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## House of Representatives

The House was not in session today. Its next meeting will be held on Friday, May 25, 2012, at 10 a.m.

## Senate

WEDNESDAY, MAY 23, 2012

The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Eternal God, You have made all things well. Thank You for the light of day and the dark of night. Thank You for the glory of the sunlight, for the silver splendor of the Moon, and for the star-scattered sky. Thank You for the hills and the sea, for productive city streets, for the open road and the wind in our faces. Thank You for hands to work, eyes to see, ears to hear, minds to think, memories to remember, and hearts to love.

Thank you also for our Senators and their families who strive to serve You and country. Bless them today with a special measure of Your wisdom, knowledge, and discernment. We pray in Your sacred Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication

to the Senate from the President pro tempore (Mr. INOUE).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, May 23, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

DANIEL K. INOUE,  
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### FOOD AND DRUG ADMINISTRATION SAFETY AND INNOVATION ACT—MOTION TO PROCEED—Resumed

Mr. REID. Madam President, I move to proceed to Calendar No. 400, S. 3187.

The ACTING PRESIDENT pro tempore. The clerk will report the motion.

The assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 400, S. 3187, a bill to amend the Federal Food, Drug, and Cosmetic Act to revise and extend the user-fee programs for prescription drugs and medical devices, to establish user-fee programs for generic drugs and biosimilars, and for other purposes.

### SCHEDULE

Mr. REID. Madam President, we are now on the motion to proceed to the FDA user fees bill. Republicans control the first half hour, the majority the second half hour. We are working on an agreement to consider amendments to the FDA bill. We are close to being able to finalize that. We hope to get an agreement and avoid filing cloture on the bill.

MEASURES PLACED ON THE CALENDAR—S. 3220  
AND S. 3221

Mr. REID. There are two bills at the desk due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the titles of the bills for the second time.

The assistant legislative clerk read as follows:

A bill (S. 3220) to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

A bill (S. 3221) to amend the National Labor Relations Act to permit employers to pay higher wages to their employees.

Mr. REID. Madam President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. The Chair read for the second time a couple of bills. I object to both of them.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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S3459

The ACTING PRESIDENT pro tempore. Objection is heard. The bills will be placed on the calendar under rule XV.

Mr. REID. Madam President, when 67-year-old Pamela Gunter started treatment for breast cancer, her doctor knew it would be a grueling fight. He also knew it was a fight she could win. Pamela's doctor put her on Taxol, a common chemotherapy drug. The results were excellent. Her tumor shrank. Her prognosis was good.

Then one day last spring, no more Taxol. The doctor could not get it. It is one of the most popular and effective treatments for breast, lung, and ovarian cancer, and it suddenly disappeared from the markets in Nevada. Doctors couldn't get it; drug suppliers could not say why. So Pamela's doctor was forced to use a much more expensive and much less effective course of treatment. The cancer spread. By the time Taxol was available again, Pamela was dead. She left behind a loving husband, two grown sons, and a grandchild. But with the right treatment she would still be alive today. Her Las Vegas doctor said a shortage of this common generic medicine directly contributed to her death. Had this product been available, she would have been fine. She of course would have suffered; that is what patients on chemo do. But their suffering is worth it because they know it is lifesaving.

Pamela is not the only American affected by a shortage of Taxol and other lifesaving drugs. Every day in hospitals across the country Americans already dealing with devastating illnesses must also face shortages of FDA-approved medications that could keep them alive. Today Taxol is still scarce. And chemotherapy drugs are not the only ones in short supply; supplies of nausea medication. The Capitol physician is, among other things, an oncologist, Dr. Monahan. I have talked to him about cancer a lot in the last year, he and other doctors. My wife would go every week to this place where everybody was hooked up to chemo. Most of them were women, but there were a few men. Just a few years ago that would have been a place where these women were retching by virtue of their vomiting. Sometimes—in fact a lot of the times—they had to hospitalize these women to stop the vomiting from these medicines.

Now we have nausea medication these patients are given to stop their suffering. At least, although they may be going through a lot of nausea, they are not throwing up most of the time. But supplies of nausea medications and other drugs that reduce the side effects of cancer treatment are limited. On Monday, one Las Vegas oncologist said he ordered 10 drugs from his supplier. He could get eight. He said that is typical; doctors never know which drugs will be accessible and which will not.

Last year FDA reported shortages of 231 drugs, including a number of chemotherapy medicines. In the last 6 years,

drug shortages have quadrupled, gone up 400 percent. Congress cannot solve every problem in this country, we know that, but this is one problem we can solve with cooperation from the drug manufacturers. It will come about much more clearly if we pass the bill that is before the Senate now.

The Food and Drug Administration Safety and Innovation Act, the one I have talked about several times already today, will help establish effective lines of communication between drugmakers, the Food and Drug Administration, and doctors. When the FDA gets early warning from manufacturers that shortages are coming, it can act quickly to find alternative sources of medication and ease supply problems by, for example, taking from one place where they have a lot of a medicine and moving it someplace where they do not. Drugmakers averted 200 shortages last year by voluntarily notifying the FDA of trouble on the horizon. But many shortages, perhaps all 231 last year, could have been prevented if drugmakers had shared information with FDA.

Our bill would make that necessary and force it to take place. That is why Congress must act quickly to pass the legislation that is now before the Senate, which will ensure the FDA has the resources to approve new drugs and medical devices quickly and efficiently.

Passing this legislation would not bring Pamela back, it would not give her another day to spend with her husband, another week to say goodbye to her sons, or another year to get to know her grandchild. But this legislation will help prevent drug shortages like what took Pamela away from her family far too soon.

As I indicated, we are very close to an agreement, a path forward on this bill, and that would be very good for this country. I hope we can arrive at that by 11 o'clock today.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

#### HEALTH CARE

Mr. MCCONNELL. Madam President, yesterday morning I came to the floor to call attention to a quiet and costly PR campaign that President Obama is mounting on the taxpayers' dime. While the President and his surrogates spend most of their time deflecting attention from his record, he has Washington bureaucrats working overtime to try to put on a good face.

I mentioned yesterday the administration is spending yet another \$20 million in taxpayer money to promote a health care bill that most Americans would like to see repealed. Let me repeat that—\$20 million to promote a health care bill that most Americans would like to see repealed.

There is more. There is a pattern that I, and I am sure many other Americans, find pretty outrageous at a time of trillion-dollar deficits and a

near \$16 trillion debt. The administration also spent more than \$25 million in stimulus funds on grants to public relations firms—PR firms—ostensibly to do public relations related to promoting the stimulus. It spent nearly \$20 million on mailings to seniors to tout ObamaCare—a mailer, by the way, that the Government Accountability Office found overstated the law's benefits.

Millions of taxpayer funds were spent on postcards that promote ObamaCare's small business tax credit—a credit the GAO said was ineffective and infrequently used. These are just a few of the ways the administration is quietly promoting its own fatal policies; how it is trying to change people's minds about the President's policies with their own money, and using our tax money to try to promote the President's policies. The campaign is one thing, but using our tax money to promote the President's policies is outrageous.

There is a larger issue than the fact that the President is quietly marketing policies with taxpayer dollars that he is clearly afraid to talk about in public. That is bad enough, but the larger point is the fact that we have a nearly \$16 trillion debt, the largest tax hike in history right around the corner, chronic unemployment, and sky-high gas prices, and the President thinks it is a good idea to spend \$20 million to promote ObamaCare. We don't have the money to begin with, and he is spending it to market his policies.

The President needs to face the facts. Americans do not want him spending their hard-earned money trying to spin policies they don't like. How about setting some priorities first? How about working with us to lower the deficit and the debt? How about working with us to fund things we actually need? We are more than ready to work with the President, as I said time and time again over the past few years, but he needs to set some priorities and lead.

I yield the floor.

#### RESERVATION OF LEADER TIME

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

#### ORDER OF BUSINESS

Under the previous order, the following hour will be equally divided and controlled between the two leaders or their designees with the Republicans controlling the first half and the majority controlling the final half.

#### SECOND OPINION

Mr. BARRASSO. Madam President, I would like to follow up on the wonderful comments made by the minority leader. Specifically, I want to talk about the health care law and the ways that taxpayer dollars are now being wasted and spent in what appears to be a propaganda campaign by this administration to promote a health care law the American people—at least the majority of them when asked about it—

think should be found to be unconstitutional by the Supreme Court and so many Americans want to see repealed and replaced.

Over 2 years ago, President Obama and Democratic leaders in Congress—in this very body and across the Hall—jammed a health care law through Congress that was drafted completely behind closed doors. We all recall NANCY PELOSI famously saying at the time: First you have to pass it before you get to find out what is in it.

I have come to the floor week after week after that with a doctor's second opinion about the health care law to make sure the American people know what is in it. Week after week there have been more things found out about the health care law that has made it even more unpopular today than it was at the time it was passed and signed into law by President Obama.

Americans knew what they wanted. They did want health care reform. They wanted to be able to get the care they need from the doctor they want at a price they can afford. Yet when I go to townhall meetings and meetings in other communities across my home State of Wyoming and ask the question: Do you think under the President's health care law you will be paying more or less for your health care, the hands go up that they are going to be paying more. Then I ask them: Do you think the quality and availability of your care is going to go down under the health care law? Again, the hands go up.

That is not what Americans want, not to pay more and get less. Yet that is what the American people are receiving under this health care law. So I will continue to deliver this second opinion on the Senate floor so we can continue to talk about what is going to be the impact on Americans' lives as a result of the health care law.

Now, for over 2 years, the news about the law has not been good for those who support it, and the country has had opposition to the law continue to increase. Today 56 percent of Americans oppose the President's health care law.

One may ask: Why is that? Well, there are a number of reasons. One is the health care law is adding to the national debt. We heard the Republican leader talk about the incredible national debt the American people are facing. The health care law has increased premiums that people have to pay for their own insurance directly as a result of the health care law being passed. The President promised: If you like what you have, you can keep it. But actually the health care law has made it harder for workers to keep their employer-sponsored health care coverage.

People want to have choices. They want to have patient-centered care. Yet this health care law established an unprecedented board with unelected bureaucrats who will, by their decisions, have a direct impact on whether

patients can get to see a doctor or whether they can receive care.

When I look at the incentives that are part of this health care law, to me, the incentives actually appear to encourage employers to either fire workers or stop providing health care coverage. To me, this health care law is discouraging to students who otherwise might pursue a career in the medical field and potentially provide care for Americans.

In my opinion, this is a law that has actually weakened, not strengthened, Medicare. It has done that by taking \$500 billion away from our seniors on Medicare, not to help strengthen Medicare but to start a whole new government program for someone else.

The Medicare Actuary came out with a report last Friday to say that when we actually get into a realistic assessment of the impact of this health care law on Medicare, it weakens it. It shows Medicare going broke sooner than initially thought. This report has a realistic look at the impact of the health care law on Medicare and shows that it will make it that much harder for our seniors on Medicare to get the treatment they need and to actually get to see a doctor to find someone to care for them. The implementation of this law, which takes \$500 billion away from Medicare, is not to strengthen or save Medicare but to start a whole new government program for someone else.

So I could go on and on with legitimate complaints about the law. We made it clear for over 2 years that the law is bad for patients, bad for providers, nurses, and the doctors who take care of those patients, and it is terrible for taxpayers.

This week we got a response to our long list of serious issues, responses from the administration and members of the administration. What they are doing is essentially doubling down on the President's failed law. Instead of addressing the serious concerns the American people have about the law and about their own health care, the White House has come to the conclusion they have actually done a bad job of educating the American people about the law. So now, just months before the Presidential election, the 2012 election, the administration has just signed a \$20 million contract for a private PR firm to educate the American people about the law.

Of course, this is taxpayer funded. So let me repeat: The Obama administration is not even going to acknowledge any of the real problems with the law. Instead it is going to spend 20 million taxpayer dollars on press releases and more government propaganda.

It is important to remember this isn't the first time the White House has spent millions of taxpayer dollars on trying to spin this law. They realize it is unpopular, but are they addressing the fundamental flaws? No, they want to do more public relations.

In fact, this administration spent \$700,000 on an advertisement starring

Andy Griffith, the television star, about how the law will impact Medicare. The Internal Revenue Service spent nearly \$1 million in taxpayer funds to pay for 4 million postcards to promote tax credits in the law for small businesses. Of course, what we have seen, and what the President would say, and I would say, is fewer and fewer small businesses than anticipated found they were not able to qualify for the so-called benefits of the health care law.

So what we have seen is the President's law continues to be unpopular, and now the administration chooses to spend taxpayer dollars to try a public relations campaign to make it more popular instead of dealing with the fundamental problems.

So here we are millions of dollars later, and it is clear that the White House still has not learned what most Americans understand—good policy is good communication. When a law is good, it sells itself and Americans immediately reap the rewards and appreciate what has been done. But when a law such as this health care law is a bad one, there is no way another slick PR campaign, paid for with taxpayer dollars, can make it look any better.

The American people deserve real solutions to their health care problems, not more Washington spin. Yesterday I called on the President to cancel this program immediately, to retain the taxpayer dollars and use it to pay off the debt, use it as part of lowering the deficit. Don't send it to a PR firm to try to spin this law.

We need to repeal this law. We need to repeal this health care law and replace it with a better plan. Instead of wasting millions of taxpayer dollars on this PR campaign, we need to go back to the drawing board. Americans deserve to be able to get the care they need from the doctor they want and at a price they can afford. That is what I will continue to talk about on the Senate floor as I offer a doctor's second opinion about the significant failure of the law that passed the Senate, was crammed through the House, and was signed by President Obama 2 years ago.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Kansas.

JOB CREATION

Mr. MORAN. Madam President, yesterday a group of four Senators introduced legislation that I would like to highlight in this brief opportunity on the Senate floor. We introduced S. 3217. This legislation is called Startup 2.0 and was introduced by Senator WARNER, Senator COONS, Senator RUBIO, and me to begin the process of trying to create a better entrepreneurial environment in the United States, to create opportunities for entrepreneurs for innovation and to grow the economy and create jobs.

I want to personally thank those three Senators—two Republicans, two Democrats—who decided that this common phrase we hear around Washington, DC—we can't do anything this

year because it is an election year—is nothing that we are willing to tolerate. We didn't get the marching orders and instructions to say we cannot work and accomplish good work for America because there is a November election.

I want to highlight to my colleagues and ask them to join us in this effort to grow the number of Senators who find this kind of legislation valuable and appealing and to commit myself to work with Senator WARNER, Senator RUBIO, and Senator COONS to see that we are successful in 2012. I have talked about this legislation before. In fact, Senator WARNER and I introduced the Startup Act months ago. We then joined with Senator COONS and Senator RUBIO, who had introduced legislation called the AGREE Act. We took the best components of our two pieces of legislation and yesterday, as I said, introduced S. 3217, the Startup 2.0 Act.

This legislation has about five components. In broad terms, it is based upon the Kauffman Foundation Center for Entrepreneurship based in Kansas City, which is the most world-renowned organization that studies and promotes entrepreneurship. Their proposals were based upon their research and are included in many aspects of this legislation. Part of it is dealing with the regulatory environment that a startup company faces and to require that the benefits of that regulation exceed the costs. That kind of requirement has been in the law before but only for the departments, not for the independent agencies. So we know the independent agencies create lots of hurdles and handicaps in regard to the ability of particularly a young company, a beginning company, a startup company to succeed.

