insurance mandate for employers violated RFRA's statutory protections on religious freedom by forcing employers to provide health insurance coverage for abortion-inducing drugs and devices. Judge Gorsuch's opinion explained why the owners of one of the plaintiff companies were entitled to relief under RFRA. As an initial matter, he noted that the owners' ''religious convictions are contestable'' and that ''[s]ome may even find [their] beliefs offensive,'' but that RFRA ''does perhaps its most important work in protecting unpopular religious beliefs.''

Judge Gorsuch then turned to the statutory interpretation question at issue and noted that the case was a ''tale of two statutes.'' Wrote Judge Gorsuch: ''The ACA compels the [plaintiffs] to act. RFRA says they need not. We are asked to decide which legislative direction controls.'' To decide which statute controlled, he did not defer to the executive branch's position on the matter. Nor did he seek to impose his own policy preferences. To the contrary, he noted that ''[t]he tiebreaker is found not in our own opinions about good policy but in the laws Congress enacted.'' Because ''Congress structured RFRA to override other legal mandates, including its own statutes, if and when they encroach on religious liberty,'' and ''because the government identifies no explicit exclusion in the ACA to its dictates,'' Judge Gorsuch concluded, RFRA's directive prevailed.

Even a casual review of Judge Gorsuch's opinions should eliminate any concerns my Senate colleagues may have concerning his commitment to the Constitution's separation of powers. In his opinions, Judge Gorsuch has resisted executive branch efforts to make laws as opposed to merely enforcing those laws as written. Indeed, his opinions and other writings cogently make the case for this approach to separation of powers in a way that finds few rivals on the federal bench and reminds me much of the case Justice Scalia made during his time on the Court. Judge Gorsuch, moreover, has been a model of respect for the proper judicial role, a judicial philosophy under which ''judges seek to interpret texts as reasonable affected parties might have done rather than rewrite texts to suit their own policy preferences.''

To be sure, that Justice Gorsuch would be a fierce defender of the separation of powers and the rule of law does not mean his rulings will match his policy preferences, much less mine. In fact, in his tribute speech to Justice Scalia last year, Judge Gorsuch embraced Justice Scalia's philosophy of judicial restraint: ''If you're going to be a good and faithful judge, you have to resign yourself to the fact that you're not always going to like the conclusions you reach.'' That is precisely why Judge Gorsuch is the right choice for the Supreme Court.

Mr. HATCH. To be sure, that Justice Gorsuch would be a fierce defender of the separation of powers does not mean his rulings will match his policy preferences. As Justice Scalia wisely remarked, good and faithful judges will not always like the conclusions they reach in interpreting the law. And it certainly does not mean that his rulings will match my policy preferences or those of my colleagues. As I have repeatedly stated on this floor over decades, that is not the proper inquiry when we assess the qualifications of a nominee to the Federal bench. Federal judges must be judges, not super-legislators.

The bottom line is, even a casual review of Judge Gorsuch's opinions should eliminate any concerns my colleagues may have concerning Judge Gorsuch's commitment to the Constitution's separation of powers. Any review would lead to that conclusion. In his opinions, Judge Gorsuch has resisted executive branch efforts to make laws as opposed to merely enforcing those laws. Judge Gorsuch's opinions and other writings make the compelling case for separation of powers in a way that finds few rivals on the current Federal bench.

If my colleagues are truly concerned about the proper separation of powers between the three branches of government, there is a simple solution: Confirm Judge Gorsuch as an Associate Justice on the United States Supreme Court.

REPEALING AND REPLACING OBAMACARE

Mr. President, I want to once again discuss the ongoing effort to repeal and replace the so-called Affordable Care Act. This is one of our most vexing issues of the day. Of course, this isn't the first time I have come to the floor to discuss ObamaCare, and I am fairly certain it won't be the last.

I was here just last week, in fact, talking about the general unanimity among Republicans on these issues, despite the seemingly eternal focus on the supposed divisions among our ranks. While some are still advancing that narrative, Republicans are, overall, still united in our desire to repeal and replace ObamaCare. As I said last week, I don't know if there is a single Republican in Congress who supports keeping the healthcare status quo in place. All of us want to right what went wrong with the poorly named Affordable Care Act and provide patients and consumers with more healthcare choices that address healthcare costs.

Most differences of opinion that do exist on these matters are more about timing than anything else. As I have said before, I support moving quickly to repeal ObamaCare and include as many replacement policies as possible under the rules of the reconciliation process. More specifically, I support repealing ObamaCare's harmful taxes, and I will explain why.

Put simply, the tax provisions in ObamaCare were poorly conceived and recklessly enacted, and they are harmful to our economy. Those taxes came in a number of forms, including the employer mandate and the individual mandate, both of which are enforced through the Tax Code.

In addition, there is the health insurance tax, the Cadillac tax, along with new taxes on healthcare savings and pharmaceuticals. ObamaCare also included a payroll tax hike for some high-income earners as well as additional taxes on investing. And, of course, we cannot forget the medical device tax, which, in just the first 3 years that ObamaCare was implemented, resulted in more than 30,000 lost jobs in that important industry.

