save lives. In fact, this ad campaign is expected to inspire a half million quit attempts and help at least 50,000 Americans quit smoking forever.

I might just add that within 2 days of these ads first appearing, the number of phone calls to quit-smoking lines tripled from people who wanted help in quitting smoking.

I mentioned the immunization programs for kids. These investments from the prevention fund aren't just at the national level, they are also in our communities. This fund is helping States and cities and towns to implement evidence-based programs that meet their particular local needs.

For example, in Illinois, the State has made improvements to its sidewalks and has marked crossings to increase levels of student physical activity. Because of these improvements, the number of students who are walking to school has doubled. That is a good thing. So not only is this good for their health; it is expected to save the school system about $67,000 yearly on bus costs.

In Mobile, AL, Mobile County officials enacted a comprehensive smoke-free policy expected to protect 13,000 residents and visitors from being exposed to secondhand smoke.

All across America, the prevention fund is investing in proven, locally developed programs that promote health and wellness. These evidence-based programs not only improve health but, as I said, will help us save money in health care costs.

According to a new study by the Centers for Disease Control and Prevention, programs such as the National Diabetes Prevention Program could prevent or delay nearly 885,000 cases of type 2 diabetes, saving our health care system about $5.7 billion over the next 25 years. The National Diabetes Prevention Program is a public-private partnership of health care organizations working together to prevent the type 2 diabetes the New York Times editorial was talking about. Given that in 2007 diabetes alone accounted for $116 billion in direct medical costs, it is critical we continue these investments.

Again, here is how this investment is returned, the return on investment for public health care spending. For every $1 spent on childhood immunizations, we save $16.50—proven; tobacco control programs, for every $1 we save $5; for chronic disease prevention, for every $1 we save $5.60; for workplace wellness programs, $3.27. If we want to look at it just in terms of dollars and not just in terms of lives, we are saving money also.

The prevention fund's investments in cancer prevention also provide an opportunity to save lives and money. In 2007, the direct and indirect costs of cancer, which account for nearly one out of every four deaths in the United States, totaled about $123 billion. Earlier this year, researchers found nearly half of U.S. cancer deaths could be prevented—again, through the kinds of programs the prevention fund is funding today. Preventable U.S. cancer deaths, about 50 percent; preventable deaths from heart disease, diabetes, and stroke, about 80 percent. This is what the prevention fund is going after. For the life of me, I have never understood those who want to get rid of the prevention fund, yet are willing to pump untold billions, trillions of dollars into patching, fixing, mending surgery and health care costs down the line. Perhaps my friends on the other side of the aisle never learned the old axiom of Ben Franklin about an ounce of prevention is worth about a pound of cure. Here, an ounce of prevention is worth about 10 pounds of cure or more.

The list goes on. Recently, the Trust for America's Health released a study showing that a 5-percent reduction in the obesity rate could yield more than $600 billion in savings on health care costs over a 20-year period of time—a 5-percent reduction. Studies such as this one confirm what common sense tells us, that prevention is the best medicine for our bodies and for our budgets. That is why nearly 800 organizations have spoken out against these misguided efforts to slash or eliminate the prevention fund. These organizations, such as the Young Invincibles, the U.S. Student Association, the American Diabetes Association, the Campaign for Tobacco-Free Kids, have all said: No, don't cut, don't eliminate the prevention fund.

Despite misguided efforts to cut or eliminate the Prevention and Public Health Fund, most Americans understand what is at stake. Prior to the prevention fund, for every $1 spent on health care, 75 cents went to treating people with chronic illnesses and only about 4 cents went to prevention: 75 cents taking care of people later on with chronic diseases that are preventable, only 4 cents out of every $1 went to prevention. This underinvestment has had devastating consequences. Nearly half of American adults have at least one chronic condition. Yes, you heard me right. Nearly half of American adults have at least one chronic condition, and two-thirds of the increase in health care spending between 1987 and 2000 was due to the increased prevalence of chronic diseases. So two-thirds of our budget, of the increase in spending, is on chronic diseases. Yet since we can reduce those chronic diseases through prevention, one would think we would want to increase that 4 cents a little bit—4 cents on the $1 we are spending right now. This prevention fund gives us an unprecedented opportunity to bend the cost curve.

How many times have I heard about bending the cost curve in medicine? The best way to do it is to prevent chronic diseases. The transformation of America into a true wellness society, a society that focuses on preventing diseases, saving lives and thereby money is the most cost-effective way to proceed. As we can see, to slander the prevention fund as a so-called slush fund is a shameful mischaracterization. This fund is saving lives and saving money. Eliminating this fund—as proposed by my friend from Tennessee—would be bad public policy, a serious case of misplaced priorities. The very idea that Republicans would slash prevention in public health care so a small group of high-income taxpayers can continue to abuse the Tax Code I find simply unacceptable.

Before I close my remarks, I would like to address an egregious mischaracterization that I have heard from the other side of the aisle. Some Republicans claim Democrats, in our historic reform of the student loan program, took money that had been going to students and used it to pay for the health care bill. I have heard that a lot of times. Again, that is simply not so. The reforms passed by Democrats in Congress—I might add over vehement Republican opposition—did not take a single dime from students. Instead, the bill eliminated wasteful, taxpayer-funded subsidies to banks by converting all new Federal student loans to a more stable, reliable, cost-efficient direct loan program and redirected that money to students, to deficit reduction, and some important health care reforms.

The money did not come from students. The money came from the subsidization we have been giving to banks. Specifically, thanks to the huge savings generated by eliminating wasteful subsidies to banks, what we were able to do with that—we provided increases in the maximum Pell grant award to keep up with inflation. We provided funding for minority-serving colleges and universities. We made a major investment in community colleges, creating a community college and career training grant program. We were able to make loan repayment more manageable by capping a new borrower's loan payment at 10 percent of their net income and, for some, forgiving any remaining debt after 20 years of payment.

That was all done by stopping these wasteful subsidies to banks and putting it into the direct loan program. Again, we provided more than $10 billion in deficit reduction at the same time we were able to expand the Community Health Center Program to ensure access to lifesaving medications and to expand vital consumer protections to millions of Americans with private health insurance—protections we put in such as banning lifetime limits, requiring dependent coverage, prohibiting cancellation of coverage due to an illness. In other words, thanks to the education reform bill, students benefited, the middle class benefited, taxpayers benefited, and health care consumers benefited. For my friends on the Republican side, had they had their way and had those reforms been defeated, only the banks would have benefited.

Indeed, I kind of detect a pattern. When we Democrats were fighting to end this subsidy to banks so we could dramatically increase college grants and loans for middle-class and disadvantaged students, my friends on the other side of the aisle stood with the banks and did everything they could to kill the reforms. Likewise, today Democrats are fighting to prevent a 100-percent student loan rate hike. We want to fully pay for it by correcting a provision in the Tax Code that allows a small group of wealthy Americans to avoid paying some Social Security and Medicare taxes. Republicans are going to the mat to prevent those wealthy taxpayers from having to pay their fair share. Instead, how do they want to pay for keeping the interest rate down? By gutting the prevention fund, killing it, eliminating it—the very fund that is investing in initiatives to fight cancer and heart disease and to protect the health of our children, our women, and our elderly.

What they are proposing is bad public policy. It is bad priorities. We need to be putting the middle class first. We need to be putting students struggling to pay for college first. We need to be putting public health care and prevention first—put all those out there. To make these things possible, we should ask a small group of wealthy Americans to put their country first and stop abusing this provision, this loophole in the Tax Code. I urge my colleagues to support the Stop The Student Loan Interest Rate Hike Act and to support the offset currently in the bill.

Five years ago, the original law that reduced the student loan interest rate to 3.4 percent passed with overwhelming bipartisan support and was signed by a Republican President. I hope we can find common ground to pass this new legislation with that same kind of broad and bipartisan support.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I am glad I had an opportunity to hear the distinguished Senator from Iowa, who is my friend and the chairman of the Health, Education, Labor and Pensions Committee. I wish to address the same subject he did, but I want to hasten to summarize it at the beginning to say that we agree. By we, I mean Governor Romney, the likely Republican nominee for President, President Obama, the House Republicans, I, and others agree that for the next year we should keep the interest rate on 40 percent of new student loans at 3.4 percent. There is no difference of opinion on that.

What is different is how we propose to pay for it. The distinguished Senator from Iowa has actually outlined the difference of opinion very well. What we are saying, what the Republicans are saying, is that in order to pay for the $6 billion it will cost taxpayers to keep that 3.4 percent interest rate the same for the next year, we want to give to students—give them back their own money, the money the Democrats are overcharging them on their student loans. The Senator from Iowa went through a very careful explanation on that which was largely correct. He pointed out that at the time the majority decided it would make the Secretary of Education the Nation's leading banker and put him in charge of administering what is becoming to be nearly $1 trillion worth of student debt—in other words, take it away from banks and make the government the banker—that there was about $61 billion in ''savings.'' That is from the Congressional Budget Office.

Our friends on the other side of the aisle argued those were unnecessary subsidies to banks. Let's say, for the moment, for the sake of argument, they are correct about that. That $61 billion is money students were paying in interest on their student loans. Wouldn't the logical thing to do be to let the students keep the money? If we truly cared about college tuition going up and student loans rising, wouldn't the thing to do be to say: We have done a big favor to you students—the government has been overcharging you on your student loans, all 18 or 19 million of you who have student loans—so instead of the rate of 6.8 percent, which it is for most students, we are going to lower that rate to 5.3 percent.

That is not my number. That is the number the Congressional Budget Office said. We could have that $61 billion our friends on the other side said the government is overcharging students and we could reduce the average loan of about $25,000 to a 5.3-percent rate instead of 6.8 percent and that would save the average student on the average loan about $2,200 over 10 years. But they didn't do that. They spent it on more government; $10 billion to reduce the debt and $8.7 billion to pay for the health care bill. So what we are saying is in order to freeze this rate at 3.4 percent, let's give to students the money they were paying. Instead of paying for the health care bill, let's reduce the student rates. That is the difference of opinion here.