In fact, in my view, our legislation is based upon something I was told once by an engineer who said that for an airplane to fly, there are two forces at work: one is thrust and the other is drag. The thrust has to be sufficient to overcome the drag or you could reduce the drag so the thrust is not so necessary. What I like about this legislation is that it is so focused on reducing the drag—getting things out of the way. It is not a thrust program, meaning more government programs, more government spending, more government. This legislation provides aspects that are designed to get government out of the way and to reduce the drag so that the airplane can launch and can fly and can succeed.

One of those, of course, is the regulatory environment. Another is the tax environment. Startup companies face significant challenges in accessing enough capital to get off the ground. We were successful in passing the JOBS Act signed by the President a few weeks ago. This legislation picks up where that legislation left off.

Incidentally, I read this morning that crowdfunding is already beginning to develop a piece—a development that occurs as a result of the passage of the JOBS Act. So once Washington, DC—

let me say that differently. Once Washington, DC, gets out of the way so that the private sector can pursue opportunities, those opportunities are pursued. We see that already happening with the passage of the JOBS Act in regard to crowd source funding in which we are gathering capital investments from people across the country to help new businesses commence.

This legislation, the Startup Act, makes permanent the 100-percent exemption on capital gains taxes for investments held at least 5 years in qualified small businesses so investors can provide financial stability at this critical point in their growth. The legislation also includes a limited, targeted research and development tax credit for startups less than 5 years old. So we alter R&D, we alter income taxes, and we alter capital gains in a way that is designed to create better opportunities for access to credit.

We attempt in this legislation to accelerate the commercialization of research. Billions of dollars are being spent—taxpayer dollars—at universities and colleges across the Nation. We want to incent that research to be devoted toward what can be commercialized, that brings new products, new businesses to market. So we take existing resources and utilize those dollars to reward those universities that take their research dollars and use them in ways that are more likely to be commercialized—in other words, create products, pursue dreams, and ultimately create jobs.

In addition, we create competition—at least knowledge of information, knowledge that allows somebody who is thinking about starting a business to decide which States are the most progrowth-oriented and make decisions about their location—where they should locate—based upon information. That then would also encourage States to be very entrepreneurial and progrowth, pro-innovation in their State policies.

Perhaps the most significant portion of this legislation creates two new visas. The first is an entrepreneur's visa to help foreign-born entrepreneurs currently legally in the United States to register their business and to employ Americans. In many instances, foreign-born entrepreneurs, here legally, have an idea and want to begin a company that will employ Americans but are told their visa does not allow them to remain in the United States.

The second visa that is created in this legislation is related to STEM—and this is a topic of conversation I think is so important—to retain foreign students who are studying in the United States, who have a Ph.D. or a master's degree in science, technology, engineering or mathematics. It is silly, it is wrongheaded for us to educate these individuals and tell them we no longer want them in the United States once they receive their degree. So the Startup Act 2.0 makes two important modifications to that current system of visas.

In addition, we include a provision from the legislation introduced by Senators RUBIO and COONS, a provision that eliminates the per-country numerical limit for employment-based immigrant visas, which is another handicap in our system that prevents those who have the greatest skills and talents and intellect from being eligible for a legal visa to remain in the United States.

I heard a story from an entrepreneur in California who was ready to hire foreign-born immigrants who were U.S.-educated individuals with Ph.D.s in computer education—computer science, for example—and yet the H-1B visa program failed them. There were no slots available. So, yes, the company hired these 68 Ph.D.s—technicians, highly skilled and educated individuals—but they hired them in Canada, not in the United States. So not only is that a loss of 68 jobs, but many of those people who are now working in Canada will be the next set of entrepreneurs, and they will start their businesses, their startup companies, and grow their companies in Canada, not in the United States. So we lose in both employment today and in opportunity for American jobs in the future because we have a visa system that handicaps our ability to get the highly educated, trained, and technically skilled individuals in the United States.

Today in the local paper I read some statistics that I think are important for us to remember and to know. Research by the Partnership for a New American Economy and Partnership for New York City shows a widening gap between the supply and demand of American graduates educated in the so-called STEM fields of science, technology, engineering, and mathematics. The number of job openings requiring such degrees is increasing three times the rate of the rest of the job market. However, college students majoring in non-STEM fields still outnumber math and science-minded counterparts five to one, according to the National Science Foundation. So five people are majoring in something other than science or mathematics for every one who majors in math or science in the United States.

If this trend continues, American businesses will be looking for an estimated 800,000 workers with advanced STEM degrees in 2018—just 6 years away—but will only find 550,000 American graduates with that type of training. Not only do we need to fill that gap with those who are available to us today, but we also need to encourage education in the United States and educate American students in the STEM field as well. Without easing these restrictions, we will continue to have 60 percent of foreign graduate students in the United States enrolled in science and engineering today. So 60 percent of foreign students are majoring in science and mathematics—not true of American students—and we need to reverse that course.

A study earlier this year showed that half of the Nation's top venture-backed companies have at least one immigrant founder. Three out of four claim at least one foreign-born executive.

The point is that we want the economy to grow, we want to create jobs, and we want to do the commonsense things that get government out of the way to allow the private sector to be entrepreneurial, to be innovative, and to create great opportunities for Americans today and, equally important, for Americans tomorrow. We want our kids and grandkids to have the opportunity to live and work in a growing, exciting economy. That requires the Congress to take actions today to create that environment for the private sector to succeed in creating entrepreneurship in the United States.

When we look at the last few years, we see that the net jobs filled in the United States have been filled by entrepreneurs, by new startup companies, not by existing companies. In fact, the trend is that big companies are often laying off workers while startup companies are the ones obviously hiring individuals.

I ask my colleagues to take a look at the legislation that my colleagues, Senators WARNER, RUBIO, COONS, and I introduced. I look forward to working with the leadership of the Senate to see that it receives appropriate consideration. We ought to do all we can do. We ought not ever use the excuse that we can't do everything; therefore, we can do nothing. These are all commonsense ideas that, in my view, will be supported by at least 80 percent of my colleagues here in the Senate. We ought not use the idea that it is an election year so we can't accomplish anything. The country cannot afford to wait. It needs our action now.

Thank you, Madam President.

The ACTING PRESIDENT pro tempore. The Senator Nevada.

#### THE HOUSING CRISIS

Mr. HELLER. Madam President, last September I had the honor of coming to the floor to give my maiden speech to my fellow Nevadans and to the American people. In that speech, I quoted a great Nevadan, Mark Twain, who wrote: "You are a coward when you even seem to have backed down from a thing you openly set out to do." I have always said that I ran for office to make a difference, and since my first day here I have set out to provide solutions to fix our current housing problems.

Nevada is the epicenter of our Nation's housing crash. Home prices continue to decline in Nevada. In February of 2006 the average home value was \$309,000. Today that has dropped to \$120,000. Let me give my colleagues another fact: 5 years is how long Nevada has led the country in foreclosures.

The people of Nevada have suffered far too long because of the recklessness of Wall Street that caused this crash. Many Nevadans are struggling to pay for mortgages or have their homes in

foreclosure as a result of the poor job market and the economic downturn. Because of the high rates of foreclosure devastating Nevadans, many are being forced to move, to find a new place to live.

Washington must provide solutions that help those who have been hit the hardest by this tough economy. I have worked on several solutions that I believe will provide some relief for many of those who are struggling.

In February I introduced the Keeping Families in their Home Act or the Home Act. This legislation would allow banks, Fannie Mae and Freddie Mac, to offer long-term leases for foreclosed homes. By doing so, it gives families the opportunity to stay in their homes while also easing the pressure that foreclosures put on home values.

The next month I joined Senator STABENOW to introduce the bipartisan Mortgage Forgiveness Tax Relief Act, which would ensure that homeowners who owe more on their mortgages than their homes are now worth would not be hit with an additional income tax if a part of their mortgage loan is forgiven. The current mortgage relief act expires at the end of this year, and this bill extends this critical safety net for underwater homeowners through 2015.

Today I am proud to announce the introduction of the SOLD Act. Home buyers, sellers, and real estate agents have long observed that banks have been slow to approve home short sales. Current delays in approving short sales are a major challenge to consumers and to realtors. These delays can cause canceled contracts and homeowners being forced into foreclosure. Those short sales are seen as a far better outcome than foreclosure, and finding a way to improve and make this process more efficient has been very difficult.

My legislation, the SOLD Act, would require that mortgage servicers respond to a short sale request within 30 days and make a final decision within 60 days of receiving the purchase offer. By placing a shot clock on these decisions, it will reduce the amount of time it takes to sell property, improve the likelihood that the transaction will close, and reduce the number of foreclosures in Nevada and across this country.

Stability in the housing market is critical for long-term economic growth. As Nevada continues to lead the Nation in unemployment, it is more important now than ever for Washington to provide solutions and address our Nation's biggest problems. Getting Americans back to work and helping families who find themselves in tough economic times should be a priority of every Member of Congress.

I hope my colleagues will join me in supporting the SOLD Act and help those who have fallen on tough times.

Madam President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, I ask unanimous consent that execution of the previous order with respect to S. 3187 be delayed until 12:30 p.m. today; that at 12:30, the majority leader be recognized prior to execution of the order, and that all provisions under the previous order remain in effect at that time.

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

Mr. REID. Madam President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### TOXIC CHEMICALS

Mr. LAUTENBERG. Madam President, I come to the floor today because we dare not stand here while a menace threatens children across our country with too many untested chemicals present in everyday consumer products, products intended for children's use, such as baby bottles and nursery furniture. Many of them contain chemicals that have never been tested for human safety. These chemicals should be tested in industry laboratories, not in our children's bodies. It is time to update the law to protect them.

This picture shows some of the moms, many who traveled long distances yesterday to come to the Capitol with signs demanding "safer chemicals now." Many of the moms had little children with them.

They are pleading with us. They are saying: Senators, understand what is taking place. Threats to our children should not be tolerated in America.

These moms are right to be concerned that their families are not being protected from dangerous chemicals. It is our responsibility, the responsibility of those in the Senate and the House, to fix our broken chemical laws. But until these laws are fixed, toxic chemicals—the word "toxic" is a replacement word for poisonous—toxic chemicals will continue to gnaw away at our children's bodies, their health, and their well-being.

Studies by CDC scientists found 212 industrial chemicals, including 6 carcinogens, coursing through America's children's bodies.

"Toxic Chemicals Pose Significant Health Risks."

This chart tells a very bad, a very sad story: Five percent of pediatric

cancers, 10 percent of diabetes, 10 percent of Parkinson's disease, and 30 percent of childhood asthma are significant health threats to children. And instead of protecting us from harmful chemicals, our current law falls short.

A law called TSCA was designed to eliminate these threats to children's health. It passed in the 1970s. It is so severely flawed that the nonpartisan Government Accountability Office testified that it is a "high-risk area of the law." Imagine that: TSCA, because of the fact that it is so severely flawed, is a high-risk area of the law.

In nearly 35 years, TSCA has allowed EPA to require testing of only 200 of more than 80,000 chemicals. Thousands of new chemicals are introduced every year in industrial and research facilities, but only 200 over that time were tested. What does that say? When you think about the number of children we are trying to protect, 80,000 chemicals, and EPA could require testing for only 200 of them, and only 5 were banned. It is hard to believe the chemical industry fought for years to keep the status quo alive at the expense of our lives, our children's lives, our children's health.

Recently the Chicago Tribune exposed how the industry used dirty tricks and junk science to drive their public misinformation campaign. They wanted to mislead the public about what is going on. Their series detailed how the industry repeatedly bullied and lied to State legislators to prevent commonsense reform. They bankrolled phony experts. A doctor in one instance prominently stood up there and defended a chemical material, a fire retardant. They are brought in there to invent stories that spout the company line, protecting not the health of children but protecting their profits. It is a terrible exchange—all at the expense of safety and health.

It is clear that chemical manufacturers purposefully hid the dangers of toxic flame retardants. We have a chart here that shows the average couch, for instance, has over 2 pounds of flame-retardant chemicals in its foam cushions, chemicals that have been linked to developmental problems and other health risks. The Presiding Officer has cautioned us about this, as well, that there are discharges when these are compressed that release the toxic chemicals into the air. Scientists have warned us about these chemicals since the 1970s, and yet they show up in household furniture, including baby crib mattresses and high-chair cushions.

The Chicago Tribune report said that:

A typical American baby is born with the highest recorded concentrations of flame retardants among infants in the world.

But we are not here to attack chemicals. We are saying sort out those that are necessary and good for our sustainability, but there are hidden in there products that are dangerous, that are contaminants, that can bring terrible

things to children, terrible health threats. Hundreds of useful everyday products contain chemicals, but it is our responsibility to make sure they are all safe, and today we don't know what is in the air, the atmosphere, and is poisonous.

Here is an example. Everybody recognizes what this is, a baby bottle. We have all bought them or seen them used for our kids. But chemicals in some baby bottles have been linked to serious health threats. Imagine, as a child takes nourishment, they are taking in a substance that can be dangerous to their health and make them sick—or worse.

When we use these products, the chemicals in them can end up in our bodies. In essence, the American public has become a living, breathing repository for chemical substances. No one should accept this standoff, and most do not. Those who are aware of what is taking place don't want to hear any excuses. They say: Get rid of these things. Let us know what is in there so we can protect our children and shield them from these threats to their health and their well-being.

Everyone—from some chemical manufacturers to businesses that use chemicals in their products, to environmental, labor, and health groups—has called for reforming our chemical laws, and we will not wait. I ask my colleagues not to wait here. Join us in this quest to save our children's health to make sure they grow up as healthy as we can enable them to do. We will not wait any longer, and we cannot let lobbyists run out the clock.

Lobbyists. Those are people, who for a fee, will represent almost anybody. But in this case, we are looking at not those who bring in good information or a good product, but those who are defending companies that are producing products that are dangerous for all the children who are exposed.

My bill, the Safe Chemicals Act, lays out a vision for strong, effective, and pragmatic regulation of chemicals. The bill simply requires the chemical makers to prove that their products, their chemicals are safe before they end up in children's bodies by being put into a product that children use.

Most of the thousands of chemicals we use every day are safe, but this bill will separate the safe chemicals from the ones that are not—the ones that threaten our children and our families. It will ensure that chemicals are tested and that EPA can take unsafe uses of chemicals off the market.

This bill is common sense. I am sure those who might be listening and those who might read the story from the Chicago Tribune and the research they did will find it very difficult to understand why it is we can't take the steps in here in the Congress to make their children safe. We do it in all kinds of ways to protect our kids. We want them to be able to grow and develop as children should—healthy, healthy kids.

Some chemical industry lobbyists say the cost of testing all these chemi-

cals would be too high. Talk to a parent whose children carry lots of toxins in their bodies already. Talk to the mothers who carry these toxins in their bodies and can transmit them very easily to their children, particularly in pregnancy. So, too high? Too high has to be judged not by the chemical company making a profit and wanting to make more.

We cannot violate our responsibility to the mothers and fathers and the relatives and the families, where little kids live and enjoy life. What about that cost to the damage of their health? What about the cost to them? How high is that cost?

I would like one of these chemical manufacturer executives to stand up to parents who are worried about the health and the well-being of their children and say they are not making enough money and they are going to have to pump more of these threatening materials into the atmosphere without submitting them for testing. What about the cost to the parents who have to pay for their care?

The bottom line is this: If we don't act to protect Americans from thousands of toxic chemicals in everyday consumer products, who is going to do it? It is our responsibility.

Throughout this process we have invited input from all sides of this issue, including the chemical industry. I have extended an open invitation to my Republican colleagues: Think about it. Look at it through the eyes of your children and of your families. Think about it. Or would you rather go to the bank with a larger deposit because you are doing something that is a threat to children of any age and any stage? So I asked colleagues from the Republican side to work with us. Work with me to fix this broken law.