All told, the tax provisions of the Affordable Care Act represented a trillion-dollar hit on the U.S. economy in the first 10 years, and the burdens of the vast majority of these taxes are ultimately borne by patients and consumers in the form of higher costs, larger tax bills, and reduced value in existing health plans and savings accounts.

I know some of my colleagues like to plead ignorance on the notion that taxes on a particular industry tend to be passed along to that industry's consumers, but it is a fact that can't be ignored. Taxes on health insurance plans increase premiums for patients. Taxes on drug companies make drugs more expensive. Taxes on medical device sales increase the costs of those devices.

It is not a complicated concept; it is the natural byproduct of tax provisions negotiated with stakeholders behind closed doors under threat of increased government intrusion and market regulation. These taxes weren't drafted solely to pay the cost of ObamaCare; they were also part of a strategy to get the law through Congress, dividing the business community and pitting industries against one another to prevent widespread opposition. As I said, at the end of the day, it is patients and consumers—individuals and families—who pay most of the freight on these types of tax policies.

Don't take my word for it. Let's look at one major example. Congress's nonpartisan scorekeeper, the Joint Committee on Taxation, indicated that, by and large, the tax on health insurance premiums would be passed along to health insurance policyholders.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the JCT to Senator GRASSLEY, dated October 28, 2009.

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

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, October 28, 2009.

Hon. CHARLES E. GRASSLEY,
Ranking Member, Committee on Finance, U.S. Senate, Washington, DC.

DEAR RANKING MEMBER GRASSLEY: You requested that we provide you with an analysis of the incidence of the insurance industry fee provision of S. 1796, the ''America's Healthy Future Act,'' our estimate of the effect on the after-tax price of purchased health insurance, and a distributional analysis of the provision.

INSURANCE INDUSTRY FEE

Sec. 6010 of S. 1796 would impose an annual fee on any covered entity engaged in the business of providing health insurance with respect to United States health risks. Under the provision, employers who self-insure their employees' health risks and governmental entities are not covered entities.

The fee applies for calendar years beginning after 2009. The aggregate annual fee for all covered entities is $6.7 billion. Under the provision, the aggregate fee is apportioned among the covered entities based on a ratio designed to reflect theft relative market share of U.S. health business.

For each covered entity, the fee for a calendar year is an amount that bears the same

ratio to $6.7 billion as (1) the covered entity's net premiums written during the preceding calendar year with respect to health insurance for any United States health risk, bears to (2) the aggregate net premiums written of all covered entities during such preceding calendar year with respect to such health insurance.

INCIDENCE OF INSURANCE EXCISE TAXES

The proposed fee is similar to an excise tax based on the sales price of health insurance contracts. The effective excise tax rate varies from year to year depending upon the aggregate value of health insurance sold. The economic incidence of an excise tax imposed on sale of health insurance contracts (that is, who actually bears the cost of the tax) may differ from the statutory incidence of the tax (that is, the person on whom the tax is levied). Taxes may be borne by any of the following: consumers in the form of higher prices; owners of firms in the form of lower profits; employees in the form of lower wages; or other suppliers to firms in the form of lower payments. This makes generalizations about the incidence of taxes difficult to make. Nonetheless, two principles have general validity. First, economic incidence does not depend on whom the tax is levied. Whether the statutory incidence of the tax is on the consumer, the employer, or the insurer, the economic incidence is the same regardless of who writes the check to the government. Second, taxes are shifted from those who are more sensitive to price changes (economists describe these individuals and entities as having more ''elastic'' supply and demand) to those who are less sensitive to price changes (those with more ''inelastic'' supply and demand).

In the case of competitive markets, an excise tax generally is borne entirely by consumers in the form of higher prices in the long term. An excise tax increases the cost of producing an additional unit, or incremental cost, of the taxed good by the amount of the tax. In a competitive market, market forces cause the after-tax price of a good to equal the additional cost of producing and selling another unit of the good. Competition drives the price down to equal the incremental cost of the provision of the good or service, including the return to incremental invested capital. If supply is perfectly responsive to price changes, any price above incremental cost would induce new firms to enter and increase production until prices were bid back down to incremental cost. Similarly, any price below incremental cost would induce firms to exit or reduce production (because they would now be losing money selling the taxed good). The reduction in supply allows prices to increase back up to incremental cost.

This response may be observed even if some of the participants in the competitive market do not seek to maximize profits as their primary objective. Tax-exempt and nonprofit producers may also pass on the tax as they also face the increased incremental cost, which they will need to recover. If they cannot, for example, raise additional funds from donors, effectively passing the tax on to them, their alternative is to pass on the tax to consumers in the form of higher prices.

While consumers are thought to bear the burden of excise taxes in competitive markets, some may question the degree of competition in health insurance markets. Recent surveys have noted that many markets are characterized by the presence of only a few firms. Additionally, there may exist barriers to entry in the health insurance market, including multiple State regulatory requirements, the cost of establishing health provider networks, health provider network effects (i.e., the value of a health provider network to consumers rises with the size of the network), and efficiencies in risk shifting and risk distribution for large firms.