Of course, our friends on the other side of the aisle have a better way, in their opinion. Not only do they want the students to continue to pay for other government programs, and some money for the health care bill, they want to raise taxes on job creators in the middle of the longest recession we have had since the Great Depression.

Let me go back to the beginning point here. We are talking about something that was reflected very well in the New York Times yesterday. I noticed the Senator from Iowa talked about the New York Times. Here is the national section from yesterday talking about what is going on in California.

> Angry about tuition increases and cuts in courses and enrollment, a dozen students at California State University have taken their protest beyond marches . . . and declared a hunger strike.
>
> The fasting protest was the latest display of anger at the 23 California State University campuses. The system has lost roughly $970 million in state financing since 2008.

The University of California is probably the best public university in the world. It has lost nearly $1 billion in State funding since 2008, and the students are fasting. They are upset about the tuition increases. Why is the tuition increasing? Well, the administrators say if we lose $1 billion from the State for our State universities, the money has to come from somewhere to pay for excellence in our universities, so we increased the tuition. That story has been going on all over the country. Why is that happening?

The President has put this issue on the table. I think we need to discuss it. Why are they fasting in California, protesting tuition increases? In the last year why did State funding for the University of Tennessee and Tennessee's community colleges and Tennessee Tech go down 15 percent last year? The main reason is the Federal Government's health care policies and its

Medicaid mandates on States that are soaking up State dollars on Medicaid that would otherwise go to pay for public universities.

President Obama did not start this policy—it has been going on for 30 years—but he is making it much worse with his health care law. And when it takes effect next year, the Kaiser Family Foundation says that States, which already are spending one out of four of their State tax revenues on Medicaid, will see a 29-percent increase in their spending on Medicaid. What will that do? What that will do is force California, Tennessee, Connecticut, and Iowa to look in their State budgets, to take the money that most likely would have gone for the colleges and community colleges and public universities and instead spend it on Medicaid. Those Federal Medicaid mandates are soaking up money that would otherwise go to public colleges and universities, and as a result of that, universities are raising tuition. As a result of that, loans are up, students are fasting, and the President is on the campaign trail promising to fix it.

Let's talk about his fix. First, it is the political season, so Senators, and all of us, need to listen very carefully when someone begins to stir the crowd about a popular issue, and surely being able to pay for college is a popular issue. We hope all American students who want to have a college degree will be able to go and afford to go to college. Our Federal Government goes to great efforts to make that possible.

Half of the students who go to colleges and universities in America—there are 6,000 of them—have a Federal grant or loan to help pay for college. We have more than $100 billion in new loans going out this year from the American taxpayer. That is from people out there working and paying taxes—the UAW member, the teacher, their taxes are going to loan more than $100 billion to students this year. The amount of money for Pell grants this year is over $41 billion.

The University of Tennessee in Knoxville is a fine campus where the tuition is about $7,400 a year, which is a good bargain at a great university. Almost all the students show up with a $4,000 State scholarship called the HOPE scholarship. For a quarter of the students who are low income, they have Pell grants that carry them above the amount of tuition. State and local governments have made a great effort to try to make it easier for our young people and older people to continue their education, and we want to continue to do that. There is a bipartisan effort on that.

Now the specific issue at play here, and the one we are likely to vote on tomorrow, has to do with one type of those student loans, and let's try to put that in perspective.

The Democrats have a version and the Republicans have a version. I offered a version which would pay for it by giving back to students the money the government is overcharging them. The Democrats have one that would raise taxes on people who create jobs. But whatever one passes—if one were to pass—would save average students on new loans about $7 a month in interest payments for the next 10 years. That can add up. That could be $83 in a year, $830 over 10 years. But that is what we are talking about, $7 a month in savings or $7 a month in interest payments on the average loan, and that is for 40 percent of the new loans. So if you have a student loan and it is at 3.4 percent, that is not going to change. There are 40 percent who have student loans today that they took out last year at about 3.4 percent. Most everybody else is at 6.8 percent, which is a good deal lower than you could get with a private loan. A private loan is one where you go to a bank and say: I am going to college and I don't have a job so I need to borrow money. You may get it, but they are going to charge you more because you may not be able to pay it back as well as somebody else.

We have agreed on this—at least we agreed on the policy, but not how to pay for it. The President has agreed on it and Governor Romney agreed on it. For the next year we wish to take 40 percent of new loans and keep them at the 3.4 percent rate, and then later in the year—earlier next year—when we look at our entire budget, how much money we have to spend, the size of the debt, which is of great concern to all of us on both sides of the aisle, we will see what we can afford to do. That is the first question.

But I am glad the President has been going to college campuses. I am glad he has raised the issue of student loans and college tuition because as a former Governor of Tennessee who cares deeply about education and as someone who was also U.S. Education Secretary about 20 years ago, I have been trying for 20 or 25 years to get Washington to pay attention to the idea that it is ruining our public colleges and universities where these Medicaid mandates soak up the dollars that ought to go to public colleges and universities. Three-quarters of our students go to public universities such as the University of Tennessee or Iowa or Iowa State or California or the community colleges, which are our secret weapon. And even with the rising tuition, those costs are at least reasonable now. I mean tuition at a community college in Tennessee is about $3,000. Nationally the average tuition for a 4-year public university is about $8,200. It is not easy to find the money for that, but it is still within range.

What has happened in the last 25 years? I can tell you what happened in my State. I visited with the retiring president of Tennessee Tech University, a fine engineering school. He said two things: One, over the last 3 years State funding for his university—and for most in Tennessee—has gone down by 30 percent. That is not a 30-percent reduction in the rate of growth, that is a flat-out cut. And why has that been happening? Well, our current Governor, a Republican, and our former one, a Democrat, have said what I know and every Governor knows: when you make up your State budget and you get down toward the end of it, you make a choice between Medicaid and higher education. And because Medicaid is run from Washington with specific mandates on states, the States end up having a stranglehold put on them, and in effect, if they participate in the program, they are forced to make decisions about eligibility and how much they spend, and there goes the money. There goes the money and it doesn't go to the public colleges and universities, resulting in less money, higher tuition, and more loans.

The fasting students in California—if I walked up to them today and said: I bet you didn't know that President Obama's health care policies are the reason you are hungry today, they wouldn't believe that. But the fact of the matter is not just the President's policies but the policies over the last number of years have gradually soaked up money that would make the University of California a great university and left it no recourse but to become more efficient, which it should, and to raise tuition, which it is doing.

I will give an example of how much difference this makes. In the early 1980s, I was a young Governor and I was making these budgets up. I would say: Well, about this much goes to K 12 education, and the courts are running prisons, so I will have to put that in, and then the gas tax goes to the highways. And you get down to the end of the budget and you make a choice between Medicaid, the Federal program that States pay about 30 percent of, and education. I was trying to restrict funding for Medicaid and increase funding for education. I could see where we were headed over the next several years.

I went to see President Reagan. I had made an appointment. I saw him in the Oval Office. I said: Mr. President, let me propose a grand swap. He said: What do you mean, a grand swap? I said: We will take all of K 12 education in the States and you take all of Medicaid. He thought for a moment, and he said that sounds like a pretty good idea. My reasoning was that instead of Medicaid having two masters—one in Washington and the other among all the different Governors—if it had one, it would be managed better. If Washington ran Medicaid, Washington would have to pay for it all and make sure that it could be funded.

I thought then, and I still think today, that almost all of the responsibility for kindergarten through the 12th grade belongs as close to the child as possible—first with the family, then with the classroom, and then with the State. I believe that while there has been some important advocacy from Washington over the last 30 years, if we had made that grand swap 30 years ago, the Medicaid Program would be run better today and our public schools would be performing better today.

We could argue about that, but the one thing we could not argue about is the difference in money. Back then if we made the swap, the States would have come out ahead by about $4.5 billion. In other words, the Federal Government would have taken over Medicaid and the States would have taken over K 12. The States would have given back to the Federal Government the Federal aid for education and keep their Medicaid money. Four-and-a-half billion dollars was the difference in 1981 or 1982.

What would the difference be today if we made such a grand swap? It would be $92 billion. It would be $92 billion of extra money the States would have if today the Federal Government took over all of Medicaid and the States took over all of the responsibility funding for K 12.

That would mean in a State such as California where the students are fasting, California would probably have an extra $12 billion or $13 billion. Do you think much of that would go to the University of California to continue its excellence? Sure it would. Would much of it go to Tennessee Tech, the University of Tennessee, and the community colleges? It absolutely would.

What happened over the years is that these well-intentioned Federal health care Medicaid mandates have put a stranglehold on Governors, which is why I said when we were debating the health care law that I thought any Senator who voted for it ought to be sentenced to serve as Governor for 8 years and try to implement it.

I mentioned that last year Tennessee's State funding for higher education went down 15 percent. Guess what. State funding for Medicaid went up 16 percent. So there is a direct relationship: Medicaid up, State funding for public universities down, tuition and loans go up, and that is the real problem we have today.

I am glad the President has put this issue on the table. I am glad he is talking about it, and I hope Governor Romney talks about it. I hope what they agree to do is either to repeal the health care law or to repeal the Medicaid mandates and give States more flexibility. We can't pass a law in Washington, as we did 3 or 4 years ago with the stimulus, and say we are going to give you more Medicaid money, but, Mr. Governor and Ms. Legislator, you can't reduce State funding on Medicaid.

Lieutenant Governor Ravitch of New York, a Democrat, wrote an excellent article in the Wall Street Journal. At the time it said: If you tell New York that at a time when we are reducing revenues and say we have to keep spending on Medicaid, we have to cut something else, and the State University of New York gets cut. So New York cuts the State University of New York, tuition goes up, loans go up, and students are protesting.

It is not just the student protests that I worry about. We are at a time in our history when we are in a serious brain-power competition around the world. We have a lot of Chinese scholars who go from American universities home to their universities. In a bipartisan way—and the Senator from Iowa and I were part of it—we passed something called the America Competes Act a few years ago and reauthorized it so we could properly fund science and our innovation. Government-sponsored research has been an important part of our job growth over the last 30 or 40 years. Where is that done? It is done in our national laboratories or our great research universities. Well, at least half of our great research universities are public universities, such as the University of California, the University of Michigan, the University of Tennessee, the University of Connecticut. If we keep cutting government-sponsored research and the quality of those universities, our job growth won't be nearly as good in the future.