The one thing we will not do—and I know I speak for many others who are cosponsoring this legislation—we will not accept inaction. It is time to act. We want to mark up legislation to reform TSCA and move this legislation to the Senate floor, where decisions can be made. Opinions of individuals who may say, No, we would rather go ahead and enlarge our bank accounts, our cash reserves—let them say it in front of the public. That is when we will be conducting the kind of a test we should be doing here.

We want to move the legislation to the Senate floor and have a vote on it. Hopefully good judgment and good sense will prevail and this will get through and get to the President's desk so he can sign it and start the process of protecting our kids. It is time to come together to finally fix this law and protect our families from toxic chemicals.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. DURBIN). The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I thank Senator LAUTENBERG for his leadership and dedication to protecting

our families. And I know why he is concerned. I know, because I think about these issues every single day.

I washed my son's hair last night in his bath. I want to make sure the chemicals in that baby shampoo are safe. I put sunblock on him this morning. I want to know that I know what the level of that protection of that sunblock actually is.

When my other son was sick last week, he had three different medications. I need to know what those medications will do for him, if they will have side effects, what the impact is.

This is exactly the question every parent asks every single day in their normal daily lives: Are the products, are the chemicals, are the things surrounding my family safe? Will they cause harm? Will they cause disease? These are real questions that we have to have answered. So I thank Senator LAUTENBERG for his leadership on the Safe Chemicals Act.

Yesterday hundreds of mothers gathered here in the Capitol, right in front of the Capitol building, with their kids and with advocates from all across the United States to tell Congress one simple thing: It is time to stop playing politics with the health of our families. They remind us that the effectiveness of our Nation's chemical regulations is an issue that matters to all of us, every single American and every single parent who has children.

Our families are exposed to a variety of chemicals in every aspect of their daily lives, whether it is the soap we wash our hands with, whether it is the shampoo we wash our children's hair with, whether it is the detergents we put in our clothes washer when we are doing our laundry at night, whether it is detergents we use to wash our dishes. Every day we are bombarded with chemicals, and understanding how these chemicals impact our health and the health of our families is a growing concern not just for me but for constituents all across the country. But because of a very broken and ineffective system, our regulatory agencies are not able to provide us with enough information. The challenge our regulatory agencies face is a substantial one. Since the Toxic Control Substances Act was enacted in 1976, the EPA has faced the daunting challenge to investigate more than 84,000 chemicals in commerce, and their track record for success has been poor. Of the tens of thousands of chemicals in the marketplace, only 200 have been identified for further investigations and only 5 have been regulated.

Weekly there are news reports highlighting a new study of chemical concern found in everyday products in our homes, in our schools, and in our places of work. These reports have caused growing concern amongst consumers because we have seen links. There are studies that linked these chemicals to the rising causes of cancer, autism, learning disabilities, diabetes, asthma, obesity, developmental

disorders, and infertility. These are the gravest concerns any family is ever going to face—any one of these. So we want to know if these things we were exposed to are affecting outcomes. Is there a relationship?

As a mother of young children, who are most vulnerable to chemical exposure, I am particularly concerned about what chemicals affect them, their well-being, and their development. I have one story of a young girl from Ithaca, Mira Brouwer, who died at the age of 4 because of the complications of her brain cancer treatment. Faced with the loss of her daughter, her mother Christina Brouwer founded Mira's Movement to make sure she could raise awareness about pediatric cancers and to serve as a resource for families facing their own battles with these diseases.

After an exhaustive study and review that identified potential links between chemicals and our environment and cancers such as the one young Mira had, I believe it is time for Congress to take action. We have a number of amendments today that will, again, enhance the work we are doing.

Of the two amendments I care a lot about, one is very simple. It makes sure that parents have as much information as possible when there are disclosures that accompany medicine so we know what are all the impacts there could be of that medication. I know most of my colleagues and certainly most consumers didn't realize the leaflets that come with our prescriptions are not regulated by anyone, and it is usually written by a contractor.

In 1995 the FDA recommended standards to improve the information provided to patients, but by 2008 only 75 percent of the information patients were receiving met the standards for usefulness.

I have to say I met with one mother named Kate, and her personal story about what happened to her son who was suffering from allergies and asthma. When he took a different medication, she saw him go into a depression. She didn't know there could be a relationship. That information was never provided to her. But the pain and loss she goes through every single day, remembering her son, has encouraged her to be an advocate for reform to make sure every parent has basic information that has some level of accountability so they know what the implications of all medicines can be.

The AARP and Consumer Reports have spent years trying to ensure their patients that when they receive FDA approval, standardized and up-to-date information about their medications will be provided. They support this amendment that will make that requirement.

Consumers basically have a fundamental right to know the risks associated with their prescription medications, and my amendment would give them this knowledge.

Last, and quite simply, we use sunscreen every day. In my family my kids

have very fair skin. I want to know that the label on that sunscreen is accurate. I want to know if it has the protection it says it does, and this is an area that desperately needs regulation. I support the bill of Senator REED of Rhode Island to finally give consumers the information they need with regard to sunscreen.

Thank you, Mr. President, for this opportunity. All America's families basically have a right to know if these products are safe.

I yield the floor.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Madam President, it was 10 days ago the Chicago Tribune had a Sunday exclusive investigative report on fire-retardant chemicals, and the report went on for several days. I called the writers and commended them on the wonderful job they did on this report. It was as good as any investigation I have ever seen by a committee of Congress. It raised some serious issues I had never thought about.

We probably have all heard from time to time there are certain chemicals which, when put on fabric, for example, will reduce the likelihood that it will flame and injure someone. I accepted that as truth, and I guess most people would. There was testimony given, even by medical doctors and so-called experts, that said that is a fact.

Well, the Tribune series took a look at the so-called experts, and guess what they found. They were on the payroll of the chemical companies that made the fire-retardant chemicals, and the doctors were actually kind of manufacturing cases of burns to make the case that States should apply these new standards. Over the years this testimony by these people, who had a built-in conflict of interest, ended up being persuasive at many levels in many States. As a result, there were requirements to add fire-retardant chemicals to fabrics in clothing, pajamas, furniture, and the like.

Then a closer look was taken. The Underwriters Laboratories took a look at these chemicals and said: You know what. They don't stop a fire from flaming up. The tests they are using are totally inadequate. These chemicals don't achieve what they are supposed to achieve. But there is another side to the story. The chemicals themselves can be dangerous. These are chemicals that haven't been tested in terms of their exposure to human beings. The Chicago Tribune article said the average couch had 2 pounds of fire-retardant chemicals built into it. They put it particularly in those foam cushions. I will get back to that in a moment. Remember that, the foam cushions.



Madam President, in your wonderful State last November my daughter gave birth to twins. November 15 was a source of great celebration. It still is. My wife and I were there with our son-in-law and daughter to welcome this little boy and little girl into the world. After a couple of days we brought them home from the hospital to the condo where my son-in-law and daughter live. We were so careful. I think about it now. We used hand sanitizers. We never had that when we were raising our kids, but we were careful to make sure we washed our hands. Every single thing these kids would come in contact with, the little onesies and the blankets that had to not only be cleaned but cleaned with the right detergent—we wanted to get the right detergent so it wouldn't cause any problems with these children.

Of course, when we are giving them formula, we are sterilizing everything in sight to make sure it is perfectly clean. Then I recall at that moment when I had that tiny little baby, and I was going to give this baby a bottle—and see if I still remembered how to do it—they said get a comfortable place. Why don't you sit down on the couch? It never crossed my mind as I sat down on the couch and pressed that cushion on the couch that I was releasing a spray of toxic dust from fire-retardant chemicals. That never crossed my mind at one moment.

When we went to buy a little cradle with a cushion for each of the kids, we took the subway to Columbus Circle to Babies "R" Us. It never occurred to me to think about whether the cushion on that baby's cradle or crib had fire-retardant chemicals in it that might, in fact, be sprayed every time someone sat on it or the baby was put on it. It never crossed my mind.

Well, I can say that as a result of the Chicago Tribune article, I think about it all the time now. I also think about this: How many American families can make that judgment when they buy a couch or a chair or children's furniture? They cannot. They cannot physically do it. I am a political scientist, but that doesn't count; I am not a real scientist. I can't judge what is safe and what isn't.

Who can we trust? Can we trust the company making the product? We want to think so, but sometimes not. Can we trust the spokespeople for the chemical industry? Unfortunately, they come into this with a conflict of interest.

So Senator FRANK LAUTENBERG of New Jersey created legislation that calls on the chemical industry to take care with the chemicals they put into everything we use every single day. It is also to make sure that Americans and families have peace of mind when they buy products to know the Environmental Protection Agency is at least reviewing the chemicals that are being put in those products that cite they are safe.

If the Environmental Protection Agency doesn't do this, who will do it?

Can we trust the chemical industry to do it? I don't think so. Can we trust the furniture industry? I am not sure. We know if the EPA does it, it can make a difference. There are 80,000 different chemicals out there now. Many of them are critically important for our safety and health. There are safe chemicals we can be exposed to every single day without concern, but there are others that are not. The flame-retardant chemicals are a good example of that.

As the Presiding Officer said when she was speaking on the Senate floor, over the years they have reviewed 200 of these chemicals out of 80,000, and at the end of the day, they banned 5. What about the rest of them? Have they taken a look? Where does the first level of responsibility start?

Senator LAUTENBERG's bill says it starts with those who put the chemicals in the marketplace and that there be a certain level of safety established before they can be sold across the board. I think that is essential.

We are on a bill that will not bring up the toxic chemical issue, but I hope that will come up in and of itself soon. We are on a bill dealing with the Food and Drug Administration, and I heard about the amendment, and I support it. I think it is a good one.

Let me tell you something else we should know. The Food and Drug Administration is a small agency with big responsibility. Literally before any drug can be sold as a prescription drug in America, the Food and Drug Administration has to establish, No. 1, it is safe, and No. 2, it is effective. If it says it is going to do certain things, it has to accomplish those things. So there is lengthy testing in terms of these drugs before they will actually be licensed and allowed legally in America. The drugs that make it through all of these tests can generate millions, even billions, of dollars in profits for the pharmaceutical companies, but many don't make it through the testing process. But the FDA is there to establish that those drugs are safe and effective, and of course the consumers rely on them. When the doctor writes a prescription, we feel pretty certain this is going to be something the doctor knows is good for you and it has already been tested through the FDA.

There is a whole other category of goods, though, that we buy every single day that are treated differently and they are called dietary supplements. They include things such as vitamins and minerals that you take in the morning. I take a multivitamin every day. I don't know for what reason, but I do.

Dietary supplements also include things such as energy drinks. Heard about energy drinks lately? We can hardly escape them. The 5-hour Energy drink, the Monster drink. There are all of these different drinks we can buy that turn out not to be the same as soda or soda pop, but they are dietary supplements with small print on the back of the label. What is the dif-

ference? The difference is this: If you wanted to sell a bottle of cola, for example—and I won't give any proprietary names—there is a limitation by the FDA about how much caffeine can be put in each bottle of cola. If they decide they are not going to sell cola, which is classified as a beverage or food, and instead sell Monster Energy Drink and call it a dietary supplement, there is no regulation on the amount of caffeine that can be included.

Yesterday I met a woman who came here with her parents and her daughter to be in the gallery as I talked about her late daughter. Her late daughter's name was Anais Fournier from Hagerstown, MD, 16 years old. This young girl, with no history and no warning, drank two 24-ounce Monster Energy Drinks in a 24-hour period of time, and it killed her. There was almost 500 milligrams of caffeine in those two drinks. It was too much for her. She died of cardiac arrest. Those were billed not as beverages or sodas but as dietary supplement energy drinks.

Here is what it comes down to. I have a simple amendment I am going to offer, and this amendment will come up, I hope, on the Food and Drug Administration. Here is what it says: Every dietary supplement manufacturer that wants to sell their product in America has to register with the FDA. They have to tell the FDA the name of the product, the ingredients of the product, and a copy of the label. That is it. There is no requirement for testing, just so we know what is out there.

Let me add, dietary supplements are coming from all over the world into the United States. When we walk into that vitamin store or nutrition store and we think everything in there has been tested, no, virtually nothing has been tested. Do we still have a right to buy it? Yes, and I will fight to defend our right to buy it, but I also think we have a responsibility too. If people get sick and die because of a dietary supplement, we ought to do something about it, and the people across America expect us to. It starts with registration, simple registration, so the Food and Drug Administration knows what is out there.

A few years ago there was a pitcher for the Baltimore Orioles who, in an effort to lose a few pounds before the season, took a dietary supplement that included a compound called ephedrine. Ephedra is a stimulant. He died as a result of that compound he took. We ended up basically banning ephedra from dietary supplements as a result. I think it is important for the Food and Drug Administration to have lists of the dietary supplements and their ingredients in what they are selling, and a copy of the label, so that some future ephedra, some future compound that we find can be dangerous could then be traced to the actual dietary supplement product in order to protect American consumers and families.

The dietary supplement industry hates my amendment like the devil



hates holy water. The notion that they would have to register and disclose the name of their product and its ingredients? No way. They say: You can't do that. It is a violation of basic rights.

I say: Baloney. If they want to sell in America, then sell what is safe or at least tell us what they are selling. If a seller lives in China, for goodness' sakes, and wants to sell in the United States, is it too much to ask that they register with the FDA and tell us what they are putting on the shelves across America? That is basic.

So we will have a choice. I am fighting now to put this amendment on this bill. Let's have a choice. Let's have a vote: Should the dietary supplement industry have to register their products? It is pretty basic.

This amendment is based on a recommendation from the 2009 GAO report which said the FDA has insufficient information to regulate dietary supplements and analyze adverse event reports. That is what happens when people get sick or die from dietary supplements. The amendment requires facilities which manufacture, package, or hold dietary supplements to register the products with the FDA, provide a description of each dietary supplement, a list of ingredients, and a copy of the label. Facilities notify the FDA within 30 days and provide the required registration information when a product is introduced or removed from the market. So they have 30 days to do it.

Any product that is not registered is to be considered misbranded and illegal to sell. In other words, they have to do it. It is a real law.

That is it. Just register. They have to tell us what they are selling to Americans. Give us the name, give us the ingredients, and give us a copy of the label.

Well, get ready, because the industry is coming in to say this is an outrage. I think it is outrageous that they would not comply with this basic amendment. I say this to them: I am not opposed to people buying vitamins. I have gone to these nutrition stores, and about every other month they say: Stop the latest Durbin amendment. Well, I buy vitamins. I take vitamins. It is OK. I think it is fine. We shouldn't have to have a prescription for it. But Americans have a right to know what they are taking, and they have a right to know what, if anything, the government is doing to protect them.

I hope my colleagues will support the amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. FRANKEN). The Senator from Missouri.

Mr. BLUNT. I thank the Presiding Officer for the time to speak on the Senate floor.

I am supportive of the bill that has come out of the HELP Committee to reauthorize user fees for the Food and Drug Administration. We have tried these user fees in the past, and under this bill they would be reauthorized for prescription drugs and for medical de-

vices. This seems to be a way to help get these items to the consumer faster, to get them through the approval process more quickly, and to allow the companies that develop new medical devices or new prescription drugs to recoup their investment in a quicker way, which also allows them to get to the generic market in a quicker way.

I think it serves the purpose of health care well, and the community that pays the user fees appears to be in support of their continued use, and I am too. This bill provides for faster verification of generics. It also adds a product called biosimilars to the process where fees would be paid. For all of the same reasons, it seems that those fees would also make sense for health care and make sense for health care costs. Again, it allows for recouping the investment that is made to develop a new drug quicker. That allows it to go to the generic market quicker.