However, the absence of many competitors does not by itself imply that there is no competitive pressure on prices. The threat of potential entrants may provide competitive price pressure on the existing firms. Furthermore, the option to self-insure may provide a source of potential competition for full, purchased insurance, at least for larger firms.

If the insurance industry is not perfectly competitive in a particular market, the question remains as to what extent an insurance excise tax would be borne by consumers or producers in that market. Theoretical analysis has shown that, depending upon market conditions, the price could increase by: (1) more than the amount of the tax; (2) exactly the amount of the tax; or (3) less than the amount of the tax. Various empirical studies have examined the effect of excise taxes on prices in less than perfectly competitive markets. Studies of the tobacco industry suggest that manufacturers pass on more than the full amount of the tax, while studies of less than perfectly competitive retail gasoline markets in rural areas suggest that producers pass on nearly all of the tax. Even in the rural retail gasoline markets in which gas stations may be the sole provider of gasoline for many miles and firms exhibit some pricing power, nearly 95 percent of the excise tax is still passed on to consumers.

While uncertainty exists, we assume that a very large portion of the excise tax on purchased insurance will be borne by consumers in most markets, including in some markets with a high level of concentration among market participants covered by the proposed excise tax. In the context of general health care reform legislation, this assumption is further supported by the presence of an excise tax on individuals without minimum essential benefits coverage, which is likely to make demand for insurance somewhat less sensitive to changes in price, as consumers will have to buy insurance or face a penalty. While consumers (or employers) may respond by changing their insurance coverage from more expensive coverage to less expensive plans to offset any potential price increase, this behavior too is properly characterized as the consumers bearing the burden of the excise tax by accepting lower quality (for example, a more restricted physician network) for the same price rather than paying a higher price for the quality of insurance that they would prefer if there were no tax. To the extent that firms can avoid the tax by switching from full insurance to self-insurance, this may suggest that insurers are unable to pass on the full cost of the excise tax on purchased insurance. Increased self-insurance from firms avoiding the excise tax may increase the cost of this health benefit to employees as firms that previously chose full insurance, presumably because it cost less in the absence of the excise tax than self-insurance, switch to higher cost self-insurance. Additionally, to the extent that insurers maintain some pricing power in the administrative services that they provide self-insurers, the self-insurance market may bear some of the burden of the excise tax as well.

EFFECT OF THE FEE ON THE COST OF PURCHASED HEALTH INSURANCE

The aggregate value of the proposed fee is the same for each year. The current law baseline for health insurance premiums projects rising health insurance premiums annually through the budget period. Consequently the magnitude of the proposed fee declines annually relative to the sale of health insurance. Given the incidence analysis discussed above, while there is imcertainty, we expect a very large portion of proposed insurance industry fee to be borne by purchasers of insurance in the form of higher premiums. Our estimate is that the premiums for purchased health insurance policies, including the tax liability, would be between 1.0 and 1.5 percent greater than they otherwise would be as a consequence of the industry fee for calendar years 2010, 2011, and 2012.

DISTRIBUTIONAL ANALYSIS OF THE INSURANCE INDUSTRY FEE

Regardless of the determination of the economic incidence of the proposed insurance industry fee of S. 1796, at the present time the staff of the Joint Committee on Taxation is not able to distribute the effects across individuals on our individual tax model. The proposed insurance industry fee would apply only to the revenues from underwritten policies sold to third parties. It would not apply to the value of health benefits received by individuals through their employers who self-insure the health risks of their employees. Our individual tax model is based upon a sample of approximately 180,000 actual tax returns. To distribute proposed tax changes related to economic activity that is not already reflected on the individual tax return we impute values or statistically match supplemental information such as data gathered by the Census Bureau, to the individual tax returns of our model. For our quantitative analysis of employer-provided health benefits we have made such imputations of data relating to employees' employer-provided health care benefits to the individual model. These imputations are based on the data collected as part the Medical Expenditure Panel Survey (''MEPS''), a survey undertaken by the Agency for Healthcare Research and Quality of the Department of Health and Human Services, However, the imputations we have made to the individual tax model at this time relate only to the value of employer expenditures for the health care of their employees. These imputations do not generally distinguish between the employers' purchased insurance coverage and benefits for which the employer self-insures. Consequently, we are unable to distribute either the economic incidence or the revenues generated from the proposed fee of S. 1796, which applies only to purchased health insurance,

I hope this information is helpful to you. Please contact me if we can be of further assistance,

Sincerely,

THOMAS A. BARTHOLD.

Mr. HATCH. While we are setting the record straight on ObamaCare, my colleagues on the other side have repeated a particular false claim that needs correction. My Democrat friends are fond of characterizing the repeal of ObamaCare as a tax cut for high-income earners and a tax increase for low- and middle-income taxpayers. That claim is simply false.

According to JCT, the Joint Committee on Taxation, the Affordable Care Act imposed significant and widespread tax increases on taxpayers earning less than $200,000 a year, despite President Obama's repeated promises that the law would not do so. In fact, in 2017, a single provision—the reduction in the deductibility of catastrophic losses—is projected to raise taxes on 13.8 million taxpaying families and individuals, mostly from the middle class. That is more than the number of taxpayers who receive exchange credits and other premium subsidies under

current law. That is just one example. There are others.

