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Senate

The Senate met at 10 a.m. and was called to order by the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois.

PRAYER

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

Let us pray.

Our fathers' God, to You, the author of liberty, we lift this prayer. Long may our land be bright with freedom's holy light. Protect us by Your might, great God, our King.

Lord, it is so easy for us to forget Your gracious providence that sustained our Nation's Founders through bitter adversity. How easily we forget and assume that our might, wisdom, and ingenuity alone produced this land we love. Remind our lawmakers each day that they are helpless without You. May they not wait for calamities to fall before they acknowledge their dependence upon You. Lord, deliver them from the pride which believes that they alone can solve the problems that beset our Nation. Quicken their minds to seek Your wisdom, and return them to that noble dependence on You that enabled our forebears to persevere and win against great odds.

We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROLAND W. BURRIS 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. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 9, 2009.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BURRIS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following the remarks of the leaders, the Senate will be in a period of morning business for 1 hour, with Senators allowed to speak therein for up to 10 minutes each. The majority will control the first 30 minutes, and the Republicans will control the second 30 minutes.

Following morning business, the Senate will resume consideration of H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. Last night, cloture was invoked on that matter, and we also agreed last night that we would have a vote in relation to the Burr substitute amendment at 4:30 p.m. I hope we will be able to reach an agreement to consider other amendments prior to the vote in relation to the Burr amendment.

Senators will be notified if any other votes are scheduled. Staff is working now trying to come up with a list of amendments we can vote on.

The Senate will recess from 12:30 to 2:15 for the weekly caucus luncheons.

MEASURE PLACED ON CALENDAR—H.R. 31

Mr. REID. Mr. President, it is my understanding that H.R. 31 is at the desk and it is due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bill by title for the second time.

The legislative clerk read as follows:

A bill (H.R. 31) to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.

Mr. REID. Mr. President, I object to any further proceedings at this time.

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

RECOGNITION OF THE MINORITY LEADER

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

HEALTH CARE

Mr. MCCONNELL. Mr. President, when it comes to health care, Americans are looking for answers. They don't understand why basic medical procedures are so expensive. They don't understand why millions of Americans have to go without basic care in a nation as prosperous as our own. Many are worried about losing the care they already have and like.

So the need for health care reform is not in question. All of us want reform. The question is: What kind of reform will we deliver? And two very different approaches are now beginning to come into view.

According to one approach, the government plays the dominant role by getting into the health care business and leverages taxpayers' money to muscle everybody else out of the way. Under this approach, the vast majority of Americans who like the health care

they have risk losing it when a government-run system takes over.

The other approach is to find ways of controlling costs, such as discouraging the junk lawsuits that drive up the cost of practicing medicine and limit access to care in places like rural Kentucky; lifting barriers that currently diminish the effectiveness of prevention and wellness programs that have been shown to reduce health care costs, like quitting smoking, fighting obesity, and making early diagnoses; and, finally, letting small businesses pool resources to lower insurance costs—without imposing new taxes that kill jobs.

This second approach acknowledges that government already plays a major role in the health care system, and that it will continue to play a role in any solution we devise. But this approach is also based on the principle that government cannot be the solution. Americans want options, not a government-run plan that drives every private health plan out of business and forces people to give up the care they currently have and like.

The Secretary of Health and Human Services acknowledged this concern about a health care monopoly when she described those parts of the country where certain private health plans already have a monopoly. ''In many areas in the country,'' she said, ''the private market is monopolized by one carrier . . . You do not have a choice for consumers. And what we know in any kind of market is a monopoly does not give much incentive for other innovation or for cost-effective strategies.''

Well, if this is true of private health plans, then it would be especially true of a government-run health plan. If a government-run plan came into being, concerns about a monopoly would not just be regional, they would be national.

Another problem with a government plan is a feature that has become all too common in nations that have adopted one. Many of these nations have established so-called government boards as part of their government health plans that end up determining which benefits are covered and which benefits are not covered. Our former colleague and the President's first choice for HHS Secretary, Tom Daschle, envisions just such a board in his widely cited book on the topic. ''The Federal Health Board,'' he writes, ''would promote 'high value' medical care by recommending coverage of those drugs and procedures backed by solid evidence.''

What this means is that the Federal Government would start telling Americans what drugs they can and cannot have. We know this because that is exactly what is happening in countries that have adopted these government boards. They have categorically denied cutting-edge treatments either because the treatments cost too much or because someone in the government decided the patients who needed it were either too old or too sick to be worth the effort. When these countries enacted health boards, I am sure their intention was not to delay and deny care. But that is exactly what these government boards are doing.

The writer and commentator Virginia Postrel, who has written for the New York Times and the Wall Street Journal recently wrote an account of her own first-hand experience with breast cancer and her ability to treat it successfully with the drug Herceptin here in the U.S. Postrel said the availability of the drug increased her chances of survival from a coin flip to 95 percent. A year after beginning her treatments, Postrel wrote that she had no signs of cancer.

In the same article, Postrel points out that the situation is far different in New Zealand, where a government board known as Pharmac decided that Herceptin should not be made available to some cancer patients in that country. As one cancer doctor in New Zealand put it, New Zealand ''is a good tourist destination, but options for cancer treatment are not so attractive there right now.'' Bureaucrats in New Zealand finally relented and allowed coverage for Herceptin, due in part to a public outcry over the limited availability of the drug.

New Zealanders have also been denied access to drugs that have proven to be effective in reducing the risk of heart disease and strokes. According to an article from 2006 in The New Zealand Medical Journal, the restrictions placed on statins by New Zealand's government board significantly hampered the preventative approach to heart disease. As the authors of the article put it, ''[it is probable that . . . this one decision] has caused more harm and premature death to New Zealand patients than any of their other maneuvers.''

Americans want health care reform. But they do not want reform that destroys what is good about American health care in the process. They do not want a government bureaucrat making arbitrary decisions about which drugs they or their loved ones can or cannot take to treat an illness. And they do not want to be told they have to give up the care they have. Americans do not want a government-run health plan. And they certainly do not want a government board to dictate their health care coverage. They want real reform that solves the problems they face without sacrificing the benefits they enjoy.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business for up to 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided between the two leaders, or their designees, with the majority controlling the first half and the Republicans controlling the second half.

The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I ask unanimous consent that I may speak for 15 minutes.

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

GUANTANAMO

Mr. DURBIN. Mr. President, for the last month, the Republican leader from Kentucky has come to the floor and argued that we should not move detainees currently in Guantanamo into the United States, even for trial. Luckily, the President, the Attorney General, and the head of the joint military chiefs of staff have come to the conclusion that it is in the best interest of the safety and security of the United States that one of these notorious terrorists be brought to the United States for trial. So it has been announced today that Mr. Ahmed Khalfan Ghailani is being brought to the United States, to New York, for trial.

Luckily, this administration is not following the advice and counsel of Senator MCCONNELL and some on his side. It is time for this man to face trial. What is he being charged with? He is being charged as one of those involved in the 1998 embassy attacks in Africa. This Tanzanian national has been held in Cuba since September of 2006. He was captured by our forces, and others, in Pakistan in 2004 and transported to Guantanamo. He is being charged with his involvement in the 1998 bombings of U.S. Embassies in east Africa, which killed 224 people, including 12 Americans.

The position being taken by the Republicans in the Senate is that this man should not be brought to the United States for trial. I think they are wrong. I think it is time that he answered for the crimes being charged against him. Twelve Americans died as a result of what we believe was his conduct. He needs to be held accountable. This argument that he cannot be brought to the United States and tried would virtually allow this man to escape punishment for the crime that we believe he committed. The Republicans' position that he should not be brought to the United States because somehow, if he is being held in a prison in the United States, it is a danger to the rest of us cannot be supported in fact.

There are 347 convicted terrorists presently being held in U.S. prisons—not one has escaped—in supermax facilities and no one has ever escaped. For the Republicans to argue we cannot bring this man to the United

States for trial for killing a dozen Americans leaves him in a position where we may lose our ability to prosecute him. The speedy trial requirements of our Constitution and the laws of the United States could virtually end up with the United States being unable to prosecute this man if the Republican position on Guantanamo detainees is followed.

GEN Colin Powell is right, Guantanamo needs to be closed. It is a recruiting tool for al-Qaida. We know these individuals can be brought to the United States and tried and safely imprisoned. We have never had an escape from a supermax facility. We know that to turn these prisoners over to some other country runs the risk that they will be released.

Dangerous people who threaten the United States should be dealt with by our Constitution and laws. The administration has made the right decision that this man be brought to trial in the United States, held accountable for any wrongdoing on his part that led to the deaths of so many hundreds of innocent people at our Embassies in Africa.

HEALTH CARE REFORM

Mr. DURBIN. Mr. President, this morning we heard the Republican leader come to the floor again—this is not the first time—to address the health care situation in America. I have read his previous speech, and I listened to his speech today. It is clear to me he does not believe we are facing a crisis when it comes to health care. I think we are. I think it is a serious crisis. It is a crisis where 47 million Americans have no health insurance. Imagine, if you will, being a parent and having children with no health insurance coverage. Imagine yourself in a position where an accident or a diagnosis at a doctor's office could literally mean you would lose every penny you have ever saved in your life for expensive medical care when you do not have health insurance. Imagine that as a crisis that affects Americans, too many of them today.

Then imagine those who have health insurance and worry that tomorrow the costs will go up to the point where they cannot afford it, that there will be medical procedures necessary uncovered by their health insurance. Cost is an issue. It is an issue which is driving us to look at reform of the health care system.

I heard Senator MCCONNELL this morning, and what he is arguing about, frankly, is not even in the debate on Capitol Hill. He said repeatedly—said it yesterday, said it again today—that our debate over health care reform means Americans run the risk of losing the health insurance they want. Exactly the opposite is true. What President Obama has said and what we are saying is that if you have good health insurance, you can keep it. You like the health insurance you have? You can keep it. No one has ever argued the opposite position, which the Senator from Kentucky referred to this morning.

He also spent a lot of time talking about government-run health care plans. It is interesting that he would raise that as an issue when we are not suggesting a government-centered health insurance reform. We think it should be a patient-centered health insurance reform.

But we also know that when you ask Americans across the board—families and patients—what do you think about the health care system in America, what are its greatest shortcomings in the current health care system, do you know what No. 1 is? Almost half, 48.9 percent, of the people say not having health insurance. The second, 43 percent say the greatest shortcoming of America's health care system is dealing with health insurance companies; 30.9 percent, inflexibility of health care plans; 30.9 percent, insurance companies' refusal to cover preexisting conditions.

When the Senator from Kentucky comes to the floor and argues against changing the current situation, he is arguing for allowing these health insurance companies to continue to dominate. As long as they dominate, Americans and their families will be vulnerable—vulnerable to increases in costs they cannot manage, vulnerable to new policies with more exclusions, vulnerable to preexisting conditions not being covered. That is the vulnerability of Americans we have today that we have to seriously address.

The Senator from Kentucky argues we do not want a Canadian plan, we do not want a British plan, we do not want a New Zealand plan. He is right. We want an American approach—an American approach that combines, yes, private health insurance companies when they are held to standards that are fair to American families but also holds open the option that we will have a plan which is run by the government—as an option, a voluntary option—for people to choose. If they like what they have in their current plan, they can keep it. If they want to move to another private health insurance plan, they can do so. If they want to choose a government plan, they can do that as well.

According to the Senator from Kentucky, if the government is involved in it, it must be bad. Tell that to 40 million Americans under Medicare, many of whom never had health insurance in their life and now have the protection of Medicare. Medicare has worked for senior citizens and the disabled for a long period of time.

The Senator from Kentucky should also tell the people in the Veterans' Administration that when the government is involved, it does not work. They know better. Veterans and their families across America know our veterans health care system provides quality care for them. We entrust to them, the men and women who risk their life for America and come home injured—we know they are going to get quality care. To argue that if there is any government involvement at all in health care it is to the detriment of America argues against Medicare, argues against the Veterans' Administration.

The Senator went on to say, if the government gets involved, the delays will be intolerable. We do not want delays. We want timely treatment of people. If a doctor believes either I or my family members need to have a surgical procedure, some help, some diagnostic test, we want it done in a timely fashion.

What the Senator from Kentucky, the Republican leader, ignores is that there are delays within the current system. An article in BusinessWeek highlights a case of a woman in New York, Susan, who called for an annual mammogram appointment in April, knowing she would have to wait 6 weeks. In 2007, her first scan at the end of May was not clear. A followup scan detected an abnormality which the doctor wanted to address with a needle biopsy and outpatient procedure. The first available date was mid-August, more than 2 months later. This lady who had an abnormality in her mammogram was forced to wait months under the current private health insurance system.

We have a similar problem in Chicago, Cook County, IL. At the local public hospital, wait times for speciality services can range from 6 months to 1 or 2 years under the current system.

We know that when it comes to delays, unfortunately, they are occurring in the current system. We also know that for a lot of people, this current system has become unaffordable and intolerable.

I think back to one of my friends in Springfield, Doug Mayol. Here is a fellow who tells a story. He owns a small business in my hometown of Springfield, a shop that sells cards and gifts. His only worker has Medicare coverage, so she is taken care of. But Doug has to buy private health insurance. Unfortunately, Doug has a problem. He was diagnosed many years ago—30 years ago, in fact—with a congenital heart valve defect. He has no symptoms. Without regular health care, he runs the risk of developing serious problems.

In the year 2001, Doug, in Springfield, IL, paid $200 a month for health insurance. By 2005, even though he had not turned in any claims, his cost of health insurance was up to $400 a month. The next year, when he turned 50, the rate nearly doubled to $750 a month. He made some changes in coverage so he would pay more out of pocket, choose a small network of providers, and have a higher deductible. He got his premium down to $650 a month.

This man owns a small shop. He sells greeting cards. He was up to $650 a month. Two years later, his premium

jumped to over $1,000 a month. Again, he made some changes. By opting for the highest possible deductible, he was able to bring his premiums down to $888 a month. Think about that: He is paying 300 percent more than he paid for health coverage 8 years ago and getting a lot less for it.

He isn't a costly patient. His valve condition is asymptomatic. He has never made a claim for illness or injury. He receives routine medical care. His high deductible rarely kicks in. Here is the problem. Because of his high deductible and expense of health insurance, he is afraid to go to a doctor, that it will create another red flag for the health insurance company to raise his premiums even more.

It is unfair to him, Doug Mayol, working in Springfield, IL, as a small business owner, a man whose insurance company has never paid a claim, to watch his costs explode from $200 a month to $1,000 a month in just a few years. Sadly, if we follow the advice of the Senator from Kentucky, it will get worse.

President Obama has challenged us to take on this reform. This is not easy, believe me. There are health insurance companies that are going to fight us every step of the way. Anytime we step in to try to protect Doug and other families to make insurance affordable and to make sure it is quality, they are going to argue it is too much government, such as we heard from the Senator from Kentucky this morning. What he had to say is what we hear from the health insurance companies: Leave it alone, leave the system alone.

Can we afford for Doug Mayol and millions of Americans to leave this alone? We have to make sure we move toward a situation that recognizes we face a crisis. It is a crisis of cost and a crisis when it comes to availability of health insurance. We have to hold the health insurance companies accountable to provide us affordable quality care. We have to change the system so we have early detection of problems—preventive care. We have to ring some of the costs out of the system.

One of the persons who has made a comment on this regularly whom I respect very much is a doctor in Boston named Atul Gawande. He recently, in a June 1 article in the New Yorker, talked about the disparity in cost around the United States for Medicare. It is clear that in some parts of the country—and he was speaking of McAllen, TX, at this point—the cost for Medicare patients is dramatically higher than they are in other places. We can bring costs down to a reasonable level and try to take control of a system that is currently out of control, but we cannot do it if every day we are reminded of problems that do not exist. That is what we have heard from the other side of the aisle.

They are arguing that we want to take away people's health insurance. Absolutely false. We said: If you like your health insurance, you can keep it. They argue the government will take over the health care system. I have not run into anybody who has suggested that. What we want to do is have public health insurance and have a private option, which the Senator from New York is going to address in a moment when I close.

This is an important debate for every single American. It is time to put together reform that assures quality and affordable health care for all Americans.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank my friend and colleague from Illinois for his strong and forceful words, meaningful, bringing it home, as he always does, in a very strong and good way about individuals and how they are affected.

I would like to talk a little bit about where we are in health care and where we have to go. Let me say that about 10 years ago—I cannot remember the exact time—one of the major issues we faced was called the Patients' Bill of Rights. Doctors and patients felt—everyone felt—that HMOs were taking undue advantage of them. Doctors, if a patient desperately needed a prescription, would call some accountant in a faraway city and could not get approval and the patient would not get the medicine. It sort of hit home.

There was a movie called ''As Good As It Gets,'' with Jack Nicholson, and I cannot remember the name of the woman who starred in it. The family could not get the health care they needed because the HMO turned them down. I believe it was her child who was hurting. When she and Jack Nicholson made remarks about how somebody has to keep an eye on these HMOs, in theaters across America, the audience got up and cheered.

That is, again, what we are talking about when we talk about public option. Every one of us has a friend, a family member—maybe it is ourselves—who has experienced the basic intransigence of insurance companies in providing—even when you have a package of benefits—the kind of care you or a loved one, a member of your family, needs.

It is clear in America the insurance companies—and they are doing their job maximizing their profit to their shareholders. Of course, our capitalist system says they have to maximize it by trying to sell as many policies as possible. So there is some check on them. But it is clear America is not happy with insurance companies.

My good friend from Kentucky, the minority leader, keeps saying we do not want the government involved. Well, let me ask him: Who is going to protect the individual and even some of the individual providers—the doctor in a small town or in an inner city—from an insurance company when the insurance company either charges too much or tries to get rid of the small businessman—such as in the case of the gentleman from Springfield whom my friend DICK DURBIN talked about—or when they deny coverage or when they tell you because you have a preexisting condition that you can't get coverage or they are not renewing your proposal or whatever?

We understand there needs to be a check on the insurance companies. Left alone, they will not provide the kind of low-cost, full health care many Americans need. And when we propose a public option, we are proposing someone to keep a check on them. That is the only point. If we had complete faith in the insurance companies, we wouldn't be debating a public option. If we had complete faith that, left on their own, when an individual had the situation of an illness and their costs went way up, they would say: Sure, we are going to take care of you, you signed the contract when you were healthy and now you are sick—and sometimes that happens. I am not saying it never happens, not for sure. But what about all the instances when it doesn't? What about the worry the rest of us have? And praise God, we are healthy, but it might happen. There has to be a check on the insurance companies, and that is what the so-called public option does.

Insurance companies are part of the free enterprise system, and it is a great system, but the goal of the insurance company—it is probably in their charters, but it is how our system works—is to maximize profits to their shareholders by producing a good product. But we all know, particularly when it comes to health, that system has major flaws. It sometimes works and it sometimes doesn't work.

If we thought only the private sector should provide health care, we wouldn't have Medicare. And I know there are some—way over on the right side—who would like to get rid of Medicare. If we thought private insurance on its own worked just fine, we wouldn't have fought for years for a patients' bill of rights. So this idea coming from the minority leader that we should have no check on the insurance companies, which is what we would have if we had no form of public option, isn't where the American people are, and it is certainly not where I am.

Some bring up—and I think it is a valid argument—well, if the government is involved—and by the way, what we are proposing here is not that the government take over health care. We are proposing that in this exchange where all kinds of insurances companies compete, there be at least one that doesn't put the profit motive above all else but has to put patients above all, a public option. It doesn't make a profit. And what we are saying is, if you believe in competition, why not let the public option compete? We do this in State governments. In State governments, if you are a State worker in some States, you can sometimes get a public plan or a private plan. The consumer chooses. And that is how it

should be. We are simply saying that, just as there are some who might say: I don't think there should be any private sector involved in health care, it should all be public—and many people think that is not the right view, as I know my friend from Kentucky does—many of us think it is just as wrong to say it should only be the private sector. Let's see who does a better job. Let them compete in the marketplace.

My view is this: There has to be a level playing field. You cannot give the public option such advantages that it overwhelms the private sector. The proposal that I have made and that others are looking at—Senator BINGAMAN is one; my friends in the House, Congressmen WELCH and BRADY and MURPHY—is to try to make the playing field level. The government won't just keep pouring money into the public option. It sets it up and then it has to compete. If the private sector needs reserves—God forbid there is catastrophic illness everywhere—then so will the public option. I am certain those of us who are interested in a public option are very interested in suggestions as to how to make the playing field level. But make no mistake about it, the public option is a different model. The public option will not have to make a profit. That is about 10, 12 percent. That money will go to health care for the patients. The public option will not have to merchandise and advertise. That is often 20 percent. So right off the bat, the public option has the same level playing field but has 30 percent of its revenues that can go to patient health care.

My friends on the other side say: Well, the public option isn't very efficient; it doesn't give enough direction, and direction to the right person, to cure this disease but lets people go all over. Well, if it is not, it is not going to work.

You know, if I were designing a health care system, I would even look carefully at single payer. I believe we do need control mechanisms, and I think the insurance companies themselves, no matter how we try to regulate them, will figure out ways around them. That is almost their mandate because their goal is to maximize profit. There is nothing wrong with that. But we are not going to get single payer here. We know that. And we are probably not even going to get something called Medicare For All, which would be a much more pure system that would not be, frankly, a level playing field. But just as we have to compromise and move to the center a little bit to get something done, so do my colleagues on the other side of the aisle. Again, when they say no public option, it is the inverse of saying no private insurance companies. Let's see who does better in this exchange.

My view is this: The public option will have certain advantages. It won't have to make a profit, it won't have to advertise and merchandise. But on the other hand, it is going to have certain responsibilities. When DICK DURBIN's friend from Springfield can't get insurance from a private company, the public option will be there, and that may be somewhat more expensive for them. Admittedly, we are going to try to pass laws to say the private insurance company has to keep DICK DURBIN's friend, the small businessman who is paying for his own insurance, without a huge increase in cost. But if you believe, as I do, and I think most Americans do, that the private insurance company is not going to embrace this and say: Gee, this is great, this is costing us a ton of money and we have to report earnings for our shareholders, and we will try to find ways—there will be an intention of not covering people like that, and the public option will step into the lurch.

So this is a different model, no question about it. It is not just another insurance company that happens to be public. But it will be a level playing field. There will be a playing field where the private insurance companies will be under certain rules and the public option plan will be under certain rules. If the private company has to leave reserves, the public company will have to leave reserves. No one is seeking to unlevel the playing field, but we are seeking to keep the insurance companies honest. A public option will bring in transparency. When we know what the public option has to pay, we will say: Why isn't the private insurer paying the same? A public option will keep the insurance company's feet to the fire.

That is why President Obama feels so strongly about it. He said so in his letter. My friend from Iowa, Senator GRASSLEY, said he is just being political. I don't think so. He knows the public option will work well. Maybe after 3 years, the public option fails and isn't needed. Fine. Fine. But I don't believe that will happen. But we are not going to, in the public option, just keep putting more and more government money in until it wipes out the insurance companies. That is not the intent. The intent is to have a robust market, such as we have in other States and some of the Federal systems, where many different plans compete, and one is a public option. There might also be co-ops, such as my friend from North Dakota has been advocating, but there will be plenty of private insurance companies.

I would say one other thing. My friends on the other side of the aisle say: Well, why can't we just have the private insurers compete and offer a whole lot of plans? We don't have that in the vast majority of States right now. We have a system where any private company can sell insurance. But in more than half our States—and I believe this statistic is right, but I will correct the record if it is not—the top two companies have more than 50 percent of the market. There is usually not unvarnished competition when you just leave it up to the private insurance companies but, rather, an oligopoly. And we all know what happens when there is not real competition: Price setting occurs. Price leadership is what the economists call it. Nobody tries to undercut on price. We have seen this with the oil industry, for instance, with our five big oil companies, and you don't get the kind of competition you would from a public option, even if there were only one or two insurance companies competing.

In conclusion, I would ask my colleagues on the other side of the aisle to, A, be openminded. We haven't said no this or no that. When you say no public option, you are saying we want to let the private insurance companies, under the guise of competition, run the show. And if you believe that will work, fine, but then you also should believe the public option won't be a threat to them. Some of us who are worried that, left to their own devices, the private insurance companies will not serve all or even most of the public as well as they should be served, are saying let there be the competitive advantage or the competition of a public option in a level playing field that has no particular built-in advantage but has a different model—no profit, no merchandising, no advertising, serve the patient first.

This debate will continue, but I would just say to my fellow Americans out there who might be listening to this, when you hear the other side say no public option, ask them: Then who is going to provide a check on the insurance companies? And do you believe the insurance companies, even with some government regulation, won't find their way out of the regulations or avoid the regulations or walk around them?

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. SCHUMER. The debate will continue, Mr. President, and I appreciate the opportunity to address my colleagues.

The ACTING PRESIDENT pro tempore. The Republican whip.

Mr. KYL. Mr. President, I understand the time for morning business has now reverted to the Republican side; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

HEALTH CARE

Mr. KYL. I thank the Chair.

Mr. President, I would like to address two subjects. The first is the subject my colleague from New York was just discussing, and that is what to do about health care issues we have in the United States. Specifically, I would like to refer to some comments that both he made and the assistant majority leader made this morning.

The first point I wish to make is that when the assistant majority leader came to the floor this morning and in effect said: Unless you agree with our solution, you don't believe there is a problem, that is a fallacy, of course. I

think everybody agrees there are lots of problems. The question is, What is the right solution? So we can all agree there are problems, but let's don't suggest that unless you agree with my solution or your solution, somehow or other we don't appreciate that there are problems.

We are frustrated and a lot of Americans are frustrated because they may work for a small business or they are unemployed and therefore they don't have insurance. It is not easy to take your insurance with you. It is hard to find quality, low-cost health care. This has to be a big priority for a lot of Americans. We all understand that.

Health care needs to be portable. It needs to be accessible. It needs to be affordable. I think all Americans want it to be quality care as well. The question is, How do you accomplish these goals?

One of the problems is, what if you have insurance and you like it? The President says, in that case you get to keep it. The problem is, under the bill that is being discussed in the Finance Committee, you do not get to keep it. If you are an employee of a small business, for example, or you are an individual with your own insurance, when your insurance contract runs out—and those contracts are usually 1 year, 2 years, sometimes as long as 3 years; let's say it is 2 years, and you are through the first year of it—the bottom line is, even though you may like it, at the end of next year when the contract runs out, you don't get to keep it.

Under the bill being discussed there is a new regime of regulation for the insurance companies about who they have to cover, how they cover them, what they can charge, and a whole variety of other regulations that mean that the policy you used to have, that you liked, does not exist anymore.

It may be you will be able to find coverage that you like, but it is simply untrue to say that one of the mainstays of the legislation being proposed is that if you like your current plan, you get to keep it. When your current plan expires, it expires, and you don't get to keep it because it cannot be renewed in its current form. That is point No. 1.

Point No. 2. We just had a discussion about government-run insurance. I find it interesting that some on the other side like to call this a public option, as if the public somehow or other is operating its own insurance company. Let's be clear about who would operate this insurance company. It is the U.S. Government. It is not the public; it is the U.S. Government. That is why Senator MCCONNELL has referred to it properly as government-run insurance.

The Senator from New York just got through saying: Who else is going to provide a check on the private insurance companies to make sure they do things right? The President himself has spoken about the need for a government-run plan to keep the other insurance companies ''honest.''

Insurance is one of the most highly regulated enterprises in the United States. Every State in fact regulates health insurance. This is an area that not only has some Federal regulation, but every State regulates health insurance. In fact, one of the reasons you cannot buy a health insurance policy from the State you do not live in—you can't go across State lines and buy a policy in another State—is because we are so jealous of the State regulation of insurance. So to the question of my friend from New York, who is going to provide a check, the answer is, your State. If you do not trust your State to properly regulate health insurance, then I don't know where we are. But you are not going to provide better regulation by commissioning a government insurance company to exist and compete right alongside the private insurance companies. How does that provide a check on the private insurance companies?

It is not as if there are not enough private insurance companies or they are not providing enough different kinds of plans, so that can't be the problem. It is not a matter of a lack of competition in most places. If the question is, who is going to regulate, the answer is, the State is going to regulate. To the extent it does not, the Federal Government is going to regulate. That is why, A, it should not be called a public option if what they are talking about is creating a government-run health insurance company, which is exactly what is being proposed in the only legislation put out there so far, the so-called Kennedy legislation in the HELP Committee. That is precisely what he proposes. Republicans say: No, thank you. We are not for that.

My final point is that the assistant majority leader said there are lots of other government-run plans, and we are not afraid of them. He mentioned Medicare and the Veterans' Administration. First of all, these are not government insurance companies, these are government-run programs. But, second, the President himself said, and everybody I know of who has studied the issue agrees, Medicare is in deep trouble. The President has said its commitments are unsustainable, meaning we cannot keep the promises we have made in Medicare to future generations because it is far too expensive. We have to find a way to get those expenses under control.

How is adding another 15, 20 or 30 million Americans to an existing program that is not sustainable going to make it any better?

My colleague talked about waiting lines. It may well be true we can find an example or two of people who have to wait in line in the United States. That is something we should not permit in the United States. We know that is what exists in other countries, and I will get to that in just a moment. Why does that justify having an expansion of a government program? If we have a government program which causes waiting lines today, does it solve the problem by adding a whole lot more people to the rolls?

What is likely to happen? The waiting lines are going to get longer because more people are going to have to be waiting for care. Is that what we want in the United States of America? I submit not. So far from being a justification for a government-run program, I believe that argues for not having a government-run program, or at least not expanding the government programs we already have. A government takeover is not the answer. No country, even the United States, the most prosperous country on Earth, has unlimited resources to spend on health care.

That brings up the third problem, which is the rationing, the inevitable delay in getting treatment or tests and frequently the denial of care that results from that. When a government takes over health care, as it has, for example, in Britain and Canada and many places in Europe and other places, care inevitably is rationed. We all have heard the stories.

One of the most direct ways we can ration care is one that the White House has already embraced, and it is part of the Kennedy bill that I spoke of earlier.

The White House has said comparative effectiveness research, which would study clinical evidence to decide what works best, will help them eliminate wasteful treatments. Wasteful to whom? A recent National Institutes of Health project has a description of part of their plan that states, and I will quote:

> Cost-effectiveness research will provide active and objective information to guide future policies that support the allocation of health resources for the treatment of acute and chronic conditions.

Allocation of health resources is a euphemism for rationing. Allocation means to allocate, and inevitably there will be denial based upon those things which are deemed to be too costly.

As discussions about health care reform have dominated the news recently, stories have trickled out from individuals living in countries that ration care whose medical treatment has been delayed or denied due to rationing, and we are beginning to hear some of those stories. One that I came across was reported in the Wall Street Journal.

It was the story of one Shona Holmes of Ontario, Canada. When Miss Holmes began losing her vision and experiencing headaches, panic attacks, extreme fatigue, and other symptoms, she went to the doctor. An MRI scan revealed a brain tumor, but she was told she would have to wait months to see a specialist.

Think about this. She goes home and tells her family: The MRI said I have a brain tumor. I have all of these symptoms, including losing vision and the rest of it. But I have to wait months to

see a specialist—I gather, to confirm the diagnosis. I don't know. As her symptoms worsened, she decided to visit the Mayo Clinic in Arizona. So she left her home country, paid her way down to Arizona and paid for the diagnosis and treatment that was called for in her case to prevent the permanent vision loss and potentially death that could have ensued had she not been treated in a timely fashion.

A Lindsey McCreith, also of Ontario, was profiled in the same article to which I referred. Mr. McCreith suffered from recurring headaches and seizures. When he went to the doctor, he was told the wait time for an MRI was 4½ months. Think about this. You are having seizures and the test that will reveal what if anything is wrong is going to be delayed 4½ months. One of the reasons, I am told, by the way, is that there are very few places in Canada where MRIs are located, where you can actually get the test. In any event, he decided to visit a clinic in Buffalo, NY—fairly nearby—in order to get the MRI. He did and it, too, revealed a brain tumor. Now Mr. McCreith is suing the Canadian Government's health care monopoly for jeopardizing his life.

I wonder if we want lawsuits to be the answer. When you can't get the care you want, you have to file a lawsuit to get it? Is that what we want in America? I don't think so.

There are also people whose care has been flatout denied. Britain's National Health Service has denied smokers treatment for heart disease, and it has denied hip and knee replacements for people who are deemed to be obese. The British Health Secretary, Patricia Hewitt, has said it is fine to deny treatment on the basis of lifestyle.

[Doctors] will say to patients: ''You should not have this operation until you have lost a bit of weight,'' she said in 2007.

That is easier said than done for some people. In any event, if they need a health treatment and they need it now, there is a real question whether they can accomplish the ''losing a little bit of weight,'' as Ms. Hewitt said. All Americans deserve access to quality care, but government-run insurance does not equate with access. Rationing will hinder access.

As I said, my colleague from Illinois, the distinguished majority assistant leader, says you can actually find some examples in the United States where there are long wait times. If that is true—and I don't doubt what he said—that is not good; it is bad. We should try to fix that so we don't have wait times. We should not justify having more wait times on the fact that we already have some. We should not say because there are some people in America who have to wait, therefore we should make it possible for everybody in America to have to wait; we should be like Canada or Great Britain.

That is not the answer. If we have wait times here, we should stop it, not say that we, therefore, might as well be like Canada or Great Britain. Americans do not deserve or want health care that forces them into a government bureaucracy with its labyrinth of complex rules or regulations.

Think about the hassles of dealing with the IRS or Department of Motor Vehicles or Social Security Administration when you have a problem there and then imagine dealing with the same issues when it comes to getting health care. We can't enable a panel of bureaucrats, through rules and regulations, to put the politicians in charge of deciding who is eligible for a particular treatment or deciding when or where they can get it. It is wrong for America, wrong for the patients in America, and it is the wrong approach to health care reform.

Republicans believe there is a better way for health care reform. Rather than empowering the government, empower patients. Rather than putting bureaucrats in between your doctor and yourself, try to remove the constraints that physicians have and hospitals have for treating people. Try to remove constraints on insurance companies.

One of the things I have asked for, for example, with all of these wonderful ideas about more government regulation of insurance is, how about repealing some laws that currently prevent insurance companies from competing? I mentioned before you can't compete across State lines.

We all know if you want to incorporate as a corporation—why are all the corporations incorporated in Delaware, ''a Delaware corporation''? It doesn't matter whether you are in Illinois or Arizona, corporations are incorporated in Delaware. At least that is the way it used to be. One of the reasons is Delaware had very benign laws regulating the incorporation of businesses. It was cheaper to do it, and there was less regulatory hassle. But if the distinguished Presiding Officer, for example, looked across the river to the west and saw an insurance company in Iowa that could provide him with better coverage at less cost than the company that insures him in Illinois, why should he be restrained from buying the policy from the company in Iowa? You could buy your automobile insurance that way. You could buy your home insurance that way. Why should you not be able to buy your health insurance that way? Well, you can't.

I am going to conclude this discussion, but just one idea is to remove some of the barriers to competition that would make it more likely that insurance companies could expand their coverage by competing, be required to compete with lower premiums and/or provide better access to care. It seems logical, and in this country, where people move around all the time—my family just drove all the way across the country from Washington, DC, out to Arizona to visit friends and family and go on to California. We travel all around this country all the time. We move families, unlike back in the old days. Why can't we have an insurance regime that enables you to buy insurance from another State? It does not make sense; it inhibits competition; it makes prices higher; and it can have the effect of restricting care. Those are the kinds of things we need to do to reform our system, not put more government in charge and not put government between you and what your physician says you need, or even put some time delay between the opportunity to visit your physician when you know you have something wrong with you.