Here is another example of how much that has changed over the years. Thirty years ago in Tennessee, the State paid 70 percent of the cost of a student to attend a State university and the student paid 30 percent. We had an implicit agreement between the government and the student, and we said: If we increase your tuition, we will increase the State contribution by the same percentage. So we kept it at about 70 and 30, and it made it possible for a lot of students to go to college. What is it today? It is 30 and 70. It is upside down. Thirty percent of the support for colleges and universities comes from the State government and nearly 70 percent comes from the students. Why is that? The main reason is Federal health care mandates that put an unrealistic amount of money on top of States, and it is about to get worse.

I mentioned earlier the Kaiser Family Foundation, which estimates that next year States that are already spending $1 out of every $4 for Medicaid will see a 29-percent increase in Medicaid funding. This fast will have to go on a lot longer in California if that is going to happen. We can't cut $1 billion out of the University of California every 3 years and have it remain the best public university in the world. It is just not going to happen. And we can't raise tuition 6 percent or 8 percent every year and make college available to the large number of students that would like to go.

So I am glad the President and our friends on the other side in this political year have raised the issue of rising tuition and student loans. We agree on the little issue before us. We would all like to take that 3.4 percent interest rate and extend it for a year. That costs $6 billion. That would affect new loans and only 40 percent of the students. But we agree on that, the President agrees, and Governor Romney agrees. That is not an issue. The issue is, do we raise taxes on job creators or do we give back to students some of the money we are continuing to overcharge them on student loans? That is the issue. The larger question—and one that I hope we all address this year in our debates and that the President and Governor Romney address in their debates—is, What about the future of our public colleges and universities, where three out of four American college students go? How are we going to maintain their quality and maintain the opportunity for access to them if we continue to impose Medicaid mandates on States that soak up the money that ought to be going for excellence in higher education and the greatest amount of opportunity for students by keeping tuition rates low? That is the real issue.

While President Obama is not responsible for what went on before he became President, he has made that condition much worse. If he is going to bring this up on the campaign trail, I hope he tells the rest of the story, which is that he and his health care and Medicaid mandate policies are a principal part of the reason and I would say the main cause going back over the years as to the reason California students are fasting, Tennessee students saw an 8-percent increase in tuition, and all across the country college presidents know very well that the reason there have been such reductions is because of Federal Medicaid mandates.

I hope we have an opportunity tomorrow to vote not only on the Democratic proposal to keep student loan rates at 3.4 percent but also on the Republican interest rate reduction act that I have proposed, which would also keep the rates at 3.4 percent but pay for it by stopping the overcharging of students to help pay for the health care law.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, first let me say that I very much appreciate the comments of the Senator from Tennessee and his leadership on this issue. I join him in hoping we will be able to vote for the alternative he has provided, which is a more sensible way to ensure that this increase in student loan interest fees does not continue.

Many students who entered college 4 or 5 years ago believing that higher education would improve their prospects for getting a good job are now, sadly, very disappointed. The Obama economy is going to let them down. According to a recent Associated Press story, one out of two recent graduates is either unemployed or underemployed. The article cites a new analysis based on government data which found that young college graduates "are heavily represented in jobs that require a high school diploma or less . . . that's confounding their hopes a degree would pay off despite higher tuition and mounting student loans."

At this time, most of us agree that Congress should extend the lower interest rate on certain Stafford loans. Unless we do, interest rates will double to 6.8 percent this July. There are competing proposals to accomplish this extension, as Senator ALEXANDER pointed out. Unfortunately, the majority leader's proposal is going to make the underlying jobs problem worse by burdening job-creating businesses with new taxes and compliance costs. Let me illustrate how this occurs.

In order to pay for the $6 billion cost of extending the 3.4-percent interest rates for 1 year, the Reid bill attempts to do what nearly every bill proposed by Senate Democrats this session has done: It permanently raises taxes on job creators in order to pay for temporary spending. Worse, the majority is attempting to divert dollars that are supposed to go to Medicare or Social Security in order to fund completely unrelated spending.

In this case, the legislation singles out certain professional service businesses for a punitive tax hike, including those in the fields of health, engineering, architecture, accounting, actuarial science, performing arts, and athletics. Ironically, these are some of the fields in which there is actually demand for new employees, according to the AP story I referenced earlier.

The tax hike would hit business owners who perform services for their businesses and make $200,000 or, if they are married, $250,000. If the IRS determines that 75 percent or more of the business's gross income is what this bill describes as ''attributable'' to the services of three or fewer owners, then this bill would make the owners pay payroll taxes on 100 percent of their share of the business profits even if some of that profit had nothing to do with the owner's work. In addition, if family members also own a piece of the business, then the working owner will owe additional payroll taxes on the family members' share of the business even if that family member provides no services.

Obviously, there are several problems with this approach. Let's start with the most obvious: It takes more money from the private sector and gives it to the government at the very time when we want the private sector to have enough to create new jobs. Second, it rewrites the laws of income from labor and income from capital investment. This should not be done lightly, especially since confiscating more from small businesses means they will be less able to expand and create more jobs.

Underscoring that this proposal is a tax increase and not a mere compliance measure, a coalition of 37 organizations that represents small businesses wrote a letter explaining that it ''could increase the payroll tax burden on business owners who are already fully complying with the law. For those businesses, this provision represents a tax increase rather than a clarification of existing tax burdens.''

I ask unanimous consent that the text of this letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. KYL. I thank the Chair.

So a bill that is intended to help students would actually make their job prospects even bleaker when they graduate. The American Institute of Architects said of the Reid proposal:

> If we're trying to make it easier for our college graduates to get started in their career and become contributing members of society, increasing taxes on those who would most likely hire them is simply bad public policy.

Payroll taxes are already scheduled to become more punitive for the small business owners targeted by this bill. Under ObamaCare, the Medicare portion of their payroll tax will rise from 2.9 percent to 3.8 percent, and another 3.8 percent will be assessed on their investment income.

To add insult to injury, this bill exposes family-owned businesses to double taxation. For example, in a business with three family member shareholders in which only two provide substantial services, those two family members would be responsible for payroll taxes on their own incomes and then both of them would have to pay payroll taxes on the income of their third family member.

Applying this rising payroll tax to even more small business income is a terrible recipe in a time of a weak economy. At a time when businesses are struggling to hire, the last thing Congress should do is to make a bad situation worse.

Now, the other side will argue that their bill is intended to prevent cases of tax abuse, so let's look into that. According to the IRS, 4.5 million S corporation tax returns were filed in 2009. Data from the Treasury Department shows that S corporations account for nearly 40 percent of small businesses with employees. As these numbers showed, doing business as an S corporation is popular because it allows a business to avoid the double taxation of income that comes with organizing as a C corporation. The business income of these and other so-called flowthrough organizations is taxed as individual income by the IRS.

Given the prevalence of flowthrough businesses in our economy, it is not surprising that there has been some abuse from some S corporation shareholders who pay themselves small salaries in order to avoid paying Medicare and Social Security payroll taxes owed on their compensation. The IRS is well aware of this potential and has developed and implemented tools to go after firms and individuals who do not pay appropriate payroll taxes through what the IRS calls the reasonable compensation test. This test has been used for over 50 years, and the IRS has won a number of cases against taxpayers who paid themselves compensation that was deemed less than reasonable, most recently in last year's United States v. Watson decision.

The Reid bill would impose a different standard—one that is arguably more confusing and less enforceable than the current IRS reasonable compensation test. Under the Reid bill, small businesses and the IRS will be asked to determine whether 75 percent of the small business income is ''attributable'' to the services of three or fewer shareholders. How on Earth is the IRS going to determine which income is attributable to the work of a particular shareholder and not to other employees or to capital investments? For example, if a business has three physical therapists, how will the IRS know whether the business's income is substantially due to their services or whether at least part of it relates to the fact that they hired talented front office staff, did marketing, bought a building in a good location, have a comfortable waiting room, implemented an efficient billing system, and invested in state-of-the-art medical equipment? Let's say an IRS agent manages to determine that exactly 75 percent of the business's income is attributable to the services of the three physical therapists. That means 25 percent of the business income was not due to their services, but the bill would impose payroll taxes on that portion as well. In other words, this bill would impose taxes on business income that is due to capital investment, which should not be subject to the payroll tax, and to the work of other employees who have already paid their payroll taxes. Payroll taxes should only apply to labor income, and they should only be applied once. That is current IRS policy and it is good policy.

As one commentator noted last week, the Reid proposal will be a ''jobs program for tax lawyers defending clients before the IRS.'' To determine what percentage of business income is ''attributable'' to services performed by certain shareholders of an S corporation will be a boon for lawyers and CPAs but not for the professional service businesses that wish to expand and hire.

Those of us who were here in 2010 argued against ObamaCare, among other reasons because it relied on student loans to pay for part of its costs. A more prudent way to extend the 3.4-percent interest rate on student loans is to cut at least $6 billion in ObamaCare spending, which is exactly what the House of Representatives recently voted to do. The House bill would cut spending from an unaccountable ObamaCare slush fund, formerly known as the Prevention and Public Health Fund.

This approach, which our colleague Senator ALEXANDER spoke to a moment ago, and of which I am a cosponsor, fully offsets the cost of a 1-year extension of the subsidized interest rate and directs an additional $6 billion toward debt reduction. This ensures that job-creating capital will not be diverted from small businesses to fund a temporary unrelated spending program.

Notably, President Obama's own budget request recommended cutting this very same ObamaCare slush fund, and he has already signed into law legislation that cut $5 billion from it.

Finally, I want to express my dismay at the lack of urgency from the majority about the most pressing issue facing small businesses and those college graduates seeking work; that is, the automatic tax increase for all Americans on January 1 of next year—the largest tax increase in the history of our country. The legislation on the floor today will not become law. The majority knows that. It is another political showboat. We know this because this Chamber rejected a similar tax hike 2 years ago when the majority had 59 Senate seats, and we know the House of Representatives would not pass the legislation.