Fortunately, we have been able to forestall the impact of a number of the ObamaCare tax provisions. We have fought and negotiated long and hard to do so, but virtually all of those taxes are still looming on the ObamaCare horizon.

Most of us on the Republican side have been fighting these taxes more or less since the day ObamaCare was signed into law. We have highlighted their harmful impact on the economy and decried the crony capitalism that was behind the effort to draft and enact them.

Given this long history, at least in my view, it is essential that we repeal all of these taxes, along with the rest of ObamaCare. It is difficult to imagine how Republicans, who are now in the majority in large part due to the promises we made to repeal and replace the Affordable Care Act, can now sift through ObamaCare's taxes and decide which ones are the least objectionable so that we can use them to pay for our own healthcare reforms.

ObamaCare isn't problematic simply because healthcare costs are not going up; it was fundamentally flawed at the outset. The way the law was drafted was, and still is, a problem. The way the law was negotiated—with stakeholders being played against each other—was, and still is, a problem. Of course, the way the law was paid for was, and still is, a problem. The ObamaCare taxes are a big part of this equation. In my view—and, I think, the view of the vast majority of my Republican colleagues—they have to go.

As I said, there really are not widespread disagreements among Republicans on these issues. Overall, we broadly agree on the fundamental issues surrounding ObamaCare, and, as I noted last week, it is not all that problematic to have some differences of opinion on the initial stage, so long as we can overcome those differences in the end. I think we can do that. More importantly, I think we will.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. LEE). The Senator from Illinois.

Mr. DURBIN. Mr. President, pending before the U.S. Senate is the nomination of MICK MULVANEY, a Congressman who is seeking to be the Director of the Office of Management and Budget.

If you were to ask the people of America about the Cabinet positions filled by the President, the one they probably would miss is the Office of Management and Budget. It turns out to be one of the more important positions, but it is not as well known historically as Treasury Secretary, Secretary of State, and Attorney General. It is an important job. It is one of the most consequential jobs because the Director of the Office of Management and Budget is responsible for preparing the President's budget, setting the priorities of the Federal budget, and overseeing the performance of Federal agencies. It is a big and challenging job.

Many other nominees for positions in the Cabinet are well known and have been debated on the floor of the Senate. Today I come to say a few words about the record of this Congressman, MICK MULVANEY, who is seeking this directorship of the Office of Management and Budget. It is a very interesting record.

It is not unusual for Members of the House and the Senate to have unusual positions on issues. I guess each one of us has something we believe intensely that other people question. When it comes to Congressman MULVANEY, there is a long litany of positions he has taken that are far out of the mainstream of either political party. Yet President Donald Trump decided this is the man, this is the person he wanted to head up his budgeting effort. This is the person he wants to set the priorities for spending in the United States of America during his Presidency.

If you look at the record of MICK MULVANEY, you will find that he has had an eagerness to dictate large and draconian cuts across the Federal Government in some of our most important and most cherished programs. Let me tell you about a few that highlight his record in Congress. Each one of these that I will speak to, if advanced by the Director of the Office of Management and Budget, would have far-reaching consequences on families and individuals across the United States, not only in the operation of government but also in the effectiveness of our Federal workforce.

To start with—and this, I think, is the right place to start—Congressman MULVANEY, who seeks the position of Director of the Office Management and Budget, has repeatedly led efforts to shut down the Federal Government. When Mr. MULVANEY and the Republicans succeeded in shutting down the government for 16 days in 2013, it cost the American economy $20 billion. Do you remember that?

Rush Limbaugh got on his radio show and said: If they shut down the government, no one will even notice.

Guess what, Mr. Limbaugh. They noticed.

All across America, working families paid the price for that foolish political act of shutting down the government. The real cost of the government shutdown is not just measured in dollars. The real cost is in hardships unnecessarily created, hardships for Federal employees who didn't receive their checks on a timely basis, hardships for people struggling to survive in America, who relied on programs like food stamps. We call them SNAP benefits now. They had their food in jeopardy and endangered because Congressman MULVANEY and his friends thought that a display of political power—shutting down the government—was the right recipe for America.

These government shutdowns delayed 2 million Federal workers from receiving their checks, real people with real families to feed. Congressman MULVANEY doesn't seem to care about these real-world consequences of a shutdown. Instead, he called the shutdown of the Federal Government ''good policy.'' Those are his words: ''good policy.''

Then, when we finally reached an agreement to reopen the government, he was one of the few Members of the House to vote against the compromise in reopening the government.

In recent years, he has repeated his calls. He is willing to shut down the government of the United States of America to defund Planned Parenthood. This man wants to craft our national budget, and he would shut down the government over one provision in that budget? That is what he said.

Time and again, he has taken extreme positions on the Federal budget. We have a standing tradition in the House and the Senate. Since not one of us can predict when the next natural disaster is going to occur, we try to help one another.

I have voted for funds during the course of my congressional career for disasters in probably every State in the union. Do you know why? Because I knew the day would come—and it did, several times during my tenure in the House and Senate—when there would be a natural disaster in my State, and we needed a helping hand, emergency disaster assistance. That is a tradition which has been around Congress—I can go back almost centuries to see it in past history.