We are going to have more discussion about this in the future, but I want to back up what Senator MCCONNELL from Kentucky has said. Americans don't want government-run insurance companies any more than they want government-run car companies. It seems as though the government is starting to run everything now—from the banks, to the insurance companies, to the car companies. Now we are going to run insurance companies as well for health care. I do not think that is what the American people want.

I think the Senator from Kentucky is exactly right. I think he is right when he says no government-run care and that we should not be rationing care. Those are two of the most critical aspects of the legislation Senator KENNEDY has come forth with and among the things being discussed in the Senate Finance Committee as well. We need to draw a line: Put patients first, not put the government first.

(Mrs. GILLIBRAND assumed the Chair.)

GUANTANAMO

Mr. KYL. Now, Madam President, since I think I have a little bit more time on the Republican side—though if I have colleagues who wish to speak, I will be happy to finish for the moment—I will go for a little bit longer on another subject.

We have had kind of a running debate on the question of closing Guantanamo prison. This is a subject the Senate has spoken on by an overwhelming vote. I think 90-some Senators voted not to close Gitmo. The American people are 3 to 1 opposed to bringing Gitmo prisoners into their State. They are 2 to 1, at least, in opposition to closing Guantanamo prison. This is not something on which there is a little bit of doubt. The American people are very much opposed to closing Guantanamo prison and bringing those people to their own States.

Nevertheless, the assistant majority leader and five other Democrats voted for the appropriation of money—or the authorization of money—actually, the appropriation of money to close Gitmo and acknowledge that would require bringing many of those people to the United States.

Well, I happen to agree with Senator MCCONNELL that this is a bad idea, and

with the other 89 Senators who agreed it is a bad idea, at least until we have some kind of a plan to do it. So I was a little struck this morning when the Senator from Illinois said: Well, here is the proof of why we should close the Guantanamo prison.

We just have had an announcement we are going to try a terrorist, whose name is Ghailani, in the United States, and that proves we can close Gitmo.

Well, it does not prove that. It does not prove anything. What it proves is, we can try somebody in U.S. courts. We have done that with a few terrorists, and it is not a pleasant experience. The one that most of us recall in the Washington, DC, area was the trial across the river in Alexandria, VA, of Zacarias Moussaoui. That was extraordinarily difficult for the government to do. It was very difficult for at least two main reasons.

First of all, much of the evidence that was gained to try him was classified and could not be shared with him, and there were significant questions of due process as a result. How can we try somebody for a serious crime and not show them the evidence against them? That is one of the main reasons it is very difficult to try these terrorists for crimes.

The second problem is the security issue. The people in Virginia, in Alexandria—in the county there—will tell you, it was a costly and difficult thing for them to be able to conduct this trial of Zacarias Moussaoui there. Nevertheless, it was possible. Although costly, it was possible. It was even possible to get a conviction, I would suggest, primarily because of some decisions Moussaoui made. Nonetheless, it was possible to do so.

Everybody acknowledges there are some people who need to be tried for serious crimes, in effect, such as war crimes, and who should be tried in U.S. courts. It does not make it easy, but it can be done. What it does not prove is that it should be done for all of the people at Gitmo. In fact, not even the President suggests that. The President, in his speech a few weeks ago, acknowledged that many of the prisoners at Gitmo now are never going to have a trial. They are simply being held until the termination of the hostilities that have caused them to be captured and imprisoned in the first place. They are like prisoners of war who can be detained until the war is over.

Here, however, they do not even have the rights of prisoners of war under the Geneva accords because they do not adhere to the rules of war, they do not fight with uniforms for a nation state, and so on. They, in fact, are terrorists. So they are still allowed humane treatment, but they do not have the same rights as prisoners of war.

What that means is—as the President acknowledged, as the U.S. Supreme Court has acknowledged—we have a right to hold them until the cessation of hostilities so they do not kill any more people. We cannot just turn them loose.

The President, in his speech, made the point that at least 60—I think is the number that was used—of these prisoners have been released and that they were released by the Bush administration. That is true. The Bush administration was under a lot of pressure to try to release as many of these people who were being held as possible, and so they held determinations. They have a determination once a year and initially as to what the status of the individual is and whether he is still a danger. Eventually, in many of the cases, they decided the person could be released back to their home country or to a country that would take them and it would not pose a danger to the United States.

The problem is, there is a very high rate of recidivism among these terrorists. One in seven are believed to have returned to the battlefield. We have evidence of many of them, specifically by name, who returned and who caused a lot of death. There are two in particular I recall who both eventually engaged in suicide bombing attacks, killing, I think, 20-some people in one instance and at least a half dozen people in another instance.

So even when we try our best to make a determination that is fair to the individuals, but we do not want to hold people beyond the time they should be held—that they no longer pose a danger—we make mistakes and we release people back to the battlefield who are going to try to kill us, and they are certainly going to try to kill others, including our allies; and, in fact, they do so. That is a risk, but it is not a risk that we should lightly take.

The remaining 240-some prisoners at Guantanamo are the worst of the worst. These are people about whom it is very difficult to say: Well, they do not pose a danger anymore. We have already been through those, and, as I said, one in seven of those people have not only posed a danger, they have actually gone off and killed people.

So we have 240 of the worst of the worst, and the President correctly went through the different things that can happen to them. Some of them—a limited number—will be tried in U.S. courts, such as this terrorist Ghailani whom Senator DURBIN spoke of earlier this morning. It is hard to do. There are a lot of issues with it. But we will try to try some of them.

Others can be tried with military commissions. Others will not be able to be tried. They will have to be held. There may be a few whom we deem no longer a threat to us and they will have to be released but to whom nobody knows because nobody appears to want—well, the French will take one of them, and I think there may be another European country that said—maybe the Germans will take one. That still leaves a lot to go.

So the bottom line is, many are going to have to be detained. The question is, Where do we detain them? My colleague from Illinois says: Well, there are other people who agree we should close Gitmo. Even my colleague from Arizona has certainly said that. But what he did not say is, before we have a plan to do so—and he himself has acknowledged this is really hard to do. And while he would like to close it—as he himself has said: I do not know how you do it—we certainly cannot do it without a plan, and we certainly cannot do it based upon the timetable that the President is talking about.

So it is one thing to say it would be nice to close it. It is quite another to figure out how to do it that would be safe for the American people.

Finally, just a point I want to mention—well, two final points. The Senator from Illinois said this is a problem he, meaning the President, inherited. No. The President did not inherit the problem of having to come up with a plan to close Gitmo by next January 20. The President made that problem himself. When he was sworn into office, I think it was within 3 days, he said: And we are going to close Gitmo within 12 months.

That is an arbitrary deadline that I submit he should not have imposed on himself or on the country because it is going to cause bad decisions to be made. We may have to try more people, such as this terrorist Ghailani, in the United States than we want to or than we should. In any event, we are going to have to try to find, I gather, facilities in which these people could be held in the United States.

FBI Director Robert Mueller testified before the House of Representatives that that posed a lot of problems, real risks, for the United States. Nobody is saying it cannot be done. The question is, Should it be done? Most of us believe, no, it should not be done; there are better alternatives.

The final point I want to make is this: What is wrong with the alternative of the prison at Guantanamo? It is a $200 million state-of-the-art facility in which, as I pointed out yesterday, people are very well treated, humanely treated. They have gotten a whole lot better medical and dental care than they ever got or could have hoped to have gotten in their home countries, fighting us on the battlefield of Afghanistan or somewhere else.

The bottom line is, this is a top-rate facility. The people there do not mistreat prisoners. That is the myth. Somehow people conflate what happened at Abu Ghraib with Guantanamo. This brings up the last point. It is argued by my colleague from Illinois and others that, well, terrorists recruit based upon the existence of Guantanamo prison.

Think about that for a moment. Are we going to say because terrorists accuse us of doing something wrong—even though we did not—we are going to stop any activity in that area because we want to take away that as a recruitment tool? We would have to basically go out of business as the United

States of America if we are going to take away all that terrorists use to recruit people to fight the West. They do not like the way we treat women with equality in the United States. They do not like a lot of our social values and mores. They do not even like the fact that we hold elections.

So because that is used as a recruitment tool, we are going to stop doing all of that? What sense does this make? We treat people humanely and properly at Guantanamo. People were mistreated in another prison called Abu Ghraib. They are not the same. Abu Ghraib, therefore, does not represent the example of what we should be doing with respect to Guantanamo.

We will have more debate on this subject. I note the time is very short, and I meant to leave a little time for my colleague from Texas. I hope to engage my colleagues in further conversation about this issue. The American people do not want people from Gitmo put into their home States.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I ask unanimous consent to speak in morning business for 15 minutes.

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

Mr. CORNYN. I thank the Presiding Officer.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. CORNYN. Actually, Madam President, I intend to speak on the underlying bill. But because the bill manager is not here, I think my remarks are just as appropriate in morning business.

I rise to offer my support as a cosponsor of the Family Smoking Prevention and Tobacco Control Act, the so-called FDA regulation of the tobacco bill that is currently before the Senate.

This is a rarity these days in Washington. It is actually a bipartisan bill—people of both parties working together to try to solve a real problem—and I want to particularly thank Senator KENNEDY and Senator DODD for their leadership on the bill. I also want to thank the Campaign for Tobacco-Free Kids for organizing more than 1,000 public health groups, faith-based organizations, medical associations, and other partners to support this legislation.

The House, as we know, passed the bill in April on a bipartisan basis, and now it is time for the Senate to do its job this week.

This comes to us in a rather unusual historical and regulatory posture. The fact is, we know tobacco is a killer. It is a killer. It kills 400,000 Americans each year in the United States, including 90 percent of all deaths from lung cancer, one out of every three deaths from other types of cancer, and one out of every five deaths for cardiovascular disease.

The real tragedy is not just that adults choose to smoke and harm their health—and many of whom, unfortunately, die premature deaths as a result—it is that many smokers begin their addiction to tobacco—the nicotine, which is the addictive substance within tobacco—when they are young, before they are able to make intelligent choices about what to do with their bodies and their health.

Every day about 1,000 children become regular daily smokers. Medical professionals project that about one-third of these children will eventually die prematurely from a tobacco-related disease.

Not surprisingly, at a time when we are contemplating health care reform in this country, the huge expense of health care and the fiscal unsustainability of the Medicare program, it is also important to point out that tobacco directly increases the cost of health care in our country. More than $100 billion is spent every year to treat tobacco-related diseases—$100 billion of taxpayer money—and about $30 billion of that is spent through our Medicaid Program.

America has a love-hate relationship with tobacco, and Congress, I should say, and State government does as well. My colleagues will recall that tobacco actually presents a revenue source for the State and Federal Government. One of the most recent instances is when Congress passed a 60-cent-plus additional tax on tobacco in order to fund an expansion of the State Children's Health Insurance Program. So government has become addicted to tobacco, too, because of the revenue stream it presents, and that is true at the Federal level and at the State level.

However, because of the political clout of tobacco companies years back, when the FDA regulation statute was passed, tobacco was specifically left out of the power of the FDA to regulate this drug. The active ingredient I mentioned is nicotine, which was not acknowledged to be an addictive drug for many years until finally the Surgeon General did identify it for what it was: an addictive drug that makes it harder for people, once they start smoking, to quit.

Then, of course, we tried litigation to control tobacco and the spread of marketing tobacco to children and addicting them to this deadly drug, which it is. Then, we found out it had basically no impact, that massive national litigation through the attorneys general in the States. Basically, the only thing that happened as a result of that is lawyers got rich, but it didn't do anything to deal with the problem of marketing tobacco to children.

One might ask, as a conservative: Why would one support more regulation rather than less? Well, because of this split personality the Federal Government has in dealing with tobacco—recognizing it is a deadly drug, recognizing marketing often targets the most vulnerable among us, and recognizing the fact that it kills so many people and increases our health care costs not only in Medicare but in Medicaid—why in the world wouldn't we ban it? I know the Senator from Oklahoma has said maybe the world would be a better place if tobacco wasn't legal. Well, we all know that is a slippery slope for the individual choices we make. If we were to ban tobacco, we might as well ban fatty food; we might as well ban alcohol. Obviously, the government would become essentially the dictator of what people could and could not do and consume, and I don't think the American people would tolerate it and I think with some good reason.

We have to accept individual responsibility for our choices. But, again, when you target a deadly drug such as tobacco and nicotine—this addictive component of tobacco to children—that, to me, crosses the line where we ought to say the Federal Government does have a responsibility to allow this legal product, if it is going to remain legal, to be used but under a regulatory regime that will protect the most vulnerable among us.

Many States have effective ways to deal with underage use of tobacco. I think the regime in my State of Texas works pretty well, but it is spotty and not uniform across the country; thus, I think, necessitating a Federal response.

This bill—which, as I say, should be our last resort, and in many ways it is—increases Federal regulation, I believe, in a responsible way, under an imperfect situation, where this legal but deadly drug is used by so many people in our country.

This bill gives the Food and Drug Administration the authority to regulate the manufacturing, marketing, and sale of tobacco products. It would restrict marketing and sales to our young people. It would require tobacco companies to disclose all the ingredients in their products to the FDA. There have been various revelations over time that there were actually efforts made by tobacco companies to provide an extra dose of the addictive component of tobacco, which is nicotine, in order to hook people at a younger age. I think by providing for disclosure of all the ingredients of these products to the FDA, and thus to the American people, we can give people at least as much information as we possibly can to make wise choices with regard to their use of tobacco, or not, preferably. It would require larger and stronger health warnings on tobacco products.

This bill would also protect our young people and taxpayers as well. Smokers will pay for the enforcement of these regulations through user fees on manufacturers of cigarettes, cigarette tobacco, and smokeless tobacco products. Nonsmokers will not have to pay any additional taxes or fees as a result of this bill.

I hope this bill does some good. I think it will. But the key to reducing

smoking is for individuals to make better choices and for our culture to change, as it has already changed, when it comes to consumption of tobacco products. I think about other examples over time where our culture has changed to where we now do things that are safer and better today than we used to when I was growing up. For example, when I was growing up, seatbelt use was very sparse. As a matter of fact, you could buy a car, and if you wanted a seatbelt, you would have to have somebody install it for you because it didn't come as original, manufactured equipment. Today we know seatbelt use is not only much broader and more widely spread, but you can't get into a car and turn it on without being dinged to death or otherwise reminded that you need to put your seatbelt on. The truth is it has made driving in cars a lot safer. It has kept people healthier, even in spite of accidents they have been involved in, and it has—not coincidentally—helped reduce medical admissions and medical expenses as well.

We know there is also today a greater societal stigma against drunk driving. That was not always the case. As a matter of fact, as a result of many years of public education and stricter law enforcement, now people take a much smarter and well-informed view of drinking and particularly the risks of drinking and driving. We know also that many Americans, in dealing with energy, are dealing more responsibly by recycling and conserving energy. Of course, millions of Americans are trying to do better when it comes to eating right and exercising more frequently so they can protect their own health and engage in preventive medicine, so to speak.

Government can't do it all because, as I said earlier, I think individuals bear a responsibility to make good choices. One thing government can do is help inform those choices. I think this regulation bill will help smokers make better decisions by knowing what is in the tobacco product and allowing the FDA to regulate this drug.

I believe the real drivers of change, though, are not just the government, not the nanny State that will tell us what we can and cannot do, but cultural influences and, indeed, economic incentives which are more powerful than government regulations in influencing individual behavior.

Some have said: Why in the world would we give tobacco regulation to the Food and Drug Administration, a Federal agency with the primary job of determining safety of food and drugs and medical devices as well as efficacy. As a matter of fact, many people have been tempted to buy prescription drugs, let's say, over the Internet but not knowing where they were actually manufactured, whether they were actually counterfeit drugs. So there is not only the question of safety—in other words, if you put it in your mouth, is it going to poison you—but it is also if you put it in your mouth and you take it expecting it actually to be effective against the medical condition you want to treat. The FDA is a regulatory agency that is supposed to determine not only safety of food and drugs but also their efficacy.

There is a certain anomaly in giving the FDA regulatory authority for something we know will kill people—and does, in fact, kill hundreds of thousands of people—when used as intended by the manufacturer, but I think this is a step in the right direction. I think the world would be a better place—we would all certainly be healthier—if people chose not to use tobacco, and many have made that choice due to the cultural influences we have mentioned, as well as some of the economic incentives that are provided by employers.

As we undertake the task of reforming our health system in America, something that comprises 17 percent of our gross domestic product, I think we could well learn from some of the successful experiences and experiments some employers have used and some workers have used when it comes to drugs such as tobacco. For example, one large grocery company headquartered out in California—Safeway—which also has many employees in Texas, as an employer, they noticed that 70 percent of their health care costs were related to individual behavior, things such as diet, exercise, and, yes, indeed, smoking. They recognized that if they could encourage their employees to get age-appropriate diagnostic procedures for cancer—colon cancer, for example—if they could encourage their employees to quit smoking, if they could encourage their employees to watch their weight and get exercise and to watch their blood pressure and take blood pressure medication where indicated, where they could encourage them to take cholesterol-lowering medication, if they had high cholesterol, that they could not only have healthier, more productive employees, they could actually bring down the costs of health care for their employees as well as their own costs. I think Safeway is just one example of many successful innovators across this country, where people are encouraged to do the right thing for themselves and for their employers and for their families. I think these are the kinds of issues that ought to guide us as we debate health care reform during the coming weeks.

I believe this legislation fills the necessary gap in FDA's regulatory authority, an agency that regulates everything from food to prescription drugs, to medical devices. The only reason tobacco was left out of it is because of the political clout of tobacco years ago. This legislation fills that gap and I think presents the most pragmatic approach to try to deal with the scourge of underage smoking and marketing to children, as well as informing consumers of what they need to know in order to make smart choices for their own health and for the health of their family.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mrs. BOXER. Madam President, I ask unanimous consent that the period of morning business be extended until 12:30 p.m., with Senators permitted to speak for up to 10 minutes each.

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

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mrs. BOXER. Madam President, I came to the floor to speak in support of the Family Smoking Prevention and Tobacco Control Act and also to express my gratitude to Senator KENNEDY and my colleagues who have pushed so hard for the consideration of this important bill. I am so pleased about the vote last night which allowed us to move forward on this bill.

This would be a historic accomplishment for this Senate, the House, and for the President. I am at a loss to understand how Senators could stand in opposition to this important legislation. To prove the point, I could ask a couple of questions:

What is the leading cause of preventable death in this country, killing over 400,000 Americans a year? The leading cause of preventable death is tobacco.

What causes more deaths than HIV/AIDS, illegal drug use, alcohol use, motor vehicle accidents, suicides, and murders combined? I guess if you ask people out there, they may not know that the answer is tobacco.

What are the only products on the market that kill one-third of their purchasers? Madam President, if you had a health device or any product that kills one-third of its purchasers, we would outlaw that product in a heartbeat. We are not outlawing tobacco; we are simply saying tobacco needs to be controlled by the FDA. Remember, the only product on the market that kills one-third of its purchasers is tobacco, if used as directed.

I could go on and on with these rhetorical questions. Clearly, we know tobacco is the only product on the market that is advertised and sold without any government oversight.

I don't understand how 35 or so of our colleagues think the answer to our pushing for this is no. But then again, that is the answer we get back from the other side of the aisle a lot. I am very grateful to the eight or nine Republicans who joined us. Without them,

we wouldn't be here today. As I did on the stimulus, thanking those three who had the bravery to say yes, I thank the eight or nine who had the bravery to say yes and move to regulate tobacco. Food is regulated. Drugs are regulated. Consumer products are regulated. Tobacco is not. We know this bill could prevent 80,000 tobacco-related deaths every year.

It makes me sad to think that over the years our failure to address this issue is having the greatest impact on our Nation's children. Ninety percent of all new smokers are children. I have spoken to the tobacco executives and watched them being interviewed. ''Oh, we just don't want kids to get our products.'' Please. It is embarrassing that they can say that with a straight face when they have invented all kinds of new products, including tobacco candy. You know, there is an old cliche that ''this is so easy, it is like giving candy to a baby.'' We know kids love candy, and what happens if you lace that candy with an addictive product? The answer is that we get a lot of kids hooked on tobacco who cannot quit when they get older.

Claims by the tobacco industry that these products are safe alternatives to smoking and they are not designed to attract kids, frankly, just don't add up. You know what they are doing. We know adult smokers are finally saying no; they are quitting, thank goodness. It is very difficult. I have watched it up close with family and friends, and some of them who quit for 2, 3 years go right back again, and it is worse than ever. This isn't easy. Don't say you are creating a safer product when you create tobacco candy, a smokeless tobacco. We know smokeless tobacco can lead to oral cancer, gum disease, heart attacks, heart disease, cancer of the esophagus, and cancer of the stomach. Smokeless tobacco products are only the latest effort by the tobacco companies to market tobacco products that they claim pose a reduced risk.

Cigarettes contain 69 known carcinogens and hundreds of other ingredients that contribute to the risk of all of the diseases I mentioned. Yet the tobacco industry is not required to list the ingredients of its products as all food products have to do. We have a right to know the calories, sugar, protein, and all those things when we eat food, but for cigarettes they don't have to list the ingredients.

The bill will make it so that we finally know what is contained in these products. The legislation will grant the FDA the authority to ban the most harmful chemicals used in tobacco and even to reduce the amount of nicotine.

A 2006 Harvard School of Public Health study revealed that the average amount of nicotine in cigarettes actually rose 11.8 percent from 1997 to 2005. How can my colleagues on the other side, who voted pretty much en masse against this bill, say we should just keep it open to amendment? How can they explain that even after all these years, now that we know the risks of tobacco? There were reasons in the early years when we didn't know how serious it was. That is one thing. But here they have a situation where recently they raised the amount of nicotine. There is no rhyme or reason for that.

This bill will give the FDA the authority to require stronger warning labels, prevent industry misrepresentations, and regulate ''reduced harm'' claims about tobacco products. If you die because you use smokeless tobacco but say you die from a heart attack, you are still dead. This Congress and the President have committed to reducing health care costs through comprehensive reform. This legislation is such an important step on the way because lung cancer is a preventable disease. It is preventable, as well as the heart risks associated with smoking. Investing in prevention and wellness will enable us to increase access to quality health care while reducing costs.

Tobacco use results in $96 billion in annual health care costs, and in California alone—my State—we spend $9.1 billion on smoking-related health care costs. Everybody who has a heartbeat and a pulse today knows that my State suffers mightily from a terrible budget crisis—$20 billion. We don't know where to look, what to do. People never put together the fact that smoking is causing our health care costs to swell. If my State could save $9.1 billion on smoking-related health care costs, that really saves the education system and a lot of other important things we do in our State.

Preventive medicine and giving the authority to the FDA to vigorously enforce some strict, new laws about cigarettes is going to make a positive difference. I am proud to be here in support of this important legislation.

I wish to say again to Senator KENNEDY, if he is watching this debate, how much I respect, admire, and miss him and his presence here on this bill. If he were here, he would be roaring from the back of the Chamber about this, in the best of ways, and challenging us to move forward on this bill as quickly as we can.

The House has acted. Once the Senate acts, we can have a conference—or maybe the House will take the Senate bill—and this bill will be on the President's desk before we do health care reform. Imagine what a great preamble this would be to health care reform—tackling this incredible problem in our society, tobacco use, an incredible problem in our society that causes so much suffering and dependence and so much addiction, so much cost—if we are able to tackle this as a preamble to our health care reform, I would be so proud. I know each and every one of us who will support this will be very proud. I know President Obama will be very proud. He has struggled with tobacco addiction. He knows how tough it is to say no to cigarettes. Clearly, the best way is to prevent someone from getting addicted in the first place.

I don't want my grandkids being lured into smoking by looking at a box of candy cigarettes and trying one, two, three, and four. I don't want that for anybody's grandkids. If people decide when they are older, when they know all of the facts, that they are going to smoke, in many ways that is their problem. But it is our job to let them know the risks and dangers. Very clearly, we have been dancing around the edges with these little warning labels, but we have not controlled tobacco. We need to do that.

I urge all of my colleagues on both sides of the aisle—again, thanking the eight or nine Republicans for joining us—to make an investment in the health of the American people and support this legislation.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mrs. BOXER. Madam President, I ask unanimous consent that the order for the vote with respect to the Burr-Hagan amendment be modified to provide that the vote occur at 4:20 p.m. under the same conditions as previously ordered.

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

Mrs. BOXER. Madam 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. LEAHY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

JUDGE SONIA SOTOMAYOR

Mr. LEAHY. Madam President, for the sake of my colleagues, I want to talk about the timing of the Judge Sotomayor nomination.

I talked with the distinguished ranking member last week on this schedule, and I would note the concerns he raised, but I am announcing today that the Senate Judiciary Committee will hold the confirmation hearing on the nomination of Judge Sonia Sotomayor to be Associate Justice of the U.S. Supreme Court on July 13.

I have talked and met with Senator SESSIONS, the committee's ranking member, several times to discuss the scheduling of this hearing. I will continue to consult with Senator SESSIONS

to ensure that we hold a fair hearing. We were able to work cooperatively to send a bipartisan questionnaire to Judge Sotomayor within one day of her designation by President Obama. Last week the committee received her response to that questionnaire. We also received other background information from the administration, as well as the official Presidential nomination.

This is a reasonable schedule. It will be the middle of next month. It is in line with past experience. It will allow several more weeks for committee members to prepare for the hearing—several more weeks than if I had held the hearing this month—and there is no reason to unduly delay the consideration of this well-qualified nominee. Judge Sotomayor deserves the opportunity to go before the public and speak of her record, especially as some have mischaracterized and misstated it. The only place she can speak of her record is in a hearing.

It is also a responsible schedule that serves the many interests involved. Of course, first and foremost is the American people's stake in a process that is fair and thorough but not needlessly prolonged. It serves the purpose of the institution of the Senate, where we need sufficient time to prepare for a confirmation hearing. We have a full legislative plate of additional pressing business in the weeks and months ahead that is of great importance to our constituents and to the Nation. Then, of course, it serves the need of the third branch of government, which depends on the other branches of government to fill court vacancies in our independent judiciary. It serves the needs of the President who has nominated Judge Sotomayor. And lest we forget, it serves the needs of the nominee herself, who as a judge will only be able to speak publicly about her record when the hearings are convened.

This is an extremely important obligation that we as Members of the Senate take on. There are only 101 people who get a direct say in the nomination and confirmation of a Justice of the Supreme Court. First and foremost, of course, the President of the United States—and in this case, President Obama consulted with numerous Senators, Republicans and Democrats alike—prior to making his nomination. Then once the nomination is made, 100 Members of the Senate have to stand in for 300 million Americans in deciding who will get that lifetime appointment. I voted on every single current member of the Supreme Court, as well as some in the past, and I know how important an obligation that is.

The Justice who takes Justice Souter's place for the court session that convenes October 5 also needs as much time as possible to hire law clerks, to set up an office, to find a place to live here in Washington, and to take part with the rest of the Court in the preparatory work that precedes the formal start of the session on the first Monday in October.

I mention that because I have put together a schedule that tracks the process the Senate followed, by bipartisan agreement, in considering President Bush's nomination of John Roberts to the Supreme Court in 2005. At that time, I served as the ranking minority member of the Judiciary Committee. I met with our Republican chairman, and we worked out a schedule which provided for Chief Justice Roberts' hearing 48 days after he was named by President Bush.

I might say that the agreement on time was reached even before the committee received the answers to the bipartisan questionnaire. And while Justice Roberts—then Judge Roberts—had not written as many opinions as Judge Sotomayor, he had been in a political policy position in Republican administrations for years before, and there were 75,000 pages of documents from that time. In fact, some arrived almost on the eve of the hearing itself. And, of course, that nomination replaced Justice O'Connor, who was recognized as a pivotal vote on the Supreme Court.

If something that significant required 48 days, and Republicans and Democrats agreed that was sufficient to prepare for that hearing, in accordance with our agreement on the initial schedule, certainly that is a precedent that says we have more than adequate time to prepare for the confirmation hearing for Judge Sotomayor.

My initial proposal to Senator SESSIONS was that we begin the hearing on July 7, following the Senate's return from the Fourth of July recess. I have deferred the start date to July 13 in an effort to accommodate our Republican members. With bipartisan cooperation, we should still be able to complete Judiciary Committee consideration of the nomination during the last week in July, and allow the Senate to consider the nomination during the first week in August, before the Senate recesses on August 7.

In selecting the date, I am trying to be fair to all concerned. I want to be fair to the nominee, allowing her the earliest possible opportunity to respond to attacks made about her character. It is not fair for critics to be calling her racist—one even equating her with the head of the Ku Klux Klan, an outrageous comment, and both Republicans and Democrats have said it was outrageous—without allowing her the opportunity to speak to it, and she can't speak to it until she is in the hearing.

I also want to conclude the process without unnecessary delay so that she might participate fully in the deliberations of the Supreme Court selecting cases and preparing for its new term. In his May 1 letter to President Obama, Justice Souter announced his resignation effective ''when the Supreme Court rises for the summer recess this year,'' which will happen later this month. Thereafter, the Supreme Court prepares for the next term. To participate fully in the upcoming deliberations, it would be helpful for his successor to be confirmed and able to take part in the selection of cases as well in preparing for their argument.

I am merely following the timeline we followed with the Roberts nomination. The timeline for the Alito nomination provides no reason to delay the hearing for Judge Sotomayor. It presented a very different situation in many ways. For one thing, that nomination was made with no consultation by President Bush. By contrast, President Obama devoted several weeks to consultation with both Republicans and Democrats before making his selection. The Alito nomination was President Bush's third nomination to succeed Justice O'Connor. It followed 4 months of intense effort by the Judiciary Committee, beginning with Justice O'Connor's announcement on July 1. And finally, the Christmas holidays helped account for the timing of those hearings. I do not believe Bastille Day requires us to delay the confirmation hearings for the first Hispanic nominated to the Supreme Court for an additional 6 weeks.

Some may recall that Justice O'Connor's resignation in 2005 was contingent on the ''nomination and confirmation of [her] successor.'' She continued to serve on the Supreme Court when its new term began in October 2005, and until Justice Alito was confirmed at the end of January 2006. In addition, proceedings to fill that vacancy involved a more extended process, not only because Justice O'Connor represented a pivotal vote on the Supreme Court on so many issues, but because President Bush first nominated John Roberts and then withdrew that nomination, then nominated Harriet Miers and withdrew her nomination when Republicans and conservatives revolted, and finally nominated Samuel Alito. The nomination of Judge Alito was the third Supreme Court nomination that the Senate was asked to consider, and followed the withdrawal of the Miers nomination by only 3 days.

Given that sequence of events, and the then upcoming Christmas holiday, that hearing on the late October nomination of Samuel Alito was appropriately scheduled by the Republican Chairman to begin after the New Year. In addition, Judge Alito did not return his questionnaire until November 30. His hearing was held 40 days after his questionnaire was returned, which includes the Christmas and the holiday period. That is substantially equivalent to the 39 days between the time receipt of Judge Sotomayor's questionnaire response and her hearing.

Of course, in the case of the current nomination, Judge Sotomayor had been reported to be a leading candidate for the vacancy as soon as it arose on May 1, and her record was being studied from at least that time forward. The right wing groups attacking her were doing so long before she was named by the President on May 26, and those attacks have intensified since her designation.

I do not want to see this historic nomination of Sonia Sotomayor treated unfairly or less fairly than the Senate treated the nomination of John Roberts. In 2005, when President Bush made his first nomination to the Supreme Court, Senator MCCONNELL, who was the majority whip, said the Senate should consider and confirm the nominations within 60 to 70 days. We worked hard to achieve that.

The nomination of Judge Sotomayor should more easily be considered within that timeframe. Judge Sotomayor has been nominated to succeed Justice Souter, a like-minded, independent and fair Justice, not bound by ideology, but one who decided each case on its merits and in accordance with the rule of law. We have the added benefit of her career being one that includes her service on the judiciary for the past 17 years. Her judicial decisions are matters of the public record. Indeed, when my staff assembled her written opinions and offered them to the Republican staff, they declined, because they already had them and were reviewing them. We have the benefit of her judicial record being public and well known to us. We have the benefit of her record having been a subject of review for the last month, since at least May 1, when she was mentioned as a leading candidate to succeed Justice Souter. We have the benefit of having considered and confirmed her twice before, first when nominated to be a judge by a Republican President and then when elevated to the circuit court by a Democratic President. We have the benefit of not having to search through Presidential libraries for work papers of the nominee. By contrast, the 75,000 pages of work papers for John Roberts required extensive time and effort to retrieve them from Presidential libraries and to overcome claims of privilege. In fact, they were still being received just days before the hearing.

To delay Judge Sotomayor's hearing until September would double the amount of time that Republicans and Democrats agreed was adequate to prepare for Judge Roberts' hearing. That would not be fair or appropriate. That would not be equal treatment.

Unlike the late July nomination of John Roberts, this nomination of Judge Sotomayor by President Obama was announced in May. Unlike the resignation of Justice O'Connor that was not announced until July, the retirement of Justice Souter was made official on May 1. Given that the vacancy arose 2 months earlier, and the nomination was made after bipartisan consultation 2 months earlier, by following the Roberts roadmap, we should be able to complete the process 2 months earlier. We should be able to complete the entire process by the scheduled recess date of August 7.

Of course, while the Roberts nomination was pending, Chief Justice Rehnquist passed away and President Bush decided to withdraw the initial nomination to be an Associate Justice, and proceeded to nominate John Roberts to succeed the Chief Justice, instead. We did not insist that the process start over; rather, we continued to move forward. It was the aftermath of Hurricane Katrina, with its destruction and toll in damage and human life, that pushed the start of the hearings back 1 week, by bipartisan agreement.

We were still able to complete Senate consideration and the Senate confirmed John Roberts to be the Chief Justice 72 days after he was initially designated to be an Associate Justice. We did this despite the fact his initial nomination was withdrawn and only shortly before his hearing he was renominated to serve as the Chief Justice of the Supreme Court. And we did this despite the terrible aftermath of Hurricane Katrina, where everybody—Republicans and Democrats alike—agreed that we should hold back a week on the hearings so we could all concentrate the Nation's resources on Hurricane Katrina. So that required a week's delay. If we followed the same schedule, 72 days after Judge Sotomayor was nominated to the Supreme Court would be August 6—and we will not have to lose 7 of those days to Hurricane Katrina.

Her historic nomination should be treated as fairly as the nomination of John Roberts was treated by the Senate. Given the outrageous attacks on Judge Sotomayor's character, I do not think it fair to delay her hearing. I cringed when I was told that, during the courtesy visit Judge Sotomayor paid to Senator MCCONNELL, reporters shouted questions about conservatives calling her a racist. She had to sit there silently and could not respond. She deserves that opportunity as soon as possible.

The hearing is the opportunity for all Senators on the Judiciary Committee, both Republicans and Democrats, to ask questions, to raise concerns, and to evaluate the nominee. As Senator SESSIONS' Saturday radio speech ably demonstrates, Republican Senators are already prepared to ask their questions. Last week, we were considering another judicial nomination at the meeting of the Judiciary Committee when Senator KYL suggested that he may oppose all of President Obama's nominees given what he views as the criteria President Obama is considering in selecting them. Republicans have questioned whether her recognition that she brings her life experience with her, as all judges do, is somehow disqualifying.

Our Republican colleagues have said they intend to ask her about her judicial philosophy. It doesn't take a month to prepare to ask these questions. In fact, most of them have already raised the questions. They will surely be prepared to ask them more than a month from now. And during that month, we have a week's vacation from the Senate. I intend to be using that week—without the interruption of committee hearings, without the interruption of votes, without the interruption of the regular Senate business—to prepare for the hearings. I would advise those Senators who feel they have to have extra time to forgo your vacation and spend that week preparing for the hearing. Holding Judge Sotomayor's hearing on July 13 will, in effect, afford 10 weeks for them to have prepared.