As the senior Senator from Utah noted last month:

> Senate Democrats are fiddling while Rome burns.

That is because, in 8 months, as I said, the largest tax increase in American history will take effect on individuals, families, and businesses. Taxes on income, capital gains, dividends, family-owned farms and estates will skyrocket. As previously mentioned, new taxes on investment and payroll from ObamaCare will also take effect.

Even without the tax increase in this Reid bill, small business owners are facing a marginal tax rate increase to nearly 41 percent, a regular payroll tax rising to 16.2 percent, and an additional 3.8-percent payroll tax on investment income. And we want these people to hire more, to create more jobs?

Instead of wasting valuable time on a bill that will never become law, I hope my colleagues on the other side of the aisle will end their obsession with class warfare and start focusing on the most pressing issue at hand: stopping policies that will do further damage to our already weak economy. Defeating the majority leader's latest tax hike proposal will be a good place to start.

EXHIBIT 1

MAY 3, 2012.

Hon. HARRY REID,
Majority Leader, U.S. Senate, Capitol Building, Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate, Capitol Building, Washington, DC.

DEAR SENATORS REID AND MCCONNELL: As organizations representing millions of employers, we strongly oppose the provision in S. 2343 to increase payroll taxes on S corporations and partnerships by $9 billion.

While we are sympathetic with efforts to ensure that taxpayers, including business owners, fully comply with the tax law, we are concerned that the new rules envisioned by S. 2343 are less clear and less enforceable than current law and will do little to increase compliance.

On the other hand, they could increase the payroll tax burden on business owners who are already fully complying with the law. For those businesses, this provision represents a tax increase rather than a clarification of existing tax burdens. Businesses engaged in service professions have employees and capital investments. S. 2343 would apply payroll taxes to the income attributable to both, thus blurring the line between payroll taxes imposed on wages and salary, and income taxes applied to other forms of income.

While the authors describe the targets of this provision as lobby shops and law firms, the application of the ''Professional Service Business'' definition included in the bill is much broader and could embrace a significant portion of the American economy. Closely-held businesses engaged in health, real estate, engineering, architecture, consulting, financial services, billing, and other fields could be affected. Moreover, once the line between earnings from labor and capital is removed, we are concerned that this provision could be expanded to include other, more capital intensive industries.

Under S. 2343, the active shareholders of service sector S corporations would be required to pay payroll taxes on all their income from the business—wage and business earnings alike—if the S corporation is a partner in a professional service business or if 75 percent or more of the gross income of the S corporation is attributable to the service of three or fewer shareholders.

This new approach, particularly the ''principal rainmaker'' test, is neither clear nor more enforceable than existing rules. These rules have been in effect for over half a century, and the IRS has repeatedly and successfully used them to ensure that active S corporation shareholders pay themselves a reasonable wage, most recently in Watson v. US (2011).

Legislation similar to the payroll tax provision in S. 2343 failed to move through the Senate in 2010. Like S. 2343, that provision was made public at the last minute and brought directly to the Senate floor. It was not considered by the full Finance Committee, nor was it subject to an open amending process the Senate floor. Now, two years later, we are presented with a similar policy to be debated in a similar, truncated manner.

Finally, we are concerned that the permanent payroll tax increase in S. 2343 would be used to fund a temporary program—however worthy—outside of the Medicare or Social Security programs. Moving forward, we would argue that payroll tax collections should be reserved for Medicare and Social Security and not diverted to offset unrelated federal spending.

Thank you for your consideration of our concerns.

Sincerely,

Air Conditioning Contractors of America; American Bankers Association; American Council of Engineering Companies; The American Institute of Architects; American Rental Association; American Supply Association; Associated Builders and Contractors; Associated Equipment Distributors; Associated General Contractors of America; Automotive Aftermarket Industry Association; Financial Executives International's Committee on Private Company Policy; Financial Planning Association; Financial Services Institute, Inc.; Independent Community Bankers of America; Independent Insurance Agents & Brokers of America; International Foodservice Distributors Association.

International Franchise Association; National Apartment Association; The National Association for the Self-Employed; National Association of Convenience Stores; National Association of Wholesaler-Distributors; National Electrical Contractors Association; National Federation of Independent Businesses; National Funeral Directors Association; National Grocers Association; National Multi Housing Council; National Restaurant Association; National Roofing Contractors Association; National Small Business Association; National Utility Contractors Association; Printing Industries of America; Professional Beauty Association; The S Corporation Association; Truck Renting & Leasing Association; U.S. Business and Industry Council; U.S. Chamber of Commerce; Wine & Spirits Wholesalers of America.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, there is no reason we should be having this debate today. Freezing student loan interest rates for 1 year during tough economic times is something I believe we all agree on, so it should be relatively simple to accomplish. The President supports it, Governor Romney supports it, and a bipartisan majority in both the House and the Senate supports it. Given this kind of agreement, I see no reason why both sides could not have a good-faith discussion on where to find the $6 billion in savings in a government with a budget that spends nearly $2 trillion annually. Actually, we spend more than $2 trillion annually.

I would mention, this bill has not been to committee. I hope the American people have noticed that bills that go to committee and then come to the floor are usually successful. I hope they also notice that bills that do not go to committee and come to the floor are usually not successful; they are usually a political statement. That is what we have here again today.

This is how it works: You bring a bill that you know the other side—well, in fact, this body has already voted on the concept of this tax before and defeated it. They know with that provision in there, this common interest will fail. So why do they do it? Well, you notice this is a motion to proceed and requires a cloture vote. So 40 of us can stop this bill, and will stop this bill in the condition it is in without having gone to committee. But when we stop things, it seems those Republicans think that students ought to be paying more interest. That is the part that is wrong. The part we are disagreeing about is how to pay for it.

Pay for it? We have an economic judgment day coming in this country because of the debt we are running up on a daily basis. That is what put the world into kind of this funk anyway. I am not sure what is going to happen now that France has decided they are not going to have austerity and Greece has decided they are not going to have austerity. Now they have leaders who say they are going to fight any kind of austerity. It could put the world in a real crisis.

But what we are talking about is whether to keep the student interest rate at the low rate that it is right now, and we are going to have to vote on a bill that we are going to have to defeat because of the pay-for in it, which will make it look as though Republicans want to raise the rates on students, and that is not true.

But the majority prefers to pick a fight rather than help students during these tough economic times. What do I mean by this? After initially reaching out to my staff, indicating their willingness to work toward a bipartisan solution, they leaked their proposal before talking to us, which contained the offset they have in here.

There could be a solution. We have to counter with one and ask that there can be two side-by-side bills. That means we can have one they vote against, so we can say they did not want to keep student rates low, which is also wrong. But somehow we have to figure this out, and we have to do it in a bipartisan way. That means probably neither suggestion that is up right now is the one that is going to work.

The majority would have Americans believe their bill simply closes a loophole used by wealthy doctors and lawyers and other professionals who organize as an S corporation in order to avoid payroll taxes. Well, let me tell you about taxes. If you are in one of those small business S corporations, you pay your taxes. You pay them on the year the company earns them—not the year the dividends are distributed. The year the company earns it, you pay all of the taxes that are due on that piece of money, even though you have to leave it in your business, so you can keep reinventing your business, so you can stay in business, so you can maintain the jobs you already have, and, hopefully, add a few. That is what an S corporation does. It says: We are going to give you this big break. We are going to let you pay your taxes upfront, even though you cannot take the money out.

But what we are talking about here is payroll taxes. Payroll taxes are the money all of us put in as an investment for our Social Security and our Medicare. That is what payroll taxes are. That is what we are talking about now, charging on this money that has already had all the income taxes paid on it and, incidentally, has also had payroll taxes paid on it.

The IRS is already given the authority to check and see if people are taking out a de minimis distribution. There is an amount you have to take out of your business and you have to claim it for salary. You cannot hide it as if you were rich or something. It does not work that way. The IRS has rules. The IRS can claim those payroll taxes. But what we are talking about now is taking those payroll taxes—payroll taxes, remember, are Social Security and Medicare payments; they are investments in your Social Security and your Medicare—we are talking about taking those and subsidizing student loans.

Medicare is in trouble and, once again, we are talking about stealing from Medicare. We did that in the health care bill. We took half a trillion dollars out of Medicare and we put it into new programs. We did not put it into a doc fix. You keep hearing us talk about the doc fix. We are not paying the docs enough that they want to take any new Medicare patients. Well, we did not take the money in Medicare that might have been used and use it in Medicare to keep the Medicare system running. No. We put it into new programs so we could say this health care plan was paid for.

Now we are saying we are going to use those payroll taxes and we are going to use them to subsidize the student loans. When does Medicare ever get the money to pay for Medicare? Oh, that is right, we have a new board now—an unelected board—and this unelected board will tell us each and every year where we have to cut in Medicare in order to pay for Medicare, even though we stripped all this other money out that could have paid for Medicare. What a deal.

Well, here we go again. This tax would end the payroll taxes by shifting them into the student loans. When we are talking about pay-fors, we do all kinds of crazy things around here, and we should not be doing them. We should be a little bit more straightforward, not just with the students but with the American taxpayer. In reality, this is an irresponsible tax increase on small businesses at a time when we need small businesses creating jobs so college students have employment opportunities when they graduate.

In Wyoming, S corporations are family owned small businesses working hard to keep their businesses afloat. As I mentioned, they get to pay their taxes even if they cannot draw the money out and use it. So, for instance, small motels, small architecture firms, and groups of engineers might choose to operate as S corporations. Or they could be a full corporation, and then they would have some of the same benefits Warren Buffett has. Warren Buffett makes millions and he does not have to pay payroll taxes on that. But we did not suggest ending Warren Buffett's payroll tax-free money. We are only going to do this to the small business corporations. Sounds fair? I do not think so.