I hope this bill can be approved, and I hope it will be approved even before we leave for the Memorial Day work period.

I think Senator HARKIN, Senator ENZI, and their committee, the HELP Committee, have worked hard. I don't serve on that committee. I am on the appropriating committee for the Food and Drug Administration—for agriculture, rural development, and FDA. I am glad to be on that committee, and I have the contacts I have with FDA because of that. But, certainly, I support this bill.

There will be amendments, and we will look at those amendments as they are offered; although I think the committee has worked hard in a bipartisan way to bring a bill to the floor that is legislated the way we should legislate wherein the committees do their work and there is a bipartisan approach. That approach seeks input, continues current policies, and improves on those policies in a way I hope the Senate and then the House can be supportive of.

I know one of the areas where we are likely to have amendments will be the debate we have had over and over on whether prescription drugs can be imported into the country. If that amendment is brought up, I would have the same position I have had in the past, which is it is fine as long as someone from our government is willing to say those prescription drugs are what they appear to be. They have been out of the chain of custody, out of the closed pharmaceutical chain supply system that we believe is always essential to be sure that the drug one is getting is the drug one is getting.

Senator DURBIN spoke about vitamins earlier. I don't know what is in that capsule and neither does he unless someone has verified what is purported to be in there is really in there. It is very easy for that not to be the case. There are all kinds of examples of that all over the world. We want to be sure that American consumers who are taking a health product take that product for a good cause.

The Senator from Illinois even mentioned that he thought dietary supplements should be filed with the FDA. Certainly anyone who would think that should also think the same for prescription medicines, pharmaceutical medicines—that someone would need to verify that a prescription medicine is the medicine one believes it to be because a person is not taking it for some additional dietary reason; a person is taking it because their doctor has told them it is a medicine they need to take. It means there must be some medical reason they are taking it, and they must be certain, in my view, that a specific health care reason is being met.

Also, I read this week that in a time of trillion-dollar deficits, the Department of Health and Human Services announced it was going to go forward with a provision in the affordable health care act that apparently allows the department to spend \$20 million of taxpayer money to launch a PR campaign to convince Americans they should like the affordable health care act better than they apparently do.

We are spending \$20 million at a time when we have trillion-dollar deficits, at a time when, in fact, the health care law is even being challenged in Court. We will find out within the next month what the Court thinks about the potential constitutionality of the health care law.

This is the same Department of Health and Human Services that, during the health care debate, told insurance companies they could not tell their customers—they could not communicate with their customers in any way that suggested any possible negative impact this law might create. I thought that was an incredible position for the government to take at the time, so maybe I shouldn't be surprised that now the government would spend \$20 million on a PR contract to convince people they should like this health care plan better than they do.

In fact, poll after poll shows the more people know about the health care proposal, the less they like it. Two years after its passage, opposition to the health care law, I believe, is stronger than it has ever been. The recent Rasmussen poll said 56 percent of voters favor a repeal of the affordable health care act, believing that it is perhaps neither all that affordable or all that good for health care.

According to a USA Today Gallup poll, 72 percent of Americans think this bill will make things worse or would not help their family health care situation. They believe it would not make things better or it will even make things worse. It is clear, in my view, that this is a bad law that we can't afford—bad for families, bad for seniors, bad for job creators. I guess maybe that is why the government is going to spend \$20 million to convince me and others that it is not nearly as bad as we think it is.

This is not the first time the administration has used taxpayer money to

roll out publicity initiatives or to move forward in a way that will try to encourage the use of this law. Last year, the Department of Health and Human Services asked Congress to quadruple the budget for its public affairs office to \$20 million. So the request was, let's have \$20 million in public affairs to double the staff, quadruple the budget. Let's have another \$20 million to hire a PR firm to convince the American people that the affordable health care act is going to be good for them. Let's sway seniors by using \$3 million for an ad campaign featuring Andy Griffith, who is one of my favorite actors of all time, who took on the role to convince people the health care law is good for seniors.

The nonpartisan factcheck.org concluded that the ads used—they said “weasel words” to mislead seniors. I certainly would not imagine that Andy Griffith would use weasel words, but I do know they used taxpayer dollars—taxpayer-paid-for words—to talk about how this plan is going to be good for them.

Then the administration recently decided to spend \$8.35 billion—now we are talking about real money; we are not talking about \$20 million or \$3 million. We are talking about \$8.35 billion to postpone the vast majority of the Medicare Advantage cuts until after the end of this year, which is, coincidentally, after Election Day as well. This supposedly comes out of money that would usually go for a demonstration project.

As I understand demonstration projects, it is to take an idea and prove whether it will work. Well, apparently, this demonstration project is merely to not allow these provisions of the affordable health care act to go into effect until after the election. I think we can all see what that demonstrates. It demonstrates there must be something the administration believes the American people and seniors would not like if they found out before the election that \$8.35 billion was scheduled to be taken out of Medicare and put into another health care program. In fact, the affordable health care act will spend \$500 billion that will come out of Medicare at a time when Medicare, we all know, is about to be in real trouble.

If someone made this argument anywhere but Washington, DC, I think they would be laughed out of the room. We have one fund that is about to be in big trouble, so we are going to take money from it and start another program that we also don't quite know how we are going to fund.

The Government Accounting Office has said this demonstration project—I think they have identified it as a sham demonstration project because it doesn't demonstrate anything.

This is not a health care system proving that if you take care of seniors on a per capita basis, you do a better job keeping them well than if you wait until everybody gets sick for them to be able to see a doctor under Medicare.

This just simply demonstrates that the administration would not like people to know what the impact of the law is going to be during this even-numbered year.

Government spending is out of control. Federal debt is at a record high. It is unacceptable to me that the administration has decided to waste money on a PR campaign or to waste money to see that the impact of the law is not evident until after election day. Instead of spending time and taxpayer dollars to try to convince people that unpopular things should be liked, I would like to see the President work with the Congress to help us get the 23 million men and women who are either unemployed or underemployed back to work. If we are going to spend money, let's spend money for purposes like that.

I yield back and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, today we will be considering and are considering a vital piece of legislation that not only includes all four user fee agreements but also includes policy proposals to improve the Food and Drug Administration review and approval of medical products, particularly in the pharmaceutical supply chain.

In 2008, when Senator Kennedy was still in the Senate, he and I introduced the Drug and Device Accountability Act. This legislation was largely in response to the extensive oversight I conducted on the Food and Drug Administration. During these investigations, I identified serious problems at the FDA that included severe weaknesses in the inspection process, delays in informing the public of emerging safety problems, and lack of enforcement authority.

Based on these findings, the Kennedy-Grassley legislation included provisions to ensure the safety of drugs, including foreign-manufactured drugs. It would have expanded FDA's authority to inspect foreign manufacturers and importers on a risk-based schedule. It would have required all manufacturers to register with the agency so they can properly identify the number of manufacturers and where they are located. This would have ensured that when a crisis occurs, we can quickly locate the questionable facility. And it would have increased civil and criminal penalties with respect to violations.

Unfortunately, Senator Kennedy and I never had an opportunity to debate this legislation, let alone cast a vote on it. However, roughly a year ago Senators HARKIN and ENZI forged a bipartisan working group to address these

challenges. The group has worked tirelessly to produce a bipartisan bill that modernizes FDA's authority to ensure that drug products coming into the United States are safe for American patients.

This bill incorporates many provisions in the Drug and Device Accountability Act Senator Kennedy and I introduced. It increases penalties for knowingly and intentionally counterfeiting drug products. It requires electronic submission of certain key information by a drug importer as a condition to grant entry.

I would like to have seen additional enforcement tools included in the legislation. For example, granting FDA the authority to destroy unsafe products that are refused admission into our country would enhance FDA's ability to protect the public from tainted products.

Likewise, I think FDA should have been granted subpoena authority and have it on a par with other Federal law enforcement authorities because currently FDA lacks subpoena authority and has to go through the Department of Justice, which is time-consuming and burdensome.

Ultimately, this legislation is a needed step in the right direction toward securing our supply chain. This legislation did not address a top priority of mine; that is, ensuring whistleblowers have adequate protections. Four months ago, my office learned of an abusive treatment by the Food and Drug Administration toward whistleblowers due to their protected communications with Congress, more specifically with the office of this Senator. Once the agency learned of the communications, it began actively monitoring and observing employees' personal e-mail accounts for 2 years until the agency was able to have the employee fired.

Regrettably, I was not shocked to learn that the FDA was mistreating whistleblowers within this agency as it has done on more than the one occasion in the past that I have identified. What makes the example different and worse is that the FDA intentionally went after an employee because they knew that employee had no protection under the Whistleblower Protection Act.

The employee in question happened to be a member of the Public Health Service—the title is the Public Health Service Commissioned Corps. Because of the decision from the Court of Federal Claims, those employees are, in the Public Health Service, along with other members of the uniformed services, not covered by Federal employee whistleblower protections.

In 2009, the Court of Federal Claims held in *Verbeck v. United States* that an officer in the Public Health Service Commissioned Corps is a member of the uniformed services and as such is not covered under the Civilian Whistleblower Protection Act nor the Military Whistleblower Protection Act. This

same logic extends to the commissioned corps of NOAA. So under this precedent, officers of the Public Health Service and NOAA currently have no whistleblower protection under Federal law.

This is particularly problematic when we consider that the Public Health Service and NOAA officers can be detailed to agencies such as the Food and Drug Administration or the Centers for Disease Control. That is the case here where that Public Health Service officer was working with FDA. At FDA they have to work side by side with civilian employees doing critical work to review and approve drugs, oversee medical devices, and even work on infectious diseases. However, unlike their civilian colleagues sitting right beside them, if these employees uncover wrongdoing, waste, fraud, and abuse, they can be retaliated against by the agency and have no recourse for it.

This is wrong and needs to be fixed. Whistleblowers point out waste, fraud, and abuse when no one else will. They do so while risking their professional careers. Whistleblowers have played a critical role in exposing government failures, and retaliation against whistleblowers should never be tolerated whether they are in the Public Health Service or otherwise.

For this reason, I will offer an amendment that expands whistleblower protection for uniformed employees of the Public Health Service. It corrects the anomaly pointed out in the Court of Federal Claims and ensures that officers in the Public Health Service have some baseline whistleblower protection. It expressly includes the commissioned corps of the Public Health Service within the protections of the Military Whistleblower Protection Act. This is consistent with the structure of the commissioned corps functioning like a military organization and matches the fact that these officers receive military-like benefits and retirement.

All Federal employees should feel comfortable expressing their opinion both inside the agency and to those of us in Congress. The inclusion of this language will ensure those opinions receive appropriate protections. I want to take this opportunity to express my appreciation to Senator HARKIN and Senator ENZI for their commitment and effort over the years to reform and improve the Food and Drug Administration.

We have to do what we can to protect whistleblowers. They know where the skeletons are buried. They and enterprising journalists come to us in Congress so we can investigate. We need those sources of information.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent the execution of the previous order with respect to S. 3187 be delayed until 2:15 today; that at 2:15

p.m. the majority leader be recognized prior to the execution of the order, and that all provisions of the previous order remain in effect at that time.

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

Mr. REID. Mr. President, we are close to a way to move forward on the FDA bill. I do say this, however: On this side we have cleared everything. So the disputes now are with the Republicans on the Republican amendment. We are willing to do whatever is necessary on that amendment. So I hope we can get this worked out. It would sure be helpful. We have heard all the speeches about this important bill. It really is important, as I indicated today in talking about some of the shortages we have had in Nevada where people die as a result of not having the medicines.

We are nearing a time where we cannot prolong this any more. This legislation is necessary because the bill—the information we have in this bill, everything we need expires at the end of this month.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I rise today to talk about the importance of passing the Food and Drug Administration Safety and Innovation Act, more commonly known as the user fee reauthorization bill. This bipartisan legislation would reauthorize the user fee program for the medical device industry, incredible important in my home State of Minnesota, as well as the pharmaceutical industry.

This bill represents over 1 year of negotiations between the FDA, Congress, and the industry. I believe we have achieved a good balance in terms of the improved performance, incentives through increased accountability, more meaningful goals, important process improvements, better metrics, and additional resources.

Not only does this legislation include the user fee agreements negotiated between the industry and the FDA, it also includes several reforms that will benefit the entire health care system and improve public health. The bill will make medicines safer for children. It will protect the global drug supply chain. It will improve access to safe, innovative medical devices and treatments, and it will tackle the drug shortage crisis that is spreading across the country.

On Monday I talked about the work I did leading the effort on drug shortages. I am so pleased that Senator HARKIN and Senator ENZI included this provision in this bill. But I also believe it is important to talk about the guts of the bill; that is, the improvements with the FDA and the work that needs to be done.

I commend the HELP Committee, on which the Presiding Officer serves, and specifically Chairman HARKIN and Ranking Member ENZI for being dedicated to ensuring that this process was open, transparent, and bipartisan.

At a time when Congress has been deeply divided, this legislation shows we can still overcome our differences and address the needs of the country through strong bipartisan cooperation.

For the State of Minnesota, passing this bill is vital to our continued economic growth and strength. With strong institutions such as the Mayo Clinic and the University of Minnesota and innovative companies such as 3M and Boston Scientific and Medtronic and St. Jude's, Minnesota's job numbers have fared better than the national average, with our unemployment rate now more than 2½ points below the national average; that is, 5.6 percent compared to 8.1 percent.

That is also attributed to the fact that Minnesota has one of the largest and most dynamic pockets of medical device companies in the country. I mentioned a few of the big ones, but there are also many small thriving companies. Many of our biggest innovations have come from the small companies, adding up to about 400 firms employing over 35,000 people across our State.

We cannot forget that it was Minnesota that brought the world one of the biggest innovations in the country. I am not talking about the Post-It note, although it is true that did come from our State. I am talking about the pacemaker, which we give thanks to a company called Micronic that started out in a garage in Minneapolis.

So our roots run deep in this industry. But medical technology is just not important to Minnesota, it is important to our country, putting billions of dollars in our economy each year. It is important to the world. The devices we make in the United States do not just save lives locally, they save lives globally.

As we look at potential exports and how we are going to reach the President's goal of doubling our exports in 5 years, and how we are going to get out of the economic rut we have been in, a lot has to do with exports, new markets, and a rising middle class in countries such as China and India where people are finally going to the hospital, will use our medical devices, and will bring jobs to the United States.

But that only works if these medical devices get approved and if we are able to make them, have the skilled workers to make them, and can beat our competition, basically, of companies in other countries that may be growing unless we make sure we have a proper approval process here that keeps things safe but also moves smoothly and quickly. The kind of meaningful, innovative work that our country needs more of is this kind of work. It is high-tech manufacturing, and that is what we need more of in this country.

As cochair of the bipartisan Med-Tech Caucus in the Senate, I have had several conversations with FDA about ways to improve this regulatory environment. I have introduced bills, as has the Presiding Officer, and looked at the

importance of putting in things that guarantee safety but also make sure we improve the process so we get more innovation and more jobs in this country.

If we are not careful, as we know, continents such as Europe—if they move faster than us, as they have in some instances, then we have a problem because then the venture capital money goes to Europe. With China requiring country-of-origin approval, we can have a situation where companies decide they can get things done quicker if they move their business to a place such as Europe and then get the approvals in place so they can sell in China. We do not want that to happen.

The FDA will now be responsible for total review time goals. That is an important part of this bill. This measures the time from submission of a new application to the time the technology is available to patients. Putting the FDA on the hook for this measure will streamline the approval process and help get innovative and lifesaving devices and treatments to patients.