Because this is a historic nomination, I hope all Senators will cooperate. It is a schedule that I think is both fair and adequate—fair to the nominee, but also adequate for the Senate to prepare for the hearing and Senate consideration. There is no reason to indulge in needless and unreasonable delay.

I say this is a historic nomination because it should unite and not divide the American people and the Senate. Hers is a distinctly American story. Whether you are from the south Bronx or the south side of Chicago or south Burlington, VT, the American dream inspires all of us. Her life story is the American dream. And so, I might add, is the journey of the President who nominated her.

Some are simply spoiling for a fight. There have been too many unfair attacks, people unfairly calling her racist and bigoted. I know Sonia Sotomayor, and nothing could be further from the truth. These are some of the same people who vilify Justice Souter and Justice O'Connor. Americans deserve better. There are others who have questioned her character and temperament. She deserves a fair hearing, not a trial by attack and assaults upon her character. So let's proceed to give her that fair hearing without unnecessary delay.

I am also disappointed that some have taken to suggesting that after 17 years as a Federal judge, including 11 as a member of the U.S. Court of Appeals for the Second Circuit, Judge Sotomayor does not understand ''the judge's role.'' I know her to be a restrained and thoughtful judge. She has reportedly agreed with judges appointed by Republican Presidents 95 percent of the time. Let us respect her achievements, her experience and her understanding. Let no one demean this extraordinary woman or her understanding of the constitutional duties she has faithfully performed for the last 17 years. I urge all Senators to join with me to fulfill our constitutional duties with respect.

I have said many times on the floor of this great body over my 35 years here that as Senators we should be the conscience of the Nation, as we are called upon to be. There have been occasions when this Senate—Republicans and Democrats alike—has united and shown they can be the conscience of the Nation. I would say this is one time we should rise above partisanship and be that conscience.

When I met with Judge Sotomayor, I asked her about her approach to the law. She answered that, of course, one's life experience shapes who you are, but ultimately and completely—

her words—as a judge, you follow the law. There is not one law for one race or another. There is not one law for one color or another. There is not one law for rich, a different one for poor. There is not one law for those who belong to one political party or another. There is one law for all Americans. And she made it very emphatic that as a judge, you follow that one law.

There is only one law. We all know that. She said, ultimately and completely a judge has to follow the law, no matter what their upbringing has been. That is the kind of fair and impartial judging that the American people expect. That is respect for the rule of law. That is the kind of judge she has been.

The purpose of the hearing is to allow Senators to ask questions and raise their concerns. It is also the time the American people can see the nominee, consider her temperament and evaluate her character, too. I am disappointed that some Republican Senators have declared that they will vote no on this historic nomination and have made that announcement before giving the nominee a fair chance to be heard at her hearing. It is incumbent on us to allow the nominee an opportunity to be considered fairly and allow her to respond to false criticism of her record and her character. Those who are critical and have doubts should support the promptest possible hearing. That is where questions can be asked and answered. That is why we hold hearings.

Judge Sotomayor is extraordinarily well equipped to serve on the Nation's highest court. To borrow the phrase that the First Lady used last week, not only do I believe that Judge Sotomayor is prepared to serve all Americans on the Supreme Court, I believe the country is more than ready to see this accomplished Hispanic woman do just that. This is a historic nomination, and it is an occasion for the Senate and our great Nation to come together. This is the time for us to come together.

The process is another step toward the American people regaining confidence in their judiciary. Our independent judiciary is considered to be the envy of the world. Though less visible than the other two branches, the judiciary is a vital part of the infrastructure that knits our Nation together under the rule of law. Every time I walk up the steps into the Supreme Court, I look at the words over the entrance to the Supreme Court. They are engraved in marble from my native State of Vermont. Those words say: ''Equal Justice Under Law.'' The nomination of Judge Sotomayor keeps faith with that model.

Her experience as a trial court judge will be important. Only Justice Souter of those currently on the Supreme Court previously served as a trial court judge. Judge Sotomayor has the added benefit of having been in law enforcement as a tough prosecutor who received her early training in the office of the longtime and storied New York District Attorney, Robert Morgenthau.

I appreciate that she has shown restraint as a judge. We do not need another Supreme Court Justice intent on second-guessing Congress, undercutting laws passed to benefit Americans and protect their liberties, and making light of judicial precedent.

President Obama handled the selection process with the care that the American people expect and deserve, and met with Senators from both sides of the aisle. Senator SESSIONS suggested to the President that it was important to nominate someone with a judicial record. Judge Sotomayor has more judicial experience than any nominee in recent history.

I wanted someone outside the judicial monastery, and whose experiences were not limited to those in the rarified air of the Federal appellate courts. Her background as someone who was largely raised by a working mother in the South Bronx, who has never forgotten where she came from, means a great deal to me. Judge Sotomayor has a first-rate legal mind and impeccable credentials. I think she combines the best of what Senator SESSIONS and I recommended that the President look for in his nominee.

The Supreme Court's decisions have a fundamental impact on Americans' everyday lives. One need look no further than the Lilly Ledbetter and Diana Levine cases to understand how just one vote can determine the Court's decision and impact the lives and freedoms of countless Americans.

I believe Judge Sotomayor will continue to do what she has always done as a judge—applying the law to the case before her. I do not believe she will act in the mold of conservative activists who second-guess Congress and undercut laws meant to protect Americans from discrimination in their jobs and in voting, to protect the access of Americans to health care and education, and to protect their privacy from an overreaching government.

I believe Judge Sotomayor understands that the courthouse doors must be as open to ordinary Americans as they are to government and big corporations.

President Obama is to be commended for having consulted with Senators from both sides of the aisle. I was with him on some of the occasions that he did. I have had Senators come up to me, Republican Senators, and tell me they had never been called by a President of their own party, to say nothing of a Democratic President, to talk about a Supreme Court nominee. But President Obama did call and reach out.

Now it is the Senate's duty to come to the fore. I believe all Senators, of both parties, will work with me to consider this nomination in a fair and timely manner.

I yield the floor 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. BROWN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

HEALTH INSURANCE

Mr. BROWN. Madam President, in 1945, President Truman delivered a speech to a joint session of Congress, in which he declared:

> Millions of our citizens do not now have a full measure of opportunity to achieve and enjoy good health. Millions do not now have protection or security against the economic effects of sickness. The time has arrived for action to help them attain that opportunity and that protection.

That was said by President Truman, 10 or 11 Presidents ago, perhaps six decades ago, and 64 years later we are still fighting to provide that opportunity and that protection.

A severely weakened economy, growing unemployment, rising health care and health insurance costs, and declining employment-based insurance are all factors contributing to the current health care crisis. Today, 47 million Americans are uninsured. An additional 25, 30, 35, as many as 40 million Americans are underinsured and millions of Americans are either underinsured or uninsured and are saddled with catastrophic medical debt.

Closing the health care gap will dramatically improve the public's health. It will also lead predictability to national health spending, which is essential if we are going to get health care costs under control.

Closing the health care gap would dramatically reduce personal bankruptcies, more than half of which result from catastrophic illness and the huge bills that go with it.

Think about that for a moment. Most bankruptcies in this country are because people have had health care bills they simply cannot pay. Most of those people have those health care bills which they cannot pay which then force them into bankruptcy. Most of those people have health insurance, but it is inadequate and has too many gaps in it.

Closing the health care gap is a short-term and a long-term investment in the health of Americans, the health of U.S. businesses—businesses whose premiums are inflated by the costs of uncompensated care. It is an investment in the health of our economy, which benefits from the health care industry but not from already too high health care costs, further inflated by needless red tape, needless duplication, needless indifference to health care needs that become more serious and more costly when they are not caught early.

Per capita health care spending in the United States is 53 percent higher here than that of any other nation in the world, and we are the only nation

in the world without an insurance system to cover everyone. In other words, we are paying at least half again as much—at least—as any other country in the world per person. Yet millions, tens of millions of Americans, do not have health insurance. Life expectancy, infant mortality, maternal mortality, immunization rates—we are not among the world leaders in any of those categories.

Interestingly, the only place we are a world leader is life expectancy at 65. If you get to be 65 in this country, the chance that you will live a longer, healthier life is greater than in almost any other country in the world.

In Ohio, $3.5 billion is spent each year by and on behalf of the uninsured for health care that meets about half their needs. For the first time, we are on the verge of meaningful health care reform that will make a difference in the lives of Americans who have, for too long, put up with less than they deserve when it comes to health care. Our health insurance system does some things very well, but we have let the industry, the health care industry, forget its own core central purpose.

The insurance industry is supposed to bear risks on behalf of its enrollees, not avoid risk at the expense of its enrollees.

The insurance industry is supposed to protect the sick, not throw them overboard.

The insurance industry is supposed to offer affordable coverage to every American, not expensive coverage to some Americans and no coverage to the rest.

The insurance industry is supposed to cover the reasonable and customary costs of health care, not a fraction of that.

The health insurance industry is supposed to cover the doctors you need, not the doctors the insurer chooses for you.

The insurance industry is supposed to pay claims on a timely basis, not as slowly as they possibly can.

Who can forget, when Senator Obama was talking about his mother in the last months of her life, how as she suffered and was dying from terminal cancer, she spent much of her time on the phone trying to figure out how to collect on insurance, how to pay, how to simply get by and not leave debt for her soon to be very famous son.

The health insurance industry does some things pretty well, but it gets away with too much. What do we do about it? First, we put stronger insurance rules in place. Second, we introduce some good old-fashioned competition into the insurance market. That is the purpose of a federally backed insurance option, one the Presiding Officer from New York has spoken out for, as has the other Senator from New York and a majority of people in this body. It is to set the bar high enough for private insurers that they can't slip back into their risk-avoiding ways without taking a hit in the marketplace. In other words, we need insurance company rules on preexisting conditions, on changing the way we do community rating, on a whole host of rules to make insurance companies behave better and serve the public better.

We also need this federally backed insurance option because all too often insurance companies are a step ahead of the sheriff. They always can figure out how to stay ahead of the rules that try to make them behave in a way that is more in the public interest.

The purpose of establishing a federally backed insurance option—it is an option—is to give Americans more choices and to give the private insurance industry an incentive to play fair with their enrollees, or their enrollees will look elsewhere, perhaps in the public plan.

Private insurers have helped to create a system of winners and losers—a system in which insured Americans can still be bankrupted by health expenses and uninsured Americans can still die far too young because they cannot get the health care they need.

Insurance companies have always been one step ahead of the sheriff. They have given us no reason to believe they will behave any differently. They have come to Congress this year and said: You can put some new rules on us. But when we have done that in the past, we know they have always found a way to avoid some of those rules that do not serve their bottom line. And it is their bottom line, and I do not even blame the insurance companies for acting the way they do. I just say we need a set of rules to make sure they act in the public interest.

Private insurance market reforms, coupled with the creation of a competitive, federally backed health insurance option—it is an option, just as it will be an option, once we pass health insurance, that anybody today can stay in the insurance plan they have. Nobody is going to be forced to do anything they do not want to do. Private insurance market reforms, coupled with the creation of a competitive, federally backed health insurance option represents our best hope at achieving the health reforms so vital to the health of our citizens and the future of our Nation.

Last week, President Obama sent a letter to Chairman KENNEDY of the Health, Education, Labor, and Pensions Committee, on which I sit, and to Chairman MAX BAUCUS, chairman of the Finance Committee, the other health care committee here, in which the President stated:

I strongly believe that Americans should have the choice of a public health insurance option operating alongside private plans. This will give them—

Will give American citizens—

a better range of choices, make the health care market more competitive and keep insurance companies honest.

A public health insurance option—not administered by a private for-profit insurance company but a public health insurance option—is one of the necessary components of health reform.

There is no better way to keep the private insurance industry honest than to make sure they are not the only game in town. Historically, public health insurance has outperformed private insurance in preserving access to stable and reliable health care, in reining in costs, in cutting down on bureaucracy, and in pioneering new payment and quality-improvement methods.

A public health insurance option will not neglect sparsely populated and rural areas, as insurers too often do. The Presiding Officer previously represented a rural congressional district in New York. She knows the problems of insurance availability in rural areas. It will not disappear.

A public health insurance option will not disappear when an American loses her job, when a marriage ends, or when a dependent becomes an adult. And the pages sitting here in front of me, when they finish school and go into the workplace, they would have an option. Once they are no longer dependent on their parents, they will have that public option, as other Americans will.

A public health insurance option will not deny claims first and ask questions later, as insurance companies too often do. It will not look for any and every loophole to insure the healthy and avoid the sick, as private insurance companies too often do.

These are the fundamental reasons why a public plan option is the key—is the key—to arriving at a health insurance system that better serves every American, insured and uninsured alike. What is the point of health care reform if we do not do it right and make sure every American citizen is better served than they are now in this health insurance market?

Madam President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Acting President pro tempore.

The ACTING PRESIDENT pro tempore. The Senate will come to order.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I note there is nobody here who wishes to speak, so 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. GREGG. Mr. 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.

THE DEFICIT

Mr. GREGG. Mr. President, I rise today to speak briefly about two issues, and I know Senator BURR wants to continue his discussion of the FDA tobacco bill.

There are two issues which are very significant to the American taxpayer, especially to those of us who are concerned about how much debt this administration is running up on our children, and they need to be highlighted.

The first is good news. It looks as though a number of banks are going to repay a fair percentage of the TARP money that has been put out by the administration—potentially $65 billion. When TARP was originally structured, the understanding was that we would buy assets in banks or from banks, and at some point we would get that money back as taxpayers. In fact, we would get it back with interest. This is what is happening now. The money is coming back, as these banks have restored their fiscal strength, and it is actually coming back with interest. About $4.5 billion on top of the money we have put out, is my understanding, as to what will be paid back on the interest side relative to the preferred stock. So that is all good news.

First, the financial system was stabilized during a cataclysmic period in September and October, and the investments which remained in preferred stock, with taxpayers' money, is now being repaid.

The issue becomes, however, what are we going to do with this money that is coming back into the Treasury? Well, it ought to go to reduce the debt. This administration in recent days has been giving at least lipservice to the fact that the budget they put in place, with a $1 trillion deficit over the next 10 years on average every year—$1 trillion every year for the next 10 years, of doubling the debt in 5 years, of tripling it in 10 years—they have been giving lipservice that they understand that is not a sustainable situation. The Secretary of the Treasury, the Chief Economic Counsel, and even the President have said the budget they proposed is not sustainable because the debt that is being run up on the American public cannot be afforded by our children. It goes from what has historically been about 35 percent of the gross national product up to over 82 percent of the gross national product. The interest on the debt alone at the end of this budget which the President proposed will be $800 billion a year—$800 billion a year—just in interest payments that the American people will have to pay. That will actually exceed any other major item of discretionary spending in the budget. We will be spending less than that on the national defense. We will be spending more on interest, in other words, than we spend on national defense because of all of the debt that is being run up.

Well, if this administration is serious—and I am not sure they are; I think they are basically holding press conferences because they did something else today which implies that—if they are actually serious about trying to address this debt issue, then they should immediately take the $65 billion they are going to get back from the banks to which money was lent and that was put out by taxpayers and knew we would get back, they should immediately take that money and apply it to reducing the Federal debt. It should not be spent on other programs. It shouldn't even be recycled through the financial system.

It should be repaid to the taxpayer by reducing the debt of the United States. That is the only reasonable way to approach it. It would be a tremendously strong signal not only to the American taxpayers that this administration is serious about doing something on the debt side, but it would be a strong signal to the world markets that we were willing, as a nation, to take this money and pay down the debt. Ironically, it would also follow the proposal of the original TARP bill, which said that after the financial system was stabilized, any moneys coming in should be used to reduce the deficit and debt of the United States. It certainly should not be used to fund new ventures into the private sector, whether it is buying automobile companies or insurance companies or anything else such as that. It should be simply used to reduce the debt.

I hope the administration will do that because that would follow the law, and it would be a good sign to the world markets, which are becoming suspicious of our debt, as we have seen in a number of instances—for example, the cost of 10-year bills, 30-year bills, and also the fact that the Chinese leadership, in the financial area, expressed concern about the purchase of the long-term debt of the United States. It would also be a positive sign to Americans that we are going to do something about this debt we are passing on to our kids.

It is unfair to run up a trillion dollars a year of deficit, double the debt in 5 years, and triple it in 10 years, and send all those bills to our kids. These young students here today as pages, in 10 years, will find the household they are living in has a new $30,000 mortgage on it, and it is called the bill for the Federal debt. They will have a new $6,500 interest payment that they will have to make, which is called the interest they have to support on the Federal debt. It is not appropriate to do that to these younger Americans and to the next generation. Let's take the $65 billion and use it as it was originally agreed it would be used, which is when it came back into the Treasury, with interest, which is pretty good, it would be used to pay down the debt.

Why am I suspicious that this administration is giving us lip service on the issue of fiscal discipline? There is a second thing that happened today. The President today came out and held a big press conference about how he was for pay-go. I have not heard a Democratic candidate for Congress, and now the President of the United States, not claim they are going to exercise fiscal discipline here by being for pay-go, because the term has such motherhood implications, that you are going to pay for what you do here. It is total hypocrisy, inconsistent with everything that has happened from the other side of the aisle in the era of spending and budgeting. Not only do they not support pay-go, they punch holes in what we have for our pay-go law.

In the last 2½ years, this Congress—and now in the last 3, 4, or 5 months—and this Presidency have passed—democratically controlled—10 bills that have waived or gamed the pay-go rules that are already on the books to the tune of $882 billion. If you throw in the things they wanted to do that they weren't able to pass, because we on our side stood up and said, no, that is too much—and we did it on the rest, but we got rolled—it is over a trillion dollars of instances where this Congress and this President have asked for initiatives that would waive, punch holes in, go around the pay-go rules we already have. That is why I called it ''Swiss-cheese-go,'' not pay-go. Now we have this disingenuous statement from the administration that suddenly they are for pay-go. It already exists; we just don't enforce it around here. Not only do they claim they are for pay-go, even in their statement they claim they are for it, and they game their own pay-go proposal by saying it is not going to apply to the doc fix, the AMT fix, or even to the health care exercise. There should be a pay-go point of order against the first 5 years, and they waived that on health care reform.

It is a good precedent. It will be picked up by the mainstream media as an effort by this administration to try to discipline spending because, of course, they are not going to acknowledge that it has been gamed to such an extraordinary extent that over $882 billion has been spent that should have been subject to pay-go rules. So it is a touch inconsistent and disingenuous for them to suddenly now find the faith of pay-go when, in fact, they have been ignoring pay-go rules and gaming those rules so they could spend money.

Again, what happens there? They run up the debt on the American people in the United States, creating a system where our government will not be sustainable or affordable for our children.

If this administration wants to do something meaningful in the area of reducing the debt and controlling spending, take the $65 billion they are about to get in repayment of TARP money from the various banks and apply it to reduce the debt. That would be real action versus the precedent.

I yield the floor and appreciate the courtesy of the Senator from North Carolina.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

Mr. BURR. Mr. President, I ask unanimous consent to speak for up to an hour as in morning business.

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

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. BURR. Mr. President, I came to the floor last week for north of 5 hours and spoke about the bill that will be disposed of as this week goes on and, specifically, on an amendment that, though nongermane postcloture, the majority leader has agreed to hold a vote on. To me, this will be one of the most important votes Members in this body cast this year.

Again, I believe this is one of the most important votes Members in the Senate will cast this year. Let me try to say why. This is a debate about the regulation of tobacco and, to start with, Members need to be reminded that today this is not an industry without regulation. This is the current charted Federal regulation of the tobacco industry before we do anything. I point out that included in that regulatory structure is the Department of Transportation, Department of Treasury, Department of Commerce, Department of Justice, Office of the President, Department of Health and Human Services, Department of Education, Department of Labor, General Services Administration, Department of Veterans Affairs, Federal Trade Commission, Department of Agriculture, Environmental Protection Agency, U.S. Postal Service, and Department of Defense.

One, no Member can come to the floor and claim this is not a regulated product. It is the most regulated product sold in America today. I think there is consensus, and I agree, that we can do better than this maze of regulatory oversight in jurisdiction that is currently structured within the Federal Government, because it has been cobbled together as the Federal Government has grown, as new areas saw they had a piece of this pie, and they wanted some jurisdiction. We are throwing this regulatory structure away, and the proposal in the base bill, H.R. 1256, is to centralize this regulation of tobacco within the FDA.

For those who aren't familiar with the FDA, let me say the Food and Drug Administration regulates 25 cents of every dollar of the U.S. economy—25 percent of all of the products sold in the United States are regulated by this one agency.

FDA's core mission is this:

> Responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biologic products, medical devices, our Nation's food supply, cosmetics, and products that emit radiation.

Nowhere in there does it say tobacco, nor has it ever. A layperson would look at this and say if there is an agency whose responsibility it is to approve safety and effectiveness, for God's sake, you could not give them tobacco because they could never prove it was safe. It kills, and there is no dispute about that. We are trying to take a round peg and put it in a square hole. We are trying to find an agency that we think has punitive steps that they can take, but we are actually going much farther than that. You see, not only is there experience or expertise at the FDA to regulate tobacco, they are not. We are going to ask the FDA to surge, with their resources, their personnel, expertise, away from things such as lifesaving drugs, effective medical devices, and a responsibility to food safety at a time Americans have been killed because this agency couldn't effectively do their job. We are going to ask them to surge to handle a new product they have never, ever regulated.

As a matter of fact, the last FDA Commissioner, von Eschenbach, said this:

> The provisions in this bill—

I might say this was slightly over 2 years ago. As I have pointed out and talked about last week for over 5 hours on H.R. 1256, the authors of the bill didn't even change the dates in the bill from the bill written 2 years ago. As a matter of fact, the section by section is the same bill written 10 years ago. So I think it is appropriate, if they are going to use an effective date of February 2007, that I use the comments of the FDA Commissioner at the time, who said:

> The provisions in this bill would require substantial resources, and FDA may not be in a position to meet all of the activities within the proposed user levels. . . . as a consequence of this, FDA may have to divert funds from other programs, such as addressing the safety of drugs and food, to begin implementing this program.

This is not RICHARD BURR, this is the former Commissioner of the FDA saying we may have to divert funds from other programs, such as safety of drugs and food. If the American people are given this choice, they would say uphold the gold standard of the FDA. Let me go to bed at night as I take that medication my doctor prescribed and the pharmacist filled, and let me feel confident that the most qualified reviewer looked at that application, at the clinical trial date, and made a determination that this drug was safe and effective for me. Make sure when I go to the grocery store and buy food in a global marketplace, where the melons might have come from Chile or the spinach from Mexico, that they have the best and brightest addressing food safety.

They have already flunked that several times in the last 3 years, and we have all dealt with the consequences of it. But think about what we are getting ready to do. We are getting ready to make it worse. We are getting ready to take an agency that has a seal of approval, a gold standard, and we are getting ready to say we want you to maintain that gold standard on drugs, and food, and biologics, and medical devices, but we understand you cannot hold tobacco to the same threshold. So we want you to ignore the fact that tobacco kills, and we want you to regulate it as we prescribe it in legislation. How does H.R. 1256 prescribe this in regulation?

We will turn to this, which is my continuum of risk chart. It basically starts to my right, and your left, Mr. President. It has unfiltered cigarettes. You remember those. They had a risk of 100 percent. If you smoked them, there was a 100-percent likelihood that you were going to have a health problem from smoking.

Then the industry came up with filtered cigarettes, and they reduced the risk by 10 percent, from 100 percent to 90 percent. But when one is looking for a way to play this, a 90-percent risk is not a good one.

What H.R. 1256 says is: OK, we realize FDA is not the right agency, but we are going to place it there anyway, and we are going to tell the FDA: We want you to leave this alone; we don't want you to touch this 100-percent risk or 90-percent risk. We want to grandfather all the products that were made before February 2007. And, oh, by the way, that would include U.S. smokeless tobacco.

The most risky we are grandfathering in and we say to the FDA: You can't change it. You basically can't regulate it. You can't regulate the 100 percent, you can't regulate the 90 percent, and you can't regulate this small but growing U.S. smokeless market that has a risk of 10 percent.

One might look at the chart and say there are other things on there. There are electronic cigarettes, tobacco-heating cigarettes, Swedish smokeless snus. There are dissolvable and other products that have less risk. All those products in February 2007 were not in the marketplace. They are banned. They are eliminated.

What are we asking the FDA to do? We are asking them to grandfather three categories of products and let all adults who choose to use a tobacco product choose from the most risky categories.

What are we saying to the 40 million Americans who smoke today? If you are in this category of using cigarettes, we are not going to give you any options as to what you turn to as you realize that is not the best thing for your health. We are going to lock you in and hope it kills you fast so our health care cost goes down.

Any claim—any claim—that H.R. 1256 reduces the cost of health care is only because we have grandfathered in smokers who will die sooner, not that we have allowed them a pathway through this bill to ever experience not only products that are currently on the marketplace that reduce the risk from 100 percent to as little as 1 percent, but we have completely eliminated any additional innovation in product in the

future that would allow somebody to get from 100 percent to 1 percent and actually be a healthier American.

I am not on the floor today suggesting that regulation is not in order. It is in order. At 4:20 p.m. today, Members of the Senate will have an opportunity to vote on a substitute amendment that has several changes from this current bill. One, it does not centralize the jurisdiction in the FDA. It creates, under the Secretary of Health and Human Services, a new agency called the Harm Reduction Center. Its sole job is to regulate tobacco. It regulates tobacco more specifically than does the FDA under H.R. 1256. But what it does allow is the development of new products that might encourage individuals to give up smoking and to turn to products that are less harmful.

Here is a list of the organizations that support tobacco harm reduction: The American Association of Public Health Physicians, 2008; the World Health Organization, 2008; the Institute of Medicine, 2001; the American Council on Science and Health, 2006; the New Zealand Health Technology Assessment, 2007; the Royal College of Physicians, 2002, 2007; Life Sciences Research Office, 2008; Strategic Dialogue on Tobacco Harm Reduction Group, 2009—this year.

People around the world are talking about reduced harm, except in the Senate. As a matter of fact, we don't need to look far across the pond before we find Sweden. During the past 25 years, Swedish men have shown notable reductions in smoking-related diseases: a decline in lung cancer incidence rate to the lowest of any developed country; no detectible increase in oral cancer rate; improvement in cardiovascular health. Tobacco-related mortality in Sweden is among the lowest in the developed world.

Why? Every Member of this Congress should ask why. Because the sponsors of this bill have said this is what we are trying to do in the United States.

How did Sweden do it? It is very simple. Sweden did it by allowing these products to come to market. As a matter of fact, Swedish smokeless snus is currently on the market in the United States. I am not going to tell you the market share is big, but I can tell you this. The risk of death or disease is less than 2 percent. But under H.R. 1256, which the Senate may or may not adopt this afternoon, what we would do is we would eliminate Swedish snus, and we would lock smokers into the categories that are currently on the market, all because of an arbitrary February 2007 date because somebody was too lazy to change the bill.

Think about that: that we would take something Sweden found over 25 years had been an incentive to get people off cigarettes and move toward other products, to the degree that, in Sweden, they had a decline in lung cancer, they had no detectible increase in oral cancer, and they had an improvement in cardiovascular health; that tobacco-related mortality in Sweden is among the lowest in the developed world. Why is that? Because the authors of H.R. 1256 suggest that new product innovation can happen, and I would tell you there are three thresholds one has to meet for new products to come on the market. I will not talk about the first two. I will focus on the third one.

The third one is this: that to have a product approved to be placed on the market, a company has to prove that a nontobacco user is no more likely to use that new product if that product is available. Then it goes on to say, in great congressional form, that unless you have an application that has been approved, you cannot engage the public on a product that has not been improved.

How does one do a clinical study that proves to the FDA that no American is more likely to use tobacco on a product that wasn't in the marketplace if, in fact, you can't talk to them about the product until it is approved? It is a Catch-22.

The authors of this bill knew exactly what they were doing. Let me say it again. The authors of this bill knew exactly what they were doing.

What has changed over the weekend since I was out here for 5 hours-plus last week? Public health experts around the country are beginning to read the bill and they are beginning to go: Oh, my gosh. Do not pass this. This is a huge mistake. As a matter of fact, I will get into it in a little while. I have plenty of time that I am going to spend on it.

Understand there are only three reasons we would consider new additional regulations: to reduce the rate of disease and death and to reduce the prevalence of youth access to tobacco products and specifically smoking.

I know the Presiding Officer heard me say this last week. This is my chart of 50 States. In 1998, the tobacco industry came to a settlement with States called the Master Settlement Agreement, MSA. In that agreement, they committed $280 billion to defray the cost of health care for the States—specifically, their Medicaid costs—and also provided money to make sure they could have cessation programs to get people to quit smoking and to make sure youth access, youth prevalence went down.

These are the CDC levels for last year, and I might say the CDC makes a recommendation to every State at the beginning of the year as to how much they should spend on programs that encourage youth not to smoke. I am just going to pull randomly a few States.

Connecticut: Of the CDC recommendation, Connecticut spent 18.9 percent of what the CDC recommended; 21 percent of the youth in Connecticut have a prevalence of smoking; 23.2 percent of the youth in Connecticut have a prevalence of marijuana usage.

The Presiding Officer's own State, Illinois: Of the CDC recommendation of what Illinois should spend on youth prevention, Illinois spends 6.1 percent; 19.9 percent of the youth have a prevalence to smoke. They are at 23.3 percent who have a prevalence of marijuana use.

In Missouri, of the CDC recommendation on how much should be spent on the prevalence of youth smoking, Missouri spent 3.7 percent; 23 percent of the youth have a prevalence of smoking; 19 percent a prevalence of marijuana use.

I can see that the Presiding Officer gets where I am going. We have constantly, since 1998, with the money provided by the tobacco industry to the States, chosen to build sidewalks over promoting programs to reduce youth prevalence of smoking. Now the authors of this bill would have us suggest that by allowing the FDA to have regulation of tobacco, the prevalence of youth smoking is going to go down because now we have one Federal agency that will have total jurisdiction over this product.

Let me say this: If that were the case, the prevalence of marijuana usage by youth would be zero because it is illegal. There is no age limit. As a matter of fact, there is no agency need for jurisdiction because nobody in America—adult or youth—is supposed to use it. It is a myth for us to believe the authors of this bill that by simply dumping this in the FDA, somehow youth prevalence of smoking goes down. It is a joke. It is a joke, and the public health community has now recognized this.

In 1975, Congress commissioned the University of Michigan to track youth smoking rates. At that time, youth smoking was at an alltime high. However, those rates started coming down and leveled off around 30 percent all the way up to 1993. For some unknown reason at that time, youth smoking started to rise and peaked at an alltime high in 1997. In 1998, 12th graders who said they tried a cigarette in the last 30 days was approximately 36 percent, according to the University of Michigan.

Congress didn't have a good sense of why this was happening. Opponents of the tobacco industry started blaming all this on the alleged manipulation of young people by tobacco manufacturers through sophisticated marketing and advertising.

The tobacco industry has a checkered past, I will be the first to admit that, when it comes to advertising in the market. But what I am suggesting is, it may not have been all due to tobacco marketing. There was another trend occurring during the 1993 to 1998 period that virtually mirrored that of youth smoking. It was the increase in illicit drugs in the United States.

Let me say that again. What mirrored the trend from 1993 to 1998 of the increase in youth smoking was the increase of use of illicit drugs by teenagers. Something much broader was happening among our country's young people.

The Senate's answer to the smoking rate increase was to pass this initiative, to give FDA jurisdiction.

Senator KENNEDY made the following remarks during the 1998 Senate floor debate to emphasize the need to protect kids. Let me quote him:

FDA Commissioner David Kessler has called smoking a ''pediatric disease with its onset in adolescents.'' In fact, studies show that over 90 percent of the current adult smokers began to smoke before they reached the age of 18. It makes sense for Congress to do what we can to discourage young Americans from starting to smoke during these critical years. . . . Youth smoking in America has reached epidemic proportions. According to a report issued last month by the Centers from Disease Control and Prevention, smoking rates among high school students soared by nearly a third between 1991 and 1997. Among African-Americans, the rates have soared by 80 percent. More than 36 percent of high school students smoke, a 1991 year high. . . . With youth smoking at crisis levels and still increasing, we cannot rely on halfway measures. Congress must use the strongest legislative tools available to reduce youth smoking as rapidly as possible.

Well, the Senate told the American public that the passage of a massive FDA tobacco regulation back in 1998 contained the strongest legislative tools available to address youth smoking issues.

By the way, they have decreased since 1998—youth smoking has decreased. As a matter of fact, overall smoking has decreased. I don't want anybody to think there is no light at the end of the tunnel. As a matter of fact, what this shows is a comparison—a study done by the Centers for Disease Control and Prevention and then a Congressional Budget Office estimate after reviewing the Kennedy bill, or Waxman bill, H.R. 1256. What the CDC said was that if we do nothing, we reduce smoking to 15.97 percent by 2016, and the Congressional Budget Office, under H.R. 1256, said that if we pass the Kennedy bill, the rate would be 17.80 percent. As a matter of fact, I miscalculated when I put the chart together, and it is actually 2 percent higher, meaning we do 4 percent better if we do nothing.

You see, my point is this, and it is exactly what I said at the beginning: The authors of this bill said its purpose is to reduce the risk of death and disease and to reduce youth smoking. I would tell you that a caveat to that should be that we should reduce smoking. Clearly, the Centers for Disease Control and Prevention says that if you do nothing, it goes to this point, and the Congressional Budget Office, after looking at the bill, suggests it is 2 percent or 4 percent higher if, in fact, we pass the bill. Why is that? How could it possibly be higher if you pass legislation that is supposed to fix it? Well, it is for this reason: It is because of what H.R. 1256 does. It is not a public health bill. It is a bill that locks in the most risky products and grandfathers them to the Food and Drug Administration and allows no pathway for reduced-harm products to come to market. It actually takes some reduced-harm products that are currently on the market, that haven't been sold since February 2007, and says, therefore, they are gone. There is no ability for the FDA to look at this product and say: My gosh, in the name of public health, let's keep this product on the market, because the Senate is legislatively telling the FDA what to do.

Why does it matter what agency we put this in? If Congress believes they can fix it, then why haven't they fixed it up until now? If writing a bill that legislates how to fix it would work, why haven't we done it? Well, I would contend that all I have to do is go to this chart of 50 States, and for the majority of the States the prevalence of marijuana usage is higher than the prevalence of youth smoking, which tells you there is no regulatory body that can eliminate the usage of an illegal product by those who choose to use it, unless—unless—it is through education. There is no education in H.R. 1256. Let me say it again: There is no education in H.R. 1256.

If the goal is to reduce the risk of death and disease and education is the only way to accomplish that, if the goal is to reduce youth prevalence of smoking and the only tool to accomplish that is education, then I ask the sponsors to come to the floor and show me where the education is in FDA regulations.

I am on day 5 now—maybe day 6 if you count that I was here for a short period of time last Monday, but I didn't make it yesterday, Monday—day 6, and I have yet to have anybody come to the floor and ask a question, refute anything I have said or question the facts I have produced. Why? Because I am using the same agencies most Members come to the floor and reference: the Centers for Disease Control and Prevention and the Congressional Budget Office. It is hard to say that they are wrong, that they are not reputable entities within the Federal Government, and then turn around next week and bring your own statistics using the same entities we use as a gauge.

One can question whether the Royal College of Physicians came to the right conclusion when they said:

In Sweden, the available low-harm smokeless products have been shown to be an acceptable substitute for cigarettes to many smokers, while ''gateway'' progression from smokeless to smoking is relatively uncommon.

Let me say that again: ''. . . while gateway progression from smokeless to smoking is relatively uncommon.''

Some authors of H.R. 1256 have come to the floor and said: Well, my gosh, if we let reduced-harm products come to the marketplace, this is going to create a gateway to youth usage of tobacco products that will eventually turn them into smokers.