This will also hurt family businesses in another way. For example, a son who is taking over an accounting practice from his father could be hit with substantial payroll taxes if he owns, for example, 10 percent of the firm, while his father, who is no longer active in the business, retains the other 90 percent.

These are not the tax scofflaws that the majority suggests this tax will impact. They are real, small businesses that are the fabric of the American economy. Small businesses accounted for 65 percent of the 15 million jobs created between 1993 and 2009. So rather than increasing taxes on small engineering and accounting firms, we should be encouraging these businesses to hire new employees. As a former small businessman, I know this will not happen if we raise taxes on the very businesses we depend upon to turn the labor market around.

Recent reports demonstrate the need to encourage, rather than inhibit, job growth and creation. That is what we are talking about: jobs. This year, more than 50 percent of college graduates are either unemployed or underemployed. Graduating in a bad economy, where jobs are scarce and lower wages are the norm, can have negative economic consequences for up to 15 years. With the cost of higher education increasing more rapidly than the median family income, there will continue to be greater dependence on student loans. Unless the economy improves, there will also be a lesser chance that going forward graduates will have the resources to even make minimum loan payments.

The Republican alternative puts forward a solution that takes money out of—and I know the Senator from Iowa hates the word—a slush fund, but it is a fund with rather wide possibilities, and a fund that can be designated by the Secretary. This is not the first time this has been used as an offset. Our President signed legislation that cut $5 billion from the fund to offset the payroll tax bill. Now we are talking about payroll taxes again, but our side is talking about using the same funding source the President used to pay for a payroll tax cut earlier this year. The President also proposed to cut an additional $4.5 billion out of the same fund when he submitted his budget for this year.

I had to go and look and see what some of the uses are for this fund that we would be cutting into because it is spent at the discretion of the Secretary of Health and Human Services and there are not a lot of guidelines. Many of the programs funded by this Prevention and Public Health Fund—often called a slush fund—duplicate existing health programs or waste taxpayer money on some frivolous programs.

The fund has wasted millions of taxpayer dollars and even supported potentially unlawful lobbying activity. For instance, a public health clinic in Nashville, TN, used money to offer free preventive services for dogs and cats, not women and children; $3.6 million went to the Minnesota Department of Health to create at least four regional food policy councils, to increase the access and availability of affordable healthy food; $8.4 million to the New York Fund for Public Health to implement a local tax on sugar-sweetened beverages; $3.3 million to the Washington State Department of Health to increase local preemption of tobacco marketing and taxation and support legislation that repeals preemption of tobacco marketing; $3 million to lobby lawmakers in New York for legislation requiring chain restaurants to publicly post the amounts of the calories they serve; $7 million to Jefferson County, AL, to urge Alabama lawmakers to raise tobacco taxes; $16 million to the County of Los Angeles to help secure a ban on new fast food restaurants around Los Angeles. A lot of that is lobbying activity. Yes, I suppose the end results could be prevention of health care.

This country is coming up on an economic judgment day. We do not have extra money lying around. In fact, when we are talking about pay-fors, we are only talking about paying for whatever new is put in. We do not talk about how we are going to cover the $15 trillion in debt we have out there, the $49,000 every man, woman, and child in the United States owes. It is a heavy burden.

I talked earlier about Greece. Greece only owes $39,000 per person. They are just not trusted as much as the United States. If we keep running up that debt, we are not going to be trusted either. Unfortunately, President Obama and the congressional Democrats would rather play election-year politics than find a solution that focuses on the immediate need of America's students and their families.

Neither bill is ideal. Each spends 10 years of savings in 1 year and neither produces a long-term, sustainable solution. However, the Republican proposal has the benefit of using an offset previously used by the Democrats, as I mentioned. The $5 billion from that fund was used earlier this year to help pay for the extension of the payroll tax holiday, and in this year's budget, the President proposed cutting an additional $4.5 billion.

The Democratic bill raises taxes on small businesses at a time when the Nation needs those businesses to be creating jobs so college students have employment opportunities when they graduate. It is discriminating against small businesses because it does not take in corporate dividends that people get, which are the same thing. It is the dividends they eventually are able to take out of the business. But a big corporation pays dividends to investors and those do not have payroll taxes taken out either.

So no sincere attempt was made by the Democrats to find a bipartisan solution. Both Senator REID and Senator HARKIN reached out to my staff to inquire about the possibility of funding a solution. My staff expressed a willingness to discuss possible offsets, but the Democrats released the details of their proposed S corporation tax prior to any meeting.

When my staff did meet with Senator HARKIN's office, his staff indicated the S corporation offset was the only offset the Democrats were willing to consider. That makes compromise pretty difficult. Senator REID has filed for cloture on S. 2343, the Democrats' bill we are talking about now, and a vote will be held tomorrow at noon. At this point, we have been told we are not going to have a vote on the Republican bill at all.

So cloture tomorrow will fail because there will be no opportunity to put any amendments on this bill, and this is not a perfectly drafted bill. This is something that was put together in a bit of a hurry without having bipartisan input. The reason we have 535 people in Congress is that there are a whole bunch of different viewpoints. The reason we have 22 people on a committee is that there are 22 viewpoints that go into the bill and we can see what unintended consequences there are. That did not happen on this bill.

This has been put together by two or three people or half a dozen staff members or whatever, I am not sure. But it has not had the input from both sides. So our side had to come up with a bill that follows the same procedure. I can tell you neither bill is ideal, and a solution has to be reached for these young people. We are all agreed on that. We are just not agreed on how we pay for it, and we do have a problem with paying for things around here.

I urge the majority leader to pull the bill from the floor, sit down with us, find a solution we all can agree to. This is not an issue over which election-year politics should prevent us from reaching a bipartisan agreement. I am not aware of anybody who is opposed to the extension of the reduction in the interest rate. Incidentally, that is not an interest rate reduction to everybody; it is only to those who have subsidized loans.

If someone is a student who has regular loans, they are not able to participate in this. That would require a lot more money. Again, I urge the majority leader to pull this bill, sit down, come up with a solution both sides can agree on. It is getting tougher and tougher to find pay-fors because we are getting further and further in the hole. We are not going to stop digging, so we better start digging together.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. HARKIN. Mr. President, how much time is remaining on our side?

The ACTING PRESIDENT pro tempore. There is no allocation of time.

Mr. HARKIN. Mr. President, am I correct the time for debate under this bill will expire at 4 p.m.?

The ACTING PRESIDENT pro tempore. At 4:30.

Mr. HARKIN. I thank the Chair. Mr. President, after listening to the previous three speakers, it is hard to know where to begin to correct the record with all the misstatements. Maybe I will kind of work backward. My good friend, the Senator from Wyoming, gave a whole list of different things about where this money was spent. He mentioned something about California and fast food construction. I did not get it all. But I am informed there was absolutely no money from the Prevention and Public Health Fund that went for that program.

If the Senator from Wyoming has any evidence to the contrary, I would be more than delighted to look at it. Then there was the one about the dogs and cats in Nashville, TN. I thought the newspaper article that was in the Hill newspaper put that one to rest, but I guess it did not. It just goes on and on.

That money actually was funded by private grant money. I guess PetSmart, from what I am told, put that money in for pet spaying and neutering in Nashville, TN. Again, that money did not come from the Prevention and Public Health Fund. If the Senator from Wyoming has evidence to the contrary, I would like to look into that. Then the Senator from Wyoming mentioned the New York Department of Health using $3 million to lobby in New York for a soda tax initiative. First of all, I will tell my good friend, the Senator from Wyoming, there is an absolute prohibition on Federal moneys being used for lobbying. So if anyone has any evidence of Federal funds being used to lobby, please let us know. We would like to take them to task for that and sic the Justice Department on them.

That did not happen. It was not CDC funding. This was funding by the New York State Department of Health. Again, none of the CDC money we used in the prevention fund was used for that. Those were just three of—I do not how many examples my friend the Senator from Wyoming had, but those are just three of them there that absolutely had nothing to do with the Prevention and Public Health Fund, but somehow this has gotten out in the popular press.

The city of Nashville received a $7.5 million grant to provide free pet spaying and neutering. You put that out there and the radio talk shows pick up on that and all that kind of stuff. Then they bat this around and it gets everyone upset. My God, we are using tax money now to neuter dog and cats in Nashville, TN. Who would not be opposed to that? It is not true. That is all. It is simply not true. As I say, if anyone has any evidence to the contrary, please let me know and we will get the Justice Department after them.

Again, I say to my friends on this side of the aisle that talk about seriousness of whether—how we are going to pay for this. I heard it said by the previous three speakers we all agree the interest rate should not go up. OK. We have before us, as I understand, two choices right now. The Republican choice is the one passed by the House of Representatives a couple weeks ago, which would eliminate the Prevention and Public Health Fund and put that money in to keep the interest rate down at 3.4 percent rather than letting it go up to 6.8 percent.

So they would eliminate the Prevention and Public Health Fund, about which I spoke at length a little while ago. Our bill would close a loophole in the Tax Code that allows certain subchapter S corporations to avoid paying their FICA taxes, their Social Security and Medicare taxes, because of the way they are arranged.

I am going to get into that in a minute and try to explain exactly how that is set up. We are not going after small businesses at all. We are simply providing more of a bright line on what are legitimate dividends from a corporation, which does not have to pay FICA taxes, and what are wages and salaries that they do have to pay FICA taxes on.

Right now, in certain subchapter S corporations, it is kind of cloudy. It is kind of cloudy. As someone on the other side said, we have seen this big increase in subchapter S corporations. Well, of course. People who have had partnerships before or sole proprietorships all of a sudden are rushing to establish subchapter S corporations, with very few stockholders, to get away from paying their legitimate taxes on Social Security and Medicare.

Our bill would close that loophole. We have these two choices in front of us. Which do we want? If those are the only two, do we want to eliminate the Prevention and Public Health Fund or do we want to put a bright line on subchapter S corporations and say if they cross that line they have to pay their Social Security and Medicare taxes? Maybe we can have that vote. Maybe we have to actually have that vote here.