Listen to what Congressman MULVANEY did. He tried to block emergency disaster assistance to States that desperately needed the help of the Federal Government in their recovery efforts. He offered a poison pill amendment to the Hurricane Sandy relief package that would have required across-the-board cuts in military spending—military spending—to pay for disaster relief from Hurricane Sandy. Then he went further and said: Not just military spending, I want cuts in entitlement programs—Medicare, Medicaid. Let's cut the healthcare assistance for Americans to pay for that disaster. That is his idea of social justice.

Despite President Trump's campaign promises to rebuild the Nation's crumbling infrastructure, Congressman MICK MULVANEY has taken an extraordinary and extreme view. He wants to eliminate Federal funding for transportation projects. He cosponsored a bill that would slash the Federal gas tax. That is how we pay for repairing Federal roads and mass transit across America. He isn't interested in fixing the highway trust fund solvency problems. His solution is to bankrupt it.

This is the man who wants to write the budget for America? His extreme ideology would threaten billions of dollars that my State receives in Federal transportation funds. We put money into the Federal highway trust fund,

too, every time we buy a gallon of gas in Illinois. He would cut back on the resources coming back to my State and others to repair the very roads we drive on.

He has consistently supported across-the-board cuts for the Department of Defense, regardless of those affected. Just a few minutes ago, Senator JOHN MCCAIN, the senior Senator from Arizona, came to the floor to announce that because of Congressman MULVANEY's positions on cuts in the military, he—Senator MCCAIN—would oppose the appointment of MULVANEY as head of OMB. Senator MCCAIN said that it is a rare day when he comes out against a Presidential nominee of his own party. But he thinks MULVANEY's record is worrisome, and I couldn't agree more. The positions that Congressman MULVANEY has taken are reckless and would jeopardize the economic security of working families and put our Nation and economy at risk.

Possibly one of the most troubling positions that Congressman MULVANEY has taken is the fact that he is opposed to the Federal Government spending funds for medical research. Last year when Congress was deliberating how to combat the Zika virus, Representative MULVANEY wrote this on his Facebook page: ''Do we really need government-funded research at all?''

Let's think about that for a moment. Do we really need government-funded medical research in the United States? Do we need the National Institutes of Health, the Department of Defense, and the Veterans' Administration investing in trying to find new cures for diseases?

Government-funded research in the Department of Defense has produced fascinating insights into the biology of breast cancer that have greatly impacted the treatment of that disease and saved lives in America. Look at the revolutionary Department of Defense-funded work that led to the development of the innovative drug Herceptin. Government-funded research, which Congressman MULVANEY does not believe we should do, at the National Institutes of Health has accomplished the following. It has cut the U.S. cancer death rate by 11 percent in women and 19 percent in men. And Congressman MULVANEY says: Do we really need to do that? Is that important? I would guess that his family, like every family in America, has a story to tell about cancer—what it has meant, the devastation it has created, the deaths that have resulted.

But Congressman MULVANEY doesn't get it. He just doesn't understand anything as basic as investing in medical research to save lives. HIV/AIDS is no longer a death sentence in America. I saw Magic Johnson just a few weeks ago at a farewell party for President Obama. I remembered the day in the House of Representatives when I was told that he had AIDS. We assumed he would die in just a short period of time. But that was over 25 years ago. He has survived because of research that was done at the National Institutes of Health, and he is not alone. There are thousands just like him.

When I was a kid, polio was something every mother and father were frightened of. What in the world was happening? How could your child be infected with polio and end up being crippled for life? Our Republican leader here, MITCH MCCONNELL, went through that in his childhood and has talked about that episode in his life and how devastating it was. He has had a full life since then, but he has overcome the problems of that disease. I remember as a kid in grade school, when they announced that our government research had come up with a vaccine that would protect kids from polio. That, to me, was a breakthrough, and one that I welcomed and our family welcomed.

Congressman MULVANEY questions whether or not medical research should continue, even in the light of the achievements in eradicating polio and small pox and other diseases in our country. These advances didn't just magically happen because of the miracle of the marketplace. They occurred because of sustained taxpayer investment in Federal medical research.

I will tell you this. If he wants to make a referendum in the Senate or the House on medical research a part of his budget debate, I welcome the challenge. I believe that Members of both political parties would stand up for medical research, despite Congressman MULVANEY's extreme positions.

So when someone asks if we really need government-funded medical research, the answer on behalf of cancer patients who are beating the disease, on behalf of HIV/AIDS patients who are living longer and normal lives, on behalf of all those families hoping and praying that some Federal researcher will come up with a breakthrough for Alzheimer's, for autism, or Parkinson's or diabetes—the answer, Congressman MULVANEY, is unequivocally, yes. America needs to invest in medical research. And the fact that you would question it really raises the question of your judgment.

Let me tell you another thing that he is for, which I think is the single most irresponsible budgetary position he has taken. He has been an opponent of raising the country's debt ceiling.