Read the substitute bill. The substitute bill requires the Reduced Harm Center to actually list for the American public the most risky tobacco products and the least risky. The bill that consolidates all this jurisdiction for tobacco within the Food and Drug Administration doesn't even require the Food and Drug Administration to rank the most risky products. Why? Because those are the ones we have grandfathered. We have said they can't touch them.

Compassion would tell you that if you want people to switch from smoking and give it up, you have to give them a tool to get there. But what we have said is that the future will consist of no new tools except those manufacturers that were on the market before February 2007—some magical date in history we will all look back on and probably find that to blame as to why this program doesn't work.

In a little over an hour, we will have an opportunity to come to the floor and to vote on the substitute. Let me say to my colleagues, if you want a real public health bill, vote for the substitute. If you want to reduce the prevalence of youth smoking, vote for the substitute. If you want to reduce the rate of death and disease, vote for the substitute. Don't just listen to me, listen to public health experts and authors who now have written on this issue.

This happens to be a book—and I am not sure how long ago it was published, although I am sure I can probably find that out—that I think I spent $50 today to get, either that or it is on loan. That seems like a lot of money, but the truth is, it is a book about how the Senate of the United States is getting shafted. It is a book about the collusion that happened behind closed doors between the authors of this bill and Philip Morris. It is written by an author named Patrick Basham. I want to read a few things he has printed in his book.

Handing tobacco regulation over to the FDA, as Congress is poised to do, is an epic public health mistake. It is tantamount to giving the keys of the regulatory store to the Nation's largest cigarette manufacturer.

It goes on:

There are significant and numerous problems with the FDA regulating tobacco and virtually no benefits to public health.

Let me say that again.

There are significant and numerous problems with FDA regulating tobacco and virtually no benefits to public health.

Do you get it? I mean, if you are going to bill it as a public health bill, for God's sake, put something in there that is to the benefit of the public health of this country.

Mr. Basham goes on to say:

Kennedy, Waxman, and the public health establishment present their legislation as a masterful regulatory stroke that will end tobacco marketing, preventing kids from starting to smoke, make cigarettes less enjoyable to smoke, and reduce adult smoking. But FDA regulation of tobacco will do none of these things.

This is not a fan of the tobacco industry. This is an author, an individual, who has been covered in numerous publications. He is an adjunct

scholar with the Cato Center for Responsible Government. He is a lecturer at Johns Hopkins University. He has written a variety of policy issues, and his articles have appeared in the New York Times, the Washington Post, USA Today, the New York Post, and the New York Daily News, just to name a few. His book is titled ''Butt Out! How Philip Morris Burned Ted Kennedy, the FDA & and the Anti-Tobacco Movement.'' This is no fan of tobacco. This is a guy who is calling balls and strikes. He is one person who is so concerned about the public health in this country and making sure what we do accomplishes good public health policy that he is willing to be outspoken.

He goes on in his book and says this:

The process of validating new reduced-risk products appears to be designed to prevent such products from ever reaching the marketplace, thus giving smokers the stark, and for many the impossible, choice of ''quit smoking or die.''

You might want to remember that part. We can now call the continuum of risk ''quit or die.''

Rather than making smoking safer for those who continue to smoke, it will deny smokers access to new products that might literally save their lives. That is hardly a sterling prescription for good public health.

If the objective is public health, H.R. 1256 falls way short. Even if the idea of FDA regulation were good in theory and practice, several things, including the FDA's competence in tobacco policy and science, its public image, its fit with the tobacco file, its available resources, and its overall current competence, argue strongly against giving it regulatory responsibility for our Nation's tobacco policy.

This is a scholar, Mr. President.

FDA regulation of tobacco need not be a public health tragedy, however. By bringing the crafting of tobacco policy out into the light of day, by taking it out of the hands of the special interests and, most importantly, by keeping it away from the FDA, there is every opportunity to begin to create a policy that not only serves the interest of nonsmokers and smokers, but a policy that might really work.

To Senators of the U.S. Senate: If you want a policy that really works, do not adopt H.R. 1256. Consider strongly the merits of the substitute amendment, which does focus on the public health of this country.

Mr. Basham is a professor who studies and writes on a variety of topics, and when he took an objective view of the situation, he saw H.R. 1256 for what it was. He saw it as misguided legislation.

Our amendment—mine and Senator HAGAN's—accomplishes exactly what Mr. Basham raises. Our amendment sets up a new agency under the auspices of HHS and a Secretary who will examine all tobacco products and set up a regulatory framework that will save lives. That is in the public health interest of America. We don't preclude new reduced-risk products from entering the marketplace. We do not preclude reduced risk products from coming into the marketplace; H.R. 1256 does. We mandate the Tobacco Harm Center post the relative risk of each tobacco product currently on the market. Wouldn't that be incredible if we had a ranking between cigarettes and all the other things? We wouldn't need that if H.R. 1256 passed because we would only have nonfiltered cigarettes, filtered cigarettes, and smokeless tobacco. I can tell you the ranking would be unfiltered cigarettes the worst, filtered cigarettes next to the worst, and smokeless third. Those are the choices that adults would have in this country, and for somebody who is addicted to smoking, if smokeless wasn't something that enticed them to quit smoking, they would be left out because the legislation does not create a pathway for new products.

We also give current users the information they need to decide whether they want to migrate from a more harmful product, such as cigarettes, to less harmful products.

I have heard my colleagues and many other advocacy groups boast how the underlying bill will give the FDA authority to remove toxins in cigarettes, boast how granting the FDA the ability to regulate advertising will encourage people to not use, and current smokers to quit.

I agree, better warning labels will act as a deterrent to nonsmokers. But what about current smokers? Dr. Basham sites a very interesting study conducted in Canada and the United States by an independent organization. The study consisted of showing smokers packages of their current cigarettes with an increased warning label and graphic pictorials of cancer and other diseases. The study concluded that no statistically significant change in smoking behavior could be expected to be followed from the redesigned packages.

If you have noticed, over this 45 minutes, so far, I have sort of knocked all the things out that the sponsors of this bill said it accomplished. It does not do any of them. It does do one thing: it grandfathers the most risky products and consolidates their regulation at the FDA. It does not reduce risk of death, disease, or youth prevalence of smoking.

Since H.R. 1256 bans any reduced risk smokeless products from entering the marketplace, it locks current smokers only into cigarettes. However, our amendment does not lock them into just cigarettes. We provide this consumer with the ultimate amount of choice. The purpose of my amendment, as I said, is to reduce the risk of death and disease and to reduce youth prevalence of smoking.

The regulated products under my amendment? All tobacco and nicotine products. There are no holes in the substitute. It covers the entire scope of tobacco products. New smoking provisions in H.R. 1256, ''change current tobacco advertising to black and white only and require graphic warning labels on packages of cigarettes.''

We require graphic warning labels on the package of cigarettes, and we eliminate print advertising. Somehow the authors of this bill would have us believe if we go from color to black and white advertising that people under 18 actually will not read it or can't read it. Maybe today's youth can only read in color. But they suggest theirs is a stronger regulatory bill. But the substitute eliminates print advertising. No longer will the Vogue magazine that a mom finds in the grocery store attractive, that might not be one of those publications that is considered a publication that youth would purchase, but a 14-year-old might go to her mother's Vogue magazine and flip open and see a tobacco ad by mistake—it can't happen under the substitute legislation. It will happen under H.R. 1256, but only in black and white.

H.R. 1256 uses user fees to fund the FDA, about $700 million over 3 years. We asked the Secretary of Health and Human Services: How much do you need to stand up a complete new agency that is only focused on tobacco legislation? One hundred million dollars a year because these fees that we charge the tobacco companies are passed on to the consumers, the people least likely to fund it, the ones who are already funding the Children's Health Insurance Program, funding the majority of the State Medicaid programs. Let's give these folks a break. Let's not put this entire burden on their backs, especially if it is not going to do any good.

It is not just Mr. Bashan. As a matter of fact, Brad Rodu wrote, March 26—Brad Rodu, the Endowed Chair of Tobacco Harm Reduction Research, School of Medicine, University of Louisville—I will read a couple of excerpts of what he wrote.

According to the American Association of Public Health Physicians, the bill ''will do more harm than good in terms of the future tobacco-related illnesses and death.'' While the AAPHP favors ''effective regulation of the tobacco industry. . . . This bill does not meet this standard.'' The bill, introduced by Rep. Henry Waxman, is supported by medical groups that are engaged in a crusade against the tobacco industry. That's the problem: In a blind desire to kill tobacco manufacturers, the Waxman bill may end up hurting smokers.

It goes on and on. Again, an endowed chair of a major academic institution says don't do this.

How about Michael Siegel, Professor in the Social and Behavioral Sciences Department at—get this—Boston University School of Public Health, home of the authors of the bill. The Los Angeles Times, op-ed, June 3—not long ago. Let me read a couple of excerpts out of Mr. Siegel's op-ed.

In the end, it ensures that federal regulation of tobacco products will remain more about politics than about science.

H.R. 1256 gives the FDA the ability to lower nicotine levels in cigarettes. Since H.R. 1256 locks current users into cigarettes only by banning reduced risk products, H.R. 1256 ensures that 40 million Americans who currently smoke are doomed to death and disease associated with cigarette smoking. H.R. 1256 will cost lives, not save lives.

This is a professor in the Boston University School of Public Health, talking about his Senator's bill. He goes on to say:

Even worse, by giving a federal agency the appearance of regulatory authority over cigarettes without the real ability to regulate, the legislation would seemingly create a FDA seal of approval for cigarettes, giving the public a false sense of security about the increased safety of the product.

In fact, the bill's crafters are apparently so worried about the harmful effects of such a public perception—

Get this—

that they have written a clause into the bill that prohibits the cigarette companies from even informing the public that cigarettes are regulated by the FDA or that the companies are in compliance with FDA regulations.

The legislation forbids a company from even referring to the regulator. He goes on to say:

This is clearly an unconstitutional provision, as it violates the free speech rights of the tobacco companies; nevertheless, it suggests that even the supporters of the legislation are aware that the bill creates a false perception of the increased safety of cigarette smoking.

There is a charge I have not made. The bill is actually unconstitutional. When we recognize things as unconstitutional, I know it is the inclination of some Members of the Senate to wait and have it passed and somebody refer it to the Supreme Court so the Supreme Court can tell us it is unconstitutional. When scholars tell us it is unconstitutional, I believe our responsibility is then: don't pass it, don't do it.

Let me conclude with Michael Siegel, professor in the School of Public Health, Boston University.

During the previous administration, the FDA was accused of making decisions based on politics, not health. If the Senate passes the FDA tobacco legislation, it will be institutionalizing, rather than ending, the triumph of politics over science in federal policymaking. This is not the way to restore science to its rightful place.

I am not saying it. It is a professor from the School of Public Health at Boston University.

What is this bill about? Its author said reducing the rate of death and disease and prevalence of youth smoking. Michael Siegel's assessment: It is about politics.

Patrick Bashan's conclusion in ''Butt Out,'' the book: It is about politics. As a matter of fact, it says on the back of the book:

Philip Morris outwitted this coalition of useful idiots at every turn.

The decision in front of Members of the Senate is simple. Do you want to reduce the risk of death? Do you want to reduce the risk of disease? If you want to reduce the prevalence of youth smoking you only have one chance, and that is support the substitute amendment.

If you want to do politics as usual, if you want to let politics trump science, if you want to lock in a category of products that have a high likelihood of risking the American people, if you want to ignore the research from around the world that suggests by allowing lower harm smokeless products on the marketplace it allows smokers to get off the tobacco products, support H.R. 1256.

I believed 5 days ago when I came to the Senate floor that was all I needed to put up to win this debate. I actually believed that was all I needed to put up for the American people. I have learned over the past 5 days just how stubborn Members of the Senate are. I hope that now, after 6½ hours of coming to the Senate floor on this one bill, staff members through every office—Republican, Democrat, and Independent—have taken the opportunity to check the facts that I have presented, and they have found I am right; they have found a study did exist in Sweden. I didn't make it up; they have found that CDC did do a study—if we did nothing we would reduce smoking more than if we pass this bill; they have found that in Sweden, people did become healthier because of the decision to use smokeless products.

I thought this was all it took for the American people to understand it; that you can't take an agency of the Federal Government that is ''responsible for protecting the public health by assuring the safety, efficacy and security of human and veterinary drugs, biologic products, medical devices, our Nation's food supply, cosmetics and products that emit radiation''—it is impossible to take an agency where that is their core mission and give them a product where you ask them to ignore the gold standard on everything else they regulate. I think the American people would say it seems reasonable to create a new entity to regulate tobacco, if for no other reason than—if you didn't believe any other science that I have shown and the data that has been proven—if for no other reason than why would we jeopardize this gold standard? Why would we make one American at home wonder whether that pharmaceutical product they were taking was actually safe or effective?

Why would we have them question for a minute whether that medical device was approved and reviewed by the most seasoned reviewer versus maybe somebody who was fresh on the job because that seasoned person went over to regulate tobacco products?

Why would we put the American people in a more difficult situation today on their question of food safety with the incidents we have had of death in the United States of America because the Agency could not quite meet their mission statement?

Why would we dump on them now? Why would we do this to the American people? It is beyond me. But when you turn to some of the folks who have written on this issue—whether it is Brad Rodu, whether it is Patrick Basham, whether it is Michael Siegel, in the public health department at Boston University—I guess the only answer is, it is politics over science, that for 10 years people have said we have to put this in the FDA, that Matt Meyers, head of Campaign for Tobacco-Free Kids, is the most powerful ''U.S. Senator'' because he is getting his wish, he is getting exactly what he has been trying to do for decades. He is not a science expert. If he was, he would be voting for the substitute, if he were here.

He wrote the bill. I am surprised he did not catch the mistake of February 2007. Nobody caught that. But the truth is, the bill has not changed much in 10 years, though the world has changed a lot. The science has changed a lot. Health care has changed a lot.

There is a real opportunity to do the right thing in the Senate. But Members will have to show a degree of independence and vote for the substitute and not wait for the base bill. I hope Members will heed the words of people who have no dog in this fight who have suggested, if we pass this bill—not the substitute, the base bill—we will have done a great disservice to the public health of America. More importantly, we will have done a disservice to those individuals to get locked into these categories, as shown on this chart, because their certain future is death and disease. They are counting on us. They are. They are counting on us to do the right thing.

I can leave this debate tonight and say: I left nothing in the bag. I have tried everything to convince my colleagues not to make a huge mistake. I will sleep well tonight. If this substitute does not pass, if H.R. 1256 passes and becomes law, it is others who are going to have to live with the way they voted. When people die because of what they did, it is others who are going to have to live with it.

There are going to be more articles. This is just the tip of the iceberg of health professionals, of public health individuals, people who detail in great quantity exactly what has been going on. As a matter of fact, as they say, the wool has been pulled over our eyes. Well, it has not. That is why we have a substitute amendment. That is why the majority leader allowed a nongermane amendment to come to the floor. Well, it might have had something to do with that he did not have the votes for cloture without allowing it to come to the floor, but I give him the benefit of the doubt that he understood this was an important debate to have, that this was worth extending the opportunity for people to vote up or down.

I see my colleague is here to speak, and I am not going to prolong this debate. In less than an hour, Members will have an opportunity to come to the floor. Most Members will get probably 2 minutes equally divided; 60 seconds to hear what it has taken me 6 hours to say in this debate. Clearly, that is not much time. But now it is in their hands. It is a decision Members of the Senate will have to make about the future of the public health policy of this country.

I urge my colleagues, on both sides of the aisle, to support the substitute amendment today at 4:20 and make sure the future of our country is one we will be proud of and not one we will find as an embarrassment.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Nebraska.

Mr. JOHANNS. Mr. President, I ask unanimous consent to speak in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MIDDLE CLASS TAX

Mr. JOHANNS. Mr. President, I rise this afternoon to speak about the President's announcement a few hours ago relative to pay-go.

Today, the President said:

> Paying for what you spend is basic common sense. Perhaps that's why, here in Washington, it has been so elusive.

Well, I could not agree more. But I must ask: Where was that common sense when the President proposed to add $10 trillion to the national debt in the fiscal year 2010 budget submission? Where was this basic common sense when he signed a bill earlier this year that adds $1 trillion in debt this year alone? Where was this newfound fiscal discipline when he proposed a massive universal health care proposal that is now turning out to be a government-run proposal with just a downpayment of $650 billion?

The President's announcement undoubtedly was meant to quell rising fears about the amount of spending and borrowing his administration has undertaken. It was likely intended to calm the fears of those who buy our debt who are wondering if it is just paper.

But do the President's words today in any way address the mountain of debt and increased taxes he proposed and supported just a few weeks ago with the budget submission? The answer to that is no.

Today's announcement does absolutely nothing to decrease the rising, crushing debt we have accumulated. In fact, this President has significantly added to our debt, causing it to rise to an unprecedented level, an unsustainable level. Let me repeat that. The President's announcement does absolutely nothing to address our record spending and borrowing. This is akin to maxing out on the personal credit card and then promising not to use it anymore but offering no plan to pay off the balance.

The President rightly pointed out today:

> The debate of the day drowns out those who speak of what we may face tomorrow.

Maybe it is an appropriate time to thoughtfully consider what we face tomorrow because of the unpaid credit card balance.

It is important to dissect the rhetoric and speak to Americans who have been promised something I would suggest the President cannot deliver. Remember that those in the so-called middle class—and the definition of that has changed—have been told they will be shielded from tax increases. Well, I would suggest the evidence is obvious. The rug is about to be pulled out from underneath them by the President's explosive growth in spending and borrowing.

If Congress continues to follow the President's unlimited spending spree and tries to balance the budget at the same time, the middle class will get hammered with tax increases. This, I would suggest, is the elephant in the room that no one in the Obama administration wants to discuss for fear of the consequences.

But the American people deserve an open discussion about the real-life consequences of big government and the runaway freight train of spending and borrowing that comes with bigger government.

Supporters of the current budget claim that only individuals earning more than $200,000 will see their taxes go up; therefore, there will be no tax increase on the middle class. Yet such a tax on higher income earners still results in an average annual deficit hovering around $1 trillion per year for the next 10 years, described by many to be unsustainable.

Our national revenue simply cannot keep up with the bloated spending in the budget, and that is resulting in a shortfall.

Let me illustrate this in an example. This is equivalent to a Lincoln, NE, teacher earning $33,000 per year but spending $58,000 per year—year after year. It cannot last long. So is the Obama administration going to continue this spending increase with only the revenue from the so-called rich? How can they continue running annual deficits with no end in sight? They cannot. Inevitably, the spending spree and exploding deficits will land squarely on the middle class in the form of higher taxes, unless we do something.

The reality is, the Obama administration cannot continue the unprecedented level of spending while claiming to hold the middle class harmless.

If you do not believe me, listen to leading economists.

Martin Sullivan, a former economic aide to President Reagan, actually, who backed President Obama last fall, said:

> You just simply can't tax the rich enough to make this all up.

He went on to say:

> Just for getting the budget to a sustainable level, there needs to be a broad-based tax increase.

Leonard Burman, director of the liberal Tax Policy Center, said:

> [T]here's no way we're going to be able to pay for government 10, 20 years from now without coming up with a new revenue source.

Finally, economist Paul Krugman, a New York Times columnist, wrote:

> I, at least, find it hard to see how the federal government can meet its long-term obligations without some tax increases on the middle class.

All of these experts echo the point I am making: You cannot tax the rich enough to cover all the spending. Inevitably, what all of this is leading to is that the middle class will fall victim to massive taxation.

I will put this into more tangible terms by examining how much the tax rate would need to rise to make up for only this year's projected budget deficit—just this year's projected budget deficit. The deficit for this year alone is an eye-popping $1.8 trillion. This does not even take into consideration the more than $12 trillion public debt we currently owe.

Here is what would have to happen to the tax rate. The rates for the top four brackets would skyrocket from the current rates of 35 percent, 33 percent, 28 percent, and 25 percent to an alarming 90 percent across the board. Imagine, people would have to work until Thanksgiving just to pay their taxes.

Some may say: Well, this is great. Tax the rich because they can afford to pay more in taxes. Yet those making up the third and fourth brackets from the top can hardly be characterized as rich.

Let's look at who actually falls in those income brackets. Currently, for tax year 2008, people who fall under the 25-percent bracket earn about $32,000 to $78,000.

Does anyone want to come to the Senate floor and make the case that somebody making $32,000 a year in Nebraska is rich? The average salary in Nebraska is $35,000. I do not know anyone who would suggest that only wealthy people fall within the bracket.

The average Nebraskan would have something to say about that in terms of whether they are wealthy. Let's look at the next bracket, those taxed at 28 percent. The income levels for this bracket are roughly $78,000 and $164,000 for singles. For married couples, it is $131,000 to $200,000. What does that mean? This means that a landscape architect in Nebraska making $75,000 a year, hypothetically, married to an emergency room nurse making $59,000 a year would fall into a 90-percent tax rate. Again, I suggest if you asked this couple, I am quite confident they would not describe themselves as wealthy. Taxing the middle class to the tune of 90 percent would bring this economy to its knees.

There is some notion in America that we, the people, should be the masters of our own economic success. If you tax someone at a 95-percent rate, you take away the economic incentive to be innovative, to strive for greater success. Eventually you end up with slim or no productivity or competitiveness. Yet this administration keeps spending as though it is monopoly money. Just this week, more directions: Get that money

out there. Get that spending going. Their spending binge has an unsustainable course. Complying with pay-go alone won't even come close to fixing it. Maybe Congress would benefit from being coached by the same credit card counselors who help Americans who are drowning in debt. I will bet those counselors would have some stern words.

My point is simple: This is not the right direction for our country. We must start to make spending decisions today that paint a realistic and candid picture of the impact on the middle class, and if it is the purpose of our Nation to hold them harmless, then we have to cut spending and we have to smart size our government.

Working families across our Nation and in my State deserve an honest debate. It is time for Washington to take responsibility. The people at home I believe are demanding it. I often say Nebraskans have great wisdom to convey. I couldn't agree more with a gentleman from North Platte, NE, who wrote me a letter recently and he said this:

It's important to remember that while government consumes wealth, transfers wealth and sets the ground rules for the generation of wealth, it is the private individuals that create it.

As a final note, the President today rightly acknowledged:

The reckless fiscal policies of the past have left us in a very deep hole.

I would add to that: And the present.

Digging our way out will take time, and patience, and tough choices.

Again, I could not agree more, other than I would add to that: The present.

However, instituting pay-go does nothing to cut the deficit or the debt, it simply attempts to hold the line, which the President's budget fails to do. His proposal is actually a more liberal approach than what is already in House rules. Right-sizing government and cutting spending is far from revolutionary. So while the President is saying when you find yourself in a massive hole, stop digging, the more important question might be: How are we going to start filling up this gaping hole?

Our country needs leadership, not the empty rhetoric I would suggest we heard today. The President's speech today sought to subdue the fears of many regarding our country's exploding deficits. I am sure it was targeted to those who buy that debt, who are expressing concerns about what they are purchasing. Yet people should not be fooled into thinking that pay-go is the holy grail for solving all of our spending and borrowing woes. I believe that while pay-go is a useful tool, when you look at the hard facts, you realize that President Obama's speech today, though, is simply too little and it is too late. The horse is already out of the barn, and the President is talking to us about closing the barn door.

Thank you, Mr. President.

Mr. ENZI. Mr. President, I rise today to speak in support of the Burr amendment No. 1246. The Burr substitute amendment takes major steps to restrict tobacco. It creates a new office within HHS to regulate tobacco. It puts in place a realistic, science-based standard for the approval of new and reduced risk products. It also requires states to do more on tobacco control—something we can all support.

As many of you know, I support strong tobacco regulation. I want to remind my colleagues that supporting a different approach to tobacco regulation doesn't mean being soft on tobacco.

The Burr amendment is extensive—longer and more detailed even than the underlying bill. It makes it more difficult for kids to get tobacco and start smoking, and that is the most important thing of all.

Whether we see the Burr proposal or the Kennedy proposal put in place, we still have our work cut out for us when it comes to putting out tobacco use. I am going to keep working on this issue, and I am going to keep putting forward new ideas to stop smoking. These proposals are a first step, but we have a long way to go.

I urge my colleagues to support the Burr amendment.

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

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

Mr. DODD. Mr. President, I further ask unanimous consent that I be allowed to speak as in morning business for 10 minutes.

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

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. DODD. I thank the Chair. I will try and be brief on this. I know I have spoken at some length about the bill before us, the Family Smoking Prevention and Tobacco Control Act. I wish to begin by again thanking our colleagues who voted yesterday to allow us to move forward by supporting the cloture motion. It took a bipartisan effort and I am grateful to colleagues, both in the majority and the minority, for lending their support to that effort. I am also pleased we are having an opportunity to vote on the Burr-Hagan amendment. There were some questions raised as to whether that amendment would be permissible under a postcloture environment from a parliamentary standpoint. As I told my friend from North Carolina, Senator BURR, even though I disagree with his amendment, I would vote against a point of order if one were raised against it so he would have a chance to make his case. His State is going to be affected by this decision we are making. As I recall, I think he told me there are some 12,000 to 15,000 tobacco farmers in North Carolina, hard-working families who have been in the business for generations. This will have an impact on them. It may not be as dramatic as some suggest, but it certainly will have a negative impact if we are successful in reducing the amount of smoking and use of tobacco products by young children.

I am pleased my colleague from North Carolina has had a chance to make his case, along with his colleague from North Carolina, Senator HAGAN.

Having said I would support his right to be heard, now I wish to take a few minutes to express why I support the underlying bill. This bill has been supported over the years by a substantial number in this body, as well as in the other body, the House of Representatives—as I pointed out in the past, this matter, which has been under consideration for almost a decade, has not become law because neither House of Congress has adopted the legislation in the same Congress. We have ended up with the Senate passing a bill, the other House passing a bill, but never in the same Congress. So for all of these years, the Food and Drug Administration has not been able to regulate tobacco products.

We are about to change that if we, in fact, reject the Burr amendment and several others that are pending and give the Food and Drug Administration the power, the authority, to regulate the sale, production, and marketing of tobacco products, particularly to young children. So for the first time, the FDA will have this authority and put in place tough restrictions that for far too long have been absent. This will provide support for families when it comes to how cigarettes are marketed to their children.

I am sure my colleagues are tired of hearing me speaking over the last several weeks about the number of young people who start smoking every day. We have been at this matter now for about 2 or 3 weeks, considering the floor action, as well as the action in the HELP Committee, which is the committee of jurisdiction. You can do the math yourself: Over 20 days, 3,000 to 4,000 children every day starting to smoke while we have been deliberating this piece of legislation. Needless to say, I don't know of a single person in this country with an ounce of sense who wants that many children who begin this habit to continue. I don't know of anybody with any sense at all who believes our country is better off if day after day we allow an industry to market products designed specifically to appeal to young people, knowing what danger and harm it causes. Four hundred thousand of our fellow citizens expire, die every year because of smoking-related illnesses—400,000 people. That is more than the number of people who lose their lives as a result of automobile accidents, AIDS, alcohol

abuse, illegal drug abuse, and violent crimes with guns. All of those combined do not equal the number of deaths that occur because of people's use of tobacco and tobacco products. That does not include the number of people who lead very debilitated lives, who are stricken with emphysema or related pulmonary illnesses that fundamentally alter their lives and the lives of their families.

I apologize to my colleagues for continuing to recite these numbers, but I pray and hope these numbers may have some impact on those who wonder if every aspect of the bill makes the most sense or not. None of us should ever claim perfection, but we have spent a lot of time on this, a lot of consideration on this. There are 1,000 organizations, faith-based, State organizations—leading organizations dealing with lung cancer and related problems and they are all speaking with one voice. They are telling us to pass this bill, pass this bill, and allow finally for the FDA to be able to control the marketing, the selling, and the production of these tobacco products.

Absent any action by this Congress, more than 6 million children who are alive today will die from smoking. Mr. President, 1 out of 5 children from my State of Connecticut smokes today, and 76,000 children, we are told by health care professionals, will die prematurely because of their addiction to tobacco.

As I mentioned earlier, we are on the eve of passing major health care reform legislation. The centerpiece of that bill, as I hear my Republican friends and Democratic friends talk about it, is prevention. That is the one piece about which there is a great deal of unanimity. How can we deal with health care reform? The best way to treat a disease is to have it never happen in the first place. This bill may do more in the area of prevention, if adopted, than anything else we may include in the health care bill in the short term. The estimates are that 11 percent of young people would not begin the habit of smoking if this bill is adopted. Imagine 11 percent of the young people not smoking of that 3,000 to 4,000 every day who start. That in itself would be a major achievement.

My friend from North Carolina, Senator BURR, does not give authority to the FDA. The FDA is 100 years old. His bill creates a completely new agency, an untested agency, to oversee tobacco products. But the FDA is the right agency because it is the only agency that has the regulatory experience and scientific experience and the combination of that with a public health mission. Unlike the Kennedy bill, the underlying bill, the Burr substitute fails to provide adequate resources to do the job. In the first 3 years, if the Burr substitute is adopted, it would allocate only one-quarter of the funding allocated in Senator KENNEDY's proposal. The Burr substitute fails to give the authority to remove harmful ingredients in cigarettes, which the Kennedy bill would do. It doesn't go far enough in protecting children and has weaker and less effective health warnings as well.

I say respectfully to my friend, setting up and creating a whole new agency, providing a fraction of the funding necessary to get it done, and providing inadequate resources in order to support these efforts is not the step we ought to be taking. All of us can agree that the FDA is basically the agency we charge with the responsibility of regulating everything we consume and ingest, including the products ingested by our pets. The FDA has jurisdiction over your cat food, dog food, and what your parakeet may have, but your child's use of tobacco is not regulated by anybody. Your child's safety, in many ways, is being less protected than that of a household pet. That needs to change.

For a decade, we have debated this. We have been through countless arguments. Now we have come down to the moment as to whether this Congress, in a bipartisan fashion, as we did yesterday, will say enough is enough. We have come to the end of the debate.

Mr. President, 400,000 people are losing their lives every day, and 3,000 to 4,000 children are starting to smoke, a thousand of whom will be addicted for life, and one-third of that number will die because of the use of these products. That is over with. The marketing, the production, as well as the selling of these products has to come to an end. This is the best way to save money, if you are not impressed with the ethics and morality of the issue.

This is a self-inflicted wound we impose on ourselves as a country, knowing the damage it causes, the costs it imposes, the hardships, the horror, and the sorrow it brings to families. I don't know a single person who smokes and wants their child to begin that habit. If they could stand here collectively—the families across this country who are smokers—they would say with one voice: Pass this bill. Please do everything you can to see to it that my child doesn't begin that habit.

Ninety percent of smokers start as kids, we know that. So we need to change how we regulate these products. That is what this bill does. It has had tremendous support from our friends, both Republicans and Democrats, over the years. We have never done it together, and we are on the brink of doing that and making a significant change in our country for the better. It is long overdue.

When the vote occurs on the Burr amendment, I urge my colleagues to vote against the amendment. I want to do everything I can to help those farmers. The bill makes a difference in providing real help to the farmers. I see my friend from Kentucky. He knows I went to law school there, and he knows I have an affection for the people there. We owe it to them to provide real help so they can get back on their feet. I say to my friend from North Carolina, and others, I know what it means to have an industry in your State face these kinds of challenges, but clearly the challenge to our Nation is to begin to reduce the number of children who smoke and to save lives every year. I say respectfully that there is no more paramount issue for our Nation as a whole.

I urge my colleagues to reject the Burr amendment.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, the ranking member of the Senate Judiciary Committee, Senator SESSIONS, Senator KYL, and I will take a few moments to discuss the pending Supreme Court nomination and the proceedings leading up to that. I have notified the Democratic floor staff that it might slightly delay the 4:20 vote. I find that not objectionable on the other side.

I would inform our colleagues that we are going to proceed as if in morning business. I ask unanimous consent that we may do so.

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

Mr. MCCONNELL. It will not cause much of a delay on the 4:20 vote.

Senator SESSIONS is up and will be first to speak.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

SOTOMAYOR NOMINATION

Mr. SESSIONS. Mr. President, I thank Senator MCCONNELL for his leadership in so many ways but in particular the concern he has shown repeatedly on the U.S. judiciary. He is on the Judiciary Committee, and he takes these issues seriously. I think it is important that we all do so.

I have to say I am disappointed that this morning we learned from media reports—I did—that the chairman of the Judiciary Committee, Senator LEAHY, announced we would begin the hearings on July 13 on Judge Sotomayor. I believe that is too early. I don't believe it is necessary. It is far more important that we do this matter right than do it quick. When the announcement was made, President Obama said the time we should look to is October 1, when the new Supreme Court term starts. I think that always was an achievable goal, and it is something I said I believe we could achieve and still do it in the right way.

The question is, Can we get all this done in this rush-rush fashion? It will be the shortest confirmation time of any recent nominee. It is a time well shorter than that of Justice Roberts—now Chief Justice—and we had a need to move that a bit because he was confirmed, as it turned out, on September 29, a couple of days before the new term began. He was going to be Chief Justice. But the last nominee, whose record was much like this nominee, Justice Alito, was coming up in late December, and the Democratic leader

then on the Judiciary Committee, Senator LEAHY, asked that it be put off until after Christmas. The Republican chairman at that time, Senator SPECTER, despite President Bush's desire that it move forward, said: No, I think that is a reasonable request, and so we put it off. It was 90-some-odd days before that confirmation occurred. It was well over 70 days before the hearings began.

Mr. President, first and foremost, we are committed to giving this nominee a fair, good, just hearing. But to do so requires that we have an opportunity to examine her record of probably more than 4,000 cases. In addition to that, she has given a lot of speeches and written law review articles, which need to be analyzed.

Make no mistake about it, this is the only time, the only opportunity this Congress and the American people have to play a role in what will turn out to be a lifetime appointment, an appointment to a Federal bench of independence and unaccountability for the rest of their lives. I think it is important that we do this right.

I thank Senator MCCONNELL for his leadership in trying to insist that we do it right. I believe, from what I know today, the timeframe set forth is unrealistic. More than that, it is not necessary. Let's do this right, take our time, and do it in a way that I hope—as I have said repeatedly, this would be what people could say is the finest confirmation process we have ever had.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, I thank my good friend from Alabama for his observation about this nomination. He and I have been involved in a number of these confirmation proceedings over the years. In every one of them, I think there is a sense of fairness that can be reached on a bipartisan basis so that the nominee is adequately and appropriately vetted. That is what the Senator from Alabama is looking for as we go forward on the Judiciary Committee.

Frankly, I was surprised to learn that the majority decided unilaterally, basically, that the schedule would involve hearings beginning on that specific date, July 13, to which Senator SESSIONS referred.

During the Senate's consideration of both the Roberts and Alito nominations, we heard a lot from our Democratic colleagues about how the Senate wasn't a rubberstamp and about how it was more important to do it right than to do it fast. If that was the standard, I suggest to our colleagues, just a few years ago, why wouldn't it be a good standard today? If that was the standard when the Republicans were in the majority, why wouldn't it be a good standard when the Democrats are in the majority? We are talking about the same Supreme Court, the same lifetime appointment to which Senator SESSIONS referred.

The chairman of the Judiciary Committee, today, said back then that ''We need to consider this nomination as thoroughly and carefully as the American people deserve. It is going to take time.'' That was Senator LEAHY then. He also said, ''It makes sense that we take time to do it right.'' I think the American people deserve nothing less. He also said that we want to do it right, we don't want to do it fast. Again, if that was the standard a few years ago when Republicans were in the majority, I don't know why it wouldn't be the standard today.