I would like to see if my Republican friends want to eliminate the Prevention and Public Health Fund. Earlier this year, from our committee I passed out to every Member of the Senate how much money went to the individual States and what it was used for in the Prevention and Public Health Fund because I wanted to be transparent and above board. So I pointed out, for example—these are not private things; these are public. I pointed out to my friend from Tennessee that $4,669,362 was made available to Tennessee in this Prevention and Wellness Fund for fiscal year 2011. I listed all the things it went to: community programs to promote healthy living, detection and prevention of infectious diseases, clinical preventive services, strengthening of public health infrastructure, tobacco prevention programs, some to East Tennessee State University for the training and preparing of a public health workforce, Vanderbilt University Medical Center for clinical preventive services.

I get right down to the dollar, where it all went. I am not trying to hide anything. I say to my friend from Tennessee, ask these people where did this money go. We know where it went. Does my friend propose that we cut out all this money that went to the State of Tennessee?

Here is Arizona: $7,758,944 went to Arizona in 2011. I gave this to my friend from Arizona listing exactly where it went and what it went for in prevention and wellness. Does my friend say this ought to be eliminated? Wyoming got $1,785,534. Every bit of it is listed here, exactly where it went.

If we accept the Republicans' proposal, we do away with all of that, all prevention and public health. It has been said on the other side that even our President wanted to do away with or take money out of it. I point out that the President did propose earlier this year as a pay-for for the extension of the unemployment insurance program and for other things to keep tax rates from going up that we take $5 billion out of this program over the life. But I think the President made it very clear that was it.

In fact, we have a Statement of Administration Policy on this bill which states unequivocally that the President will veto this bill if there are any cuts in the Prevention and Public Health Fund. While I was personally opposed to the $5 billion that the President proposed taking out—and was taken out of the fund—I can say that, well, that ought to be the last penny taken out of the Prevention and Public Health Fund. Now we see that the President agrees, no more. We took $5 billion out and that is the end of it.

People keep calling it a slush fund. I have here where every dollar went in all of the States, what it went for. It did not go to neutering dogs in Nashville, TN, regardless of how many times we may read it or hear it on Rush Limbaugh or Joe Scarborough or anyplace else. It is not true. I challenge anybody, if they have that evidence, let's see it.

Again, I just think what the Republicans have offered as an offset is not serious. I cannot believe they want to do away with the Prevention and Public Health Fund. On the other hand, is our proposal serious? Do we want to really close this loophole for professional corporations under subchapter S? Yes, we do. I think that is serious. There has been a lot of abuse of people using the cover of subchapter S to avoid paying their taxes. A number of cases have come before us that I have seen where people have used subchapter S as a means of not paying their fair share of taxes.

One of the examples that just came through was former Senator John Edwards of North Carolina, a former Member of this body, a former Presidential candidate and Vice Presidential candidate. I will not get into his personal life; that is something else. But former Senator John Edwards of North Carolina claimed, over a multiyear period, that $26 million in revenue from his subchapter S corporation was unearned. He claimed he didn't really work for a large share of his income from winning court cases. By making this argument, he avoided nearly $750,000 in payroll taxes.

That is not fair. That is an inappropriate gimmick. It is a gimmick when we allow a professional to give his or her spouse and children 95 percent of the stock in their subchapter S corporation and then declare it their profit and not their work as an accountant or as a lawyer that is responsible for the income. That is a gimmick. That is why people are rushing to form these subchapter S corporations.

We have a recent case where the taxpayer was an S corporation, an accounting practice owned by a CPA and his wife. The CPA served as the corporation's president, treasurer, director, and only full-time accountant but received no salary. Imagine that. He received no salary. Instead, the CPA "donated" his services to the corporation and withdrew earnings from the entity in the form of dividend distribution. During the years under audit, the CPA worked for the corporation approximately 36 hours per week. In addition to testifying that his work was crucial to the continued success of the corporation's business, the CPA also indicated that dividends were drawn in lieu of salary to reduce employment taxes. Imagine that. The corporation asserted that the CPA was not an employee, and even if he was an employee dividend distributions cannot be taxed as wages.

Well, he was caught in an audit. But, we know audits are few and far between. So the court found the shareholder to be an employee who performed significant services. His wages encompassed all remuneration for services, and it constituted all wages for tax purposes. That is what is happening. That is what is happening out there.

What does our bill do? Right now, if you are in a subchapter S corporation, you, the person, get to say whether what you are making is income or dividends. I heard mentioned something about Warren Buffett. I don't know his whole deal, but it seems to me that most of his income is from dividends and capital gains. We are not talking about that. We are talking about—this would be—if we took the subchapter S situation and applied it to C corporations, which Mr. Buffett would be in, then Mr. Buffett would face a board with independent people making a decision on officers' salary.

Now with subchapter S corporations with only one, two or three stockholders, they are making their own decisions on their personal taxes, whether they are dividends or salary. What do you think people decide?

Again, an accountant tells a subchapter S corporation it can do 40 percent and it would not get audited, they do 40 percent and don't get audited, and they don't have to pay Social Security or Medicare taxes on what is really gain.

What do we do in this bill? We say: Look, if you are a professional subchapter S corporation and you have three or fewer shareholders, then we draw a bright line. If your income is over $250,000 a year for a joint filer, and if in fact there was earned income, then it would be subject to FICA taxes. That is the bright line that we are drawing. In fact, what it will do is give subchapter S corporations a better idea of whether profits are earning money or dividends.

Quite frankly, not only are we helping to raise money for the Medicare and Social Security trust funds, we are actually making it better for people out there who may not know where they fall. Is it dividends or is it earned income? Our bill only covers a very narrow share of S corporations. It deals only with certain professional corporations. It doesn't touch manufacturing or retail activities. It doesn't touch real estate activities. It covers the area where the abuse is most prevalent right now.

I want to speak for a minute on what Senator ALEXANDER was talking about earlier about the money that came from students and whether it was given back to students. He said that instead of 6.8 percent, it would have been 5.3 percent. We voted on that and it failed. So we did speak on that.

Again, what I point out is that most of this money—most of the money that we had in that $61 billion, most of that indeed went for students. I think I had it here—of that $61 billion, $36 billion went to Pell grants, helping raise Pell grants; $750 million went to bolster college access for students through the College Access Challenge Grant Program; $2.55 billion went to Historically Black Colleges and Universities and minority-serving institutions; $2 billion went to community colleges; about $10 billion was used for deficit reduction; $9.2 billion, as I said, went to certain health care activities.

Guess what one of those was that was paid for. Requiring dependent coverage—saying that a young person can stay on his or her parents' health care policy until age 26. Does that help students? Of course it helps students. How many young people who go off to college, and they are in college and maybe drop out a little while to make some money and then go back to college and maybe even graduate, but they don't have a full-time job—they can stay on their parents' policy until they are age 26.

I cannot tell you how many people I have heard from in my State of Iowa who have said what a godsend this is to them and their kids who are students. I make no apologies for the fact that some of this money out of that $61 billion that went to subsidize banks went to help students stay on their parents' health care policy.

When they say some of the money came from students, it didn't. The $61 billion all came from cutting the subsidy to banks. The great bulk of it, all but about—well, $10 million went to pay the deficit down, and $9.2 billion went to things such as banning lifetime limits, requiring dependent coverage, expanding community health centers, that type of thing. So none of it actually came from students themselves. It all came from closing the loophole where banks were making on that money.

The next thing that was said I wanted to correct was that the Medicaid expansion in the affordable care act—100 percent of that expansion is paid for in the Federal side, not the stateside. Senator ALEXANDER talked about this and was saying we are expanding Medicaid, which is a burden on the States. That would be true, but for the fact that 100 percent of this expansion is paid for by the Federal Government. I think that phases down to 90 percent in the future, but it never comes below 90 percent.

If the Senator would like to debate whether Medicaid should be all Federal, or Federal and State, we can do that and maybe even find some common ground on that, but that is not the case before us. I didn't think the debate on this bill to keep student interest rates low would now morph into a debate on health care. But if you want to have a debate on health care, I will be more than happy to do so, and whether or not we should use money from the Prevention and Public Health Fund to pay for it.

So, again, I would say no money—no money—comes out of the Medicare trust fund to pay for this bill—none—and certainly none comes out of the Social Security trust fund. The money that is raised goes to the Social Security trust fund and the Medicare trust fund. None of it is actually diverted from the trust funds.

Under the budget rules we are operating under, money raised can be used as an offset even though that money is raised for Medicare. I want to make it crystal clear that the money we are raising from closing this loophole on subchapter S corporations, none of it—none of it—actually comes out of the trust funds for student loans or to keep the interest rate low. It does go to the Medicare and Social Security trust funds.

Under the Republican proposal, we would not get any more money into Medicare or Social Security. They would just do away with the Prevention and Public Health Fund and take that money and use it to offset keeping the interest rates low, but not one nickel of that would go to Medicare or Social Security. Our bill would help those trust funds.

So our bill really has three benefits: First, it closes a tax loophole, provides for more definitive application of what is subchapter S income or dividends for a narrow class of companies—earned income or unearned income; second, it provides money to the Social Security trust fund and Medicare trust fund, which is needed; and third, it allows the student interest rate loans, Federal subsidized loans, to stay at 3.4 percent for the next year.

Sometime in the next year, obviously, we are going to have to figure out a long-term fix for this or what we want to do on these subsidized loans in the future and how we are going to pay for this down the road. In the meantime, as everyone has said on both sides, we both agree it ought to stay at 3.4 percent for the next year.

So I guess the debate does revolve around how we pay for it. Again, from my viewpoint—not my viewpoint; the House already voted last week to kill the Prevention and Public Health Fund, and that is what the Republicans are proposing here.

Again, to refer back to where I started earlier this afternoon, I think the lead editorial in the New York Times today was quite clear in talking about the findings found in the New England Journal of Medicine about what is happening with type 2 diabetes and how devastating that is going to be in the future. They said the long-term goal should be the prevention of obesity and diabetes. The editorial said:

> Congressional Republicans, meanwhile, are bent on dismantling health care reforms that could greatly assist in curbing the obesity epidemic. The Republican-dominated House last month narrowly passed a bill that would eliminate a Prevention and Public Health Fund, established under the reform law in part to pay for lowering the interest rate on subsidized student loans for a year.