In addition to improved review times and performance standards, the one aspect I hear about the most from our medical device companies, both small and large, is they need better communication between the FDA and industry. This agreement takes significant steps to address this issue by opening clear lines of discussion before a submission is made. This helps provide companies with clear direction and requires the FDA to stick to their commitments.

It also requires interaction between the FDA and the applicant during the review process to keep everyone on the same page and avoid miscommunication and costly delays. The agreement also requires the FDA to work with companies to find the best path forward if goals are not met. Most importantly, this legislation will give the FDA the tools necessary to meet these goals.

This agreement provides for \$595 million in user fees over the next 5 years. This is meant to provide for additional reviewers, enhanced training, and increased efficiencies to help improve FDA performance and help patients get access to the most innovative and safest products available.

But a positive user fee agreement does not guarantee success. We must also focus on the execution and administration of these new resources and new guidelines. That is why I introduced a bipartisan bill with RICHARD BURR of North Carolina, a Republican, and MICHAEL BENNET of Colorado, a Democrat, that would significantly improve the regulatory process.

It would tackle three important things related to the approval process: First, it would increase efficiency by strengthening the agency's least burdensome principle, which has been continuously overlooked by FDA's reviewers. The average time to approve an application has increased 43 percent from

the 2003-to-2007 time period to 2010. This simply is unacceptable.

Second, it would improve conflict-of-interest provisions making it easier for the FDA to recruit top-line experts to take part in the review process.

This would allow the FDA to protect the integrity of the review from undue conflicts of interest but also take advantage of available expertise.

Third, it would require the FDA to use an independent consulting organization to assess the management processes at the Center on Devices. This would encourage the agency to consider the impact of its decisions on innovation, while also considering the balance between the risk and benefits of the new devices.

I am thankful that, in working with Senators HARKIN and ENZI, we were able to include these improvements in this bipartisan legislation.

Equally as important to improving the regulatory process at the FDA, this legislation also includes my provision on drug shortages. I have come to the floor several times in the past year to talk about the crisis as it has impacted individuals all across our country. There is the story of a little 4-year-old boy who was going to get treatment for his leukemia, and his parents were put in a panic. He was a little bald boy with a smile on his face. They found out that the drug he needed, Cytarabine, was missing in action; it was not in the hospital, not in the pharmacy. They were actually looking into booking flights to Canada so that he could get the drug treatment he needed. At the last minute someone located the drug.

Sadly, that doesn't happen in many cases across the country, where we have had people come forward and talk about missing breast cancer treatments and people who have died because drugs were not available. The fact that physicians, nurses, and pharmacists are spending hours and hours of their time, which should be spent with patients, looking for pharmaceuticals is an outrage.

We know there are many reasons for this. We are glad the industry was willing to work with us to come up with at least a short-term patch here, where the FDA will be alerted as a result of the provisions in this bill when the pharmaceutical companies believe there is going to be a shortage. Right now, they are only required to do it for orphan drugs. Now they will be required to do it for all drugs. These can be shortages as a result of raw materials that are not there, as a result of mergers in the pharmaceutical industry, or shortages as a result of a decision not to produce a drug because it may not be as profitable or shortages because of all kinds of things that could happen in the course of commerce.

The key point here is that when the FDA finds out early, they have been able to avert drug crises. They can find another manufacturer in our country

or abroad, and they get the drugs in; they have done it over 200 times in 2 years. This will give them more tools to be able to avert what is an escalating crisis in this country where we are seeing more and more shortages of drugs on a weekly basis.

As I said, I am glad this bipartisan provision—and Senator CASEY introduced it originally with me, and we have had support from Senator COLLINS and others, and our working group worked out an agreement to get this provision in the Senate bill, with good prospects in the House under the leadership of Congresswoman DEGETTE from Colorado.

I thank my colleagues for their work for two reasons. One, this is important for medical devices and pharmaceuticals in terms of getting fast approval, and that is better for patients and for jobs in America as we become a country again that makes products and invests in goods that we export to the world. To do that, you need the regulatory process working.

Second, this bill is good because it contains a drug shortage provision to finally get at something that is long overdue, and that is the escalating crisis of drugs that have gone missing, which should be in the hands of patients across this country. Now we put them in a much better position in terms of being able to find alternative drugs in either our country or others, so we don't have these shortages we are seeing every day. That is why I think it is very important that we get this bill done soon.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### THE DISCLOSE ACT

Mr. WHITEHOUSE. Mr. President, I rise today to speak about a subject that I know is dear to the heart of the Presiding Officer, which is the sorry state of our campaign finance system and the need for the DISCLOSE Act of 2012, which we call DISCLOSE 2.0.

The Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission* opened the floodgates to unlimited corporate and special-interest money in our elections, bringing about an era in which corporations and other wealthy interests can drown out the voices of individual voters in our political system. Worse still, much of this spending is anonymous, so we don't even know who is spending millions to influence our elections.

Here is how my State's newspaper, the *Providence Journal*, explained it when the ruling came down:

The ruling will mean that, more than ever, big-spending economic interests will determine who gets elected. More money will especially pour into relentless attack campaigns. Free speech for most individuals will

suffer because their voices will count for even less than they do now. They will simply be drowned out by the big money.

The Providence Journal had a lot of foresight with that warning. What has happened since then has proven them right. Senator JOHN MCCAIN recently said this:

I predicted when the United States Supreme Court, with their absolute ignorance of what happens in politics, struck down the law—

Referring to the McCain-Feingold campaign finance law

—That there would be a flood of money into campaigns, not transparent, unaccounted for, and this is exactly what is happening.

Senator MCCAIN, is it ever. In the 2010 midterm election, the first after Citizens United, there was more than a fourfold increase in expenditures from super PACs and other outside groups compared to 2006, with nearly three-quarters of political advertising coming from sources that were prohibited from spending money in 2006. Also in 2010, 501(c)(4) and (c)(6) not-for-profit organizations spent more than \$135 million in unlimited and secret contributions. This anonymous secret spending rose from 1 percent of outside spending in 2006 to 44 percent in 2010.

We are already seeing the influence of money on the 2012 elections. Super PACs and other outside groups have spent around \$140 million in this election cycle. That is about twice what was spent over the same period in 2008 during the last Presidential election. In the 2 weeks leading up to Super Tuesday, outside PACs that supported the Republican Presidential candidates spent three times as much on advertising as the campaigns did themselves.

There are already signs things are going to get even worse. The Washington Post reported:

Groups that do not reveal their funding sources have spent \$28.5 million on advertising related to the November presidential matchup, or about ninety percent of the total.

Ninety percent. And these are groups that don't reveal their funding sources.

Our campaign finance system is broken. Action is required to fix it. Americans of all political stripes are disgusted by the influence of unlimited, anonymous corporate cash in our elections, and disgusted by campaigns that succeed or fail depending on how many billionaires the candidates have in their pockets. More and more, people believe their government responds only to wealthy and corporate interests.

As they see their jobs disappear and their wages stagnate and bailouts and special deals for the big guys, they lose ever more faith their elected officials are actually listening to them. Over the deafening roar of secret special interest spending, they get harder and harder to listen to.

This growing consensus across the political spectrum was reflected in the brief Senator JOHN MCCAIN and I filed with the Supreme Court last week in

American Tradition Partnership v. Bullock. In that brief, we urged the Court to reconsider the flawed central premise of its decision in Citizens United: the proposition that independent expenditures do not lead to corruption or the appearance of corruption.

As the statistics about anonymous spending and public perception make clear, this premise is discredited. I am proud to have worked on the brief with Senator MCCAIN, who has long been a leader in Congress on campaign finance issues. I hope our partnership will mark the beginning of greater cooperation across party lines on this issue of vital importance to the integrity of our great American democracy. I also hope the Supreme Court will take heed of the nearly universal opinion that the system they have unleashed in Citizens United puts our very democracy in jeopardy.

Until the Court acts, or until we enact a constitutional amendment to repair what they have done, we are left with one weapon in the fight against the overwhelming tidal wave of money from special interests—and that is disclosure. At least make them fess up to who they are.

That is why I stand here today in support of the DISCLOSE Act of 2012 or, as I said, DISCLOSE 2.0, in recognition of Senator SCHUMER's great work on the DISCLOSE Act. This legislation will shine a bright light on these powerful interests and their spending. With this legislation, which now has 43 cosponsors in the Senate, every citizen will know who is spending these great sums of money to get their candidates elected and to influence those candidates.

I would like to give particular thanks to the previous Presiding Officer, Senator FRANKEN, and the current Presiding Officer, Senator TOM UDALL, as well as Senators CHUCK SCHUMER, MICHAEL BENNET, JEFF MERKLEY, and JEANNE SHAHEEN for their hard work on developing this legislation. Senator SCHUMER, as we all know, has been leading the charge for disclosure since Citizens United upended and fouled our campaign finance system.

In 2010, with Senator SCHUMER's leadership, we came within one vote of passing the original DISCLOSE Act. Since then, the problem of anonymous, unaccountable special interest money has become much worse. We must redouble our efforts and pass DISCLOSE 2.0.

DISCLOSE 2.0 says two very simple things: First, if you are an organization, such as a corporation, a super PAC, or a 501(c)(4), and you are spending money in an election campaign in support of or in opposition to a candidate, you have to tell the public where that money came from and what you are spending it on in a timely manner.

That should not be a controversial idea to anyone, at least to anyone who is not seeking secret special influence.

This chart shows how easy it is under our current system for wealthy interests to anonymously spend millions on election ads. This amounts to a form of legalized money laundering or identity laundering. Super PACs are supposed to disclose their donors under current law. But if someone wants to avoid that disclosure, they can set up a shell corporation, which may be nothing more than a P.O. box, and send the money to the super PAC through that.

Worse still, instead of using a shell corporation, they can pass the money through to a 501(c)(4), a so-called "social welfare" organization set up just for the purpose of spending money in elections. Think about that. The IRS gives nonprofit status to groups whose primary purpose in many cases is to shield billionaires and corporations spending money in elections from having their identities disclosed. In many cases, these 501(c)(4) groups are so closely affiliated with their super PACs they have all the same staff and all the same office space, and the (c)(4) groups still don't have to disclose the identities of their donors.

On this chart we see the money raised through the end of 2011 by two political groups started after Citizens United by Republican political operatives. These two organizations have the same staff and the same office space, and they run negative ads against many of the same candidates. One, American Crossroads, is a super PAC and is supposed to disclose its donors. The other, Crossroads GPS, is a 501(c)(4) group and doesn't have to disclose donors. Guess which one has raised more money. Of course it is the 501(c)(4) group which doesn't have to disclose its donors. That group has raised \$76.8 million as compared to only \$46.4 million by its sister super PAC.

This is, by no means, a unique situation. For corporations trying to buy influence through spending in elections, "nondisclosure is always preferred," as an unnamed corporate lobbyist recently told Politico. Why? Well, for one thing there is no accountability—not to the company shareholders, not to their customers, and not to the public. Nondisclosure is "preferred" because it makes it impossible for the public and for law enforcement to track the corrupting influence of the money these corporations spend in elections. DISCLOSE 2.0 would put an end to using 501(c)(4) groups and shell corporations to shield the identities of big campaign contributors.

One thing that shouldn't be lost in this discussion of anonymous spending is the fact there is one person to whom this spending is certainly not anonymous, and that is the candidate—the elected official. The donors manage to hide their identities from the public, but they can sure tell the candidate how much money they put into that candidate's super PAC and what positions they want the candidate to take on issues. What this creates is a perfect

formula for corruption: wealthy corporations and individuals spending millions of dollars to influence a candidate without any oversight or public accountability or scrutiny.

Also, as a former Attorney General—and I know the Presiding Officer, the Senator from New Mexico, can appreciate this as well—a well-heeled donor doesn't have to make the contribution necessarily, doesn't have to launch the ad necessarily. They can also secretly threaten a massive expenditure against a candidate if the candidate doesn't vote right on their issue. Political scientist Norm Ornstein recently said:

I have had this tale told to me by a number of lawmakers. You're sitting in your office and a lobbyist comes in and says, "I'm working with Americans for a Better America. And I can't tell you who's funding them, but I can tell you they really, really want this amendment in the bill." And who knows what they'll do? They have more money than God.

If the candidate complies and does the right thing by the amendment or the right thing by the bill, the expenditure is never made. There will be no paper trail; no trace of the threat that drove that vote—that corrupted that vote—was ever made.

The whole rationale for unlimited spending was that it was going to be done independently of the candidate's campaign. That has proven false. The reality is that super PACs are anything but independent. Campaigns and super PACs share fundraising lists, donors, former staff, and consultants. Candidates appear at fundraisers for their super PACs, and super PACs recycle ads originally run by the candidates. They are free to act as the "evil twins" of candidate campaigns, as one FEC Commissioner put it, raising unlimited, anonymous money and then spending it on massive amounts of advertising—most of it negative—which further hides the identity of the interest behind the ad because if all you are doing is trashing a candidate, you don't even have to show what your interest is, let alone your identity.

About 70 percent of ads in this election cycle have, as a result, been negative ads, up from only 9 percent in 2008. This brings us to the second thing DISCLOSE 2.0 does. If someone is a top executive or a major donor of an organization spending millions of dollars on campaign ads, they have to take responsibility for their ads, just the way we do as candidates. These are reasonable provisions that should have wide support from Democrats and Republicans alike. As Trevor Potter, a Republican former Chairman of the Federal Election Commission, said in a statement submitted to the Rules Committee of the Senate:

[DISCLOSE 2.0 is] . . . appropriately targeted, narrowly tailored, clearly constitutional, and desperately needed.

We have made every effort to craft an effective and fair proposal while imposing the least possible burden on covered organizations. Passing this law

would remove a dark cloud of unlimited, anonymous money from our elections, and it would prove to the American people that Congress is capable of fairness, equality, and following the fundamental principle of a government "of the people, by the people, and for the people."

I urge my colleagues to support the DISCLOSE Act of 2012.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. UDALL of New Mexico. Mr. President, I was just listening to the Senator who is now in the Chair, and I want to congratulate him on filing that amicus brief with Senator MCCAIN in the Supreme Court. I believe the Supreme Court should heed the good advice both Senator MCCAIN and Senator WHITEHOUSE have given them, and I think if they do not heed that advice, the authority they have undertaken themselves will be taken away from them by the people who are urging a constitutional amendment to give this back to the Congress and back to the State legislatures.

I join my colleagues today to highlight what I consider a significant problem in our country—the unprecedented flow of money into our democratic elections.

Over the past several months, a group of us have been working together to address this problem. We have asked the FEC, IRS, and the FCC to take actions that would help curb the impact of money on our elections.

Led by Senator WHITEHOUSE, we have introduced the DISCLOSE Act. This bill would shine a light into the dark corners of the campaign finance system. Senator BENNET and I have introduced a constitutional amendment, which currently has 22 cosponsors, to overturn the disastrous judicial opinions that have led to the broken system we have today.

In January 2010, the Supreme Court issued its opinion in *Citizens United v. FEC*. Two months later, the DC Circuit Court of Appeals decided the *SpeechNow v. FEC* case. These two cases gave rise to the super PACs.

Millions of dollars now pour into negative and misleading campaign ads, and often without disclosing the true source of the donations. But our campaign finance system was hardly a model of democracy before these disastrous opinions. The *Citizens United* and *SpeechNow* decisions renewed our concerns about campaign finance, but the Court laid the groundwork many years ago.

We can go all the way back to 1976. That year, the Court held in *Buckley v. Valeo* that restricting independent campaign expenditures violates the first amendment right to free speech; in effect, that money and speech are the same thing.