I don't know what our friends in the majority are fearful of. This nominee certainly has already been confirmed by the Senate twice. She has an extensive record, and it takes a while to go through 3,600 cases. In the case of the Chief Justice, there were only 327 cases. He had only been on the circuit court for a couple of years. She has been on one court or another for 17 years. It is a larger record. I am confident, and our ranking member, Senator SESSIONS, confirms that the staff is working rapidly to try to work their way through this lengthy number of cases. But a way to look at it is the committee had to review an average of six cases a day in order to be prepared for Judge Roberts' hearings—six cases a day. The committee will now have to review an average of 76 cases—76 cases—per day in order to be ready by the time the majority has proposed for the Sotomayor hearing.

The Senate functions on comity and cooperation, and the majority leader and I are a big part of that every day, trying to respect each other's needs and trying to make the Senate function appropriately. Here the Democratic majority is proceeding, in my view, in a heavy-handed fashion, completely unnecessary, and is basically being dismissive of the minority's legitimate concerns of a fair and thorough process. There is no point in this. It serves no purpose, other than to run the risk of destroying the kind of comity and cooperation that we expect of each other in the Senate, all of which was granted in the case of Chief Justice Roberts and Justice Alito.

Let me be clear. Because of what our Democratic colleagues are doing and the way they are doing it, it will now be much more difficult to achieve the kind of comity and cooperation on this and other matters that we need and expect around here as we try to deal with the Nation's business.

I hope they will reconsider their decision and work with us on a bipartisan basis to allow a thorough review of this lengthy record that the nominee possesses.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I wish to join the ranking member of the committee on which I sit, as well as the distinguished minority leader, in asking the question of why we have to set a date right now on the hearing for Judge Sotomayor. There is no reason for us to do that because there is no way to know at this point whether we will have our work done by that time.

Historically—and it is for good reason—you want to have the review completed before you question the witness about the matters under review. That makes sense. So there is no reason to set that date today, and that is troublesome. We don't know if we will be ready by July 13, but there is a lot of history to suggest it is going to be very difficult to be ready by that time.

The leader just pointed out the fact that if you compare the work required to consider the nomination of the now-Chief Justice John Roberts as opposed to this nominee, you have more than 10 times as many cases to look at with Judge Sotomayor as you had with Justice Roberts. That takes a lot of time. And even with 20-some staffers reading these 4,000-plus decisions, it is not just a matter of reading the cases; it is a matter of then looking to see what the precedents cited were to determine whether you think the judge was right in the decision that was rendered, to look at the other references in the case to see how closely this followed existing law, and whether it appears the judge might be trying to make law as opposed to deciding law.

That is important in this particular case because of the standard the President laid down for his nominees which strongly suggests something beyond deciding the law. In 5 percent of the cases, as he said, there is no precedent, there is no legal mechanism for deciding how the case should come out. You have to base it on other factors. Everybody is well aware of some of the factors this particular nominee has talked about and the President has talked about—the empathy, the background, the experience in other matters.

The question is, in reading these opinions, do you find a trend of deciding cases on something other than the law, potentially the making of law in this particular case? And even if, as the leader said, you have to review 76 cases a day, that is only the decisions she has participated in or the opinions she has written or joined in.

How about the other writings—her law review writings, her speeches she has given, the FBI report, the ABA report, which we do not have yet, the questionnaire which has not been completed; in other words, a variety of things that have been reviewed and read. And then you discuss the nomination with witnesses to say this matter has been raised, this matter has been raised, what do you think about that?

She will have a variety of people who will be writing to the committee on her behalf. We will receive reams of letters and comments from people who think she is a good nominee, and we will receive a lot of comments, I suspect, from people who think she is not a good nominee. We need to go through all of that. When people write to us

about these nominees, for or against, we don't ignore what they say; we take it to heart. That is part of our job. All of this takes a great deal of time and effort.

Final point, Mr. President. We don't want to leave this to staff. We are going to read those opinions. I have instructed my staff on the opinions I want to read. I am used to reading court opinions, but not everybody has done that fairly recently in their career, and that takes a lot of time as well, considering all the other work we have to do.

To do this right, to conduct the kind of fair and thorough hearing that Senator SESSIONS talked about, and to follow the kind of precedents and tradition that the minority leader talked about, I think it is important for us to do it right, to get it right, to take the time that requires. And if that means going beyond July 13, then do that.

Senator SPECTER, when he was chairman of the committee, worked in a bipartisan way with Senator LEAHY. Senator LEAHY can certainly work in a bipartisan way with us to ensure there is an adequate amount of time.

At the end of the day, what we want is a hearing that everyone can say was fair, was thorough, resulted in a good decision and, hopefully and presumably, will allow this nominee, if she is confirmed, to take her position prior to the beginning of the October term. Justice Roberts was confirmed, I believe, on the 29th of September, and that was 4 days ahead of the time, I think—or 2 days. The Court reconvenes on October 5. Therefore, I see no reason why, if we do this right, we cannot have the nominee—if this nominee is confirmed—confirmed by the time the October term begins.

I say to my colleagues, let's do this right and not try to push things beyond the point that is appropriate under the circumstances.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator KYL for his leadership on this committee. He is one of the Senate's great lawyers. I appreciate his insights, as we all do.

I note that I think this rush is ill advised. In truth, the White House was determined to get the nominee's questionnaire to the Senate in a hurry. There were a number of cameras and crews and press releases that went out when boxes were delivered. In many ways, the questionnaire was incomplete, the result, I think, of that kind of rush. In others, the nominee failed to provide sufficient details that are required by the questionnaire.

For example, the judge did not include a troubling recommendation to the Puerto Rican Legal Defense Fund to lobby against a New York State law that would reinstate the death penalty, and it had quite a bit of intemperate rhetoric in it. After that was noted, she admitted she had failed to include but got that document in. But I suggest perhaps if somebody had not been aware of that omission, maybe we would not have received that document at all. What else might she have failed to include that might be an important bit of information as our committee does its oversight work?

In addition, the nominee was supposed to provide opinions and filings for cases going to verdict, judgment, or final decision. For three cases, she indicates that the District Attorney's Office is searching its records for information on this case, and she did not provide those.

In 14 cases, she noted that she tried, the record is incomplete and not provided. So we don't have any documents related to these cases.

As another example, the nominee is supposed to list speeches, remarks, and lectures she gave and, in the absence of having a prepared text, to provide outlines, notes, and then a summary of the subject matter.

Several of the entries lacked any subject matter descriptions or are so vague as to be utterly uninformative, including these quotes I will note for the record, and we have had some problems with her speeches. A lot of speeches she has given she has no text for.

I note this is on her questionnaire: ''I spoke on Second Circuit employee discrimination cases.'' She did not indicate what or give any summary of that.

Another one: ''I spoke at a federal court externship class on 'Access to Justice.' '' It is not clear what that was in any way, and no summary and certainly no text.

''I participated in a panel entitled 'Sexual Harassment: How to Practice Safe Employment.' '' Similarly, no additional explanation.

Next: ''I spoke on the United States judicial system.''

Next: ''I spoke on the topic 'Lawyering for Social Justice.' I discussed my life experiences and the role of minority bar organizations.''

''I participated in a symposium on post-conviction relief. I spoke on the execution of judgments of conviction.''

''I spoke on the implementation of the Hague Convention in the United States and abroad.''

''I participated in an ACS panel discussion on the sentencing guidelines.''

''I participated in a roundtable discussion and reception on 'The Art of Judging' at this event.''

It would be nice to know what she thought about the art of judging.

''I contributed to the panel, 'The Future of Judicial Review: The View from the Bench' at the 2004 National Convention. The official theme was 'Liberty and Equality in the 21st Century.' ''

Those are some of the things that I think are inadequate responses to the questionnaire's requirements. This questionnaire is one we have used for nominees of both parties for a number of years.

The chairman justifies this rushed schedule because of the need, he says, to allow the nominee to respond to unfair criticisms of her record. But the chairman and all our Democratic colleagues know that the Republican Senators who will actually be voting on this nominee, I am confident and certain, have been nothing but extremely fair and courteous and respectful of the nominee. Even when she made mistakes, such as omitting several things from her questionnaire, we have not criticized her for that. So in return for this courtesy, I am disappointed that we are being rushed to complete this process in a time based on what I know now is not a wise approach. I don't think it is a good way to begin the proceedings.

I look forward to working with my colleagues on this date. Perhaps we can do better as we move forward. It is an important process. It is the public's only opportunity to understand what this is about. I think we ought to do it right. As Senator LEAHY has said, do not rush it.

I yield the floor.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative 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.

Mr. REID. Mr. President, let me say a few words regarding the excellent work of the Judiciary Committee, the work that has been done by Chairman LEAHY. He has informed me that Senator SESSIONS has been most cooperative during the entire time Senator SESSIONS has had this new assignment.

Senator MCCONNELL asked me one day last week to delay a floor vote on Judge Sotomayor until after the August recess, and he sent me a letter, which I was happy to receive, making his case for this delay. I indicated to him this morning—he, Senator MCCONNELL—that I had a telephone call scheduled with the chairman of the Judiciary Committee and the President to go over the content of Senator MCCONNELL's well-written letter.

We had quite a long conversation with the President. Time? I don't know, 15 minutes, 10 minutes. But it was certainly enough to learn very quickly that the President was well versed on this nomination.

After having spoken with the President and the chairman of the committee this morning, I had an obligation to convey to Senator MCCONNELL my conclusion based on my conversation with the President.

What I wish to do now, Mr. President, is read into the RECORD a letter I had delivered this morning to Leader MCCONNELL:

DEAR MITCH:

Thank you for your letter regarding the process for considering the nomination of Judge Sotomayor to the United States Supreme Court. I have taken your concerns

into consideration and have discussed the confirmation process with the President and the Chairman of the Judiciary Committee.

Judge Sotomayor's judicial record is largely public and has been undergoing extensive review by all interested parties at least since the President announced her nomination on May 26. In addition, she has returned her questionnaire, including available records of her speeches and writings, in record time. Her record for review is now essentially complete.

In contrast, both Judge Roberts and Judge Alito had spent significant time in the executive branch and much of their record was not public or available for review following their nominations. Numerous executive branch documents were not included with their questionnaires, and much staff preparation time was devoted to extensive negotiations over document production with both nominations.

In 2005, Senator LEAHY agreed to a September 6 hearing date for the Roberts nomination before Judge Roberts had submitted his questionnaire, and before more than 75,000 pages of documents, primarily from the Reagan Library and the National Archives, came in throughout August and before the hearing began in September. Indeed, on the eve of the planned start of the hearing, on August 30, the Archives notified the Judiciary Committee they had found a new set of documents consisting of about 15,000 pages. These were delivered September 2, further complicating the hearing preparations. The hearings went ahead on September 12.

Furthermore, Hurricane Katrina hit New Orleans and Chief Justice Rehnquist passed away while Judge Roberts' nomination to be an Associate Justice, leading to a week-long delay in his hearing after he was then nominated to be the new Chief Justice.

Despite these obstacles, Judge Roberts was confirmed 72 days after President Bush named him as a nominee to the Supreme Court. If Judge Sotomayor is confirmed before the Senate recess in August, she will have been confirmed on a virtually identical timetable. If, however, she is not confirmed until the beginning of the Court's term in October, consideration of her nomination will have lasted nearly twice as long as that of Judge Roberts.

Confirming Judge Sotomayor before the August recess would give her time to prepare adequately for the Court's fall term, including the review of hundreds of petitions for certiorari for the Court's first conference and preparation for merits arguments. It would also allow her time to move and hire law clerks. I do not believe it is fair to delay Judge Sotomayor's confirmation if it is not absolutely necessary.

I appreciate that Senate Republicans are committed to a fair and respectful confirmation process for Judge Sotomayor. I believe it is important that Senators be permitted the opportunity to thoroughly review Judge Sotomayor's record and to fulfill our constitutional duty to provide advice and consent. I believe our proposed schedule for hearings and a floor vote on her confirmation will do so.

I signed that letter HARRY REID.

The hearing date is just 48 days after Judge Sotomayor was selected and is consistent with the 51-day average time between announcement of a Presidential selection and the start of their hearings. It has been that way for the past nine Court nominees who were confirmed.

The proposed alternative, that the hearings be held after the August recess, or the first Tuesday after Labor Day, Tuesday, September 8, would subject Judge Sotomayor to the longest delay between selection and her confirmation hearing of any Supreme Court nominee in history, so far as we can tell. We stopped checking, frankly, when we got back to 1960. The GOP plan would delay her hearing until the 107th day after her selection. Robert Bork, the current record holder, waited 76 days. Thomas and Alito waited 64 and 67 days, respectively.

We are doing our utmost to have this nominee have a fair hearing. We want to make sure the Republicans have all the time they need, but history doesn't lie, and history suggests we are being overly generous with this good woman. She will be a wonderful addition to the Court, and I would hope we can move forward and have this matter resolved quietly, respectfully, and fairly.

Mr. LEAHY. Mr. President, if the Senator would yield. I might add to that. When I met with the distinguished Senator from Alabama last week, I had originally suggested it would be well within the appropriate timeframe of the other Justices—including Justice Roberts—that we have the hearing the week we came back from our week-long break of the Fourth of July. He had expressed—and I will let him speak for himself—some concern about that week after, and so I said: OK, we will put it a week later.

He, obviously, wanted to speak with his leadership, and that is fine. I had originally intended to speak about it on Friday, but I understood that the Republican leader had sent a letter to the majority leader because the majority leader had told me about that, and we are all aware of the date. There was never a question about what date I intended to start. I had known that for some time. But this morning I told him by telephone I was going to do that date. I talked to the President, and I so advised Judge Sotomayor.

The fact is, we are not doing something where we have problems with tens of thousands of pages just days before the hearing. We have all the material. I can't speak for other Senators, but we have a lot of work to do. We are paid well, and we have big staffs. I had hoped to take some vacation time during the Fourth of July week—I will not. I will spend that time preparing for it in my farmhouse in Vermont. I would suggest Senators may have to spend some time doing that. I know a lot of our staffs—both Republican and Democratic staffs—are going to have to plan to take time off. They are going to be working hard.

We have a responsibility to the American people. Certainly, we have a responsibility to have a Justice have time enough to get a place to live down here, hire law clerks, and get going.

Mr. REID. Will my friend yield for a moment?

Mr. LEAHY. Sure.

Mr. REID. It is also true, is it not, the announcement was made that during the 5 weeks we are in session during July we are going to be working Mondays through Fridays, and you have informed the members of the Judiciary Committee—Democrats and Republicans—that would be the case? That is why—it is my understanding from the distinguished chair—you had announced the hearing was going to start on a Monday?

Mr. LEAHY. We are going to be in anyway. I would also note this gives us plenty of time.

We get elected in November, most of us—the first week in November—and when we are new Senators, we find it difficult to put everything together in 2 months, to go into the Senate in January. We should at least give the same courtesy to a Justice of the Supreme Court that we expect the American voters and taxpayers to give us.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I wish to confirm and agree with most of what the majority leader and our chairman have said. The bottom line is, this is a nomination that should be easy to study up on. The record is public. The record has been available from the day she was nominated. There are not thousands and thousands of pages given to us at the end of the days, as I know my colleague, the chairman, has said.

I would like to make one other point. I know my colleague, our ranking minority member, Mr. SESSIONS, said Alito took some 90 days. That is true. But that included both the Thanksgiving and Christmas breaks. If you look at the actual working days, it was much shorter, as it has been for every other Justice. Let me repeat. If we were to do what the minority leader asks, and not vote on this nomination until well after the September break, it would be the longest nomination proceeding we have had for the most publicly available and most concise record.

This is not somebody whom we have to dig and find out things about, because she has had 17 years—17 years—of Federal decisions at the district and at the court of appeals level, more than any other nominee to the Supreme Court in 100 years—in 70 years, excuse me. No, in 100 years for Federal and in 70 years for Federal and State because Justice Cardozo had 29 years on the State bench. The record is ample and the record is public. Given the staff that I know the Judiciary minority has, as chairman of the Rules Committee, any lawyer worth their salt could more easily research the whole record in less than a month. So, actually, Chairman LEAHY has been kind of generous by delaying a week or two beyond that month.

Every day, as we speak now, there are, I daresay, tens of thousands of lawyers who have larger research dockets to do and are doing them in less

time. So the bottom line is very simple. One can only come to the conclusion that the reason for delay is delay alone, not needing time to study a public, ample record. So I would urge my colleagues on the other side to reconsider.

I have been told, at least on my subcommittee, that no one is going to participate in any meetings on anything. I don't know if that is true—I hope it isn't—that there is going to be an attempt to close down the Judiciary Committee on all the important issues we face.

Mr. KERRY. Mr. President, will the Senator yield for a question?

Mr. SCHUMER. I will yield to the Senator.

Mr. KERRY. Mr. President, I ask my colleague, in terms of the public record, is it true not only that this is the longest period of time, but if we were to delay it until September, that would be the longest period of time for consideration of any Justice for the Supreme Court in history?

Mr. SCHUMER. I believe my colleague from Massachusetts is correct.

Mr. KERRY. Certainly much longer than Justice Alito, Justice Roberts or any of the others whom we considered very rapidly?

Mr. SCHUMER. Clearly, longer than Roberts—much longer than Roberts—and somewhat longer than Alito. But Alito had both the Thanksgiving and Christmas breaks that were counted in that time, and we all know people are busy celebrating the holidays.

Mr. KERRY. I would also ask my colleague whether there is any rationale here whatsoever, that we have seen, for why this Justice's entire record, which is public, and has been poured over already, requires having the longest period in history, in terms of Justices of the Supreme Court, particularly given the issues that are at stake and the convening of a new Court in October?

Mr. SCHUMER. Well, I thank my colleague, and I think his points are well taken. As I mentioned before, the bottom line is, any lawyer worth his salt—and there are many very qualified lawyers in the minority on the Judiciary Committee—could research this record within a month, easily—easily. Right now, in the buildings here in Washington and in the buildings in New York and in the buildings in Birmingham, AL, are lawyers who have far more extensive research to do in less time and they do it well.

Mrs. BOXER. Would my friend yield for a question?

Mr. SCHUMER. I would be happy to yield.

Mrs. BOXER. I know we have to vote, but I wish to speak for a minute. As a woman, and being from California, we have such excitement about this nomination. I know we all agree this is a historic first, this nomination, and I think, given that and the fact that the women of this country comprise a majority and there is only one woman on the Court—and we certainly have never had a Latino on the bench—I am asking my friend, does he not believe this nominee should be accorded equal treatment—equal treatment as it relates to the others who have been nominated to the same post?

That is all I am asking for. I am not on the committee, but I am supporting our Chairman LEAHY and the rest of the committee—at least those who are moving toward this in a schedule similar to Justice Roberts. I would ask, once again: Shouldn't we, who are very excited about this nomination and want to see it move forward, expect to have Judge Sotomayor treated in an equal fashion?

Mr. SCHUMER. I think my colleague from California makes an excellent point, and I would answer in the affirmative. We are not asking for more time. We are actually asking for less time, if you include vacation time.

It is not a situation like with Justice Roberts and even Judge Alito, where there were weeks and weeks before we were able to get private records that were available. No one has requested—Judge Sotomayor has not worked with the executive, so you don't have all those issues that have to be discussed and negotiated about executive privilege. She has a 17-year career on the bench. She has 3,000 opinions. If that is not an adequate record?

My office just in 2 days looked at every one, for instance, of the immigration asylum cases that were brought before her. There were 83—a pretty good sample, 83 percent. I don't recall the number, but there were a large number of cases, and 83 percent of the time we found she denied asylum to the immigrant applicant, which we concluded made it pretty clear that her fidelity to rule of law trumped her natural sympathy for the immigrant experience.

We just did that in a day or two. I don't have the kind of staff that my good friend, the Senator from Alabama, has. He should have it. He is the ranking minority Member. So it is very easy, given the number of staff, given the public record, given that there is no litigation or discussion about executive privilege—as there was with both nominee Alito and nominee Roberts—that a month seems to me to be ample time. The chairman, in his wisdom, to which I will defer, gave more than a month to the day of the nomination.

Mr. SESSIONS. Will the Senator yield for just one question?

Mr. SCHUMER. I am happy to yield to my colleague.

Mr. SESSIONS. I know the Senator from California raised the question of doing for this nominee as the others. If this goes forward as planned, it would be 48 days from nomination announcement to the first hearing. I wonder if the Senator from New York would acknowledge that for Justice Breyer it was 60 days; for John Roberts it was 55, the shortest; and Sam Alito was 70. This would be much shorter a period of time than the period we are being given for this nominee, who has 3,500 cases.

I would ask if the Senator remembers saying with regard to the Alito nomination, when our Democratic colleagues asked that it be held over past Christmas, and at their request it was done so, he said:

> It is more important to do it right than to do it quickly. And now we have a bipartisan agreement to do that.

So we just ask for a bipartisan agreement to do it right and not too fast. I don't know how we can work it out, but I think this is an arbitrary date, designed to move this process forward by a certain end game, faster than we need to. The vacancy, as the Senator knows, does not occur until October when Justice Souter steps down. So we do need to complete it by then. I have told the President I will work to make sure that occurs.

Mr. SCHUMER. I thank my colleague.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. If I might respond, with nominee Alito, now Justice Alito, there was a Christmas break. As I understand it, according to Chairman LEAHY it was the majority, Republicans, who asked we go to that Christmas break, not the Democrats. In Justice Roberts' case, I believe Katrina intervened and everybody had to drop everything and work on the emergency of Katrina.

If you look at days where the record is available, and it has been available right from the get-go here, and no vacation, no intervening long recesses and things like that, the minority here, any Senator here, will have had more time to scrutinize this record than we have had for most other Judges. Again, underscored by the fact that the record is public, is open and ample.

No one has to go look for needles in a haystack to try to figure out the record of Judge Sotomayor. It is very extensive and ample. With Justice Roberts, we only had a few years where he was on the bench and all the rest of his record was in the executive and it took us weeks, I think—the chairman probably remembers this better than me—or months to get the record.

With that, I yield the floor. I know we want to get on with the vote.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak for up to 3 minutes before the vote.

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

Mr. DURBIN. Mr. President, I join in saying the chairman of the Senate Judiciary Committee, Senator LEAHY, has come up with a reasonable timetable for considering this historic nomination. I believe his setting Monday, July 13, for the hearing is well within the ordinary bounds of time allotted for Supreme Court nominees. The important date is when paperwork is submitted. When it came to the submission of paperwork before the hearing

actually took place, basically, when it came to Judge Sotomayor, she completed her paperwork setting forth her key information, background, on June 4. The July 13 hearing will take place 39 days after that paperwork was submitted.

In the case of Justice Alito—who incidentally had participated in 4,000 cases, 1,000 more than Judge Sotomayor—in that case, in Justice Alito's case, the hearing took place 40 days after we received his work; for Chief Justice John Roberts, 43 days. This is entirely consistent.

I might also add a point that was raised by Senator UDALL of New Mexico. Judge Sotomayor is no stranger to this Chamber. She was nominated first for the district court bench by President George Herbert Walker Bush and then nominated for the district court by President Clinton. That is an indication that we have seen her work before. We are aware of her background.

The last point I would make, consistent with the Senator from California, is that justice delayed could be justice denied. In this case, if we continue this hearing for a record-breaking period of time—which has been requested by the Republican side—it will mean we will have a vacancy on the Supreme Court when it begins its important work this fall.

What Chairman LEAHY has asked for is reasonable. It is consistent with the way Judges were treated under President Bush and at the time the Republicans had no objection or complaint about it. This is a reasonable timetable. I urge my colleagues to support Chairman LEAHY.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1256, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1256), to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, and to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

Pending:

Dodd amendment No. 1247, in the nature of a substitute.

Burr/Hagan amendment No. 1246 (to amendment No. 1247), in the nature of a substitute.

Schumer (for Lieberman) amendment No. 1256 (to amendment No. 1247), to modify provisions relating to Federal employees retirement.

The PRESIDING OFFICER. The question occurs on amendment No. 1246 by the Senator from North Carolina, Mr. BURR.

Mr. BURR. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Mossouri (Mrs. MCCASKILL) are necessarily absent.

The PRESIDING OFFICER (Mr. BEGICH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 60, as follows:

[Rollcall Vote No. 205 Leg.]

YEAS—36

Alexander	DeMint	Martinez
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Gregg	Risch
Bunning	Hagan	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Voinovich
Crapo	Kyl	Wicker

NAYS—60

Akaka	Feinstein	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Grassley	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown	Kerry	Sanders
Burris	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Snowe
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Collins	Levin	Tester
Conrad	Lieberman	Udall (CO)
Cornyn	Lincoln	Udall (NM)
Dodd	Lugar	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feingold	Mikulski	Wyden

NOT VOTING—3

Byrd	Kennedy	McCaskill

The amendment (No. 1246) was rejected.

Mr. DODD. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, if I may—I wish to ask unanimous consent to go into morning business at the conclusion of these brief remarks—there are several amendments that are germane amendments to this bill that we ought to consider, and my hope is that will happen. I will let the leadership determine what the rest of the day will be like, but my hope is we can complete these other germane amendments that are before us. I know there is a package of amendments on other things to be looked at, and I am certainly prepared to do that.

My good friend, the Senator from Wyoming, Senator ENZI, is not on the floor at this minute, but he and I have had a good relationship on this bill, and we would like to complete it if we could. We have been now almost a week and a half on this legislation, so it shouldn't take much more to get to final passage.

So I make that offer to my colleagues, that they can sit down and see if we can't resolve some of those matters or at least allow for some time for debate on those outstanding germane amendments that are pending.

MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent to proceed to morning business, with Senators permitted to speak for up to 10 minutes each.

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

The Senator from Utah is recognized.

ORDER OF PROCEDURE

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Missouri be given a couple of minutes to make his speech for the record and that afterwards I immediately be given the floor.

Mr. WYDEN. Mr. President, reserving the right to object, and I do not intend to object, I would ask unanimous consent to be recognized following the remarks of the distinguished Senator from Missouri, and then following the remarks of the distinguished Senator from Utah, that I be allowed to follow him.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Mr. President, I wish my colleague to understand that I may take longer than 10 minutes, so I ask unanimous consent for that.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Missouri is recognized.

NOMINATION OF LIEUTENANT GENERAL STANLEY MCCHRYSTAL

Mr. BOND. Mr. President, today in the Appropriations Defense Subcommittee we heard about some good things going on in South Asia and the new strategy for both Afghanistan and Pakistan to bring military and civilian efforts into that region.

I understand the Armed Services Committee has just approved the nomination of LTG Stanley McChrystal, an ex-commander of the international security forces, the final senior-level military position in the theater.

The dedicated members of the American military, our intelligence professionals and State Department officials continue to serve our country well, but it is essential that the efforts of each be woven together to form a comprehensive strategy that will not only win the battle but win the war. This will take senior leaders of great vision in all areas of our government.

Last November I reached out to many of these leaders when I sent then President-elect Obama and his national security team my report on the way forward in Afghanistan and Pakistan. President Obama has taken many of the steps I outlined, steps that are critical to our long-term success in the region.

Earlier this year the President appointed a special envoy for the region who will oversee the implementation of the new strategy and he appointed a new ambassador to Afghanistan, who will focus the efforts of U.S. Government agencies in country. With General Petraeus firmly in place as the CENTCOM commander and the recent nomination of LTG Stanley McChrystal as the next commander of International Security Forces, Afghanistan—COMISAF—the President will have filled the senior-most military and civilian positions in-theater.

I recently met personally with General McChrystal to talk about our way forward in the region and to listen to his ideas on Afghanistan and Pakistan. I must say I was impressed. He is not only a dedicated and accomplished soldier who has years of combat and counterterrorism experience, he is also an effective leader who understands the critical challenges we face in the region. More importantly, he understands that the war will not be won with military might alone—that to win this war we must combine the outstanding work of our military with effective diplomatic and economic efforts.

A true counterinsurgency—or COIN—strategy, one that wins the hearts and minds of the local population and gains grassroots support for development and governance efforts, includes an effective public diplomacy campaign. General McChrystal not only understands the importance of good public diplomacy, he is dedicated to ensuring that our actions on the ground speak as loudly for our intentions as do our information efforts. That is part of what I call ''smart power''—combining diplomatic, economic, informational and military efforts.

I have seen first-hand the success of these smart power efforts. In Nangarhar Province, the Missouri National Guard Agriculture Development team gained the trust and cooperation of the local leaders. These Missourians have given Afghans in Nangarhar the skills they need to grow and harvest legitimate and sustainable crops. As a result, Afghan farmers are not only improving their own lives and land, but poppy production in the region has virtually been eliminated. I am confident that General McChrystal will support increased focus and investment in smart power efforts such as these.

General McChrystal understands how critical putting an ''Afghan face'' on our combat operations is to our ultimate success. I was pleased that when we talked about accomplishing this goal by improving our efforts to train the Afghan National Army and Police, General McChrystal acknowledged the Afghan component is essential to any successful COIN strategy. Years of special operations experience has led him to know inherently how important it is to have the populace gain confidence in its own government institutions. Having met with the general in Iraq and seen the good work he did there, having watched his work on the Joint Staff, and having spoken with him at length over the past several weeks, I can unequivocally state that he is the kind of officer who intends to do just this—build public trust in Afghanistan.

Just look at his testimony. According to the general, more intelligence, surveillance and reconnaissance (ISR) is good not only because it gives you a better understanding of the battle space, but also because it increases precision which ultimately reduces civilian casualties. Reducing civilian casualties is a must and will gain trust in Afghanistan.

General McChrystal also believes that corruption is ''one of the things that must be reduced for the government to be legitimate, and therefore for the people to trust it.'' The general intends for us to partner with Afghans at every level to help them rid or reduce the widespread corruption because it has a corrosive effect on the legitimacy of the government and is perceived by the Afghan people to be a real problem. This will also gain trust in Afghanistan.

Finally, he believes it is important that we succeed in Afghanistan not only because it removes access to safe havens for al-Qaida and associated groups, but because it is the right thing to do. According to the general's testimony, ''we have the ability to—to support the people of Afghanistan and to move and to shape a better future that they want. And I think that that will make a difference in how we are viewed worldwide.'' This gains trust in general.

Everything I have seen or heard about Lieutenant General McChrystal, from my conversations with him and from his testimony before the Senate Armed Services Committee, his impeccable record of military command and operations, to the comments of his fellow officers, tells me that Stan McChrystal will be a wise, measured, and excellent commander of our operations in Afghanistan. I strongly urge my colleagues to support this nomination without delay so General McChrystal can get on the ground.

I thank the Chair, and I particularly thank my distinguished colleague from Utah.

CONFIRMATION PROCESS

Mr. HATCH. Mr. President, I wish to associate myself with the remarks and concerns expressed earlier by both the Judiciary Committee's ranking member, Senator SESSIONS, and the distinguished Republican leader and whip, Senators MCCONNELL and KYL.

The White House talking points tell us that the Supreme Court nomination, Judge Sonia Sotomayor, has more Federal judicial experience than any Supreme Court nominee in a century. My friends on the other side of the aisle have taken, used, and aggressively circulated these talking points. I assume by stressing judicial experience they are saying that this overwhelmingly deep, broad, and vast judicial record provides the basis on which to judge the nominee's fitness for the Supreme Court. Well, that coin has two sides. The flip side is that a 17-year judicial career that has produced thousands of judicial decisions takes time to evaluate adequately and properly to consider. The question is whether the majority is at all interested in a genuine, serious, deliberative process by which the Senate can fulfill one of our most important constitutional responsibilities. This process should be fair and thorough. Instead, it is being rigged and rushed for no apparent reason other than that the majority can do so.

This process should be bipartisan, and instead it is becoming entirely partisan. The ranking member was not even given the very same courtesy that the chairman was given when he was in that position at the time of the previous Supreme Court nominations.

Let me focus on the process followed to consider the previous Supreme Court nominee, Justice Samuel Alito. He had served on the U.S. Court of Appeals for the Third Circuit for more than 15 years when he was nominated to the Supreme Court. This is 5 years longer than Judge Sotomayor has served on the Second Circuit and nearly the same as Judge Sotomayor's combined judicial service on both the district and circuit courts.

The other party demanded and was granted 70 days from the announcement of the nomination to the hearing to study then-Judge Alito's record. The Senator from Pennsylvania, Mr. SPECTER, was chairman at the time. He made no unilateral partisan announcements. He imposed no truncated, limited timeframe. No, he consulted the ranking member, and they agreed there would be 70 days to study that voluminous judicial record.

Oh, what a difference an election makes. With the unilateral partisan edict announced today by the chairman, we are being given only 48 days to study the same lengthy record. We are told we must consider the largest judicial record in a century in the shortest time in modern memory, and that is simply not enough. It is not enough to do the job right, and I would remind my friends on the other side that it was their leaders who once said that it is more important to do it right than to do it fast. That was when there was a Republican President and a Republican Senate. Are we to assume from the unilateral imposition of a stunted and inadequate process that the majority today no longer cares that the confirmation process be done right, only that it be done fast?

The chairman has actually suggested that he really has no choice, that some intemperate criticism by a few people has somehow forced his hand. He cannot be serious about this. This nominee has the full force and weight of no less than the entire administration of a currently popular President, a compliant media, and the largest partisan congressional majority in decades to come to her defense. Interest groups are mobilizing, lobbying campaigns are in full swing, Web sites are already in operation. With all of that, are we to believe a few ill-considered remarks by a few people outside this body are enough to cut the confirmation process off at the knees? Are we to believe this is all it takes to set aside fairness, to undercut the ability of the Senate to do its confirmation duty, and to inject this degree of partisanship and rancor into the process? Give me a break.

This is choice, plain and simple, and it is the wrong choice. The distinguished Senator from New York, Mr. SCHUMER, has said that Senators on our side of the aisle oppose this nominee at their peril, as if there is any peril in fairly applying basic principles and standards to this as well as to other nominees. But the distinguished majority leader has apparently said the same thing to Senators on this side of the aisle, literally daring any of them to vote against this nominee. That is a strange tactic, indeed, especially so publicly and so early on in the process. It makes me wonder whether there are concerns, even on the majority side, that the leadership simply cannot allow to be expressed.

I urge my friends on the other side to reconsider and not be intimidated and not be pushed around. There is more than enough time to do the confirmation job right, to have a fair and thorough process that can have a confirmed Justice in place when the Supreme Court begins its term in October. There is no need gratuitously to further politicize the confirmation process. Injecting such partisanship at the beginning easily can result in greater conflict and division further down the confirmation road, and that is not good for Judge Sotomayor or anybody else in this body. That is not in the best tradition of the Senate, it is not how the Supreme Court nominations have been considered in the past, and it is not the way we should do this today.

I have been informed there have been some 4,000 decisions. My gosh, it is going to take some time to go through those decisions.

I believe we ought to be fair in this body, and fairness means giving enough time to be able to do the job properly and to get it done within a reasonable period of time and not be pushed in ways that really don't make sense.

HEALTH CARE REFORM

Mr. HATCH. Mr. President, I wish to take a few minutes now to talk about the perils of creating a government plan on American families and health care.

I am very disappointed that the President and my friends on the other side of the aisle have chosen to pursue the creation of a new government-run plan—one of the most divisive issues in health care reform—rather than focusing on broad areas of compromise that can lead us toward bipartisan reform in health care legislation.

Yesterday, I spearheaded a letter with my Republican Finance Committee colleagues urging the President to strike a more conciliatory tone on health care reform. Having played a profound role in almost every major health care legislation for the last three decades and having worked repetitively in a bipartisan manner with everyone from Senators KENNEDY and DODD to Congressman WAXMAN, I know something about getting things done for our families in a thoughtful manner. You advance legislation by focusing on areas of compromise, not strife.