The editorial noted that there is no explanation for this move except for the usual anti-health care reform demagoguery and noted that the fund is already providing grants to state and local governments to help pay for programs to fight obesity and prevent chronic diseases, including diabetes, in the community, the workplace, and among minority groups.

So I guess that is really the argument—how do we pay for it? It comes as no surprise, I am sure, when I say that I think closing this loophole is much better than doing away with the Prevention and Public Health Fund.

With that, Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, I said it before and I will say it again: Neither option is ideal. These ought to be the options we are voting on, but actually we are not going to get to vote on the two options, we are going to get to vote on one option because this is a cloture vote. And this cloture vote will fail. It will fail because it is not a good enough bill to pass. It is not a good enough bill to get 60 votes, so it will fail. And the only purpose of it failing is to say: Look at those Republicans who killed that bill.

There could be a solution, but it isn't a solution by bringing a bill directly to the floor and saying: Take it or leave it. It has to be a solution by sending it to committee and having the people there work out a way that it can be done. We have done that in our committee a number of times, and the bills that go to our committee and then come to the floor are pretty successful. But this one did not go to committee.

So it isn't really two choices we are getting, it is one choice: We can take it the way the Democrats wrote it or we can forget it.

They say this closes a loophole because of the wording regarding there being three or fewer shareholders. Now, I can already hear how people's minds are working. They are saying: OK, if I want to cheat on that—and you have now taught me how I can—I will add a fourth person. Now your bill doesn't cover it. So it is not written properly. We are not going to stop them by doing what is written in the bill, so it is not going to generate any revenue. If it doesn't generate any revenue, it will not pay for the cost of keeping the health care down.

Besides that, the IRS has guidelines that say how much one should be taking out of their business as wages, and they have to pay a payroll tax on that or they will be taken to tax court. That is the case to which the Senator from Iowa referred. It was a case of an accountant who got caught and was taken to tax court and told he couldn't cheat on his taxes. Now, we ought to have more enforcement like that. It should be pretty easy for the IRS to check and see if there are some S corporations out there that aren't paying any wages. That should be a little computer check since every return gets turned into a digital return now. Some of us help the IRS by sending our forms in digitally to begin with, which saves a lot of input on someone's part. But they can check in a matter of seconds the S corporations that have no wages, and if they have no wages, perhaps they ought to have a much lower limit than what the other side is suggesting.

If we are going to do tax reform, let's do tax reform. To do it this way is the wrong way.

I also heard the comment that this money is not being taken from Medicare and Social Security. Well, the way we do Federal accounting—and we should be ashamed of the way we do Federal accounting—that can be a true statement, but, in fact, it is not true. Here is how we do it. Here is how we cook the books as a Federal Government. We will collect this tax that should go to Medicare and Social Security and we will put bonds in a drawer and we will spend the money on the reduction in interest rates for the students. That is spending it twice because we are still showing it over here as owing it to the Social Security and Medicare folks. But we do this all the time. Do you know how much money there actually is in the drawer called Social Security? Nothing. There are bonds in there.

I used to listen to Senator Hollings, Democrat from South Carolina, talking about how we were lootin' Social Security—lootin' it—because all we do is put bonds in a drawer and we spend the money. And we have been doing that for decades. So the deficit we are talking about is probably considerably greater than what we are willing to admit. But that is exactly what we are going to be doing here once again. We are going to be lootin' Social Security and Medicare and providing some loopholes for them to keep on doing the same thing they have been doing. We are going to have to get the IRS on that and get it going better.

There ought to be a lot more options. But that is not what we are doing here. What we should be doing is getting together and figuring out more options, more ways to take care of all of the problems students are having. And they are going to be demanding a whole lot more than what we are doing.

I would remind the Democrats that the President did take $5 million from this prevention fund, and I heard him say that was enough. Well, if that was enough, how come his new budget includes taking another $4.5 billion out of that fund? So I guess he doesn't think that is enough. He thinks there is still more that can be taken—$4.5 billion. This is a $6 billion project we are talking about here, so $1.5 billion another way.

We are just talking past each other, and that is what happens any time a bill comes to the floor if this is the only place we get to debate it. Notice how many of my colleagues are listening to me right now. If there are two people on the floor, it usually means one is getting ready to speak and is not listening to what is being said. That is not a debate. That is not a way to come up with solutions. What we have to do is send these things to committee.

Senator HARKIN and I have a way of working on bills in committee, and that is to have people turn in their amendments a couple days ahead of time and we look at those. It is surprising how many times an amendment by a Republican is almost the same as an amendment by a Democrat. The trick is to get the two of them to sit down together and figure out which words need to be changed so that they can both take credit for it.

So this is a frustrating process. It is the wrong way to do it. But I have to answer one more thing yet; that is, I cited some cases where funds were being used from that prevention fund that I thought were wrong and I do think are wrong. The Senator said that if we had some information on that, if we would give it to him, he would make sure the Department of Justice gets on it. Well, now we not only need to have the IRS working, we have to have the Department of Justice working a little bit because there is some pretty good evidence, I think, that some money has been spent for lobbying. In some cases it is called advocacy, but it is by people working the legislators over, and that, in my opinion, is lobbying.

I do hope this bill will be referred to committee, which is where it deserves to be, so that a solution can be worked out. I would hope that if we do have that cloture vote tomorrow, instead of having the bill pulled, that both sides will join in saying ''send it to committee'' and vote against cloture.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. HARKIN. Mr. President, I say to my good friend from Wyoming—and he is my good friend, and we do a lot of good work together—I wish we could have this bill in our committee. I think we could work it out. But the fact is, to raise the money, it has to come from the Finance Committee, and we don't have jurisdiction over that. If we had jurisdiction over that, we could probably work it out. We have a good way of working things out in our committee. But we don't have jurisdiction over finance on this darned thing. If we did, we could probably figure it out.

Mr. ENZI. Could I amend my comments to have the Finance Committee take the bill and work out a solution?

Mr. HARKIN. Well, I think that is where this came from. I don't know.

I would also say to my friend from Wyoming, because I was listening to him, I think it is fair, if we are going to have a vote on ours, that we ought to have a vote on yours. I think that if we are going to have a vote, we ought to have a vote on ours, which is the subchapter S corporation, and see how that falls, and have a vote on whether we want to end the Prevention and Public Health Fund and use that money. I would like to have that vote. I would love to have that vote. I would love to see how my friends on the other side of the aisle want to vote on whether they want to kill the Prevention and Public Health Fund.

I would also say that on this subchapter S corporation issue, the IRS right now audits about one-half of 1 percent of the returns from subchapter S corporations. So they have to think, what are the odds they are ever going to catch me, and if they do, they pay a fine and that is it. The IRS doesn't have the personnel to do everyone.

What we are doing, I wish to say again, just to make it very clear, that because of the sort of fog that surrounds subchapter S corporations right now, the IRS simply can't audit them all. They don't have the personnel to do that, and some claim that there is a lot of questions about whether something is income or dividends. But let me repeat again what our bill does.

We create a bright-line test that affects only a narrow class of subchapter S corporations. It affects only professional subchapter S corporations, those engaged in professions such as doctors, lawyers, accountants, consultants, lobbyists, where the gain is due to the professional work. This provision does not include subchapter S gains from unrelated retail, wholesale or manufacturing activities.

The provision only covers subchapter S corporations where there are three or fewer stockholders. It only covers those earning more than $250,000 a year as a joint filer, and it only covers gains when 75% or more are attributable to 3 or fewer stockholders.

So if a subchapter S company has income that is partially from professional activities, such as lobbying, and partially from other activities, such as real estate investments, the investment income does not fall under the rule.

The Joint Committee on Taxation and the Treasury Inspector General for

Tax Administration have both issued reports that show that underreporting of earned income subject to FICA taxes is a significant issue. Using IRS data, the Government Accountability Office in 2009 calculated that in 2003 and 2004 tax years the net shareholder compensation underreporting amounted to nearly $23 billion. Since then, the number of subchapter S organizations has been increasing rapidly, and I would suggest that is a main reason why.

Lastly, I just wish to point out for the record, to my friend from Wyoming, that the House bill did not go through the committee either. They brought it directly to the floor. It did not go through the Education Committee. It only went through the Rules Committee and then to the floor. So they did the same thing. They didn't go through their committee either. Again, I am hopeful we can work this out. But if we can't, I say to my friend, I hope we do have an up-or-down vote on both provisions.

There was one other thing I wished to mention before I leave the floor this afternoon and leave this debate on the student interest rate bill; that is, I heard time and time again from the other side about the fact that the President took $5 billion out of this and the fact that I said earlier: Yes, and that was the limit and that was all and he didn't want any more taken out of it. Someone said, but he has $4.5 billion in his budget to take out.

What happened, the President did put $4.5 billion in his budget to take out of the Prevention and Public Health Fund—which I hope comes as no surprise to anyone. Then, when the House and Senate earlier this year were engaged in negotiations on extending the unemployment compensation and also the payroll tax deduction, when we were engaged in that, they put that on the table. The President stuck with his $4.5 billion, the Congress added another $500 million, and they come up with a $5 million cut to the Prevention and Public Health Fund. The President said: That was in our budget. If you want to use it for that, use it for that but no more.

As I said, we have a statement of administration policy that says that if the elimination or any cuts to the Prevention and Public Health Fund are in here, he will veto the bill. I just wanted to make clear that the $5 billion and the $4.5 billion are one and the same. They are not $9.5 billion that he wanted to take out of the Prevention and Public Health Fund. I wanted to make that clear.

I see my friend from Florida is here, and I yield the floor.

The PRESIDING OFFICER (Mr. COONS). The Senator from Florida.

Mr. NELSON of Florida. I thank the chairman and the ranking member, the Senator from Wyoming, for all their hard work on bringing this important legislation to the floor.

Mr. President, I wanted to try to paint a personal face on some of the students whom I have met this past week on how it is going to impact them. But let me just set the table by saying we voted on this back in 2007 in order to give some relief to students, and we cut the loan interest from 6.8 to 3.4 for undergraduate Stafford loans.