The damage is clear. Elections become more about the quantity of the cash and less about the quality of ideas; more about the special interests and less about public service.

We cannot truly fix this broken system until we undo the flawed premise that spending money on elections is the same thing as exercising free speech. That only can be achieved in two ways: The Court could overturn *Buckley* and subsequent decisions based on it, something the current Court seems highly unlikely to do, or we amend the Constitution to not only overturn the previous bad Court decisions but also to prevent future ones. Until then, we will fall short of the real reform that is needed.

In *Federalist* No. 49, James Madison argued that the U.S. Constitution should be amended only on "great and extraordinary occasions." I believe we have reached one of those occasions. In today's political campaigns, our free and fair elections—a founding principle of our great democracy—are for sale to the highest bidder.

I know amending the Constitution is difficult. And it should be. But we didn't start this effort last year or even in the last Congress. Others before us have urged that this longstanding problem needs a long-term solution. Many of our predecessors understood the corrosive effect money has on our political system. They spent years championing the cause.

Senator Fritz Hollings introduced bipartisan constitutional amendments similar to our amendment in every Congress from the 99th Congress to the 108th Congress. Senators SCHUMER and COCHRAN introduced one in the 109th Congress. And those were all before the *Citizens United* decision—before things went from bad to worse. The out-of-control spending since that decision has further poisoned our elections, but it has also ignited a broad movement to amend the Constitution.

I participated in a panel discussion in January with several activists in this movement. One of the panelists, Maryland State Senator Jamie Raskin, was asked about overcoming the difficulty of amending the Constitution. Jamie said that:

A constitutional amendment always seems impossible until it becomes inevitable.

I think we are finally reaching the point of inevitability.

Across the country, more than 200 local resolutions have passed calling for a constitutional amendment to overturn *Citizens United*. Legislators in four States—Hawaii, Vermont, Rhode Island, and my home State of New Mexico—have called on Congress to send an amendment to the States for ratification. Many more States



have similar resolutions pending. Over 1 million citizens have signed petitions in support of an amendment, and more than 100 organizations under the banner of United for the People are advocating for constitutional remedies.

This grassroots movement is yielding progress. In addition to our amendment, several other campaign finance-related amendments have been introduced in the House and the Senate. Senators LEAHY and DURBIN recently announced that Senator DURBIN's Judiciary Subcommittee on the Constitution will hold a hearing on the Senate proposals in July. I thank them for their support. The hearing will be a great opportunity to examine the different approaches, to solicit input from constitutional experts, and to have a national discussion about the need to return our elections to the American people.

I hope this dialogue will convince some of my Republican colleagues to join me. Fixing our campaign finance system is only a partisan issue in Washington. A recent Washington Post-ABC News poll found that nearly 70 percent of registered voters want super PACs to be illegal. Among independent voters, that figure rose to 78 percent. But the Court, in its misguided reading of the first amendment, told the Congress that we can't rein in super PACs. In doing so, it gave millionaires and billionaires unchecked power to influence our elections. It has allowed a flood of PAC money to drown out the voices of average Americans. This is a fatal misreading of the real world of political campaigns, and it is wrong. Supporters of super PACs and unlimited campaign spending claim they are promoting the democratic process. But the public knows better. Wealthy individuals and special interests are buying our elections. Citizens United has meant citizens denied. Our Nation cannot afford a system that says "come on in" to the rich and powerful, and says "don't bother" to everyone else.

The faith of the American people and their electoral system is shaken by big money. It is time to restore that faith. It is time for Congress to take back control.

I know the Senator from Rhode Island, as Senator WHITEHOUSE, has worked very hard on this issue, and has pulled us together. I believe we are going to have others join us in this hour. The crucial thing we are trying to say is we need reform, we need disclosure. We need to get to the bottom of what is happening in this broken system and get our democracy back for the American people.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WHITEHOUSE. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Without objection, it is so ordered.

Mr. WHITEHOUSE. Mr. President, while we are waiting for the next speaker to arrive, I wanted to take a moment and discuss the brief Senator MCCAIN and I filed in the Supreme Court last week. It can be found at <http://www.whitehouse.senate.gov/download/?id=e3ba7f1b-d132-4aef-b5bc-c49fd711fc51>.

The Supreme Court in the Citizens United decision was in a difficult situation. No member of the Court had ever run in an election for office. It may be the first time in the history of a country that no member of the Supreme Court had ever run for office, so it is a Supreme Court that as a corporate group was uniquely inexperienced in the actual ins and outs of elections and politics.

Moreover, the way the Citizens United case came up to the Court, the question they ended up deciding is one that they asked for additional briefing on. It is a question that, in many respects, the Court raised itself. And so the Court did not have the benefit of the usual process of a case beginning in the trial court and amassing a record of evidence, of testimony, of witnesses, of a review of all of that at the appellate court level, and then final review at the Supreme Court. So they did something very unusual. They actually made a finding of fact.

A finding of fact is not something Supreme Courts are supposed to do in the first instance. That is the job of the trial judge and the jury, if there is a jury trial. Those are the fact-finders in our system of law. And certainly for a Supreme Court that has an appellate tribunal between it and the trial branches, as our Federal system does, it is very unusual for them to be making findings of fact. They made findings of fact in this case. And, unfortunately, because they had no experience in elections, any of them, and because they had no record, they made a finding of fact that was not in fact a fact. They made a finding of a false fact.

The mistake they made was to determine that no amount of corporate spending in an election could create either the risk or the appearance of corruption, and I think the practical facts of that are pretty easy to rebut.

They stood that finding of fact, that premise, on two subordinate premises and we rebut both of them in the brief. If I have further time, I will come back to that, but I see that the Senator from New Hampshire is here and I do not want to cut into her time, so I yield to the distinguished Senator from New Hampshire, and I appreciate her great work through the long period of discussion and draftsmanship that brought 2.0 to the floor with its now 43 cosponsors.

Mrs. SHAHEEN. Mr. President, I am pleased that I could be here today to join you, to join Senator WHITEHOUSE and our colleagues who have been

working to try to bring to light for the public the serious and ongoing problem of excessive campaign spending. I congratulate Senator WHITEHOUSE for all of his work in leading this effort. It has been very important.

This excessive spending has been a problem for the last 2 years, since the Supreme Court's decision in Citizens United, because their decision has allowed for the formation of what has been called super PACs, which are really organizations that can spend unlimited amounts of money without ever having to disclose where that money came from. So the public doesn't know who is spending the money, doesn't know how the decisions about spending are made.

We are actually in the middle of the first Presidential election since that Supreme Court decision, and we can see the dramatic impact of that spending. There are now more than 500 super PACs registered with the Federal Election Commission. They are permitted to raise and spend unlimited amounts of secret money to fund political advertisements.

Again, I want to emphasize the fact that we do not know where this money is coming from. We do not know if it is coming from corporations. We have heard a lot of stories and seen a lot of stories that there are very wealthy individuals who are putting up money for these super PACs. But the amount of money that has been spent by these super PACs so far this election cycle alone has just topped \$100 million. Nearly \$80 million of that came from just five groups.

As we are looking at this money being spent, it is important for all of us to reflect on our national priorities. What does it say about our country that we allow this kind of deluge of money to flood our electoral process? Who is really being represented? Are average voters in America being represented in this process?

To provide some perspective, I think it might be useful to examine what else this amount of money could pay for. In the past few weeks we have been discussing the importance of providing survivors of domestic violence and sexual assault with the resources they need by reauthorizing the Violence Against Women Act. What has already been spent so far by these super PACs, \$100 million, could fund all of the domestic violence and sexual assault assistance in the State of New Hampshire for 20 years. It could serve more than 320,000 victims.

The New Hampshire job training program provides workers with valuable instruction at community colleges across our State. It prepares workers for high-skilled jobs and creates a stronger economy. With the \$100 million that has been spent by these super PACs, we could train 288,434 workers in New Hampshire. Mr. President, \$100 million would provide low-income heating assistance to more than 135,000 households. That is enough to keep



New Hampshire's neediest families warm for three winters.

The starting salary for a police officer in the city of Manchester, the largest city in New Hampshire, is \$50,000. With \$100 million we could put an additional 2,000 police officers on the street. Instead, this money is being spent on political advertisements, millions of dollars from groups that refuse to disclose their donors. Most of these expenditures are being made on attack ads. According to a study by the Wesleyan Media Project, at this point during the last Presidential campaign in 2008, just 10 percent of the ads were negative. Now, in this Presidential campaign, 70 percent of those ads are negative. It is no wonder that Americans are becoming increasingly disillusioned with our political process.

The challenges confronting this country are significant. We need Americans to be engaged and invested in our political process, not throwing up their hands in frustration as the attack ads pile up. We need campaign finance reform.

I have been pleased to work with the Presiding Officer, with Senator WHITEHOUSE, and with all of our colleagues in developing the DISCLOSE Act, which makes some important changes to our system. Senator WHITEHOUSE described the DISCLOSE Act very well. It will make sure voters know who is paying for all of these campaign ads. It does not eliminate super PACs, but it is a very important step in the right direction.

I urge all our colleagues to join us in calling for change and urging reform of our campaign finance system. I urge everyone in this body to support the DISCLOSE Act.

I yield the floor.

Mr. MERKLEY. Mr. President, I ask unanimous consent to ask a question of my colleague from Rhode Island.

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

Mr. MERKLEY. Mr. President, I was very engaged by the comments Senator WHITEHOUSE was making a short time ago. I was very struck, as I have been all along, by the substantial challenge posed by Citizens United. My colleague was speaking to the impact on our constitutional system. When I think about this, I often think about those first three words of our Constitution, "we the people." Is it the Senator's sense that this phrase, "we the people," that starts out the Constitution is more than simple window dressing? Does it go to the heart of who and what we are as a society, as a nation?

Mr. WHITEHOUSE. The great experiment that the Founders of this country embarked upon when they founded this country was to allow for a democratic form of government that was governed by the people—not kings, not lords, not pharaohs, by the people. It has been a consistent thread throughout our history at important times.

As the Civil War came to a close and our beloved President Lincoln stood at

Gettysburg to give his great address, he talked about the importance of a government "of the people, by the people, and for the people." That has always been the core, heart, and hallmark of the American form of government.

It has lit a blaze that has illuminated the rest of the world as well. It is not just an American value. People from around the world look at this and say: You know, it can be that way.

Mr. MERKLEY. So I think if any three words would summarize the heart of our Constitution, it would be those three words. It would be "we the people." Yet we have a Supreme Court decision, Citizens United, that essentially unleashes a flood of special interest money. Is that fundamentally in conflict with the notion of "we the people"?

Mr. WHITEHOUSE. I believe it is. We operate in a modern world in which we are bombarded by media. The average person, the average, ordinary member of "the people," does not have much access to that media, cannot get his or her voice much heard in that bombardment. But if someone has enormous amounts of money, either because they are a corporation with a vast treasury or because they are a billionaire, they can take a big chunk of that media and can use it to broadcast their view. That will drown out other voices that do not have that power. So it really does attack the basic premise of "we the people."

Mr. MERKLEY. So Citizens United goes right against the very heart of our Constitution. How is it possible that the Supreme Court found, in this 5-to-4 decision, that this has no corrupting impact on our electoral process?

Mr. WHITEHOUSE. I think three things went wrong. First of all, this is a Supreme Court that, unlike most if not all other Supreme Courts, has no political experience. None of them have ever run for office, so they do not have a practical sense of how politics engages in an election.

Second, because they sort of invented this question, they did not have a record where people who did know about politics and did know about elections and did know about corruption could assemble a record from which they could then learn. So they were operating in a much greater vacuum than the Supreme Court usually does.

Finally, they made two presumptions that supported it. One was that the super PACs and all these big entities would be independent from the candidates. We have seen that was a false assumption. That was a wrong premise. Now the super PACs are connected to a candidate. They have one purpose: to get the candidate elected. They have funds raised by the candidate, they share staff with the candidate, they share consultants with the candidate. They use the same footage as the candidate. The idea that they are independent has been made preposterous by the facts.

The second was that there would be disclosure so the public could at least evaluate, OK, this is the coal mining industry coming after somebody who is fighting for climate change. We get that. We can make an appropriate judgment about that use of corporate money to attack a candidate. They were wrong about that as well. That is why we are here on this DISCLOSE 2.0, and we have been working so hard to make sure this bill has gotten to the floor in the good shape it has been.

Mr. MERKLEY. So the Supreme Court envisioned this steel wall, this high, impenetrable wall between an independent campaign and the candidate's campaign, and thereby saw fit to unleash unlimited money on one side of the wall while saying the other side has campaign caps, and that made sense together but their fundamental premise was wrong?

Mr. WHITEHOUSE. Absolutely dead wrong, as proven by reality. It is not just a theoretical wrongness, it is a factual, actual wrongness.

Mr. MERKLEY. Most of our campaigns for the Senate involve millions of dollars—some are \$2 million, some are \$20 million, some more. There are super PACs that have that much money and can bring that much money to bear in a single race. Did the Supreme Court wrestle with the type of intimidation, that precensorship, the precensorship impact on this body when somebody thinks about what should I say? Do I want to offend someone who has, not just \$1 million but millions and millions of dollars to bring to bear? Did they wrestle with the impact on corrupting the debate and dialog and decisionmaking of this body?

Mr. WHITEHOUSE. Not only did they not wrestle with it, it is not clear they even thought about it. When there are people who have come out of the judicial monastery—not quite the right word because they are men and women alike—but out of the separate province of high-end adjudication, they are not familiar with this. They did not think of this. They didn't think of that, and the other thing they didn't think of was that the threat of launching a multimillion-dollar negative attack against a candidate could have a corrupting effect, even if no dollars were ever spent.

If the threat is successful, if the scheme works, there is no trail left to it. Before Citizens United, if someone wanted to make a threat, their threat was limited to a big PAC contribution, having a big fundraiser, things like that. It was not a real threat in the sense it could knock somebody out of their office.

Now the idea that a corporate identity can hide its identity, can launder its identity through 501(c)(4)s and then launch a multimillion-dollar attack in somebody's State is a credible threat, and I think that is a threat, among others, they overlooked completely.

Mr. MERKLEY. I thank my colleague from Rhode Island very much for

championing this bill and for what he has done helping folks to understand this issue.

I will make a few comments on this issue. My friend from Vermont is standing by and, I think, wants to make some remarks as well.

I wanted to have the key words we are talking about put up before us. This is a picture of the Constitution, or at least the top of the front page, if you will. I was always struck that our Founders saw fit to start this document that lays out the framework for our Nation, the framework for our system of government, with three simple words, "we the people." They got to it right from the very beginning. They did not put in three paragraphs of polite this and that and then get to the heart of it. They started with the heart: "We the people." They did not put it in small print, they put it in super-sized print. We can see it is written in a font that is probably 10 times the size of the rest of the Constitution. They deliberately said this is the premise on which our Nation will operate. This is the foundation on which we stand.

These words are not "we the powerful." There is a huge distinction between "we the people" and "we the powerful." But the Supreme Court, in *Citizens United*, attacked the very heart of our Constitution—by saying the most powerful companies with vast sums of money can flood our political system, can buy up the airwaves, and completely dominate the conversation.

Free speech wasn't about one side buying up the airwaves. Airwaves didn't exist then. It wasn't about one side buying up the airwaves. It was about all ideas being able to compete in the marketplace of ideas so citizens could hear the pros and cons and decide who they wished to elect and how they wished to vote based on their understanding of what would work best for "we the people."