What is the debt ceiling? That is America's mortgage. That is the amount of debt we incur as a nation. It is a mortgage that is incurred for things that we have already spent money on. So when we come and vote for $600 billion for the Department of Defense and the intelligence agencies and we don't have enough money coming in taxes to pay for it, we have to extend America's mortgage to cover it. Congressman MULVANEY says that is the wrong thing to do—extending the debt ceiling of this country. While running for Congress, Congressman MULVANEY, who now wants to manage our Nation's budget, pledged he would never ever vote to raise the country's debt ceiling. He voted against it four different times.

In 2011, when we were just about to breach the debt limit and default on our national debt for the first time in the history of our country, MULVANEY was a leading voice in support of default. He called it a ''fabricated crisis,'' and accused both parties of ''fear mongering.''

I am not sure what is more disturbing—Mr. MULVANEY's willingness to default on our country's obligations, the full faith and credit of the United States, or his lack of appreciation for the devastating economic consequences which would follow. I can tell you what is at risk with that kind of reckless attitude toward our Nation's debt. What is at risk are the savings and investments and retirement accounts of ordinary Americans across the Nation. Mr. MULVANEY may be willing to gamble the full faith and credit of the United States; I am not. Forcing the Federal Government to default on the Nation's debt would harm the economy and affect the government's ability to make payments to Social Security and Medicare recipients, military personnel, veterans, Federal employees, defense contractors, State governments, and to the bondholders of the United States, here and overseas.

We would lose our credibility if Mr. MULVANEY had his way and allowed us to default on our national debt. We should not ever consider confirming an OMB Director who has repeatedly risked the economic security of our Nation to score political, rhetorical points.

Throughout his campaign, President Trump promised to protect Medicare and Social Security and make decisions that would ''benefit American workers and American families.'' That is a quote. However, instead of making good on the promise, President Trump has chosen a man to head the Office of Management and Budget who has led calls for devastating cuts to Federal programs that millions of Americans rely on every day.

Mr. MULVANEY has said he wants to ''end Medicare as we know it,'' and he has called Social Security a ''Ponzi scheme.'' He has called for raising the retirement age for Social Security to 70, from the 67 that it currently is. Well, 3 more years at work may not mean much to a Member of Congress, because we sit down a lot in these comfortable chairs and people bring us things when we need them. But 3 more years of working before you qualify for Social Security means something to a waitress, whose hips and ankles and knees have been bothering her for years, but she has no choice but to get up every morning, go to work, carry those trays, and try to bring enough money home to help a family. It means something to someone who works in a coal mine—I guarantee you that—3 more years at work, exposing yourself to the lung diseases and other things

that might come with the job. It means something to a truckdriver, spending days and nights on the road. It means something to people who have to move freight around. It is the kind of thing that means a lot to ordinary working people. It clearly doesn't mean anything to Congressman MULVANEY. Three more years working, as far as he is concerned, is an acceptable alternative.

He wants to privatize Medicare and turn Medicare back into the loving arms of private health insurance companies, and let's see what seniors end up experiencing. Almost 60 million Americans now rely on Medicare. In Congressman MULVANEY's point of view, the guarantee of Medicare would end. This is the man President Trump has chosen to head the budget for the United States of America. MULVANEY has called repeatedly for cuts to Social Security, Medicare, and Medicaid, including a ''cut, cap, and balance'' budget, which would cut each of these programs by 25 percent. When you say the word Medicaid, people have an image in their mind: Oh, that is health insurance for poor people. And that is generally correct, although it also covers disabled Americans. But do you know who the major recipients of Medicaid are in America? The largest single group of people receiving help from Medicaid are children—children in poor, low-income families who get medical care through Medicaid. The biggest expenditure for Medicaid is not children though. The biggest expenditure is for the elderly Americans who are living largely at institutional settings, in these care homes, nursing homes. Medicaid keeps them in that place with adequate medical care. So now comes Congressman MULVANEY and says: Let's just cut those by 25 percent. There is one good way to reduce Federal spending.

Really? So that means fewer immunizations for children. What does it mean for your mother or your grandmother in the nursing home when it is announced that we don't have enough money to cover the cost to keep her here in a good, safe, positive environment? For Congressman MULVANEY, it is just numbers on paper. For real families across America, it is the reality of life.

Much like our new Secretary of Health and Human Services, Congressman Price, Representative MULVANEY wants to dramatically undermine the Medicare Program for our Nation's seniors. Let's look at what Medicare has meant to our country since it was created in 1965. Before Medicare, only 51 percent of Americans 65 and older had health care coverage. Nearly 30 percent lived in poverty. Today, 98 percent of seniors have health care, and less than 10 percent live below the poverty line. Has Medicare work? You bet it has. It has provided health insurance for seniors, and it has given people dignity and independence in their senior years—something that everyone should value. And, incidentally, the life expectancy of Americans has grown by 5 years since we created Medicare. It is working. Medicare helps seniors, helps their families, and it helps America. But Congressman MULVANEY doesn't get it.

This man has been chosen by President Trump to write the budget of America. Why is Congressman MULVANEY so hell-bent on ending a program like Medicare that 98 percent of our Nation's seniors depend on? Well, I can tell you, if his comments on Medicare scare you, on Medicaid he is even worse. This program, combined with the Children's Health Insurance Program, ensures health coverage for 70 million Americans. One out of every five nationwide depend on Medicaid. It helps low-income families, pregnant women, children, and those with disabilities. Currently, if you qualify for Medicaid, you are guaranteed to get health coverage. Congressman MULVANEY thinks he has a better idea. He wants to change that.