The whole idea was, in this time of economic trial, that we would give some little break to students. Indeed, it is and has been a break. It is something on the average of $1,000 a year we were looking at a student saving in extra interest payments on these loans. When it comes right down to the personal stories, they are wrenching.

At the University of Florida, meeting with a group of students this past week, a young woman—I will not use her name because she just broke down in tears—pointed out how not only did she have Stafford loans but that her mom—who had gone through school as an adult raising a family—had gotten a degree in computer science and could not get a job, was going back to school because she had an LPN associate degree and wants a registered nurse degree where she can get a job. So the mom and the daughter both had a considerable number of loans. This young woman absolutely broke down as to what it was going to be in the way of financial burden.

Over at the University of South Florida in Tampa, student body president Matthew Diaz said: You are cutting down the dreams of an entire generation.

Another student at USF, Emmanuel Catalan, a political science major, said he is the first in his family to attend college. He questions, if we don't give this break on interest, whether his brother and other members in his family are going to be able to pursue higher education.

Another student, Austin Prince, a sophomore microbiology and Chinese major, wondered how in the world students are going to make it in this kind of economy if they are mired in debt. He said: It reduces consumer buying power if we are paying off loans for 20 years.

At the University of Florida, Madison Todd, a political science major, said she took out the maximum amount of loans available to attend the University of Florida, and her family has been scraping together everything they could in order that she could continue her education.

Why is this important? Can we remember back to World War II, when we defeated two enemies on either side of the globe and all those GIs came home, and for the first time we had a major part of American youth under the GI bill going into college. What did that do? America was at the pinnacle of her power and influence in the world. Then, with that generation of young people getting educated as they never had before, all of a sudden we had an expanding middle class as we went into the 1950s and the 1960s.

We will also remember that was a time of attention to high technology because we suddenly found ourselves behind the Soviets in the space race, with Sputnik and then Gagarin going up. All the more kids went into math and science and technology and look what that spawned in the generations to come because of education. A lot of that came directly out of the GI bill. Are we now to adopt policies that are going to reverse that trend?

We tried to take care of it in a diminishing economy, as we slipped into the recession back in 2007, by saying it is a matter of policy that we should lower interest rates for students who want to get their education. Here we are. What this boils down to is how are we going to pay for it? It costs $6 billion for 1 year.

The House of Representatives has taken a position and that has been discussed here. Their position is take it out of the health care bill. When we take it out of health care, we are taking it out of diabetes screening, heart disease screening, cancer screening for breast and cervical cancer. Do we want to do that? I don't think so.

Do we want to take it out of antitobacco programs to try to keep kids from getting hooked on tobacco? I don't think so.

Do we want to take it out of childhood immunizations, where the spending of $1 on childhood immunizations by the Federal Government saves the government $16 in the long run? That is a ratio of 1 to 16 because of children not getting the diseases they were immunized against. Do we want to take it out of that? I don't think so.

What have we come up with in the Senate? We came up with a narrow part of the tax-paying public, subchapter S corporation individuals who pay individual tax—not corporate tax—and only those in a joint return above $250,000 gross income. They would do what? They would pay the payroll tax, Medicare, and Social Security that they do not pay under the existing law because they are treated as if they were a corporation instead of a partner which, in effect, they are, save for the tax laws.

That is the choice. If this motion does not get 60 votes in order to break the filibuster or even if it does, we have to reconcile the pay-for for the $6 billion this student loan interest bill will cost. It is my hope that common sense, that bipartisanship, that nonideological rigidity would rule the day and that we would simply ask what is best for our people and for our country.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF JACQUELINE H. NGUYEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

NOMINATION OF KRISTINE GERHARD BAKER TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS

NOMINATION OF JOHN Z. LEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The legislative clerk read the nominations of Jacqueline H. Nguyen, of California, to be United States Circuit Judge for the Ninth Circuit; Kristine Gerhard Baker, of Arkansas, to be United States District Judge for the Eastern District of Arkansas; and John Z. Lee, of Illinois, to be United States District Judge for the Northern District of Illinois.

The PRESIDING OFFICER. Under the previous order, there will be 60 minutes of debate equally divided in the usual form.

The Senator from Vermont.

Mr. LEAHY. Mr. President, for the last 4 months, the Senate has been forced to slowly work its way through the backlog created by Republican objections at the end of last year to consensus nominees. Finally, with consideration today of the long-delayed nomination of Judge Nguyen to fill a longstanding judicial emergency vacancy on the overburdened Ninth Circuit, the Senate will have completed the confirmations that could and should have taken place last year.

Today, 5 months into the year, is the first time the Senate is considering judicial nominations reported by the Judiciary Committee this year. Confirmations of the nominations of Kristine Baker to fill a judicial emergency vacancy in the Eastern District of Arkansas and John Lee to fill a judicial emergency vacancy in the Northern District of Illinois have been delayed for nearly 3 months. These nominees have the support of their home state Senators and of a bipartisan majority of the Judiciary Committee. Yet these consensus nominees have been delayed for months for no good reason.

The nominations we consider today are but three of the 22 judicial nominees available for final Senate action. Most are by any measure consensus nominees who could and should be confirmed without further delay. That would go a long way toward getting us on track to make real progress in reducing judicial vacancies that have plagued the Federal courts around the country.

I want to share with the Senate and the American people a chart comparing vacancies during the first terms of President Bush and President Obama. This chart shows that the lack of real progress during the last 3⅓ years is in stark contrast to the way in which we moved to reduce judicial vacancies during the last Republican presidency.

During President Bush's first term we reduced the number of judicial vacancies by almost 75 percent. When I became Chairman in the summer of 2001, there were 110 vacancies. As Chairman, I worked with the administration and Senators from both sides of the aisle to confirm 100 judicial nominees of a conservative Republican President in 17 months. See how sharply the line slopes as we reduced vacancies in 2001 and 2002.

We continued when in the minority to work with Senate Republicans and confirm President Bush's consensus judicial nominations well into 2004, a presidential election year. At the end of that presidential term, the Senate had acted to confirm 205 circuit and district court nominees. The chart notes where we stood in May 2004, having reduced judicial vacancies under 50 on the way to 28 that August. By comparison, see how long vacancies have remained near or above 80 and how little comparative progress we have made during the 4 years of President Obama's first term. Again, if we could move forward to Senate votes on the 22 judicial nominees ready for final action, the Senate could reduce vacancies to less than 60 and make progress.

Today also marks the first Senate action this year to address the needs of the Ninth Circuit, by far the busiest Federal appeals court in the country. The Senate should have voted on the long-delayed nomination of Judge Jacqueline Nguyen of California to the Ninth Circuit over 5 months ago, after it was reported unanimously by the Judiciary Committee. Her nomination is one of three Ninth Circuit nominations currently pending and awaiting a Senate vote to fill judicial emergency vacancies plaguing that circuit. With nearly three times the number of cases pending as the next busiest circuit, we cannot afford to further delay Senate votes on the other two nominations to the Ninth Circuit, Paul Watford of California, reported favorably by the Committee over 3 months ago, or Andrew Hurwitz of Arizona, reported favorably over 2 months ago.

There is no good reason for Senate Republicans to further delay votes on these Ninth Circuit nominees. The 61 million people served by the Ninth Circuit are not served by this delay. The circuit is being forced to handle double the caseload of any other without its full complement of judges. The Senate should be expediting consideration not only of Judge Jacqueline Nguyen, but also of Paul Watford and Justice Andrew Hurwitz, not delaying them.

The Chief Judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, wrote to the Senate months ago emphasizing the Ninth Circuit's ''desperate need for judges,'' urging the Senate to ''act on judicial nominees without delay,'' and concluding ''we fear that the public will suffer unless our vacancies are filled very promptly.'' The judicial emergency vacancies on the Ninth Circuit are harming litigants by creating unnecessary and costly delays. The Administrative Office of U.S. Courts reports that it takes nearly 5 months longer for the Ninth Circuit to issue an opinion after an appeal is filed, compared to all other circuits. The Ninth Circuit's backlog of pending cases far exceeds other Federal courts. As of the end of 2011, the Ninth Circuit had 13,913 cases pending before it, far more than any other circuit.

If caseloads were really a concern of Republican Senators, as they contended last year when they filibustered the nomination of Caitlin Halligan to the D.C. Circuit, they would not be delaying the nominations to fill judicial emergency vacancies in the Ninth Circuit. If caseloads were really a concern, Senate Republicans would consent to move forward with votes on Paul Watford and Justice Hurwitz and allow for up or down votes by the Senate without these months of unnecessary delays.

Given that all three are superbly qualified mainstream nominees with bipartisan support, the long delays that have plagued these nominations are hard to understand. Judge Nguyen, whose family fled to the United States in 1975 after the fall of South Vietnam, was confirmed unanimously to the district court in 2009 and the Senate Judiciary Committee unanimously supported her nomination to the Ninth Circuit last year. When confirmed, she will be the first Asian Pacific American woman to serve on a U.S. Court of Appeals in our history. She is the kind of nominee who should have been confirming in 5 days, not 5 months.

We still await Republican agreement to vote on the other two nominees, neither of whom would have been considered controversial by past Congresses. Paul Watford was rated unanimously well qualified by the ABA's Standing Committee on the Federal Judiciary, the highest rating possible. He clerked at the United States Supreme Court for Justice Ruth Bader Ginsburg and on the Ninth Circuit for now-Chief Judge Alex Kozinski. He was a Federal prosecutor in Los Angeles. He has the support of his home State Senators and bipartisan support from noted conservatives such as Daniel Collins, who served as Associate Deputy Attorney General in the Bush administration; Professors Eugene Volokh and Orin Kerr; and Jeremy Rosen, the former president of the Los Angeles chapter of the Federalist Society.

Justice Hurwitz is a respected and experience jurist on the Arizona Supreme Court. He also received the ABA's Standing Committee on the Federal Judiciary's highest rating possible, unanimously well qualified. This