The Supreme Court did not benefit from seeing the Republican primaries of this year in operation. They didn't see how a super PAC would sweep into a State, buy up the airwaves, dominate the conversation, and determine the outcome. No, they had some other vision. My colleague has referred to the fact that none of the members of the Supreme Court had the political experience to understand the impact of this flood of money.

You may be thinking to yourself: Well, how much money can we be talking about? Well, money beyond an amount that a working man or woman could ever envision. If it were in dollar bills and stacked in a room in your house, it would fill the room in your house, plus. All of those dollar bills would not fit into a room. We are talking about such an enormous amount of money that it completely controls the sound in the airwaves.

Let me give you an example. In 2008, if one of the rather well-off companies in America—I will use one as an exam-

ple. ExxonMobil made a lot of money that year. If they had spent just \$3 out of \$100 of their net profits on the Presidential race, they would have spent as much as the rest of America put together. That is the type of flood of money we are talking about washing across the cities and the countryside of America, buying up the newspapers, buying up the airwaves, and dominating the debate. That is not a competition of ideas envisioned in our Constitution. That is the power. That is not "we the people."

It is my hope that the members of the Supreme Court will stand back and realize their findings of fact were wrong, and their findings of fact that there was no corruption from this flood of money were wrong, their argument that they didn't attack the heart of the Constitution was wrong, the fact that they didn't consider the precensorship this type of flood of money creates was in error, and that they will change their decision.

But we can't be sure this activist rightwing Court will consider the facts and reach a finding consistent with the very heart of the Constitution. We can't be sure of that. We have to do what we can in this Chamber, and that is the DISCLOSE Act, the DISCLOSE Act that at least says at a minimum this huge flood of money will be identified by the donor, and it will be identified promptly so citizens will be able to find out where it came from; also that the advertisements purchased by this money will have disclaimers that will say who the major contributors are so the citizens can see it in real time, so when that group says they are the group for America's green forests and blue skies, and it is really by a very powerful group against blue skies and green forests, we can find out who it is. That is the heart of this. *Citizens United* is a dagger poised at the heart of the American Constitution. We must reverse it, and we must use every tool at our disposal to make that happen.

I encourage citizens to summon their full instincts about what they value in our democracy and make their voices heard. Let's get this DISCLOSE Act passed and let's go further to reverse *Citizens United*.

Thank you very much.

I yield the floor to my colleague.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Mr. President, I thank Senator WHITEHOUSE and Senator MERKLEY and everybody else for the very hard work they have done on this monumentally important issue. It is hard for me to think of an issue that is more important.

A moment ago Senator MERKLEY used the word "precensorship," which is an interesting concept. I want to give an example of this.

Mr. President, I would ask unanimous consent to have printed in the RECORD an article that appeared in the "American Banker" fairly recently.

(See exhibit 1.)

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

[From the American Banker, May 23, 2012]

BANKERS FORM SUPERPAC FOR 'SURGICAL' STRIKE AT INDUSTRY'S ENEMIES

(By Barbara A. Rehm)

Frustrated by a lack of political power and fed up with blindly donating to politicians who consistently vote against the industry's interests, a handful of leaders are determined to shake things up.

They have formed the industry's first SuperPAC—dubbed Friends of Traditional Banking—that is designed to target the industry's enemies and support its friends in Congress.

"It comes back to the old philosophy of walking softly and carrying a big stick," says Howard Headlee, the president and chief executive officer of the Utah Bankers Association. "But we've got no big stick. And we should. We have the capacity to have one, we just aren't organized."

Think of it as an Emily's List for bankers and their allies.

"Congress isn't afraid of bankers," adds Roger Beverage, the president and CEO of the Oklahoma Bankers Association. "They don't think we'll do anything to kick them out of office. We are trying to change that perception."

Unlike traditional banking PACs, which target hundreds of House and Senate races, the SuperPAC instead is focusing on making a big difference in just a handful of close elections.

SuperPACs are the latest campaign finance innovation, made possible by two 2010 court decisions. They are officially known as "independent-expenditure only committees" because they are not allowed to coordinate their activities with candidates. SuperPACs are attractive because there are no limits on contributions or expenditures.

With a regular political action committee, like the American Bankers Association's BankPAC, an individual may donate no more than \$5,000 a year. Then the PAC may contribute up to \$10,000 to any one candidate in an election—cycle \$5,000 for the primary and another \$5,000 for the general election.

But Friends of Traditional Banking can direct as much money as it can raise to certain races without such restrictions. Matt Packard, the SuperPAC's chairman and president and CEO of \$670 million-asset Central Bank in Provo, Utah, views the SuperPAC as a complement to BankPAC.

"BankPAC is much broader and covers lots of different candidates. This is much more surgical," Packard says. "If someone says I am going to give your opponent \$5,000 or \$10,000, you might say, 'Yea, okay.' But if you say the bankers are going to put in \$100,000 or \$500,000 or \$1 million into your opponent's campaign, that starts to draw some attention."

"That's why I think this is much more instrumental than BankPAC in a close race."

Friends of Traditional Banking will ask contributors to pledge from \$150 to \$500 to two congressional races each election cycle. An advisory council will research races and select the candidates to be targeted. A board of directors will sign off on the selections, and then information will be sent to those who pledged funding explaining how to donate to a particular candidate.

The SuperPAC itself will not touch the money. Unlike Emily's List, which raises money for female candidates, Friends of Traditional Banking will merely point its supporters toward the races and the candidates considered key to the future of traditional banking.

If 10,000 supporters sign up at the minimum pledge level—not a high bar considering 2.1 million people work in the banking industry—Friends of Traditional Banking would be channeling more than \$1 million. That's enough to make a difference in a tight race.

"My short-term goal is to get to the \$1 million mark," Headlee says. "I have a lot of confidence that once we get there we will get way beyond there. People will see how effective it is and they will jump on board."

SuperPACs are considered pretty cutting-edge, which is not a place a lot of bankers feel comfortable. Headlee says the first question most bankers ask him is, "Is this legal?" Friends of Traditional Banking got Federal Election Commission approval last September and federal banking regulators have been briefed on the effort.

But SuperPACs are still relatively rare. As of early April, 407 had been formed and just 18 had raised more than \$1 million.

"It would be nice to sit on the sidelines or sit on our hands and say, 'Oh we don't get involved in that stuff,' but that just means you get run over," says Don Childears, the president and CEO of the Colorado Bankers Association. "We need to get more deeply involved as an industry in supporting friends and trying to replace enemies."

Childears says he's seen SuperPACs in action, citing a credit union that donated \$50,000 to an independent expenditure committee and defeated a candidate in Colorado. "Regretfully that is our world these days," he says. "Everyone from the Realtors to the credit unions to the consumer groups are playing more hardball. It would be nice not to have to engage in that, but we do."

[The Credit Union National Association, the industry's largest trade group, does not operate a SuperPAC. But it does accomplish many of the same goals by marshalling both institutions and their customers to donate to specific races. PACs are allowed to make these "independent expenditures," or donations that are not coordinated with a campaign, and according to the Center for Responsive Politics, CUNA's PAC spent \$837,000 to influence six tight races during the 2010 elections.]

The ABA's BankPAC has spent \$1.146 million so far in the 2011-12 election cycle, which ranks it 9th overall, just behind CUNA at \$1.184 million, and well behind the second-ranked National Association of Realtors at \$1.629 million, according to the Center for Responsive Politics. BankPAC expects to raise \$3.5 million during this election cycle.

Gary Fields, BankPAC's treasurer, says it will contribute to 380 House races and virtually all the Senate races this year. Fields says the ABA is considering an effort that would parallel Friends of Traditional Banking loosely dubbed the "Chairman's Club."

"For those bankers who want to do more than just contribute to the PAC, Howard has his Friends of Traditional Banking and we're looking at something, the Chairman's Club, which would be a pledge program that would complement Friends of Traditional Banking," Fields says. "But it's only on the drawing board and nothing has been rolled out to the public on that yet."

Fields, however, sounds more focused on the traditional PAC. Asked if he is excited about the prospects for Friends of Traditional Banking, Fields says, "I'm more excited about the ABA BankPAC . . . What we would like to see is more bankers participate in the PAC."

Why isn't ABA, the industry's broadest trade group, or the Independent Community Bankers of America, the group devoted to Main Street banking, involved in Friends of Traditional Banking?

"We didn't ask the ABA or ICBA to participate," Headlee said. "I don't think they

want to have any kind of control over this because we may piss some people off inside the Beltway. We fully intend to. They have to work back there."

ICBA President and CEO Cam Fine is enthusiastic about the effort.

"I am for any PAC that is going to defeat our enemies," Fine says. "I agree with Howard on this. More power to him. I hope he raises a lot of money and hammers these guys."

Beyond Utah, Oklahoma and Colorado, the advisory council currently includes members from eight other state associations: Arizona, Colorado, Idaho, Kansas, Michigan, Minnesota, New Jersey and Vermont.

Headlee and the other state association leaders see Friends of Traditional Banking going beyond bankers to tap shareholders and customers and anyone else who sees the value in preserving Main Street banking.

"Clearly there are Members of Congress who have absolutely no reservations about kicking traditional banks in the teeth, and we are tired of it," says Headlee. "We've got to be able to defend the folks who have the courage to stand up for us as well."

The vehicle now exists. The potential is there. It's up to bankers to make it happen.

Mr. SANDERS. Let me read what this article says. This is a member of the banking industry who contrasts what the old rules would have allowed, and that is under the old rules where there are limits as to how much people can contribute into a PAC, and that is \$5,000 before the primary, \$5,000 after, for a total of \$10,000.

This is what this gentleman, Mr. Packard, from the banking industry, says:

If someone says I am going to give your opponent \$5,000 or \$10,000, you might say, "Yea, okay." But if you say the bankers are going to put in \$100,000 or \$500,000 or \$1 million into your opponent's campaign, that starts to draw some attention.

What that gentleman is saying, and what this whole issue is about, is that if a Member of Congress is prepared to stand up to Wall Street, they better watch out. If they are going to vote for a bill that protects consumers, they better watch out because—as this banker said—there may be \$500,000 or \$1 million going to your opponent and going into television and radio ads.

So when Members of the House and the Senate are thinking about how they want to address the recklessness and irresponsibility on Wall Street—if they are thinking, as I am thinking, about the need to break up these huge banks which have so much power and have done so much harm to our country; if they want to bring about reform of the Fed so we don't have representatives of the largest banks in America sitting on regional Feds—guess what. They are going to think twice about going forward because they are going to worry that when they go home on the weekend, there are going to be all kinds of ads from the banking industry.

Maybe they are concerned as to why in America we spend almost twice as much per person on health care as any other Nation. Maybe they want to move, as I do, to a single-payer health care system. Well, the private insur-

ance companies are not going to like that. They are going to pour huge amounts of money into advertising.

Maybe they are concerned that in America we pay the highest prices in the world for prescription drugs. Are they going to take on the pharmaceutical industry if they now have the ability to spend unlimited sums of money?

I come to the Senate floor this afternoon to express my profound disgust with the current state of our campaign finance system and to call for more disclosure until we can finally overturn Citizens United. I know the Presiding Officer from New Mexico has a very good constitutional amendment to do just that. I have one. There are other good amendments. Long term, there is no question in my mind that we need to overturn Citizens United. In my view, it will go down in history as one of the worst decisions ever to come from the Supreme Court by a 5-to-4 decision. Five members on the Court came to the bizarre conclusion that corporations should be treated as if they were people and that they have a first amendment right to spend as much money as they want in elections, even though corporations cannot vote.

On election day, the average American, after studying the issues, goes out and with pride votes for the candidate of his or her choice. There are many people in this country who make campaign contributions. Maybe they will contribute \$25, maybe they will contribute \$50. If they have a lot of money, maybe they will contribute \$1,000 or \$2,000. But what Citizens United is saying is that a small number of people who run large multinational corporations can spend as much as they want on campaigns. And if that is what American democracy is supposed to be about, you surely could have fooled me, and I think many of the Americans who have put their lives on the line to defend American democracy. American democracy is one person, one vote. We are all in this together. You may be rich or you may be poor, but under our Constitution you have one vote.

This country has had to go through a very rocky process to ensure one person, one vote. In the beginning poor whites could not vote, women could not vote, African Americans could not vote. We struggled and struggled, and we said in America every citizen of this country is going to have their say on election day. That is what we learned when we were in elementary school. That is what democracy is about. And by a 5-to-4 Supreme Court vote, the Supreme Court said: Everybody has one vote, but if you are rich or if you are the head of a corporation, you can go into corporate treasuries and spend as much money as you want. For the average Joe, it is one vote. Corporate America can spend unlimited sums of money buying the airwaves, and we are seeing this today.

This is no academic or intellectual debate. People all over America are

seeing the results of Citizens United today on their television stations and on their radio stations. In the past few months the American people have seen what Citizens United means.

According to the Center for Responsive Politics, super PACs alone have spent over \$112 million on this election, and we are still more than 5 months away from election day. If 2 weeks before the election there is a billionaire out there or the head of some corporation, who is to say that person cannot take hundreds of millions of dollars out of a large corporation and spend it on an election? It is totally legal but not what America is supposed to be about.

Mr. President, I know you are aware of it, once again, because of your excellent constitutional amendment. What we are seeing throughout grassroots America is that people are beginning to stand and they are saying: No, we don't want Citizens United. We want to overturn it. We want real democracy in this country.

I am very proud that in the State of Vermont, and in four other States, State legislatures have gone on record saying: Overturn Citizens United. There are 209 cities that have passed resolutions to that effect, including some 50 or 60 in the State of Vermont, and people are organizing all over America on this issue.

I thank Senator WHITEHOUSE and others for the work they are doing on this DISCLOSE bill. This is the very least we can do, and I am eagerly waiting to hear the arguments from those people who oppose it.

If I put an ad on as a candidate or if Senator WHITEHOUSE puts an ad on as a candidate, we have to say: I approve this ad. If you are saying something nasty or dishonest, the viewers have a right to know you are behind that ad, you are not hiding. Right now the ads that are going out over this country—who is paying for them? We don't know who is paying for them. We don't see that pretty face on TV saying: I am the CEO of this corporation, and I approve this ad. We don't get the immediate disclosure we should as to who is paying for that ad. That is all this DISCLOSE legislation does.

Long term, no question, we need a constitutional amendment to overturn Citizens United. It would be awfully nice if maybe our friends on the Supreme Court realized the error of their ways and acted accordingly. But at the very least here in the Congress, we need to pass a DISCLOSE piece of legislation and minimize the severe damage that Citizens United is doing to our democracy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. It is my understanding I am to be recognized at 2 p.m. for 10 minutes. I understand the majority leader has something to say at about 2:15 in regard to the progress of this bill.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, I rise today to speak on the legislation that is actually before us as opposed to the topic before, the Food and Drug Administration Safety and Innovation Act that we are currently debating. In addition to reauthorizing the user-fee agreements, this legislation includes many other important provisions. Members should know what is in this bill and how important these provisions are.

There is language to permanently reauthorize pediatric research incentives, programs to incentivize antibiotic research and development, and more transparency and accountability for the FDA and stakeholders, which we hope will help to address drug shortages. That is a big problem not only in urban areas but in the rural health care delivery system in every State. Every Senator ought to be aware of that, and I am sure they are hearing about it.

In May I joined with Senators REED, MURRAY, and ALEXANDER in introducing the Better Pharmaceuticals and Devices for Children Act, the BPDCA. I don't think that makes a very good acronym, so I am not even going to try it. Back in 1997 Congress passed the Best Pharmaceuticals for Children Act, which acknowledged the importance of ensuring medications were effective and safe for children by providing an incentive for pharmaceutical companies to invest in pediatric research. In 2003, with the passage of the Pediatric Research Equity Act, Congress required the pharmaceutical companies to engage in these studies.