First and foremost, let me make this point again, even though I am starting to sound like a broken record: Reforming our health care system to ensure that every American has access to quality, affordable, and portable health care is not a Republican or Democratic issue; it is an American issue. When we are dealing with one-sixth of our economy, it is absolutely imperative that we address this challenge in a bipartisan manner. Anything less would be a huge disservice to our families and our Nation.

Clearly, health care spending continues to grow too fast. This year will mark the biggest ever 1-year jump in health care's share of our GDP—a full percentage point to 17.6 percent. You can think of this as a horse race between costs and resources to cover these costs. The sad reality is that costs win year after year.

Growing health care costs translate directly into higher coverage costs. Since the last decade, the cost of health coverage has increased by 120 percent—three times the growth of inflation and four times the growth of wages. It is not the only problem, but cost is one part of the reason more than 45 million Americans do not have health insurance.

I believe we need to do more to ensure we achieve universal and affordable access to quality health care for every American. We can do this by reforming and improving the current system. However, the creation of a government plan is nothing more than a backdoor approach to a Washington-run health care system.

At a time when major government programs such as Medicare and Medicaid are already on a path to fiscal insolvency, creating a brand new government program will not only worsen our long-term financial outlook but also negatively impact American families who enjoy the private coverage of their choice.

To put this in perspective, as of this year, Medicare has a liability of almost $39 trillion, which in turn translates into a financial burden of more than $300,000 per American family.

In our current fiscal environment, where the government will have to borrow nearly 50 cents of every dollar it spends this year, exploding our deficit by almost $1.8 trillion, let's think hard about what we are doing to our country and our future generations.

The impact of a new government-run program on families who currently have private insurance of their choice is also alarming. A recent Milliman study estimated that cost-shifting from government payers, specifically Medicare and Medicaid, already costs families with private insurance nearly $1,800 more each year. Creating another government-run plan will further increase these costs on our families in Utah and across the country.

Let me make a very important point. A new government plan is nothing more than a Trojan horse for a single-payer system, a one-size-fits-all government-mandated system, where we are going to put bureaucrats between you and your doctors. Washington-run programs undermine market-based competition through their ability to impose price controls and shift costs to other purchasers.

The nonpartisan Lewin Group has concluded that a government plan open to all, and offering Medicare-level reimbursement rates, would result in 119.1 million Americans losing their private coverage. This is almost three times the size of the entire Medicare Program, which is already in trouble. More important, this would run contrary to the President's own pledge to the American families about allowing them to keep the coverage of their choice. So far as I know, no one has disputed the Lewin Group. They are well known as one of the most nonpartisan groups in the country.

Proponents of this government plan seem to count on the efficiency of the Federal Government in delivering care for American families, since it is already doing such a great job with our banking and automobile industry.

Medicare is a perfect example. It is on a path to fiscal meltdown, with Part A already facing bankruptcy within the next decade, and we all know it. It underpays doctors by 20 percent and hospitals by 30 percent, compared to the private sector, forcing increasing numbers of providers to simply stop seeing our Nation's seniors. According to the June 2008 MedPAC report, 9 out of 10 Medicare beneficiaries have to get additional benefits beyond their Medicare coverage—9 out of 10.

We have a broken doctor payment system in Medicare that has to be fixed every year, so seniors can continue to get care. This year alone, this broken formula calls for a more than 20-percent cut. I can keep going, but the point is simple: Washington and a government-run plan is not the answer.

Talk about creating problems. The supporters of the government plan

know these facts. So they are trying a different approach by claiming that the government plan is simply competing with the private sector on a so-called level playing field. Give me a break.

History has shown us that forcing free market plans to compete with these government-run programs always creates an unlevel playing field and dooms true competition.

The Medicare Program, once again, provides an important lesson. As a political compromise, Medicare was set up in 1965 to pay doctors and hospitals the same rates as the private sector. Faced with rising budget pressures, Congress quickly abandoned this level-playing-field approach and enacted price limits for doctors and hospitals. Today, as I have said, Medicare payments are 20 percent less for doctors and 30 percent less for hospitals compared to the private sector. I have been told by doctors from Utah and across the country that if this continues, they will simply stop seeing patients altogether. A number of them are ready to quit the profession. I cannot tell you the problems that will arise if we go to a government-run program—a Trojan horse to lead us to a government-mandated, government-run, one-size-fits-all massive program.

In his March, 2009, testimony before the House Energy and Commerce Committee, Doug Elmendorf, the Director of the nonpartisan Congressional Budget Office, testified that it would be ''extremely difficult'' to create ''a system where a public plan [government plan, if you will] could compete on a level playing field'' against private coverage. The end result would be a Federal Government takeover of our health care system, taking decisions out of the hands of our doctors and our patients, placing them in the hands of a Washington bureaucracy, and inserting that bureaucracy right between them.

Here is the bottom line: We are walking down a path where stories such as Jack Tagg's could become increasingly common in our great country. In 2006, Jack Tagg, a former World War II pilot, suffered from a severe case of macular degeneration. The regional government bureaucrats rejected his request for treatment, citing high costs, unless the disease hit his other eye also. It took 3 years to overturn that decision—3 years, while he had to suffer, when we could have done this in a better way.

Let's remember that a family member with cancer in an intensive care unit would probably neither have the time nor the resources to appeal such an egregious bureaucratic decision. We need to remember the real implications of these policies—not simply in terms of political spin and special interests but in terms of its impact on real people, who are mothers, fathers, husbands, wives, brothers, sisters, and children.

Similar to the ill-conceived stimulus legislation and flawed auto bailout plan, health care reform has the potential of simply becoming another example of the Democrats justifying the current economic turmoil to further expand the Federal Government.

To enact true health care reform, we have to come together as one to write a reasonable and responsible bill for the American families who are faced with rising unemployment and out-of-control health care costs.

I do look forward to working together to transform our sick-care system into a true health care system. I continue to hold deep in my heart that we will move beyond these beltway games and work together in a bipartisan way to fix Main Street. The time is now and I am ready.

I am absolutely positive the way to go is not with a government-run, government-mandated health care program, which will bring the lowest common denominator in health care to everybody. I think you are going to find that the costs are so astronomical, the way it is being formed in the HELP Committee, in particular, that we are leaving a burden on our kids and grandkids and great grandkids that is going to be insurmountable.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Oregon is recognized.

Mr. WYDEN. Before the Senator leaves the floor, I wish to tell the Senator from Utah how much I am looking forward, on a personal level, to working with him in this 5-month sprint to figure out a way to fix American health care in a bipartisan fashion. Some of the moments I am proudest of have been those when the two of us have been able to team up on health reform. Without getting into it this afternoon, let me say that millions of poor young people who use community health centers are getting services there at no extra cost to our taxpayers, because Senator HATCH was willing to work with this Senator and a group of others, including public interest groups and a wide variety of health care advocates, in order to change malpractice rules. This was done to make sure not only that those who had a legitimate claim got served but also that the bulk of the money went to patients in need. Thousands of low-income Americans get care because Senator HATCH was willing to take a stand for low-income folks. I wish to tell him I am very much looking forward to working with him and our colleagues on a bipartisan basis over the next 5 months to get this job done.

Mr. HATCH. If the Senator will yield, I am very appreciative of the Senator's remarks. I have spent 33 years working on virtually every health care bill that has come up. We have always done it in a bipartisan way. I certainly enjoy working with the distinguished Senator from Oregon. He is one of the more thoughtful people in health care on the Finance Committee and in this whole body. I am grateful to him for wanting to work together and in a bipartisan manner. We need to do that. You cannot work on a partisan basis on issues regarding the American economy. There are some in the White House and on the Democratic side who want to do that. I am grateful the Senator from Oregon is not one of them. I, personally, will do everything in my power to try to put together a bipartisan approach to this that would work and would put the best of the private sector in with the best of the government sector and work for our folks in this country. When you are talking about one-sixth of the American economy, if we do that, it will be for the betterment of the country and for everybody. If we go in a partisan, one-size-fits-all way—especially, in my opinion, with a government-run plan—we are going to be anything but good as far as health care is concerned. I am grateful for the Senator's kind remarks.

Mr. WYDEN. Mr. President, I share the Senator's interests. There are a lot of Senators of good will on both sides of the aisle who want to get this done right.

Mr. HATCH. I thank the Senator.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak in morning business for up to 20 minutes.

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

Mr. WYDEN. When I was a young man, I got involved working with senior citizens as codirector of the Oregon Gray Panthers. Every day back then, we got up and said we are going to make a difference. We are going to help people and, particularly, for senior citizens we are going to make it possible for them to have a better quality of life.

The distinguished occupant of the chair is, I think, close to my age. We can both recall that in those days if a town had a lunch program for senior citizens, that was considered a big deal. There weren't a whole lot of discount programs. People didn't even talk about home and community-based health care services. In most of the country, back then, if a town had a lunch program for senior citizens, that was considered a full-fledged program for older people.

In those early days with the Oregon Gray Panthers I started thinking about the importance of good-quality, affordable health care. I spent hours and hours back then watching what happened when seniors and their families got exploited in the health care system. The first issue I was involved with concerning senior citizens was a real tragedy. At that time, there were a lot of older people who needed insurance to supplement their Medicare. It was very common for senior citizens then, every time some fast-talking salesman came through, to buy another policy. When I was running the legal aid office for senior citizens I would go to visit older people in their homes, and very often they could take out a shoe box full of

health insurance policies—15 or 20 policies. A lot of them weren't worth the paper they were written on. In fact, they had what were known as subrogation clauses, so that if you had another policy, the first one would not pay off. It was tragic to watch senior citizens walking on an economic tightrope every week, balancing food against fuel and fuel against medical bills, and getting sold all this junk health insurance, and as I said earlier, most of it wasn't worth a lot more than the paper it was written on. I starting saying to people, I want to do something about this. In a few years, I got elected to the House of Representatives, and I had a chance to work with both Democrats and Republicans, a number of them in the Senate today. Chairman BAUCUS was very involved in the effort.

In the early nineties, we finally drained that swamp of paper. Today it is possible for a senior to have just one of these policies, not 15 or 20, and have the extra money to spend on other essentials. The coverage is standardized so you don't need to be some kind of Houdini in order to figure it out.

That effort resulted in the only tough law on the books today that really has teeth in it to regulate and stop some of these private insurance ripoffs. I am very proud to have taken a role along with some of my colleagues in the Senate in changing it.

Democrats and Republicans, as part of health reform, are going to have to fix the insurance market for the nonelderly population. The insurance market today for those who are not in Medicare or in the veterans system, but who instead have private coverage, is inhumane. It is all about cherry-picking. It is about trying to find healthy people and send sick people over to government programs more fragile than they are. That is today's insurance market.

Fortunately, a big group of Democratic Senators and Republican Senators are now on record saying they want to change that. They want to make sure, for example, that people cannot be discriminated against if they have a preexisting condition. These Senators want to make sure, for example, that instead of being sent off to the individual insurance market, where people don't really have any clout or any bargaining power, people will be able to be part of a bigger group so they get more value for their health care dollar. In this larger group market, insurance companies pay out a bigger portion of the premium dollar in terms of benefits.

Democrats and Republicans are prepared to, in effect, turn the current system of private insurance around completely and say: Instead of basing it on cherry-picking, which is what it is about today, in the future, private insurers should have to take all comers. They should not discriminate. People should pool into large groups, and the companies should compete on price, benefits, and quality. There will have to be prevention and wellness so it is not just sick care, as Senator HATCH touched on very eloquently.

That is something Democrats and Republicans already are on record as coming together to support. Fixing the private insurance marketplace is a fundamental part of health reform.

There are other areas where Democrats and Republicans can join forces. One that I care most about is making health care coverage portable so that you do not lose your coverage when either you leave your job or your job leaves you.

This is an especially serious problem for the millions of folks who are laid off today. They go to a program called COBRA, which, I might note, is the only Federal program named after a poisonous snake. Colleagues have improved it, certainly, in the stimulus to try to provide additional assistance. But it is still part of a dysfunctional system that has not changed a whole lot since the 1940s. Much of the rules with respect to coverage—and certainly, in my opinion, that have led to the lack of portability—were made in the 1940s, when there were wage and price controls, and when big decisions got made that affect health care today.

Back in the 1940s, the rules made some sense for those times. People would usually go to work somewhere and pretty much stay put for 20 or 25 years until you gave them a gold watch and a 20,000-calorie retirement dinner. That is not what the workforce is about today.

Today the typical worker changes their job 11 times by the time they are 40. So what workers need is portable health care coverage, coverage they can take from place to place. People do not need to find that when they lose their jobs, they go out and face discrimination in the insurance marketplace where they are not able to afford insurance, even with the COBRA subsidies which, of course, run out often before they get their next position.

The current system is also anti-entrepreneur because very often somebody who works for a business has a good idea and they would like to go into the marketplace and try it out, but if they have an illness, they cannot leave their job because they are not going to be able to get coverage at their next job.

Once again, Democrats and Republicans in the Senate are on record as being willing to make a fundamental change in the way the system works today. They are on record in favor of portability and guaranteeing to Americans who lose their job or want to go somewhere else the ability to take their coverage with them. This system would be administered in a seamless kind of way so you wouldn't have to go out and reapply and have physicals and incur excessive costs.

Which leads me to my next point where Democrats and Republicans are in agreement, and that is lowering the crushing costs of health care administration. This Senate has begun to move in the right direction, with the leadership of the Obama administration, to promote electronic medical records. As far as I am concerned, we ought to send these paper medical records off to the Museum of American History and put them next to the typewriter and telegraph.

The Obama administration has made good progress in moving in that direction. But much more needs to be done to lower administrative costs in health care.

Once again, Democrats and Republicans have teamed up. They've said, let's use the withholding system. We already do that for administering much of the human services benefits on which our people rely. We will make sure people sign up once so they don't have to go through it again and again. We will pool people into these larger groups so they don't have to experience the excessive administrative costs that are associated with smaller groups, and they will have portable coverage so our people do not have to apply time and again, every time they change their job.

For each one of these issues—insurance reform, portability, lower administrative costs—already there exists a significant group of Democrats and Republicans in the Senate willing to join forces.

My own view is these are not partisan issues, and I think there are other areas that can also be tackled together by Democrats and Republicans.

One of the most contentious of those upcoming issues involves the tax rules for American health care. The reason these are so important is, of course, they are vital to Americans who are trying to pay for their health care and other essentials. These tax rules, which are upwards of $250 billion a year, amount to the biggest federal health care program.

Prominent Democrats and prominent Republicans, just in the last few weeks, have said these rules do not make sense. Let me give some examples for colleagues on our side of the aisle of some of the progressives who have called for reforms just in the last couple of weeks. Robert Reich, the former Secretary of Labor, certainly one of the leading progressive thinkers in our country, has talked about the regressivity of these rules, how they disproportionately favor the most affluent. Bob Greenstein, the head of the Center on Budget and Policy Priorities, is on record with the same views. Both of those reflect the comments of individuals who are progressive.

Suffice it to say, a number of conservatives have spoken out against these rules as well. Milton Friedman, going back to a legendary conservative, began to speak out against these rules some time ago.

We ought to deal with these issues on a bipartisan basis. I know of no Senator—not a single one—who is going to support taxes on middle-class people on

their health care. It is off the table. It is not going to happen. There are 100 of us. Not a single one of us is going to support taxing those individuals. But I do think Democrats and Republicans, just like Robert Reich and Bob Greenstein on the Democratic side and conservatives going back to Milton Friedman on the Republican side, have said we can come together and find a way to make sure in the future these rules do not subsidize inefficiency and also disproportionately favor the most affluent.

What is tragic in the State of Delaware, the State of Oregon, the State of Georgia, is, if somebody does not have health care coverage and works in a furniture store outside Atlanta, they, in effect, have their Federal tax dollar subsidize somebody who is particularly well off who decides they want to get a designer smile in their health care plan.

Can we not all say in the interest of protecting taxpayers and fairness that we want that person who is interested in their designer smile to be able to buy as many of them as they want; but can we not agree, Democrats and Republicans, that if they are going to get a designer smile, they are going to pay for it with their own money rather than with subsidized dollars?

In each of these areas I mentioned there is an opportunity for Democrats and Republicans to come together. What each of the areas I have touched on deals with is making health care more affordable—more affordable for individuals, more affordable for families, and more affordable for taxpayers who are getting pretty darned worried about the debts that are being incurred and the prospect that their kids and their grandkids are going to have to pick up some of these bills.

I believe one of the keys to making health care more affordable is to make it possible for the individual, largely as part of a group where they can have some clout, to be rewarded for making a financially sound decision for herself and her family and to have a choice to go to the kind of program that makes sense for her and her family.

The current statistics show 85 percent of our people who are lucky enough to have employer coverage get no choice. Let me repeat that. Eighty-five percent of those who are lucky enough to have employer coverage get no choice.

Every one of us is going to require that a final bill protect somebody's right to keep the coverage they have. Mr. President, 100 Senators are going to vote for the requirement that you can keep the coverage you have. But can we not agree, as Democrats and Republicans, that we are also going to say you ought to have some other choices? I would like those choices to be in the private sector. If you can find a plan that is financially in your interest, you can keep the difference between what your health care costs today and what this new health package you buy costs. You can keep the difference. We will have a functioning market. If you save $600, $800 on the health care you buy, you have $800 to go fishing in Oregon, and I suspect the Senators from Delaware and Georgia may have some other ideas for where people can use their savings.

The point is, we will have created a market where there is none now. I consider the current health care system today, for all practical purposes, a money-laundering operation. What we have done largely since World War II is set it up so that third parties call the shots, and there are not any opportunities for individuals who want to make a cost-conscious choice to buy a good quality health care package. In effect, the individual has been divorced from the process completely.

I am not calling for individuals to go off into the health insurance marketplace by themselves. What I am saying is they ought to have the opportunity, as we have as Members of Congress, to be part of a large group where they can have clout, where they aren't discriminated against, where they do have power in the marketplace to make a sensible choice for themselves and their family.

So in each of these areas, Mr. President—and this is why I wanted to come to the floor of the Senate today, because I know emotions are starting to run hot on this health issue—I have outlined ways in which Democrats and Republicans can come together. The Congressional Budget Office, which is the independent arbiter of all of this, has largely scored the proposals I have outlined in the legislation that 14 Senators are in support of as being budget neutral over a 2-year phase-in period. The CBO has said that in the third year the proposals would actually start bending the cost curve downward.

I close with this—and I thank my colleague and friend from Georgia for his patience—I think we have five of our most dedicated legislators working now on a bipartisan basis in two committees to bring Democrats and Republicans together. The leaders on the Finance Committee on which I serve—Chairman BAUCUS and Senator GRASSLEY have been extremely fair and gracious. They have put untold hours into this issue. Both of them have spent an exceptional amount of time with me, and they have extended that offer to literally any Member of the Senate, to sit down and spend time with them to try to address this bill in a bipartisan way. In the HELP Committee, Senator KENNEDY, Senator DODD, and Senator ENZI who serves on both committees, are extending the same kind of goodwill. I have told the leaders of both of these committees I am going to do everything I can to bring to them the ideas I have outlined today that have strong bipartisan support and have been scored by the Congressional Budget Office as saving money and pushing the cost curve downward. I have great confidence in the leaders of those two committees, because they are showing they want to spend the time to bring the Senate together.

I see the distinguished Senator from Maine on the floor, and I know that for a lot of us who have worked together on health care over a lot of years, this is a historic opportunity. This is the place—the Senate—and this is the time to get it done. I believe Democrats and Republicans coming together can make it happen.

Mr. President, with that I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I ask unanimous consent to speak for 15 minutes as in morning business.

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

Ms. SNOWE. Mr. President, I rise to speak about the Family Smoking Prevention and Tobacco Control Act, but before I do I want to compliment the Senator from Oregon for his passion and his eloquent statement on behalf of renovating and reforming our health care system. That certainly will be a historic occasion. I have worked with him on so many instances in the past, in a bipartisan fashion, on key issues, such as prescription drugs and adding the critical Part D benefit to the Medicare Program. That also was a historic event in the Medicare Program—the first major expansion of Medicare since its inception. I look forward to working with him in a genuine bipartisan way to build a consensus for this historic occasion that is so essential and so important to all Americans.

It is important to get it right. It is important that we work together in a concerted fashion, as we have in the past. And certainly on the Senate Finance Committee, as we begin to proceed to mark up legislation in the future, I certainly am looking forward to working with him.

Mr. REED. Madam President, would the Senator yield for a parliamentary request?

Madam President, at the conclusion of the remarks of the Senator from Maine, I ask unanimous consent to be recognized for 5 minutes, and then following me that Senator ISAKSON be recognized for 10 minutes.

The PRESIDING OFFICER (Mrs. SHAHEEN). Is there objection?

Without objection, it is so ordered.

Mr. REED. I thank the Senator and the Chair.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Ms. SNOWE. Madam President, I am proud to join my colleagues in expressing first and foremost my admiration for Senator KENNEDY, for his longstanding, vigorous leadership, which has been the impetus behind this legislation. Undeniably, Senator KENNEDY continues to serve as the strongest of champions on so many matters relating to health care, and I am certainly,

as we all are, grateful for his tireless contributions to this major initiative. I also commend Senator DODD, who has been guiding this legislation here in the Senate, and I certainly appreciate all of his efforts to make sure that this legislation becomes a reality. I also appreciate the public health agencies and advocates who work ceaselessly to address these serious public health problems associated with tobacco, as we all well know, and who are committed to the task of reducing youth smoking. I certainly want to commend States such as Maine that have used their funds from the 1998 tobacco settlement to reduce smoking rates.

First and foremost, it is regrettable as the first decade of the 21st century draws to a close that we are even having this debate when the American Lung Association reports that cigarette smoke contains more than 4,800 chemicals, 69 of which are known to cause cancer, and that smoking is directly responsible for approximately 90 percent of lung cancer deaths, and that 8.6 million people in the United States have at least one serious illness caused by smoking.

In addition, the Centers for Disease Control and Prevention estimates that smoking costs the country $96 billion a year in health care costs and another $97 billion a year in lost productivity.

It didn't have to be this way. Looking back over the last several Congresses, I can tell you that many of my Senate colleagues have engaged on this issue of tobacco usage's ill effects for the better part of a decade. I well recall during the 105th Congress at least five comprehensive tobacco policy bills which were introduced in the Senate. The Senate Commerce Committee, on which I have served, held no fewer than 10 hearings on issues ranging from how to implement the tobacco settlement to protecting children from the health risks of becoming a smoker to reviewing marketing and labeling restrictions that were under consideration at the time.

In 1997, Senator MCCAIN, who then chaired the Commerce Committee, introduced the National Tobacco Policy and Youth Smoking Reduction Act, which contained many of the very same safeguards as the measure currently before us. While on the one hand it is irrefutable that protecting youth from the harms of smoking and ensuring tobacco products are manufactured under high standards was the correct course of action in 1997, how is it conceivable it has taken 12 years to get this right? Why, after the first warning 25 years ago by the Surgeon General on the hazards of smoking, has that message not been translated into law?

Why is Congress taking this action now? What has changed since 1997 to prompt this renewed action? For one, there has been a justifiable drumbeat of outrage over fraudulent findings that has grown louder by the decade as the tobacco industry has been less than forthcoming, and at times deceitful, in providing consumers with information to make informed decisions about smoking.

In fact, in August of 2006, a district court judge found that several tobacco companies intentionally manipulated information, lied, and conspired ''to bring new, young and hopefully long-lived smokers into the market in order to replace those who die or quit.'' Furthermore, the Harvard School of Public Health study in 2008 found that cigarette companies strategically manipulated menthol levels in cigarettes to attract and addict young people. It is bad enough Congress could have acted and chose not to do so, but what makes the situation even worse is that, in the interim, tobacco companies have ratcheted up their marketing campaigns.

Congress is tackling the tobacco issue again in the wake of discovering how tobacco manufacturers add substances to cigarettes to increase their addictiveness, enhance the taste—and this is unbelievable—making them more palatable to children. Menthol makes an individual's airways less reactive to the harsh effects of smoking, and ammonia is often added to speed the delivery of nicotine to the smoker's brain.

That is not to say we haven't made progress in trying to limit some of the negative health effects of cigarette smoking. We have. Since 1983, the proportion of Americans who smoke has declined from 30 to 24 percent, and since the landmark 1964 Surgeon General report, our knowledge of health risks of tobacco has expanded greatly. And yet, without substantial initiatives by Congress, in the past 10 years the rate of tobacco use has not dropped but merely stabilized. Today, approximately 1 in 5 youth and adults smokes regularly.

The first step toward addressing the enormous toll taken on our Nation by smoking is to equip the Federal Government with the tools it requires to hold purveyors of tobacco to account. For too long, there has been a vacuum in authority when it comes to regulating smoking at the Federal level. Our bill, the Family Smoking Prevention and Tobacco Control Act, would create the kind of restrictions that the Food and Drug Administration unsuccessfully tried to impose on the tobacco industry in 2000. Unfortunately, the Supreme Court held that Congress had not yet granted the FDA explicit authority to regulate tobacco. The purpose of the FDA restrictions was to prevent the tobacco industry from marketing its products to kids or to create products that are specifically attractive to children, such as flavored cigarettes. Granting FDA the authority to protect the children from these potentially deadly products is paramount. Thus, the legislation before us would allow regulation of manufacturers of tobacco products in order to ensure standards of content, label, and marketing.

Under our bill, the Secretary of Health and Human Services would be authorized to develop regulations that impose guidelines on the advertising and promotion of a tobacco product consistent with and to the full extent permitted by the first amendment to the Constitution. These regulations would be based on whether they would be appropriate for the protection of public health. It is imperative that we provide the FDA the flexibility to respond to inevitable tobacco industry attempts to circumvent restrictions, while acknowledging the rights of the tobacco industry to sell its products to consenting adults.

While this bill allows that informed adults ought to be able to purchase tobacco products, we must also understand that many smokers want to quit smoking. In 2006, 44 percent of smokers stopped smoking at least 1 day in the preceding year because they were trying to quit smoking completely. Undoubtedly, for some, cessation is more difficult, and as they struggle to limit their risk, those individuals will seek out products which they understand to be less hazardous, such as lower tar and nicotine products. While these actions are admirable, their benefits are indisputably limited. That is partially because the tobacco industry has waged a marketing campaign to convince consumers that they can continue to smoke and mitigate the negative health impacts of smoking by choosing alternatives, such as light, low tar, and low nicotine cigarettes. Again, an FDA with the authority to regulate the production and marketing of tobacco products is the most viable answer.

Our approach would also ensure that the scientific expertise of the FDA is applied to appropriately regulate tobacco. Current smokers deserve to learn more about the products they consume. Additionally, we must have much improved marketing oversight, so that children and adults are not targeted with false or deceptive advertising of a dangerous product.

To that end, I was pleased to join with Senator LAUTENBERG in sponsoring legislation that would end the fraud of allowing the tobacco industry to perpetuate the Orwellian idea of the safer cigarette. The Truth in Cigarette Labeling Act was a bill Senator LAUTENBERG and I introduced to prohibit the cigarette companies from using the ''FTC method'' for measuring tar and nicotine, which had been found to be a deceptive method of presenting data on tar and nicotine exposure through smoking.

Thankfully, the Federal Trade Commission agreed to implement the Lautenberg-Snowe bill by not allowing tobacco companies to label their products with low tar, low nicotine, and light. To augment that effort, Senator LAUTENBERG and I sent a letter to the FTC supporting the decision to curtail these deceptive marketing tactics and finally holding cigarette producers to higher standards in advertising their products.

As I stated at the outset, since 2000, efforts at smoking reduction have largely atrophied. A Harris poll released just last year demonstrated that after two decades of reduction in smoking rates, progress has stalled. In 2009, do we really want to say that one in four Americans smoking is an acceptable statistic, and that we will turn a blind eye to the fact that all too many young Americans have taken up smoking? Do we really want to say that although in the last 12 years America created YouTube, the IPod, the Iphone and more—yet we can't keep children from smoking altogether or substantially lower the instances of smoking by adults. Our response must be nothing less than the bill we are championing today.

And make no mistake, time is of the essence. The reality is the average smoker begins at age 19. So many individuals take up tobacco use before they can ever legally purchase the product. And let there be no mistake about it—our youth are targeted to be the next generation of tobacco consumers.

In fact, in my home State of Maine, 1 in 7 high school students currently smokes, and each year, 1,600 youth become new daily smokers. And most concerning, an estimated 27,000 youth now living in Maine will die prematurely from health consequences related to cigarette smoking, and health care costs in Maine directly caused by smoking have reached a whopping $602 million annually.

Maine has responded with a comprehensive tobacco prevention and control program known as the Partnership for a Tobacco-Free Maine which is funded with proceeds from the tobacco settlement. And I am proud to say that Maine is among the States that have maximized their tobacco settlement money for the purpose of reducing smoking rates and easing related health problems. That is why Maine has established Healthy Maine Partnerships, including 31 local partnerships that span the entire geography of Maine, which are engaging in more than 156 policy and environmental change efforts to reduce tobacco use, increase physical activity, and encourage healthy eating at local schools, worksites, hospitals, recreation centers and other community sites.

While I commend the efforts of States such as Maine in attempting to stem the tide of youth smoking, what we have not yet dealt with is the known practices of tobacco companies marketing directly to our children. The fact is, the industry has not only targeted children as its new customers, but it has designed products for them as well. Even as one prohibition is imposed—such as restricting the use of cartoon characters like ''Joe Camel''—we find that the tobacco industry devises a new scheme. We witnessed the new flavored products in packaging which was designed to appeal to a new generation. Many ''child-oriented'' flavors have been developed including such varieties as chocolate, vanilla, berry, lime and the package I am holding—coconut-and-pineapple-flavored Kauai Koala.

Although State-level bills to ban flavored cigarettes have been introduced in New York, Minnesota, West Virginia, Connecticut, Illinois, North Carolina, and Texas—a move in the right direction to be sure—there is more we must do. It is time for Congress to act to protect our youth—to safeguard our children and in the process send a clear message to those in the tobacco industry that we will not permit them to recruit our children at increasingly younger ages to become lifelong cigarette smokers.

Our bill will achieve what we failed to accomplish 12 years ago, and we can ill afford to allow this opportunity to pass. I urge my colleagues to join me in supporting this timely and necessary legislation to protect the health of all Americans, especially the millions of children at risk of becoming cigarette smokers.

I yield the floor.

COMMENDING ERIK NECCIAI

Ms. SNOWE. Madam President, I rise today to recognize the outstanding service Erik Necciai has provided to the Senate Committee on Small Business and Entrepreneurship in his capacity as a professional staff member and counsel. When Erik joined the Committee staff just—over 2 years ago—in June 2007 I knew that I had selected a top-notch staffer who cared deeply about making a difference in peoples' lives, and I will feel a deep loss with his departure from Capitol Hill later this week.

Indicative of the dedicated person Erik is, he began his work on the committee the day after he arrived home from his honeymoon in romantic Italy with his new bride, Tina. During his first weeks here, Erik was focused on preparing for a committee roundtable regarding legislative suggestions to improve the Small Business Innovation Research, SBIR, program. He was simultaneously studying for the Maryland bar exam—no small feat! As if that was not enough, Erik faced a daily commute of roughly 2 hours each way, coming from his home in Solomon's Island, MD. After a whirlwind first month, Erik settled in quickly, remaining a proactive staff member who consistently sought new and critical avenues to increase contracting opportunities to small businesses and reform the Small Business Administration's HUBZone program.

Over his 2 years on the Hill, Erik has helped me develop thoughtful and probing legislation regarding small business contracting and procurement. Committee Chair Mary Landrieu and I will soon be introducing crucial legislation to reauthorize and make significant improvements to the SBIR and Small Business Technology Transfer, STTR, programs, and Erik was instrumental in helping us craft this bill. Additionally, Erik always prepared comprehensive and insightful background materials for me that included meticulously researched statistics for committee hearings and roundtables. He has also been personally responsive to small businesses seeking help navigating the confusing and difficult maze known as Federal contracting. And Erik has been an aggressive watchdog, exhorting government agencies to not just meet but exceed their small business contracting goals.

Prior to joining the committee staff, Erik had already assembled an impressive and varied resume. A contracting specialist and procurement technician and Navy acquisitions consultant for the Department of the Navy, Erik came to the Senate armed with the necessary experience and knowledge to hit the ground running in procurement. A 2006 dean's list graduate of the Thomas M. Cooley Law School in Michigan, Erik has also interned for the circuit court of his home county in Frederick, MD, in addition to serving as a law clerk for the District Court of Ingham County, MI. These experiences all led to the in-depth and extensive knowledge Erik possess about contract law.

He graduated from Virginia Tech in 2002 with a major in biology and chemistry. This led to his work in 2003 as a research scientist for the National Cancer Institute at the National Institutes of Health. Prior to taking that position, Erik went overseas to South Africa to take part in student research. He organized and presented several lectures on government and conservation issues, including voting rights and the AIDS epidemic.

Erik has also given generously of his time in the service of others. He has been a dental assistant at the Virginia Homeless Dental Clinic, and received the Volunteer of the Year Award for his stellar work as a hospital operating room assistant. A division I varsity scholarship athlete in track and field—who was named a 2002 Virginia Tech Athlete of the Year—Erik has also combined his athletic prowess and engaging speaking skills to participate as a motivational speaker for Special Olympics athletes.

Erik's perpetual smile and charming demeanor make him eminently likeable and easily approachable. His responsible nature and insightful analytical skills make him a key member of any group, and a talented Hill staffer. The consummate team player, Erik never seeks credit or recognition for himself, but always looks for ways that government can empower people to improve their lot.

A proud native of Maryland, Erik Necciai has already led an exciting life. But on Thursday, Erik leaves the Senate to begin a new chapter as the director of an international consulting firm headquartered locally in Northern Virginia. I only hope that he can find a way to reduce his commute time. That

said, Erik's determination, sincerity, thoughtfulness, and character will be sorely missed in the halls of the Russell Building. I wish Erik and his beautiful wife Tina the best in all of their endeavors, and sincerely thank Erik for his remarkable commitment to public service.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

HONORING MICHAEL McGOVERN

Mr. REED. Madam President, I rise to recognize and honor the significant accomplishments of Special Olympics Rhode Island executive director Mike McGovern. Mike is retiring this month after 21 years of working to expand opportunities for Rhode Islanders with disabilities. He has been a lifelong friend, since grammar school and high school. He is someone I respect and admire immensely, and this respect and admiration is shared by the entire community of Rhode Island.

He has demonstrated a lifelong commitment to upholding the mission and values of the Special Olympics. Mike's special dedication and enthusiasm have ensured that the Special Olympics Rhode Island remains one of the most impressive organizations in our State, providing year-round sports training and competitions to approximately 2,700 young and adult athletes across the State.

Mike began his involvement with Special Olympics Rhode Island as a volunteer for 18 years, every year pitching in, helping out. That is the way he is—a generous heart, a great sense of community and neighborliness. He then served as assistant executive director for Special Olympics Rhode Island from 1988 to 1998, when he took over the role of executive director.

Under his leadership, Special Olympics Rhode Island expanded the number of sports offered to 20. His athlete-centered approach helped the program experience a 40-percent increase in competitors.

Mike has also worked hard to ensure that the funding goals of Special Olympics Rhode Island were achieved. During his time with Special Olympics Rhode Island, the organization built a budget surplus of over $1 million. He also helped launch a capital campaign to establish a permanent home for Special Olympics Rhode Island. His innovative spirit, which characterized his entire tenure, was evident in many different ways—particularly 33 years ago, when he and several friends cofounded the Penguin Plunge, which is an annual New Year's Day ritual in Jamestown, RI, where hardy souls, hundreds of them, brave the frigid waters of Narragansett Bay to raise money for Special Olympics Rhode Island and raise a feeling of camaraderie, fellowship, and good spirits to begin the year.