Congressman MULVANEY wants to significantly cut the Federal funding for Medicaid and leave States to fend for themselves when it comes to caring for these 70 million Americans. Faced with less Federal funding, States would be forced to find ways to cut spending and save money. They might start Medicaid waiting lists or impose work requirements or slash benefits. At the end of the day, the result would be catastrophic.

I just spent the last weekend in Southern Illinois. We had a roundtable down there to talk about the impact of the repeal of the Affordable Care Act. These hospital administrators from smalltown hospitals came in to tell me that losing Medicaid reimbursement could force them to dramatically cut their workforce and maybe even face closure. Here is Congressman MULVANEY suggesting: Let's just do that across America. I wonder where he lives. I wonder if there are any small towns or rural areas near him. I wonder if he values those hospitals the way the people living in communities that I represent value them. These are not only lifelines for people who desperately need timely, professional medical care, but they are the source of the best jobs in the community. Congressman MULVANEY could care less: Let's just keep cutting on Medicaid and see what happens.

What will happen will be devastating.

Mr. MULVANEY isn't content with just throwing seniors off Medicare and low-income families off Medicaid. He wants to punish women by taking away their healthcare providers and inserting his own decisions into their medical decisions. Mr. MULVANEY has repeatedly attempted to defund Planned Parenthood health centers, which provide women and men with important cancer screenings, family planning, STD testing, and other important health care services.

The laws of the United States of America provide that not one penny can be given to Planned Parenthood for abortion services—not one penny under the law. Most people, if asked what percentage of the Planned Parenthood budget is actually spent on abortion services would get it wrong. The actual number is 3 percent. Ninety-seven percent of what Planned Parenthood does, in terms of family planning, cancer screening, STD screening, has no relation directly to abortion services, and that is compensated, but abortion services are not under the law. Congressman MULVANEY could care less. He would close down the sources of family planning in small towns and communities around America.

The concerns I have laid out today are just a few that I have about this nomination. The millions of hardworking Americans who believed President Trump's campaign promises, and as a champion for the most vulnerable, deserve far better than Congressman MULVANEY.

There are real problems facing this Nation. Far too many people are struggling, and there is a lot of work to do. We cannot afford to risk our economic recovery, the retirement plans and savings of working Americans, the health of our children, the kind of care we want for our mothers and grandmothers—we cannot afford to risk them by appointing OMB Director MICK MULVANEY.

I have no choice but to oppose MICK MULVANEY's nomination for Director of the Office of Management and Budget.

Mr. President, MICK MULVANEY is a founder of the House Freedom Caucus, which has made repeal of the Affordable Care Act—without a replacement—one of their main causes. This is not about good policy or the real consequences for people around the country. This is about ideology.

Mr. MULVANEY wants to rip health insurance away from nearly 30 million people and deny people the important consumer protections they have come to depend upon. He would once again allow insurers to impose pre-existing condition exclusions and discriminate based on gender and cut off coverage when someone gets sick and needs it most.

His answer to fixing our health care system is ''free-market competition'' and ''crackdown on frivolous lawsuits. Those might make good talking points, but they will not stabilize our insurance market and help people in need.

The Illinois Hospital Association estimates that Republican plans to repeal the Affordable Care Act will result in the loss of up to 95,000 jobs in Illinois—in hospitals, doctor's offices, construction, real estate, and beyond.

Over the last month, I have been going around my State, meeting with hospitals and providers, talking to them about what repeal would mean. They are worried.

You see, Illinois hospitals and health systems generate nearly $90 billion in the State and local economies each year, and 1 in 10 jobs in Illinois is in

health care. Hospitals are vitally important to our State's economy and vitally important to patients in need.

Don't just take my word for it, Franklin Hospital CEO, Jim Johnson told me:

> In our community, at the time that the hospital in West Frankfort closed, we [Franklin Hospital in Benton] managed to stay open . . . they're just eaten up that they don't have a hospital anymore. It's incredible what the loss of a hospital can do to a small community. And I'm down there talking to those guys every day because naturally I like them to use our hospital . . . but those conversations, it has just torn this community apart.

In Illinois and nationwide, rural hospitals would be particularly hurt by Mr. MULVANEY and Republicans' prescription for chaos.

In Illinois, 62 of our 102 counties are rural. We have 51 Critical Access Hospitals, which are the hubs of their communities. Rural hospitals typically are more reliant on Medicaid and Medicare, and have tighter operating margins.

So what has the ACA meant for them? In States that expanded Medicaid, like Illinois, rural hospitals have seen greater financial stability thanks to the decrease in uncompensated care—or charity care—costs.

Thanks to the Affordable Care Act, the uninsured rate in rural communities has dropped by nearly 40 percent. This is not only great for those individuals obtaining insurance, it is also great for the rural hospitals who are now getting paid for the health services they provide.