These bills are often referred to as the carrot-and-the-stick approach for pediatric drug development. I prefer carrots to sticks around here, especially mandates, but they have proven over time to work—the carrot-and-the-stick approach. Since the enactment of these laws, approximately 426 drug labels have been revised with important pediatric information, and the number of off-label drugs used in children has declined from 80 to 50 percent. That is certainly good news.

In 2007 a complementary initiative to promote the development of pediatric medical devices; that is, the Pediatric Medical Device Safety and Improvement Act, was enacted. This law has resulted in a fivefold increase in the number of small-market medical devices designated for pediatric use.

The Better Pharmaceuticals and Devices for Children Act will permanently extend these worthwhile programs, while providing some real predictability and accountability for pediatric drug and medical device development.

The legislation also includes the Generating Antibiotic Incentives Now Act that I joined with Senators BLUMENTHAL and CORKER in supporting last year. This title contains provisions that aim to boost development of products to treat serious and life-threatening infections—something that is a

growing problem in all of our hospitals. It provides meaningful market incentives and reduces—get this—reduces regulatory burdens. Glory be. Here is a bill that actually reduces regulatory burdens to encourage development of new antibiotics. Why? Well, the antibiotic pipeline has slowed to an alarming rate. According to the FDA, the approval of such drugs has decreased by 70 percent since the mid-1980s. This is unacceptable. The development of just one new antibiotic can take upwards of 10 years. We must act now to avoid a potential health care crisis.

When I am back in Kansas—and I know when other Senators are back in their States—talking to folks about health care, I often hear about the problem with drug shortages. When a problem exists in an urban setting, simply multiply that 10 times, and that is what we have in our rural areas. This is never more true than on the issue of drug shortages. This is a crisis. As difficult as it is to hear from my hospital administrators and pharmacists in Kansas about the difficulties they are having in getting drugs to fill prescriptions for patients, nothing compares to the patients and the families of patients who can't get their drugs, who can't get their treatment, who are already scared about their future and they can't get their lifesaving medication due to shortages. This is unacceptable. That is why I joined with a number of my colleagues on the HELP Committee to work together to see if we could come to a bipartisan consensus on a way to alleviate at least some of the burden drug shortages create. The legislation now requires reporting on drug shortages, but it also provides some transparency and accountability in the hope that we can get to the root cause of this problem.

Not everything in this legislation is what I would have done if I had my choice—that is obvious and probably the case with every Senator and every major bill on which we must make decisions. I am certain many of my colleagues on the HELP Committee are thinking the same thing. However, I think we are all pleased we were able to come to a bipartisan consensus on this legislation and in addressing many of the issues that are affecting Kansans and the rest of Americans.

I talked with a fellow last night who said: Why can't you all work together? Why can't you pass something in a bipartisan way?

This legislation is a good example of exactly what that gentleman was talking about and what a lot of Americans are concerned about. In that regard, I thank Chairman HARKIN and Ranking Member ENZI for all of their work and for all of the work by their staff and our staff over the past years and months in putting together this important piece of legislation. This took a long time. It took a lot of effort. It took a lot of hard work. Their commitment to a bipartisan process and their willingness to communicate with all

the members of the HELP Committee has led us through a relatively non-contentious markup, and I hope the same will happen as we consider this legislation on the floor.

I yield the floor.

The PRESIDING OFFICER (Mr. CARDIN). The Senator from New York.

#### CAMPAIGN FINANCE REFORM

Mr. SCHUMER. Mr. President, I thank my friend from Kansas for finishing his speech in a timely manner.

I come to the floor to talk a little bit about the DISCLOSE Act and Citizens United. For the last 2½ years, Americans have heard us talk about the need for full disclosure of money donated to campaigns. It is time for Congress to stop stalling and let the American voters find out where the money being spent on elections is coming from once and for all.

All of our predictions in the aftermath of the flawed Citizens United decision unfortunately are coming true. This decision handed a megaphone to the wealthiest voices among us and strapped a muzzle on every other American. Sure, average Americans can talk to one another, but they are not spending \$10 million on TV ads, and we know what kind of an effect that has. If anything, the situation is even worse than we could have possibly anticipated because unlimited spending by just a handful of the wealthiest Americans has put true democracy in danger—a true democracy of one person, one vote, of true equality. This is worrisome when we have such huge amounts of money being spent by so few people who seem to speak with one voice and one conservative point of view.

The list of the top donors to super PACs reads like a who's who of the richest people in America. The contributions to super PACs that were released in the most recent disclosure reports are truly astonishing. Six-figure sums seem like pocket change now compared with today's trend of seven- and eight-figure donations.

Let's take Bob Perry, for instance, top donor to Mitt Romney's super PAC, Restore Our Future. People may know him as the former top donor to Swift Vets and POWs for Truth, the group that ran smear ads questioning JOHN KERRY's military service in 2004. When we add up his donations to super PACs this cycle, we have almost \$14 million of political influence from just one man. Another example is Harold Simmons. When we combine his personal donations with the corporation he owns with his wife, we get contributions of over \$17 million to six different super PACs.

Because disclosures to the FEC are only made publicly available once a month, this paints a mere fraction of the picture of total super PAC spending. The reports don't even address spending through so-called nonprofit organizations. As we all know, 501(c)(4) organizations are able to serve as conduits for huge sums of anonymous

funding that are never publicly disclosed. I call them "so-called" because they function the same as the super PACs, except they can't say "vote for" or "vote against," but their effect on campaigns, obviously intended, is just as real.

It doesn't stop at the Federal level. We are also seeing the concern over corporate spending at the State level through the Montana case, American Tradition Partnership v. Attorney General Bullock. This case hinges on a challenge to Montana's century-old campaign finance law by special interest groups that want to take advantage of the anonymous political spending made possible by Citizens United. In fact, the fundraisers in this case, a group called American Tradition Partnership, solicits contributors by actually bragging about their secrecy. In their promotional literature, they promise potential donors:

We're not required to report the name or the amount of any contribution that we receive. So, if you decide to support this program, no politician, no bureaucrat, no radical environmentalist, will ever know you helped make this program possible.

It is no surprise, given mounting concerns about the corruptive effects of unlimited and often anonymous campaign spending on our democracy, that so many individuals and groups have filed amicus briefs to this case—including Senators WHITEHOUSE and MCCAIN, several House Democrats, and dozens of others—urging the court to uphold Montana's 100-year-old law.

We cannot sit idly by and watch our democracy put up for sale to the highest bidders. Full disclosure—the kind the DISCLOSE Act of 2012 requires—is still necessary to shed light on which groups and individuals are funding our elections, to keep some modicum of faith that the voters at least know what is going on.

In 2010 the original DISCLOSE Act passed the House and had widespread support in the Senate and from the President but failed to gain cloture by one vote because not one Republican was willing to step across the aisle and do what the American people clearly regard as the right thing. Well, now there is no excuse. We have removed the original provisions my Republican colleagues most objected to. All that remains is disclosure and disclaimer, plain and simple.

The time to act on campaign finance reform is now. While America's richest billionaires can afford to keep contributing millions of dollars to super PACs and 501(c)s, America cannot afford to be kept in the dark any longer.

Mr. President, I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The majority leader is recognized.

#### FLOOD INSURANCE

Mr. REID. Mr. President, the first thing we are going to talk about—I have had conversations in the last few days—in fact, a longer period of time than that—with Senator VITTER, Senator COBURN, Senator JOHNSON, Senator SHELBY, and others on flood insurance.

Like a lot of things that happen, it has become critical that we do something on flood insurance. It affects almost 6 million people. We need to get something done on a more permanent basis.

There has been a general agreement—we do not have it in writing yet, but I want to make sure the record on the floor is clear what my intention is—that we would have a 60-day short-term extension. In that extension there would be language for the duration of 60 days that would include in that the second-home subject that is part of the underlying bill on which Senator COBURN is focused. That would be for 60 days. Then I would be happy to make a statement here on the floor today that during the next work period we will move to that bill, the flood insurance bill, so we would have the opportunity to make it permanent. It is very important we do that. With the economy being such as it is, we cannot, in this area—and probably others but in this one—we cannot have these short-term extensions. It does not allow people to do what they need to do. Mr. President, 40,000 homes a day go through a process where they have to have flood insurance. If there is no flood insurance, that is 40,000 loans every day that will not be approved.

Senators JOHNSON and SHELBY have done good work to narrow down the list of amendments we would have to consider when the Senate takes up this long-term flood insurance bill. It is my understanding there are a dozen or so amendments—six, eight on each side. But I hope we can do that. If we cannot do that, we are going to have to go to the bill anyway.

I wanted to make sure Senator VITTER, who is on the floor today, understands that is my understanding of things he and I have talked about in the last couple weeks.

I appreciate the work that Senators JOHNSON, TESTER, SHELBY, COBURN, and VITTER have put into working out an agreement on flood insurance.

As Senators have noted, this program that provides insurance coverage to 5.5 million people is set to expire next week.

If the program were to expire, new housing construction would stall, real estate transactions would come to a halt, and taxpayers would be on the hook for future disasters. So this is something that we have to do.

I understand that Senators JOHNSON and SHELBY have done good work to narrow down the list of amendments that we would consider when the Senate takes up a long-term flood insurance bill. I believe that they have made

good progress. And we could consider eight or even fewer relevant amendments per side on a long-term bill.

And thus I believe that the Senate can consider a long-term bill in the next work period. And I am committed to turning to a long-term bill in June.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I thank the distinguished majority leader very much for this important announcement and this plan. It certainly meets two—

Mr. REID. Mr. President, it is my understanding he was going to ask me a question, because I do not want to lose the floor.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. VITTER. Yes. I have no intention of his losing the floor. I just want to thank him for the announcement. From my perspective, it meets the two main goals we have been in search of: first of all, making sure in the short term there is not a lapse of the program; that would be disastrous; that would cancel, as the majority leader suggested, thousands of good closings, really put a hiccup in the economy for no good reason—and, in addition, getting to a permanent bill in the next work period. So I appreciate the leader's announcement.

I would also note, as he did, that there has been great work and great progress in narrowing the field of relevant amendments. I certainly hope that leads to a limited and reasonable number of amendment votes, as he does, on the floor. I understand what he said about, if that becomes unwieldy, we will just proceed with the bill as is. But that certainly it is my expectation. I will continue to work on that amendment list so we can have a reasonable opportunity for relevant amendments.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I am glad the Republican leader is on the floor. We have worked very hard to arrive at this point where I am going to ask for this consent agreement. I appreciate everyone's help, and it takes everyone's help to get to where we are. That is why we call them unanimous consent agreements.

I ask unanimous consent that the only first-degree amendments in order to the bill that is now pending before the Senate be the following: Bingaman No. 2111; McCain No. 2107—

The PRESIDING OFFICER. Will the majority leader suspend for one moment.

#### FOOD AND DRUG ADMINISTRATION SAFETY AND INNOVATION ACT

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S. 3187 is agreed to and the clerk will report the bill by title.

The bill clerk read as follows:

A bill (S. 3187) to amend the Federal Food, Drug, and Cosmetic Act to revise and extend

the user-fee programs for prescription drugs and medical devices, to establish user-fee programs for generic drugs and biosimilars, and for other purposes.

AMENDMENT NO. 2122

(Purpose: In the nature of a substitute)

The PRESIDING OFFICER. Under the previous order, amendment No. 2122 is agreed to.

(The amendment is printed in the RECORD of Monday, May 21, 2012, under "Text of Amendments.")

The PRESIDING OFFICER. The majority leader.

Mr. REID. Thank you very much, Mr. President. I am sorry I got ahead of the Chair a little bit.

I ask unanimous consent that the only first-degree amendments in order to the bill be the following: Bingaman No. 2111; McCain No. 2107; Sanders No. 2109; Murkowski No. 2108; Cardin No. 2125; Cardin No. 2141; Grassley No. 2121; Grassley No. 2129; Manchin No. 2151, as modified; Portman No. 2146, as modified; Portman No. 2145, as modified; Reed No. 2126; Coburn No. 2132; Coburn No. 2131; Durbin No. 2127; Paul No. 2143; and Burr No. 2130; that there be no second-degree amendments in order prior to the votes in relation thereto; that there be no motions or points of order to the amendments or the bill other than budget points of order and the applicable motions to waive or motions to table; that there be up to 30 minutes of debate on each of the amendments, with the exception of the McCain amendment, which will have 2 hours of debate, and 60 minutes on the bill, with all time equally divided in the usual form; that at 2 p.m. on Thursday, May 24, all debate time be considered expired and the Senate proceed to votes in relation to the amendments in the order listed above; that there be 2 minutes of debate equally divided in the usual form prior to each vote; that all after the first vote be 10-minute votes; that the following amendments be subject to a 60 affirmative vote threshold: Bingaman No. 2111, McCain No. 2107, Sanders No. 2109, and Murkowski No. 2108; that upon disposition of the amendments, the bill be read a third time and the Senate proceed to vote on passage of the bill, as amended.

That upon disposition of S. 3187, the Senate proceed to the consideration of Calendar No. 365, S. 2343; that the only amendment in order to the bill be an amendment from the Republican leader or his designee, the text of which is identical to S. 2366; that there be 10 total minutes of debate on the amendment and the bill equally divided between the two leaders or their designees prior to a vote on the McConnell or designee amendment; that no amendment be in order to the McConnell or designee amendment; that no motions or points of order be in order to the amendment or the bill other than budget points of order and the applicable motions to waive; that upon disposition of the amendment, the Senate proceed to vote on passage of the bill, as amended, if amended; that the

amendment and the bill be subject to a 60 affirmative vote threshold; that if the bill does not achieve 60 affirmative votes, S. 2343 be returned to the calendar; and finally, that the motion to reconsider with respect to the cloture vote on the motion to proceed to S. 2343 be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. So, Mr. President, we are going to have votes on these amendments. It is my understanding that there is time, 30 minutes per amendment. We need to get as much of that done today as possible. We have an event for spouses tonight, so we are not going to be working late into the night. We have tomorrow to finish this. We should be able to do that. I hope we can. I hope it does not spill and there is no reason it should spill over until the next day. We are going to also have votes on the Republican student loan legislation and ours. That is what we are doing in the next 36 hours.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Mr. President, let me just add that I think this is a good agreement that allows us to go forward on the FDA bill with appropriate amendments and also allows an opportunity for the Senate to express itself on the issue of the student loans.

I would join the majority leader in encouraging people to do their debate today or in the morning because once we get into the votes tomorrow afternoon, they will be dealt with in rapid succession.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise to discuss my amendment that would repeal the costly and counterproductive medical device tax in President Obama's health care law. In the mad scramble to find money to pay for his \$2.6 trillion health spending law, the President and his Democratic allies created a number of new taxes that serve no purpose other than to fuel this new spending. Economically, these taxes are a disaster. They will undercut job creation, and they will increase costs for patients.

The new 2.3-percent tax on medical device manufacturers, which kicks in at the beginning of next year, is particularly onerous. For that reason, last year I introduced legislation to repeal it. That bill, the Medical Device Access and Innovation Protection Act, S. 17, has been cosponsored by 25 of my colleagues.

They understand that all of ObamaCare needs to go. The President's health care law is now over 2 years old. It is not aging well. Even before ObamaCare became law, the American people made themselves absolutely clear they wanted nothing to do with this Washington takeover of the Nation's health care system. The President and his advisers refused to face reality, telling reluctant Democrats all