Last month, Mike attended his final games as executive director. Held at the University of Rhode Island in Kingston, Special Olympics Rhode Island dedicated its 2009 State summer games to Mike McGovern for his outstanding, long-time commitment to the Special Olympics. Speaking at the games, he spoke of being inspired by the courage of the athletes through their ability to defy stereotypes, to compete, to strive—all of them—to win. We, too, are inspired by his commitment to a very noble cause.

Through his presence at the organization, he imbued it with a special spirit. That spirit will be missed. But he will continue to serve because that is his nature.

Thank you, Mike, for your exemplary service. You have been a strong advocate for thousands of Special Olympics athletes, both on and off the playing field. Your dedicated leadership and hard work have helped thousands of Rhode Islanders with disabilities achieve their goals.

Also, you have been a great success in something as important—as a husband, as a father, as a friend. I wish you and your lovely family, your wife and your children, the best in your well-deserved retirement.

Let me conclude by saying Rhode Island's special athletes have never had a more special friend than Mike McGovern.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Madam President, I ask unanimous consent to address the Chamber as in morning business for up to 10 minutes.

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

HONORING JIM WOOTEN

Mr. ISAKSON. Madam President, it is a distinct honor and privilege for me to stand on the floor of the Senate to pay tribute to a gentleman I went to college with, a gentleman who has reported on politics and government in Georgia for the better part of the last 35 years, a gentleman who recently announced his retirement at the end of this month from the associate editorial page responsibilities at the Atlanta Journal and Constitution.

Mr. Jim Wooten, born and raised in McRae, GA, veteran of Vietnam, 20 years in the Georgia Air National Guard, former President of the Georgia Press Association, lifetime trustee of the Georgia Press Association's educational fund, has made a tremendous contribution to our State and to the public lives of all our people. I rise to pay tribute to him.

One of the greatest tributes of all that I can share is what happened on Monday, at lunch this week. I had a luncheon with the Board of Cox Enterprises. The Cox newspapers own the Atlanta Constitution, as they do the Palm Beach Post and the Dayton paper. They own many other businesses. It is a huge privately held company.

At that luncheon, unsolicited by me, the name of Jim Wooten came up and, one by one, the leaders of Cox Enterprises talked about the tremendous contributions that Jim Wooten has made to their newspaper.

As one who was first elected in 1976 and has been written about many times by Jim Wooten, I wanted to add my tribute to his journalistic talent and the contribution he has made. I am not sure I know of any other writer I have read who has reported on what is going on in politics in our State, who has gotten it right more often—in fact always—than Jim Wooten.

Conservative? Yes, he is conservative. But he is pragmatic. When he writes his opinions on the editorial page of the Atlanta Constitution, it makes a difference in the minds and attitudes of Georgia's people.

I say job well done to Jim Wooten. I hope his retirement is successful and rewarding in every way he wishes it to be, and I thank him very much for all the contributions he has made to the lives of all Georgians and, in one case, to this Georgian.

HOUSING

Mr. ISAKSON. I would like to talk for a minute, if I can, Madam President, about a very important issue. I don't come to the floor all that often, but people will tell you I come to the floor too often to talk about the housing industry. I am going to do it for a little bit tonight because it is critically important to our economy and to our country.

A year and a half ago, I introduced a piece of legislation, in January of 2008, creating a housing tax credit of $15,000 for any family who would buy and occupy their home as a principal residence in the United States. I did so because housing had collapsed, foreclosures were beginning to become rampant and are rampant today. Standing inventory proliferated, builders were going out of business, and our economy was in a downward slide.

The CBO score on that $15,000 tax credit is $34.2 billion, and I was told last January that was too expensive, we couldn't afford to do it. By my last count—Senator COBURN is a better counter than I am—we spent about $5.5 trillion trying to fix an economy that has been in a continual downward slide.

Fortunately, in July of last year, with the help of Members on both sides, we did get a tax credit passed, but it was basically an interest-free loan for $7,500, it was means tested to families who were first-time home buyers or had incomes under $150,000. It did no good.

Later in the year, I finally convinced this body, and we took off the limitation in terms of the payback and made it a real tax credit and raised it from $7,500 to $8,000 and it has made a difference. First-time home buyers used it and the market stabilized, but we don't

have a recession in first-time home buyers. We have a recession in the move-up market.

The man who is transferred from Missouri or Georgia who can't sell his house in Missouri, can't come to Georgia, can't take the transfer. The corporation can't afford to buy the house and hold it for him because of the proliferation of inventory that is owned and today in the United States of America one in two sales made every day is a short sale or a foreclosure. That is an unhealthy market, and it is continuing to precipitate a downward spiral in values, loss of equity by the American people, and a protracted, difficult economic time for our country.

Tomorrow, joined by a number of Members of this Senate on both sides, I will reintroduce the $15,000 tax credit that is available to any family or individual who buys or occupies any home in the United States of America as their principal residence with no means test for first-time home buyers, no means test or income limitations. Tomorrow it also will be announced in New York the Business Roundtable has adopted this tax credit as its No. 1 suggestion to the U.S. Government as the one thing we can do to turn around the American economy.

I am getting to be a pretty old guy. I went through the second recession of my career in 1974. Gerald Ford was President, it was a Democratic Congress. America had a 3-year standing inventory of new houses built and unsold. The economy went into a tailspin. Values started to go down. We were in deep trouble.

That Republican President and that Democratic Congress came together and passed a $2,000 tax credit for any family who bought and occupied as its principal residence a new house that was standing and vacant. In 1 year's time, a 3-year inventory was reduced to 1 year; values stabilized, the economy came back, home sales became healthy, and America recovered. That is precisely what will happen this time.

I am not so smart that I figured it out, I am lucky enough that I lived through it in 1974, and 30 years later we need to do the right thing for America and the right thing for our economy and put in a time-sensitive, 1-year significant tax credit for anyone who buys and occupies as their residence a single-family home.

An independent group estimated, when I introduced this last year, that it would create 700,000 house sales and 684,000 jobs this year. I think it is ironic that house sales today are at half a million. A normal to good year in the United States is 1.2 to 1.5 million sales.

If you could get the tax credit and the 700,000 sales that have been estimated it will introduce and add it to the 500,000 sales we have today, it will return our housing market to normalcy. It will stabilize the values of the largest investment of the people of the United States of America. It will recreate equity lines of credit that have dissipated and disappeared in the American family. And over time it will restore our vibrant economy back to the economy we all hope and pray will come.

So I ask all of the Members of the Senate to reconsider their positions in the past and consider joining me in the introduction of this legislation tomorrow. We have three Democrats and three Republicans who have come on board. I would like to see all 100 of us because in the end all of our problems will be more easily solved if the problems of the American taxpayers and citizens are solved, and their biggest problems today are an illiquid housing market, a decline in their equity, a decline in their net worth, and a depression in the housing market that we are obligated to correct if we possibly can.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

HEALTH CARE

Mr. COBURN. I wish to take a few minutes this evening to kind of discuss with the American people what is going to happen on health care—what it looks like is going to happen.

As a practicing physician, there are things I know that if we start from ground zero we would do in health care in this country. But as I was reading some articles, I pulled this quote. This is by Adrian Rogers, and it really belies what is happening right now with this idea of transferring the wealth. Here is what he said:

> You cannot legislate the poor into freedom by legislating the wealthy out of freedom. What one person receives without working for, another person must work for without receiving.
>
> The government cannot give to anybody anything that the government does not take first from someone else. When half of the people get the idea that they do not have to work because the other half is going to take care of them, and when the other half gets the idea that it does no good to work because somebody else is going to get what they worked for, that, my dear friend, is about the end of any Nation. You cannot multiply wealth by dividing it.

Those are pretty wise words.

As I think about the trillions of dollars that have gone through Congress this year and the fact that our spending is totally out of control, with minimal effect other than things like the Senator from Georgia—had we actually spent the $35 billion on a tax credit to stimulate housing rather than spending about $100 billion on true, true stimulus activities and another $680-some billion on other items, and the fact that all of a sudden we are now talking about pay-go—that is about me paying and you going—and we have spent $800 billion in the last year and avoided pay-go 15 times in the Senate in the last year. Fifteen times we have said: Oh, time out, pay-go does not count. And we spent another $800 billion. What that means is we did not have the money, we borrowed it.

So as we start into the health care debate, there are some things I believe are critically important that I think most Americans would agree with.

The first is that individuals ought to be in charge of their health care. Nothing should stand between you as a patient and your physician. No bureaucrat, no government-run program should get in between that relationship.

The second thing I know is you ought to be able to pick what you want, you ought to be able to afford what you want, and you ought to be able to do that at the time that is appropriate for your health care needs. That means you have to be in charge of your health care, you cannot have someone else. I am reminded of that fact because we have a Medicaid Program in which 40 percent of physicians in this country do not participate, and what we are really saying to people on Medicare is: We will give you health care, but we will limit a large number of physicians and providers because we are not willing to pay what it actually costs to do that.

The third thing is that we cannot assume, which we have, and I am worried we will, that people cannot manage their own health care, that they have to have Uncle Sam manage it for them. Nothing could be further from the truth.

There are some key components. Health care is about people. It is not about an insurance company, it is not about your employer, and it is certainly not about the government. It is about you. And if it is about you, you ought to be in control of that—absolutely, without a fact be in control. You ought to have a caring professional who will be able to spend the time with you to truly teach you prevention, to truly work with you on wellness, to truly manage your chronic disease, and then we ought to recognize that those services ought to be paid for, not outlandish fees but appropriate payment.

You recognize that in none of the government-run programs, which is now 60 percent of health care, do we truly pay for prevention. We will pay for it when you get sick. That is why we have ''sick care'' in America. We do not have health care, we have sick care. And we do not have real insurance. What we have is prepaid health expense, which about 20 percent, 25 percent of the money that went into that health insurance doesn't ever come back to help you get well or prevent you from getting sick.

So we ought to be about the fact that we know there is something wrong with health care in America today. We all know that. We are dissatisfied, whether it is the bills you get after you get a test that you can't read or can't understand or you have to wait or have an approval to get something. Regardless of what your doctor thinks, you still may not be able to access that care. There is no question we need to

fix health care, and I will be the first to admit we need to do that. But how we do it—how we do it is ultimately important, not just for the health care of Americans, but it will markedly impact our economy.

The very idea that we have to have another $1.3 trillion to $2 trillion to fix health care does not fit with any realistic set of facts anywhere else in the world. We spend twice as much per person in this country as anybody else in the world save Switzerland. We are not getting value for what we are buying.

Now, why aren't we? One of the reasons we are not is because you are not in control of your health care. You do not get to see a transparent price or quality or availability for what you purchased because we have given over the payment for that to some other organization. So we are less inclined to be prudent purchasers because it is not coming out of our pocket, whether it is Medicaid or Medicare or a health insurance plan. We ought to be about fixing that. And our health care cannot be about bureaucrats in Washington. It is personal. It is also local.

The trust in a patient-doctor relationship is enhanced by transparency of the cost and transparency of the quality. You ought to be able to go and buy a health care service and know what it is going to cost before you buy it, and you ought to know that you are likely to get great outcomes based on transparency of quality. That has to be there.

The second thing that has to be there is you have to know we are going to spend the dollars in a way to prevent you from getting sick, not just take care of you once you get sick. Grandmom was right: An ounce of prevention is worth more than a pound of cure. Yet we do not incentivize that in any of the Federal Government programs we have today. And we do some—especially in the ERISA-based plans or the company-owned plans, they have learned this.

A great plan that is out there that people are fortunate to have is Safeway. Safeway's health care costs have risen one-half of 1 percent in the last 4 years. The average of other plans of other employers has risen 42 percent. What is the difference? Why is it that Safeway, with 200,000 employees, has been able to have only half a percent, plus they also have increased satisfaction with the health care they are getting? What is the difference? The difference is prevention and wellness and management of chronic disease.

So anything we do that does not address prevention and incentivize it, wellness and incentivize it, and management of chronic disease and incentivize it will not make any fix we do here sustainable. We can cover everybody in the country. We can charge $1.2 trillion or $1.3 trillion to our kids over the next 10 years and we can get everybody covered, but if we have not fixed the sustainability to where we do not have a 7.2-percent automatic inflation in health care every year, we will not have done anything. And it will not be long before we will not be able to afford it, and then we will take the people in the government-run option and we will put them into Medicare, and then we will do a price control.

There is no question that we need to carefully address America's health care challenge. We need to find immediate measurable ways to make it more accessible and affordable without jeopardizing quality. We need to make sure we give individuals choice at every point in the health care continuum. And we need to make sure we allow personalized care. We are not a bunch of cattle lining up in the chute. Everybody is different. Everybody needs to be able to make their own decisions.

On top of that, the No. 1 thing we have to do is protect the doctor-patient relationship. Half of getting well is having confidence in the person who is treating you. When you do not get to choose that, as you do not in Medicaid and oftentimes in Medicare because we are limited to the doctors who are taking Medicare, you are limiting the outcome.

If you cannot get treatment when you need it, there is a crisis. If you are denied the ability to choose the doctor or hospital that is best for you, that is a crisis for you. If you cannot afford the coverage you need for you and your family, then you have a crisis.

We need to stop looking at it from a global perspective and restore the humanity to health care. We need to focus more on people and less on the system.

I have a lot of ideas on health care. I, along with many others, have introduced the Patient's Choice Act, where we allow everybody to have insurance in this country. We equalize the tax treatment for everybody in this country.

All the studies say that any plan Congress puts forward, our plan will do as well or better with some major differences. We do not raise the cost at all. It does not cost anything. As a matter of fact, it saves the States $1.3 trillion over the next 10 years just on Medicaid alone. And every Medicaid patient out there will have a private insurance program, and nobody will ever know if they got it through Medicaid or not. They will be truly accessing and having the care, and we will not raise taxes on anybody to do that—no one.

The other thing we do is, if you like what you have today, you can keep it. You absolutely can keep it. If what you have is what you want, it gives you care when you want it, access to the doctors you want or to the hospital you want, and you can afford it, you are going to keep it. But if you would like something different, and not be locked in, not having to stay at a job because you are afraid you will not have insurance when you leave, you need to look at what we are talking about.

There is no preexisting illness exclusion. There is no individual mandate, although there is an auto enrollment where you can opt out. If you do not want health insurance, you do not have to take it, but you do not get the tax credit that goes along with buying it.

So, in fact, of the 46 million people who do not have access to care today through an insurance program, they will have it under this program, and they will have prevention, and they will have wellness, and they will have a medical home or an accountable care organization to manage their chronic disease, help them manage it. And they will get to do that where they want to do it, not where some bureaucrat tells them they will do it or where some insurance company tells them where they will do it.

We have a chance to hit a home run for the American people on health care—not just on their health care, but keeping us globally competitive, keeping jobs here at home instead of shipping them off where the labor costs and health care costs are less. We have a chance to hit two home runs. The question is, Will we do it?

We have before us in the HELP Committee a draft of a bill that has three big blanks on it. We do not have any analysis by the CBO on what it is going to cost. We have no knowledge about what it costs, and we are going to be marking that up in a week. We are supposed to get health care done in 6 weeks in this country, which is 17 percent of our GDP, one-sixth of our economy, and we are going to do it without knowing what we are doing.

The parameters under which this Senate is addressing health care are a prescription for disaster. What we should do is put out the bills, have a legitimate debate about what is a proper way to go, and let the American people hear the debate and see which way to go. I will tell you, if you allow the American people to decide: Here is a government-controlled option or here is my option, with me choosing everything, me not depending on the government, me making the choices for my family—when I want it, where I want it, and how I want it—individual freedom and liberty will win every time over a government-mandated program or a, quote, public government-run insurance company.

The PRESIDING OFFICER. The Chair reminds the Senator that his time under morning business has expired.

Mr. COBURN. Madam President, I ask for 10 additional minutes.

The PRESIDING OFFICER. Is there objection?

Mr. WHITEHOUSE. I do not object. It will be the last extension?

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

Mr. COBURN. I thank the Chair.

One of the questions we ought to ask the American people is: Would you rather pay the costs you pay today for the quality of care you currently receive or would you rather get in line, pay less, not have the same quality,

and not get to choose the health care you are going to get or your family is going to get—defer the decisionmaking about you and your family's health care to a government bureaucracy?

All of us agree, Democrats and Republicans, we want to fix health care. All of us want prevention, wellness, management of chronic disease. All of us want as much freedom as we can give the American people. But the difference lies in how we do it and who pays the bill. That is why I started out with the article from Adrian Rogers. We are going to spend $2.4 trillion on health care this year, and we are going to get back $1.7 trillion worth of health care.

We should not be spending a penny more. What we should be saying to the Senate is: Why aren't you fixing what is wrong with this terrible, broken system? And the answer is: We need more money. That is the government's answer every time. Every time: We need more money. We need a new program.

We do not need a new program. What we need is to allow the individual entrepreneurship and ingenuity of the American people and give them the resources with which to buy their health care and make their personal choices, and what you will see is a dynamic that squeezes $500 billion to $700 billion out of the cost of health care in this country.

There are a lot of components. Health care is a complex issue. Everybody who worked on it knows it. It is hard in a 20- or 30-minute talk on the floor to explain a bill fully. But if you had absolute access, and you could afford health care, and you got to make the choices, and it did not cost your kids any more in the future to pay for that by borrowing against their future, most Americans would say: I will buy something like that. That is a fix.

And by the way, we are going to incentivize the $40 billion we spend every year supposedly on prevention to where it is actually making some difference on cost. We are going to quit paying for food that is terrible for you through the Food Stamp Program. We are going to fix the School Lunch Program so we do not feed you high carbohydrates and fat. And we are going to give you protein, fruits, and vegetables. We are going to do that which is necessary to put us on a glidepath to where we have real health care instead of sick care in this country. People will buy that.

I cannot wait for the real debate to start on health care. When you hear the talk, and you read the articles that have been written—just for example, on comparative effectiveness, the director who is involved in that in England said it was the biggest mistake they ever made. It explains why people in England die earlier. It explains why they have a cancer cure rate about a third lower than ours. It explains why people cannot get care because they have a government option. They have a government option that eliminates the ability for true choice, true access, and true affordability.

One of the things our bill will do is make sure, no matter how sick you are, you get an insurance policy. When it comes time for renewal, they cannot deny you. Our bill gives everybody insurance in this country and incentivizes you to the point where you will have extra money with which you pay for the additional costs associated with that care.

Our plan does not mandate anything, except the base minimum plan is the base minimum plan the Members of Congress get. If you want to buy more than that, you can. But nobody is going to tell you what you have to buy. You buy what is right for you, what is right for your family.

One of the costs of health care in this country—and it is about 8 or 9 percent of the cost of health care—is doctors like me ordering tests you do not need because I fear a malpractice lawsuit. We incentivize the States to make changes—very simple changes—do not eliminate the right of any individual to go to court, but set up health courts or set up judge-doctor-lawyer panels or a combination thereof, and we give them extra money if, in fact, they will do that. It is an easy, cheap buy. Because if we reform the tort system State by State, we get back about a hundredfold for every dollar we put out that comes out of health care that will then go to prevention, wellness, and management of chronic disease.

We have cost-shifting in this country. If you opt out and you go to an ER, your State can buy you a high-deductible policy, whereas you are still covered. You are not going to ever lose your home because you had an accident or you had a major health complication because you will be auto enrolled as soon as you hit the ER. So we eliminate about $200 billion in cost-shifting.

I have just outlined $500 billion that can go away under our bill out of $2.4 trillion—money that does not help anybody get well, money that does not prevent anybody from getting sick.

I had an orthopedist in my office today and he had a patient who he thought had a torn anterior cruciate ligament. That is a ligament connecting the femur to the tibia. And she could not relax. He is a good orthopedist. By clinical exam, you can tell if somebody has torn an ACL, anterior cruciate ligament. So he said: Well, you can't relax. We'll do an MRI. So she comes back a week later and says: Doctor, I didn't do the MRI. I didn't want to pay for that. And she brought a glass of wine with her, a glass of chardonnay. She said: I think if I drink this, about 15 minutes after I drink this, I think I will be relaxed enough for you to do it. Well, sure enough, she did, and she relaxed. She had a torn ACL, and she never had to have an MRI. It just saved us about $1,800. It saved her and us $1,800. He could have given her xanax and done the same thing.

But the point is, she made a logical decision not to spend $1,800 because there was another way of doing it. Part of that was because she had a $5,000 deductible health care policy, so she made a good economic choice. Multiply that 100,000 times in this country every month and see how much money we can take out of the health care system by people acting in their own best health interest and financial interest.

We have a lot in front of us, and we have a lot that is riding on us. I hope we get to see the bills, which we have not seen yet, and what people want to do. The first bill out is: The government does everything; the government is in control. There is not one government program that either offers the services or is not bankrupt that we have on health care today. Medicare is bankrupt. Medicaid—we are bankrupt, so they are bankrupt. They have $80 billion worth of fraud in Medicare; $40 billion worth in Medicaid. The Indian Health Service is a sham, especially on the reservation, because we do not have the quality and we have not put the money there. Why shouldn't a Native American have an insurance policy to be able to buy health care wherever they want? Why shouldn't a veteran be able to get care wherever they want rather than have to travel 200 miles to a VA health care center? Why can't we keep the commitment that we would say: If we are going to offer you access, then we are going to offer you access to the best, the highest quality health care, with you making the decisions about your care, when you get that care, and who gives you that care.

The patient has to come first. Senators' egos have to come second. And we have to fix this program in a way that not only solves the health care crisis but does not create another crisis for our children down the road.

With that, I yield the floor.

I thank my colleague from Rhode Island for his patience, and I wish him a good night.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, it is always a pleasure to hear the Senator from Oklahoma discussing health care, which I know is very dear to him. So I did not feel my time was wasted listening to him speak on that subject, and I wish him a good evening as well.

Mr. President, I ask unanimous consent, if I may, to speak in morning business, but to exceed the 10-minute rule.

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

GASPEE DAY

Mr. WHITEHOUSE. Mr. President, the Boston Tea Party is one of the celebrated events in American history. From a young age, Americans learn the story of the men who crept onto British ships moored in Boston harbor on December 16, 1773, to toss overboard

shipments of tea that the English sought to tax. These Massachusetts patriots yearned for liberty, opposed ''taxation without representation,'' and stepped into history books with this simple act of defiance.

But conspicuously absent from too many of those same history books is a group of Rhode Island men who took on the British Crown in a bold, insubordinate gesture matching the temper of their bold and insubordinate colony more than a year earlier than the Boston Tea Party. This evening, I would like to share the story of the H.M.S. *Gaspee*, a daring group of Rhode Islanders, and the real beginning of the fight for American independence.

In the early 1770s, as tensions between England and her American colonies grew increasingly strained, King George III stationed the H.M.S. *Gaspee*, under the command of Lieutenant William Dudingston, in the waters of Rhode Island. Its mission was to search incoming ships for smuggled goods and contraband and to enforce the payment of taxes.

On June 9, 1772, 237 years ago tonight, the sailing vessel *Hannah* was traveling from Newport to Providence, when it was intercepted by the *Gaspee* and ordered to stop to allow a search. On board the *Hannah*, CAPT Benjamin Lindsey refused and continued on his course, despite warning shots fired by the *Gaspee*. Under full sail and into a falling tide, the *Hannah* pressed north up Narragansett Bay with the *Gaspee* in hot pursuit. Overmatched in size, Captain Lindsey found advantage in guile and in his greater knowledge of Rhode Island waters. He led the *Gaspee* to the shallow water of Pawtuxet Cove. There, the lighter *Hannah* sped over the shallows, but the heavier *Gaspee* ran aground in the shallow waters off Namquid Point. The *Gaspee* was stuck, until the higher tides of the following day would lift her from the mud.

Captain Lindsey proceeded on his course to Providence, where he met with a group of Rhode Islanders, including John Brown, a community leader whose family helped found Brown University. The two men arranged for a meeting of local patriots at Sabin's Tavern, on what is now Providence's east side, later that evening. At the meeting, the assembled Rhode Islanders decided to act. The HMS *Gaspee* was a symbol of their oppression and she was helplessly stranded in Pawtuxet Cove. The opportunity was too good to pass up.

That night, there was no moonlight on the waters of Pawtuxet Cove. The *Gaspee* lay silent on the sandbar. Down the bay from Providence came 60 men in longboats, led by John Brown and Abraham Whipple, armed and headed through those dark waters for the *Gaspee*.

When the men reached the *Gaspee* and surrounded it, Brown called out and demanded that Lieutenant Dudingston surrender his vessel. Dudingston refused and instead ordered his men to fire upon anyone who attempted to board the *Gaspee*.

That was all these Rhode Islanders needed to hear, and they rushed the *Gaspee* and forced their way aboard her. In the violent melee, Lieutenant Dudingston was shot in the arm by a musket ball. Rhode Islanders had drawn the first blood of the conflict that would lead to American independence, right there in Pawtuxet Cove, 16 months before the ''Tea Party'' in Boston.

Brown and Whipple's men seized control of the *Gaspee* from its British crew and transported the captive Englishman safely to shore. They then returned to the abandoned *Gaspee* to set her afire and watched as the powder magazine exploded, blowing the ship apart and leaving her remains to burn to the water line. That historic location is now called Gaspee Point.

Since that night in June, 237 years ago tonight when the *Gaspee* burned, Rhode Islanders have marked the event with celebration. This year, as I do every year, I will march in the annual Gaspee Days Parade in Warwick, RI. Every year, I think about what it must have been like to be among those 60 men: muffled oars on dark waters; comrades pulling with voices hushed; a shouted demand, the indignant response, and then a pell-mell rush to clamber aboard; the oaths and shouts of struggle, gun shots and powder smoke, the clash of sword and cutlass; and when it was over, the bright fire of the ship in the night, the explosion turning night to day and reverberating across the bay and the hiss and splash as the pieces fell and the water claimed the flames.

I hope that one day the tale of the brave Rhode Islanders who stormed the HMS *Gaspee* will be remembered among the other stories of the Revolution and that they will be given their due place in our Nation's history beside the tea partiers of Boston.

I hope, frankly, on an annual basis, to come back to this floor and relate that story over and over and over again. It is a proud part of Rhode Island's heritage.

TORTURE

Mr. WHITEHOUSE. Mr. President, I wish to now change the subject and speak about an incident that is not part of anybody's proud heritage and that is the evidence we have recently heard about America's descent into torture. I know it is an awkward subject to talk about, an awkward subject to think about. On the one hand, we, as Americans, love our country, we hate the violence that has been done to us, and we want more than anything to protect our people from attacks. On the other hand, torture is wrong and we have known it and behaved accordingly in far worse circumstances than now.

When Washington's troops hid in the snows of Valley Forge from a superior British force bent on their destruction, we did not torture. When our capital city was occupied and our Capitol burned by troops of the world's greatest naval power, we did not torture. When Nazi powers threatened our freedom in one hemisphere and Japanese aircraft destroyed much of our Pacific fleet in the other, we did not torture. Indeed, even when Americans took arms against Americans in our bloody Civil War, we did not torture.

I know this is not easy. Our instincts to protect our country are set against our historic principles and our knowledge of right versus wrong. It is all made more difficult by how much that is untrue, how much that is misleading, and how much that is irrelevant have crowded into this discussion. It is hard enough to address this issue without being ensnared in a welter of deception.

To try to clarify it, I wish to say a few things. The first is that I see three issues we need to grapple with. The first is the torture itself: What did Americans do? In what conditions of humanity and hygiene were the techniques applied? With what intensity and duration? Are our preconceptions about what was done based on the sanitized descriptions of techniques justified? Or was the actuality far worse? Were the carefully described predicates for the torture techniques and the limitations on their use followed in practice? Or did the torture exceed the predicates and bounds of the Office of Legal Counsel opinions?

We do know this. We do know that Director Panetta of the CIA recently filed an affidavit in a U.S. Federal court saying this:

These descriptions—

He is referring to descriptions of EITs—enhanced interrogation techniques—the torture techniques.

He says in his sworn affidavit:

These descriptions, however, are of EITs as applied in actual operations and are of a qualitatively different nature than the EIT descriptions in the abstract contained in the OLC memoranda.

The words ''as applied'' and ''in the abstract'' are emphasized in the text.

These descriptions, however, are of EITs as applied in actual operations and are of a qualitatively different nature than the EIT descriptions in the abstract contained in the OLC memoranda.

The questions go on: What was the role of private contractors? Why did they need to be involved? And did their peculiar motivations influence what was done? Ultimately, was it successful? Did it generate the immediately actionable intelligence protecting America from immediate threats that it had been sold as producing? How did the torture techniques stack up against professional interrogation?

Well, that is a significant array of questions all on its own, and we intend to answer them in the Senate Intelligence Committee under the leadership of Chairman FEINSTEIN, expanding on work already done, thanks to the

previous leadership of Chairman ROCKEFELLER.

There is another set of questions around how this was allowed to happen. When one knows that America has over and over prosecuted waterboarding, both as crime and as war crime; when one knows that the Reagan Department of Justice convicted and imprisoned a Texas sheriff for waterboarding prisoners; when one sees no mention of this history in the lengthy opinions of the Office of Legal Counsel at DOJ that cleared the waterboarding—no mention whatsoever; when assertions of fact made in those OLC opinions prove to be not only false but provably false from open source information available at the time; when one reads Chairman LEVIN's excellent Armed Services Committee reports on what happened at the Department of Defense, it is hard not to wonder what went wrong. Was a fix put in? And, if so, how? A lot of damage was done within the American institutions of government to allow this to happen.

If American democracy is important, damage to her institutions is important and needs to be understood. Much of this damage was done to one of America's greatest institutions—the U.S. Department of Justice. I am confident the Judiciary Committee, under Chairman LEAHY's leadership, will assure that we understand and repair that damage and protect America against it ever happening again.

Finally—and I am very sorry to say this—but there has been a campaign of falsehood about this whole sorry episode. It has disserved the American public. As I said earlier, facing up to the questions of our use of torture is hard enough. It is worse when people are misled and don't know the whole truth and so can't form an informed opinion and instead quarrel over irrelevancies and false premises. Much debunking of falsehood remains to be done but cannot be done now because the accurate and complete information is classified.

From open source and released information, here are some of the falsehoods that have been already debunked. I will warn you the record is bad, and the presumption of truth that executive officials and agencies should ordinarily enjoy is now hard to justify. We have been misled about nearly every aspect of this program.

President Bush told us ''America does not torture'' while authorizing conduct that America itself has prosecuted as crime and war crime, as torture.

Vice President Cheney agreed in an interview that waterboarding was like ''a dunk in the water'' when it was actually a technique of torture from the Spanish Inquisition to Cambodia's killing fields.

John Yoo, who wrote the original torture opinions, told Esquire magazine that waterboarding was only done three times. Public reports now indicate that just two detainees were waterboarded 83 times and 183 times. Khalid Shaikh Mohammed reportedly was waterboarded 183 times. A former CIA official had told ABC News: ''KSM lasted the longest on the waterboard—about a minute and a half—but once he broke, it never had to be used again.''

We were told that waterboarding was determined to be legal, but we were not told how badly the law was ignored and manipulated by the Department of Justice's Office of Legal Counsel, nor were we told how furiously government and military lawyers tried to reject the defective OLC opinions.

We were told we couldn't second guess the brave CIA officers who did this unpleasant duty, and then we found out that the program was led by private contractors with no real interrogation experience.

Former CIA Director Hayden and former Attorney General Mukasey wrote that military interrogators need the Army Field Manual to restrain abuse by them, a limitation not needed by the experienced experts at the CIA.

Let's look at that. The Army Field Manual is a code of honor, as reflected by General Petraeus' May 10, 2000, letter to the troops in Iraq. He wrote this:

> Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. . . . In fact, our experience in applying the interrogation standards laid out in the Army Field Manual . . . shows that the techniques in the manual work effectively and humanely in eliciting information from detainees.
>
> We are indeed warriors. . . . What sets us apart from our enemies in this fight, however, is how we behave. In everything we do, we must observe the standards and values that dictate that we treat noncombatants and detainees with dignity and respect.

Military and FBI interrogators, such as Matthew Alexander, Steve Keinman, and Ali Soufan, it appears, are the true professionals. We know now that the ''experienced interrogators'' referenced by Hayden and Mukasey had actually little to no experience.

Philip Zelikow, who served in the State Department under the Bush administration, testified in a subcommittee that I chaired. He said the CIA ''had no significant institutional capability to question enemy captives'' and ''improvised'' their program of ''cooly calculated dehumanizing abuse and physical torment.'' In fact, the CIA cobbled its program together from techniques used by the SERE Program, designed to prepare captured U.S. military personnel for interrogation by tyrant regimes who torture not to generate intelligence but to generate propaganda.

Colonel Kleinman submitted testimony for our hearing, in which he stated:

> These individuals were retired military psychologists who, while having extensive experience in SERE (survival, evasion, resistance, and escape) training, collectively possessed absolutely no firsthand experience in the interrogation of foreign nationals for intelligence purposes.

To the proud, experienced, and successful interrogators of the military and the FBI, I believe Judge Mukasey and General Hayden owe an apology.

Finally, we were told that torturing detainees was justified by American lives saved—saved as a result of actionable intelligence produced on the waterboard. That is the clincher, they stay—lives saved at the price of a little unpleasantness. But is it true? That is far from clear.

FBI Director Mueller has said he is unaware of any evidence that waterboarding produced actionable information. Nothing I have seen convinces me otherwise. The examples we have been able to investigate—for instance, of Abu Zubaida providing critical intelligence on Khalid Shaik Mohammed and Jose Padilla—turned out to be false. The information was obtained by regular professional interrogators before waterboarding was even authorized.

As recently as May 10, our former Vice President went on a television show to relate that the interrogation process we had in place produced from certain key individuals, such as Abu Zubaida—he named him specifically—actionable information. Well, we had a hearing inquiring into that, and we produced the testimony of the FBI agent who actually conducted those interrogations.

Here is what happened. Abu Zubaida was injured in a firefight and captured in Afghanistan. He was flown to an undisclosed location for interrogation. The first round of interrogation conducted professionally by Soufan and his assistant from the CIA produced such significant intelligence information that a jet with doctors on it was scrambled from Langley—from this area—and flown to the undisclosed location so that the best medical care could be provided to Abu Zubaida so he could continue to talk. That was the first round of information.

In the second interrogation, conducted consistent with professional interrogation techniques, Abu Zubaida disclosed that the mastermind of the 9/11 attacks was Khalid Shaik Mohammed. That may be the apex piece of intelligence information we have obtained during the course of the conflict.

At that point, the private contractors arrived, and for some reason Abu Zubaida was handed over to them so they could apply their enhanced interrogation techniques. Ali Soufan testified that at that point they got no further information. What triggered the first round of information was that Soufan knew about Zubaida's pet name that his mother used for him. When he used that nickname, Zubaida fell apart. He didn't know how to defend himself, and he began to disclose this very important information.

Knowledge, outwitting people, playing on mental weaknesses, taking advantage of our skills as Americans—that is what worked and got the information about Mohammed. He was

turned over to the private contractors for enhanced techniques and they got nothing.

It was then determined that because the interrogation had become unproductive, he should be returned to the FBI agent and CIA agent who had twice interrogated him. It was in the third round that he disclosed information about Jose Padilla, the so-called dirty bomber, which was so important that Attorney General Ashcroft held a press conference, I believe in Moscow, to celebrate the discovery of this information. Again, for some reason, he was turned back again to the private contractors for the application of more abusive techniques, and again the flow of information stopped.

For a third time, he was returned to the FBI and CIA agents again for professional interrogation, but by now he had been so compromised by the techniques, even they were unsuccessful in getting further information.

As best as I have been able to determine, for the remaining sessions of 83 waterboardings that have been disclosed as being associated with this interrogation, no further actionable information was obtained. Yet the story has been exactly the opposite. The story over and over has been that once you got these guys out of the hands of the FBI and the military amateurs and into the hands of the trained CIA professionals, who can use the tougher techniques, that is when you get the information. In this case, at least, the exact opposite was the truth, and this was a case cited by the Vice President by name.