Community Health & Emergency Services CEO Fred Bernstein told me:

> You can look at Cairo as the ghost of the future. Because there is not much left that we have to lose . . . We've lost the only grocery store, and the only drug store in Cairo. If this Affordable Care Act thing isn't resolved and if we go to block grant in the Medicaid program, there's not going to be any resolution to those problems down there. We are not going to be able to stay open. At least 72–74 percent of my patients depend upon Medicaid . . . Without the expansions of Medicaid that we've already seen, and without some of the subsidies that those who can get some insurance will get to keep that insurance, there's not going to be the ability to afford any care for most of the people we serve.

Since 2009, the number of rural hospitals in Illinois operating in the red has decreased by 46 percent. Put another way, 16 rural hospitals in Illinois are now on much more solid financial footing thanks to the ACA.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

TAX REFORM

Mr. COTTON. Mr. President, our Tax Code is a mess. No one voted for it, no one wants it, and no one likes it. I have said many times we should eliminate all of the special interest loopholes in the code and use that money to cut taxes for everyone, including American businesses. We want to encourage them to invest, grow, and create more jobs right here in America.

I know my colleagues are working on a tax bill, and I want to stress how much I support their efforts. I will, of course, withhold judgment on any proposal until I see the final text, but I also want to say today, I have reservations about one idea that is being considered. It is called a border adjustment tax. It sounds like something from Orwell's Newspeak.

Here is how it would work. We would cut taxes for corporations. To make up for the lost revenue, we would tax businesses whenever they bought something from another country. For instance, every time Ford bought an auto part from Canada, it would pay a 20-percent tax or every time your local grocery store bought bananas from Guatemala, it would pay a 20-percent tax. Whatever money businesses made from selling their products in other countries would be exempt. In other words, what all this would amount to is a 20-percent tax on imports. The proponents of this tax contend it would stop businesses from leaving our country because right now some are moving overseas to avoid paying our corporate tax rate, which is the highest in the modern industrial world. Under this proposal, it would not matter where you put your headquarters, you would be taxed according to what you bought, not where you put down your stake.

The hope is, this arrangement would mean more headquarters, more factories and the jobs that come with them staying right here in America, which of course is a desirable goal, no doubt, but I am not at all convinced this is the best way to do it. Consider this. It is estimated that this one change alone would produce something like $100 billion a year in additional tax revenue. That is a lot of money, and someone has to pay for it. I will tell you exactly who is going to pay: working Americans who have been struggling for decades. A tax on imports is a tax on things working folks buy every single day. I am not talking about caviar and champagne. I am talking about T-shirts, jeans, shoes, baby clothes, toys, and groceries.

I have heard from thousands of Arkansans who are already struggling just to get by. Why would we make the stuff they get at Walmart more expensive? Its defenders say the tax will not increase the cost of imports. What will happen, they say, is our exports will be cheaper because we no longer tax them so then more people overseas will buy our exports from us, which means the dollar itself will increase in value. That means imports will not be expensive because you will be able to buy them with a stronger dollar. So even with the tax added on, you will still come out right where you were before.

This logic reminds me of Orwell again: Some ideas are so stupid only an intellectual could believe them. This is a theory wrapped in speculation inside a guess. Nobody knows for sure what will happen. No one can know for sure because currency markets fluctuate daily based on millions of decisions and events. Just because an economist slaps an equation on a blackboard does not make it real so I am more than a little concerned these predictions will not pan out.

As the old joke goes, after all, economists have predicted nine of the last five recessions. But if that happens, it will not be economists and intellectuals and politicians in Washington and New York left holding the bag; working Americans will get stiffed again.

Finally, I want to say a word about jobs. One of the biggest reasons for fixing the Tax Code is that it would help create more jobs, but if we increase the cost of goods, people obviously can't buy as much, which will hurt retail sales and retail jobs too. Retail companies are the largest private sector employers in almost every State. Are we really going to impose a huge tax on the livelihood of so many Americans and say: Oh, don't worry. It will all work out in the end.

We have to take a hard look at this proposal right now. Therefore, while I support fundamental tax reform and commit to reserve judgment on any final bill until I read it, today I want to put on the record my serious concerns about a border adjustment tax. Many other Senators share those concerns. We most certainly will not keep our powder dry and see working American's railroaded with a precooked deal that raises their taxes and increases the price of the stuff they buy every single day.

It is February 15. By law, the President is required to submit a budget to Congress by the first Monday of this month. That was over a week ago. Now, being a new administration, we expect him to be a few weeks late as has typically happened in recent times. The difference this year, though, is that President Trump still does not have a budget director. We are 4 weeks into his Presidency, and we are only just now getting around to confirming his nominee.

For those of you keeping score at home, that is the longest delay in recent history. Every one of the last six Presidents had their budget director confirmed by a week's time—as in 7 days. In other words, what we are seeing is a deliberate act of obstruction. Here is the real problem. We have serious work to do. It is that much more difficult for the President to do his job when all he has is a headless horseman bureaucracy.

Senate Democrats might consider this payback. They might consider it their chance to audition for the 2020 Presidential primary, but the American people are the ones paying the price for this obstruction.

I want to say again, this is not a game. This is not a protest. This is our job. This is what the American people sent us to do. It is time we got down to business. In that spirit, I want to say a few words in support of the President's