The costs of this could be high. There has been no accounting of the wild goose chases our national security personnel may have been sent on by false statements made by torture victims seeking to end their agony; no accounting of intelligence lost if other sources held back from dealing with us after our dissent into what Vice President Cheney refers to as the ''dark side''; no accounting of the harm to our national standing or our international good will from this program; no accounting of the benefit to our enemies' standing—particularly as measured in militant recruitment or fundraising; and no accounting of the impact this program had on information sharing with foreign governments whose laws prohibit such mistreatment.

At the heart of all these falsehoods lies a particular and specific problem: The ''declassifiers'' in the U.S. Government are all in the executive branch. No Senator can declassify, and the procedure for the Senate as an institution to declassify something is so cumbersome that it has never been used. Certain executive branch officials, on the other hand, are at liberty to divulge classified information. When it comes out of their mouth, it is declassified because they are declassified. Its very utterance by those requisite officials is a declassification. What an institutional advantage. The executive branch can use, and has used, that one-sided advantage to spread assertions that either aren't true at all or may be technically true but only on a strained, narrow interpretation that is omitted, leaving a false impression, or that sometimes simply supports one side of an argument that has two sides—but the other side is one they don't want to face up to and don't declassify.

One can hope the Obama administration will be more honorable. I suspect and believe they will be. But the fact is that a cudgel that so lends itself to abuse will some day again be abused, and we should find a way to correct that imbalance. It is intensely frustrating to have access to classified information that proves a lie and not be able to prove that lie. It does not serve America well for Senators to be in that position.

Chairman LEVIN has already done excellent work in the Armed Services Committee, and there is no reason to believe that good work won't continue. Chairman ROCKEFELLER has done excellent work in the Intelligence Committee, and his successor, Senator FEINSTEIN, has picked up the mantle and continues forward with energy and determination. We can be proud of what she is doing. Chairman LEAHY has begun good work in the Judiciary Committee, and more will ensue when we see the report of the Department of Justice Office of Professional Responsibility about what went wrong in the Office of Legal Counsel. The new administration, I hope and expect, is itself drilling down to the details of this sordid episode and not letting themselves be fobbed off with summaries or abridged editions. In short, a lot is going on, and a lot should be going on.

While it is going on, I want my colleagues and the American public to know that measured against the information I have been able to gain access to, the story line we have been led to believe—the story line about waterboarding we have been sold—is false in every one of its dimensions.

I ask that my colleagues be patient and be prepared to listen to the evidence when all is said and done before they wrap themselves in that story line.

I thank the Presiding Officer. I know the hour is late. I appreciate his courtesy.

HONORING OUR ARMED FORCES

Mr. BAYH. Mr. President, I rise today with a heavy heart to honor the life of Major Matthew Philip Houseal, from Amarillo, TX. Matthew was 54 years old when he lost his life on May 11, 2009, from injuries sustained from a noncombat related incident in Baghdad, Iraq. He was a member of the 55th Medical Company, U.S. Army Reserve, Indianapolis, IN.

Today, I join Matthew's family and friends in mourning his death. Matthew will forever be remembered as a loving husband, father, son, and friend to many. He is survived by his wife Dr. Luzma Houseal; seven children, Teresa, Catherine, David, Isabel, Patrick, Monica and Kelly; his parents, William and Helen Houseal; eight siblings, Dr. Timothy Houseal and wife Leslie, U.S. Army Retired LTC Stephen Houseal and wife Julie, Joseph Houseal, Friar David Houseal, John Houseal and wife Gail, U.S. Air Force COL Anne T. Houseal and husband Paul Houser, Elizabeth Nightingale, and Maria Johnston and husband Jeff; 26 nieces and nephews; and a host of other friends and relatives.

Matthew, a native of Washington, DC, grew up in St. Joseph, MI, and received a bachelor's degree, master's degree, and medical degree from the University of Michigan. He spent his surgical internship at Henry Ford Hospital and went through the Officers Training School in the U.S. Navy. He served his psychiatry residency at Texas Tech University in Lubbock, TX, and spent over a decade at the Texas Panhandle Mental Health Mental Retardation, where he was a beloved member of the staff. He joined the Army Reserve as a major in 2007.

Matthew had many passions in life: known as a brilliant physician and an insatiable learner, Matthew held a private pilot license and was a certified flight instructor with more than 10,000 hours of flight time in different types of aircraft. His extraordinary accomplishments were only rivaled by his passion for his family, especially his seven children.

While we struggle to express our sorrow over this loss, we can take pride in the example Matthew set as a soldier and as a father. Today and always, he will be remembered by family and friends as a true American hero, and we cherish the legacy of his service and his life.

As I search for words to do justice to this valiant fallen soldier, I recall President Abraham Lincoln's words as he addressed the families of soldiers who died at Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as we can take some measure of solace in knowing that Matthew's heroism and memory will outlive the record of the words here spoken.

It is my sad duty to enter the name of MAJ Matthew Philip Houseal in the official RECORD of the Senate for his service to this country and for his profound commitment to freedom, democracy and peace. I pray that Gary's family can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Matthew.

TIMETABLE FOR SOTOMAYOR HEARING

Mr. GRASSLEY. Mr. President, earlier today, Chairman LEAHY announced July 13 as the start date for the Judiciary Committee hearings on Supreme Court Justice nominee Sonia Sotomayor. I am extremely disappointed with this unilateral decision on the part of my Democratic colleagues. In the past, the decision of when to start these Supreme Court hearings has been a bipartisan one. With the Roberts and Alito nominations, Republicans worked with our colleagues to accommodate Democrat concerns about the timing of the hearings for the highest court in the land. Senators LEAHY and SPECTER held joint press conferences announcing the Roberts and Alito hearings.

I would have hoped that Ranking Member SESSIONS and Judiciary Committee Republicans would have gotten the same courtesy for President Obama's nominee. Yet I understand that Ranking Member SESSIONS had no idea that Chairman LEAHY was going to the floor to make this July 13 announcement, and that he was not consulted about this decision. Clearly the July 13 date is not a bipartisan decision.

Moreover, July 13 is just not enough time to prepare for a thorough and careful review of Judge Sotomayor's record and qualifications to be a Supreme Court Justice. First, July 13 is a mere 48 days from the nomination announcement to the hearing, which is shorter than the timeframe for Justices Roberts and Alito. Moreover, Justice Roberts had just a few hundred decisions for the Judiciary Committee to analyze. Judge Sotomayor has over 3,000 cases over a 17-year period on the Federal bench for us to study. The Alito confirmation hearing timeframe is probably a better comparison since Justice Alito had a similar large number of decisions.

With respect to concerns that criticisms have been lodged against the nominee, we don't control what outside groups say, but I do I know that Senate Republican members have treated Judge Sotomayor fairly and have not engaged in personal attacks. So the idea that Judge Sotomayor needs a hearing scheduled as soon as possible to respond to criticisms by outside groups just doesn't hold water.

In addition, the Judiciary Committee has yet to receive everything we need from Judge Sotomayor. I understand that her questionnaire is not complete, that we have yet to receive all her documentation, memos, speeches and unpublished opinions, that we still don't have her ABA review and FBI background report. It seems like the rushed nature of the process has contributed to the deficiencies in the questionnaire and the number of documents that are still missing. We need all this stuff in order to fully vet the nominee.

Judge Sotomayor has an extensive record, and the July 13 timetable that Chairman LEAHY wants to impose will force us to consider a Supreme Court nominee with one of the lengthiest records in recent history in the shortest time in recent history. Republican members got no serious consideration to address concerns about timing, and no consultation or bipartisanship on setting the start date as has been done in the past.

I and my Republican colleagues are committed to give Judge Sotomayor a fair hearing, but we need to thoroughly review her extensive legal record and that takes time. It is important that we do the job right because this is a lifetime appointment and we are talking about the highest court of the land. As my Democrat colleagues have said before, the Senate cannot be a rubberstamp. We have a constitutional responsibility to carefully vet Judge Sotomayor and not rush the process. We owe this to the American people.

ADDITIONAL STATEMENTS

REMEBERING RONALD TAKAKI

● Mrs. BOXER. Mr. President, I take this opportunity to honor the life of Professor Ronald Takaki, a pioneer and leader in the field of ethnic studies. Professor Takaki passed away on May 26, 2009, at the age of 70.

Ronald Takaki, the grandson of Japanese immigrants, was born and raised in Hawaii. In his youth he was an avid surfer, earning the nickname ''Ten Toes Takaki'' because of his ability to perform one of the most impressive and iconic stunts a surfer can do on a surfboard. Though uninterested in school when he was younger, Takaki applied to and was accepted at the College of Wooster in Ohio; he was the first in his family to attend college. After earning a bachelor's degree in history, he attended UC Berkeley, where he received a master's and doctorate in history. It was at UC Berkeley, doing a dissertation on the history of American slavery, that Takaki found his passion.

In 1967, Takaki was hired by UCLA, where he taught the University of California's first Black history course following the tumultuous Watts riots. Though an unlikely candidate to teach the course, students quickly came to respect and admire him, and he and his class became one of the most popular on campus. In 1971, Professor Takaki returned to UC Berkeley, where he served as the first full-time teacher in the Department of Ethnic Studies.

In addition to teaching Black history, Professor Takaki also established UC Berkeley's PhD program in ethnic studies, the first of its kind in the Nation. During the 30 years he taught at UC Berkeley, Professor Takaki succeeded in his desire to make the school's curriculum more multicultural and diverse. He inspired and engaged thousands of students with his thought-provoking and insightful perspectives on race and ethnicity in the United States.

Professor Takaki was also a distinguished and prolific writer. Among his most well-known books were Iron Cages: Race and Culture in 19th-Century America; A Different Mirror: A History of Multicultural America, which won the American Book Award, and Strangers from a Different Shore: A History of Asian Americans, which was nominated for a Pulitzer Prize.

Professor Takaki is survived by his wife Carol; his children Troy, Todd, and Dana; his brother Michael; his sister Janet; and his seven grandchildren. I extend my deepest sympathies to his entire family.

Professor Takaki was widely considered to be the father of multiculturalism. His trailblazing spirit and love of life was evident in everything that he did, and his many years of service as an educator, writer, and activist will not be forgotten. We take comfort in knowing that future generations will benefit from his tireless efforts to make America a better place to live.●

COMMENDING THE U.S. ARMY CORPS OF ENGINEERS—OMAHA DISTRICT

● Mr. NELSON of Nebraska. Mr. President, today I wish to recognize the 75th anniversary year of the establishment of the Omaha District as part of the U.S. Army Corps of Engineers.

Established on January 2, 1934, the immediate mission of the Omaha District was the creation of Fort Peck Dam in Montana, which was the first of six multipurpose main stem dams operating as part of a flood control system on the upper Missouri River. After completing the Fort Peck Dam, the Corps, operating under the Pick-Sloan Plan, went on to build the other five main stem structures on the Upper Missouri River. The Plan called for a coordinated effort with the Bureau of Reclamation for irrigation projects, flood control, navigation, and recreation facilities.

In the early 1940s, the Omaha District added military construction to its mission. Its first task was construction of Lowry Field in Colorado. Since then, the Omaha District has been involved in the construction of several historic projects, such as the Northern Area Defense Command in Cheyenne Mountain, Colorado; various missile control and launch facilities throughout the Midwest; and facilities for Space Command.

As the Cold War ended in the 1980s, the national focus switched to a stronger set of environmental principles. The Omaha District readily adopted a ''green'' program, providing outstanding leadership in environmental remediation. Today, the Omaha

District is managing one of the largest base realignment and closure and ''Grow the Army'' initiatives in the Nation.

For more than 75 years, the men and women of the Omaha District have served their country by harnessing the mighty Missouri River basin, building state-of-the-art facilities to serve our military, and recovering the earth from hazardous toxic and radioactive waste.

It is only fitting that we in the Senate recognize the impressive achievements of the U.S. Army Corps of Engineers—Omaha District during its 75th year.●

2009 NEW HAMPSHIRE EXCELLENCE IN EDUCATION AWARDS

● Mrs. SHAHEEN. Mr. President, today I congratulate the recipients of the 2009 New Hampshire Excellence in Education Awards. The New Hampshire Excellence in Education Awards, or ''ED''ies, honor the best and the brightest among New Hampshire's educators and schools.

For the past 16 years, the ''ED''ies have been presented to teachers, administrators, schools, and school boards who demonstrate the highest level of excellence in education. Outstanding individuals have been compared against criteria set by others in their discipline through their sponsoring organization. Experienced educators and community leaders select outstanding elementary, middle, and secondary schools based upon guidelines established by the New Hampshire Excellence in Education Board of Directors.

It is critical that all of our children receive a high quality education so that they can succeed in today's global economy. I am proud to recognize this year's recipients who will receive this prestigious award on June 13, 2009 for the positive examples they set for their peers and the lasting impact they have made on our children and communities.

I ask that the names of the 2009 New Hampshire Excellence in Education Award winners be printed in the RECORD.

2009 NEW HAMPSHIRE EXCELLENCE IN EDUCATION AWARD RECIPIENTS

Diane Beaman, Nora L. Beaton, Doug Brown, Michelle Carvalho, Cathy Chase, Mary K. Coltin, Anne Delaney, Arthur R. Deleault, Irene M. Derosier, Kenneth Dugal, Denise Dunlap, Katherine J. Engstrom, Deborah A. Fogg, Venera Gattonini, Doris Grady, Nathan S. Greenberg, Gerri Harvey, Cathy Higgins.

Kathleen Collins McCabe, Eric ''Chip'' McGee, Dorothy M. Morin, Jackie Moulton, Sean P. Moynihan, Dorothy A. Peters, Marge Polak, Patricia Popieniek, Richard Provencher, Meagan Reed, Roberto Rodriguez, Fern Seiden, John J. Stone, Lyonel B. Tracy, Jacqueline R. Verville, Sheila A. Ward, Suzette Wilson, Otis E. Wirth, Joseph L. Wright.

Bicentennial Elementary School, Boynton Middle School, Inter-Lakes Elementary School, Kennett High School, Matthew Thornton Elementary School, Monadnock Community Connections School, Newfound Regional High School, Northwood School, Raymond School Board, Virtual Learning Center.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

LEGISLATIVE PROPOSAL RELATIVE TO THE ''STATUTORY PAY-AS-YOU-GO ACT OF 2009,'' OR ''PAYGO,'' TOGETHER WITH A SECTIONAL ANALYSIS—PM 22

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Budget:

To the Congress of the United States:

Today I am pleased to submit to the Congress the enclosed legislative proposal, the ''Statutory Pay-As-You-Go Act of 2009,'' or ''PAYGO,'' together with a sectional analysis.

The deficits that my Administration inherited reflect not only a severe economic downturn but also years of failing to pay for new policies—including large tax cuts that disproportionately benefited the affluent. This failure of fiscal discipline contributed to transforming surpluses projected at the beginning of this decade into trillions of dollars in deficits. I am committed to returning our Government to a path of fiscal discipline, and PAYGO represents a key step back to the path of shared responsibility.

PAYGO would hold us to a simple but important principle: we should pay for new tax or entitlement legislation. Creating a new non-emergency tax cut or entitlement expansion would require offsetting revenue increases or spending reductions.

In the 1990s, statutory PAYGO encouraged the tough choices that helped to move the Government from large deficits to surpluses, and I believe it can do the same today. Both houses of Congress have already taken an important step toward righting our fiscal course by adopting congressional rules incorporating the PAYGO principle. But we can strengthen enforcement and redouble our commitment by enacting PAYGO into law.

Both the Budget I have proposed and the Budget Resolution approved by the Congress would cut the deficit in half by the end of my first term, while laying a new foundation for sustained and widely shared economic growth through key investments in health, education, and clean energy. Enacting statutory PAYGO would complement these efforts and represent an important step toward strengthening our budget process, cutting deficits, and reducing national debt. Ultimately, however, we will have to do even more to restore fiscal sustainability.

I urge the prompt and favorable consideration of this proposal.

BARACK OBAMA.

THE WHITE HOUSE, *June 9, 2009.*

MESSAGE FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by Mr. Zapata, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H. R. 466. An act to amend title 38, United States Code, to provide for certain rights and benefits for persons who are absent from positions of employment to receive medical treatment for service-connected disabilities.

H. R. 1709. An act to establish a committee under the National Science and Technology Council with the responsibility to coordinate science, technology, engineering, and mathematics education activities and programs of all Federal agencies, and for other purposes.

H. R. 1736. An act to provide for the establishment of a committee to identify and coordinate international science and technology cooperation that can strengthen the domestic science and technology enterprise and support United States foreign policy goals.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 466. An act to amend title 38, United States Code, to prohibit discrimination and acts of reprisal against persons who receive treatment for illnesses, injuries, and disabilities incurred in or aggravated by service in the uniformed services; to the Committee on Veterans' Affairs.

H.R. 1709. An act to establish a committee under the National Science and Technology Council with the responsibility to coordinate science, technology, engineering, and mathematics education activities and programs of all Federal agencies, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 1736. An act to provide for the establishment of a committee to identify and coordinate international science and technology cooperation that can strengthen the domestic science and technology enterprise and support United States foreign policy goals; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 31. An act to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEVIN for the Committee on Armed Services.

*Air Force nomination of Lt. Gen. Douglas M. Fraser, to be General.

*Army nomination of Lt. Gen. Stanley A. McChrystal, to be General.

*Navy nomination of Adm. James G. Stavridis, to be Admiral.

By Mr. BINGAMAN for the Committee on Energy and Natural Resources.

*Catherine Radford Zoi, of California, to be an Assistant Secretary of Energy (Energy, Efficiency, and Renewable Energy).

*William F. Brinkman, of New Jersey, to be Director of the Office of Science, Department of Energy.

*Anne Castle, of Colorado, to be an Assistant Secretary of the Interior.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SCHUMER:

S. 1211. A bill to designate the facility of the United States Postal Service located at 60 School Street, Orchard Park, New York, as the ''Jack F. Kemp Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DURBIN:

S. 1212. A bill to amend the antitrust laws to ensure competitive market-based fees and terms for merchants' access to electronic payment systems; to the Committee on the Judiciary.

By Mr. BAUCUS (for himself and Mr. CONRAD):

S. 1213. A bill to amend title XI of the Social Security Act to provide for the conduct of comparative effectiveness research and to amend the Internal Revenue Code of 1986 to establish a Patient-Centered Outcomes Research Trust Fund, and for other purposes; to the Committee on Finance.

By Mr. LIEBERMAN (for himself, Mr. CASEY, Mr. BOND, Ms. STABENOW, Mr. CARDIN, Mr. SANDERS, Mr. WHITEHOUSE, and Mr. CRAPO):

S. 1214. A bill to conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to improve the quality of life for the people of the United States, and for other purposes; to the Committee on Environment and Public Works.

By Mr. CASEY (for himself and Mr. SCHUMER):

S. 1215. A bill to amend the Safe Drinking Water Act to repeal a certain exemption for hydraulic fracturing, and for other purposes; to the Committee on Environment and Public Works.

By Ms. KLOBUCHAR (for herself and Mr. NELSON of Florida):

S. 1216. A bill to amend the Consumer Product Safety Act to require residential carbon monoxide detectors to meet the applicable ANSI/UL standard by treating that standard as a consumer product safety rule, to encourage States to require the installation of such detectors in homes, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. STABENOW (for herself, Mrs. LINCOLN, and Mr. BEGICH):

S. 1217. A bill to amend title XIX of the Social Security Act to improve and protect rehabilitative services and case management services provided under Medicaid to improve the health and welfare of the nation's most vulnerable seniors and children; to the Committee on Finance.

By Mr. MENENDEZ (for himself and Mr. LAUTENBERG):

S. 1218. A bill to amend title XVIII of the Social Security Act to preserve access to urban Medicare-dependent hospitals; to the Committee on Finance.

By Mr. KOHL:

S. 1219. A bill to amend subtitle A of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such subtitle for a 1-year period ending June 22, 2010; to the Committee on the Judiciary.

By Mr. SPECTER (for himself and Mr. WYDEN):

S. 1220. A bill to require that certain complex diagnostic laboratory tests performed by an independent laboratory after a hospital outpatient encounter or inpatient stay during which the specimen involved was collected shall be treated as services for which payment may be made directly to the laboratory under part B of title XVIII of the Social Security Act; to the Committee on Finance.

By Mr. SPECTER (for himself and Mr. ROBERTS):

S. 1221. A bill to amend title XVIII of the Social Security Act to ensure more appropriate payment amounts for drugs and biologicals under part B of the Medicare Program by excluding customary prompt pay discounts extended to wholesalers from the manufacturer's average sales price; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Ms. SNOWE, Mr. KERRY, Ms. LANDRIEU, Mr. VITTER, Ms. CANTWELL, Mrs. GILLIBRAND, Mr. BURRIS, and Mr. SCHUMER):

S. 1222. A bill to amend the Internal Revenue Code of 1986 to extend and expand the benefits for business operating in empowerment zones, enterprise communities, or renewal communities, and for other purposes; to the Committee on Finance.

By Mr. MCCONNELL (for himself, Mrs. FEINSTEIN, Mr. MCCAIN, and Mr. DURBIN):

S.J. Res. 17. A joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CRAPO:

S. Res. 173. A resolution supporting National Men's Health Week; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BOND (for himself, Mr. ROBERTS, Mr. BROWNBACK, and Mrs. MCCASKILL):

S. Res. 174. A resolution recognizing the region from Manhattan, Kansas to Columbia, Missouri as the Kansas City Animal Health Corridor; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. NELSON of Nebraska:

S. Res. 175. A resolution expressing the sense of the Senate that the Federal Government is a reluctant shareholder in the ownership of General Motors and Chrysler; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. FEINGOLD (for himself, Mr. ISAKSON, Mr. KERRY, Mr. INHOFE, Mr. BURRIS, Mr. WHITEHOUSE, Mr. NELSON of Florida, Mr. DURBIN, Mr. CARDIN, and Mr. BROWNBACK):

S. Res. 176. A resolution expressing the sense of the Senate on United States policy during the political transition in Zimbabwe, and for other purposes; considered and agreed to.

By Mr. HARKIN:

S. Res. 177. A resolution recognizing the 10th anniversary of the International Labour Organization's unanimous adoption of Convention 182, ''Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour''; considered and agreed to.

By Mr. DURBIN (for himself, Mr. UDALL of Colorado, Mr. BURRIS, Mr. BENNETT, Mr. BENNET, and Mr. HATCH):

S. Res. 178. A resolution supporting Olympic Day on June 23, 2009, and encouraging the International Olympic Committee to select Chicago, Illinois as the host city for the 2016 Olympic and Paralympic Games; considered and agreed to.

By Mr. KAUFMAN:

S. Res. 179. A resolution congratulating the American Society of Mechanical Engineers on its 125 years of codes and standards development; considered and agreed to.

By Mr. REID (for himself and Mr. MCCONNELL):

S. Res. 180. A resolution to authorize testimony and legal representation in United States v Edward Bloomer, Frank Cordaro, Elton Davis, Chester Guinn, and Renee Espeland; considered and agreed to.

By Mr. MENENDEZ (for himself and Ms. STABENOW):

S. Con. Res. 25. A concurrent resolution recognizing the value and benefits that community health centers provide as health care homes for over 18,000,000 individuals, and the importance of enabling health centers and other safety net providers to continue to offer accessible, affordable, and continuous care to their current patients and to every American who lacks access to preventive and primary care services; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 214

At the request of Mr. BINGAMAN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 214, a bill to amend title XXI of the Social Security Act to permit qualifying States to use their allotments under the State Children's Health Insurance Program for any fiscal year for certain Medicaid expenditures.

S. 254

At the request of Mrs. LINCOLN, the names of the Senator from Idaho (Mr. RISCH) and the Senator from Mississippi (Mr. WICKER) were added as cosponsors of S. 254, a bill to amend title XVIII of the Social Security Act to provide for the coverage of home infusion therapy under the Medicare Program.

S. 292

At the request of Mr. SPECTER, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor

of S. 292, a bill to repeal the imposition of withholding on certain payments made to vendors by government entities.

S. 301

At the request of Mr. GRASSLEY, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 301, a bill to amend title XI of the Social Security Act to provide for transparency in the relationship between physicians and manufacturers of drugs, devices, biologicals, or medical supplies for which payment is made under Medicare, Medicaid, or SCHIP.

S. 316

At the request of Mrs. LINCOLN, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 316, a bill to amend the Internal Revenue Code of 1986 to make permanent the reduction in the rate of tax on qualified timber gain of corporations, and for other purposes.

S. 500

At the request of Mr. DURBIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 500, a bill to amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions.

S. 535

At the request of Mr. NELSON of Florida, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 535, a bill to amend title 10, United States Code, to repeal requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation, and for other purposes.

S. 538

At the request of Mrs. LINCOLN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 538, a bill to increase the recruitment and retention of school counselors, school social workers, and school psychologists by low-income local educational agencies.

S. 547

At the request of Mr. BINGAMAN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 547, a bill to amend title XIX of the Social Security Act to reduce the costs of prescription drugs for enrollees of Medicaid managed care organizations by extending the discounts offered under fee-for-service Medicaid to such organizations.

S. 572

At the request of Ms. MIKULSKI, her name was added as a cosponsor of S. 572, a bill to provide for the issuance of a ''forever stamp'' to honor the sacrifices of the brave men and women of the armed forces who have been awarded the Purple Heart.

S. 655

At the request of Mr. JOHNSON, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 655, a bill to amend the Pittman-Robertson Wildlife Restoration Act to ensure adequate funding for conservation and restoration of wildlife, and for other purposes.

S. 688

At the request of Ms. SNOWE, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 688, a bill to require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

S. 700

At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 700, a bill to amend title II of the Social Security Act to phase out the 24-month waiting period for disabled individuals to become eligible for Medicare benefits, to eliminate the waiting period for individuals with life-threatening conditions, and for other purposes.

S. 711

At the request of Ms. MIKULSKI, her name was added as a cosponsor of S. 711, a bill to require mental health screenings for members of the Armed Forces who are deployed in connection with a contingency operation, and for other purposes.

S. 823

At the request of Ms. SNOWE, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from South Carolina (Mr. GRAHAM) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. 823, a bill to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

S. 831

At the request of Ms. MIKULSKI, her name was added as a cosponsor of S. 831, a bill to amend title 10, United States Code, to include service after September 11, 2001, as service qualifying for the determination of a reduced eligibility age for receipt of nonregular service retired pay.

S. 841

At the request of Mr. KERRY, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 841, a bill to direct the Secretary of Transportation to study and establish a motor vehicle safety standard that provides for a means of alerting blind and other pedestrians of motor vehicle operation.

S. 908

At the request of Mr. BAYH, the name of the Senator from Wyoming (Mr. BARRASSO) was added as a cosponsor of S. 908, a bill to amend the Iran Sanctions Act of 1996 to enhance United States diplomatic efforts with respect to Iran by expanding economic sanctions against Iran.

S. 910

At the request of Mr. WARNER, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 910, a bill to amend the Emergency Economic Stabilization Act of 2008, to provide for additional monitoring and accountability of the Troubled Asset Relief Program.

S. 941

At the request of Mr. CRAPO, the names of the Senator from Idaho (Mr. RISCH) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 941, a bill to reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, modernize firearm laws and regulations, protect the community from criminals, and for other purposes.

S. 990

At the request of Ms. STABENOW, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 990, a bill to amend the Richard B. Russell National School Lunch Act to expand access to healthy afterschool meals for school children in working families.

S. 1023

At the request of Mr. DORGAN, the names of the Senator from New York (Mrs. GILLIBRAND), the Senator from Missouri (Mr. BOND), the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 1023, a bill to establish a non-profit corporation to communicate United States entry policies and otherwise promote leisure, business, and scholarly travel to the United States.

At the request of Mr. DURBIN, his name was added as a cosponsor of S. 1023, supra.

S. 1034

At the request of Ms. STABENOW, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 1034, a bill to amend titles XIX and XXI of the Social Security Act to ensure payment under Medicaid and the State Children's Health Insurance Program for covered items and services furnished by school-based health clinics.

S. 1136

At the request of Ms. STABENOW, the names of the Senator from Vermont (Mr. SANDERS) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of S. 1136, a bill to establish a chronic care improvement demonstration program for Medicaid beneficiaries with severe mental illnesses.

S. 1156

At the request of Mr. HARKIN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1156, a bill to amend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users to reauthorize and improve the safe routes to school program.

S. 1185

At the request of Mr. BINGAMAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1185, a bill to amend titles XVIII and XIX of the Social Security

Act to ensure that low-income beneficiaries have improved access to health care under the Medicare and Medicaid programs.

S. 1203

At the request of Mr. BAUCUS, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1203, a bill to amend the Internal Revenue Code of 1986 to extend the research credit through 2010 and to increase and make permanent the alternative simplified research credit, and for other purposes.

At the request of Mr. HATCH, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 1203, supra.

AMENDMENT NO. 1230

At the request of Mr. JOHANNS, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of amendment No. 1230 intended to be proposed to H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

AMENDMENT NO. 1256

At the request of Mr. LIEBERMAN, the names of the Senator from Alaska (Ms. MURKOWSKI), the Senator from Maryland (Ms. MIKULSKI), the Senator from Hawaii (Mr. INOUYE), the Senator from Alaska (Mr. BEGICH), the Senator from Wisconsin (Mr. KOHL) and the Senator from Maryland (Mr. CARDIN) were added as cosponsors of amendment No. 1256 proposed to H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

AMENDMENT NO. 1270

At the request of Mr. CORKER, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of amendment No. 1270 intended to be proposed to H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN:

S. 1212. A bill to amend the antitrust laws to ensure competitive market-based fees and terms for merchants' access to electronic payment systems; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1212

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Credit Card Fair Fee Act of 2009''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ACCESS.—The term ''access''—

(A) when used as a verb means to use to conduct transaction authorization, clearance, and settlement involving the acceptance of credit cards or debit cards from consumers for payment for goods or services and the receipt of payment for such goods or services; and

(B) when used as a noun means the permission or authority to use to conduct transactions described in subparagraph (A).

(2) ACCESS AGREEMENT.—The term ''access agreement'' means an agreement between 1 or more merchants and 1 or more providers giving the merchant access to a covered electronic payment system, conditioned solely upon the merchant complying with the fees and terms specified in the agreement.

(3) ACQUIRER.—The term ''acquirer''—

(A) means a financial institution that provides services allowing merchants to access an electronic payment system to accept credit cards or debit cards for payment; and

(B) does not include an independent third party processor that may act as the agent of a financial institution described in subparagraph (A) in processing general-purpose credit card or debit card transactions.

(4) ADJUDICATION.—The term ''adjudication'' has the meaning given that term in section 551 of title 5, United States Code, and does not include mediation.

(5) ANTITRUST LAWS.—The term ''antitrust laws''—

(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); and

(B) includes—

(i) section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent section 5 applies to unfair methods of competition; and

(ii) State antitrust laws.

(6) CHAIRMAN.—The term ''Chairman'' means the Chairman of the Federal Trade Commission.

(7) COVERED ELECTRONIC PAYMENT SYSTEM.—The term ''covered electronic payment system'' means an electronic payment system that routes information and data to facilitate transaction authorization, clearance, and settlement for not less than 10 percent of the combined dollar value of credit card or debit card payments processed in the United States in the most recent full calendar year.

(8) CREDIT CARD.—The term ''credit card'' means any general-purpose card or other credit device issued or approved for use by a financial institution for use in allowing the cardholder to obtain goods or services on credit on terms specified by that financial institution.

(9) DEBIT CARD.—The term ''debit card'' means any general-purpose card or other device issued or approved for use by a financial institution for use in debiting the account of a cardholder for the purpose of that cardholder obtaining goods or services, whether authorization is signature-based or PIN-based.

(10) ELECTRONIC PAYMENT SYSTEM.—The term ''electronic payment system'' means the proprietary services, infrastructure, and software that route information and data to facilitate transaction authorization, clearance, and settlement and that merchants are required to access in order to accept a specific brand of general-purpose credit cards or debit cards as payment for goods or services.

(11) ELECTRONIC PAYMENT SYSTEM JUDGES.—The term ''Electronic Payment System Judges'' means the Electronic Payment System Judges appointed under section 4(a).

(12) FEES.—The term ''fees'' means any monetary charges, rates, assessments, or other payments imposed by a provider upon a merchant for the merchant to access an electronic payment system.

(13) FINANCIAL INSTITUTION.—The term ''financial institution'' has the meaning given that term in section 603(t) of the Fair Credit Reporting Act (15 U.S.C. 1681a(t)).

(14) ISSUER.—The term ''issuer''—

(A) means a financial institution that issues credit cards or debit cards or approves the use of other devices for use in an electronic payment system; and

(B) does not include an independent third party processor that may act as the agent of a financial institution described in subparagraph (A) in processing general-purpose credit or debit card transactions.

(15) MARKET POWER.—The term ''market power'' means the ability to profitably raise prices above those that would be charged in a perfectly competitive market.

(16) MERCHANT.—The term ''merchant'' means any person who accepts or who seeks to accept credit cards or debit cards in payment for goods or services provided by the person.

(17) NEGOTIATING PARTY.—The term ''negotiating party'' means 1 or more providers of a covered electronic payment system or 1 or more merchants who have access to or who are seeking access to that covered electronic payment system, as the case may be, and who are in the process of negotiating or who have executed a voluntarily negotiated access agreement that is still in effect.

(18) NORMAL RATE OF RETURN.—The term ''normal rate of return'' means the average rate of return that a firm would receive in an industry when conditions of perfect competition prevail.

(19) PROCEEDING PARTY.—The term ''proceeding party'' means collectively all providers of a covered electronic payment system or collectively all merchants who have access to or who are seeking access to that covered electronic payment system, as the case may be, during the period in which the Electronic Payment System Judges are conducting a proceeding under this Act relating to that covered electronic payment system.

(20) PERSON.—The term ''person'' has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

(21) PROVIDER.—The term ''provider'' means any person who owns, operates, controls, serves as an issuer for, or serves as an acquirer for a covered electronic payment system.

(22) STATE.—The term ''State'' has the meaning given that term in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

(23) TERMS.—The term ''terms'' means any and all rules and conditions that are applicable to providers of an electronic payment system or to merchants, as the case may be, and that are required in order for merchants to access that electronic payment system.

(24) VOLUNTARILY NEGOTIATED ACCESS AGREEMENT.—The term ''voluntarily negotiated access agreement'' means an access agreement voluntarily negotiated between 1 or more providers of a covered electronic payment system and 1 or more merchants that sets the fees and terms under which the merchant can access that covered electronic payment system.

(25) WRITTEN DIRECT STATEMENTS.—The term ''written direct statements'' means witness statements, testimony, and exhibits to be presented in proceedings under this Act, and such other information that is necessary to establish fees and terms for access to covered electronic payment systems as set forth in regulations issued by the Electronic Payment System Judges under section 5(b)(4).

SEC. 3. ACCESS TO COVERED ELECTRONIC PAYMENT SYSTEMS; LIMITED ANTITRUST IMMUNITY FOR THE NEGOTIATION AND DETERMINATION OF FEES AND TERMS; STANDARDS FOR ESTABLISHMENT OF FEES AND TERMS.

(a) ACCESS TO COVERED ELECTRONIC PAYMENT SYSTEMS.—Access by a merchant to any covered electronic payment system and the fees and terms of such access shall be subject to this Act.

(b) AUTHORITY AND LIMITED ANTITRUST IMMUNITY FOR NEGOTIATIONS OF FEES AND TERMS AND PARTICIPATION IN PROCEEDINGS.—

(1) IN GENERAL.—Notwithstanding any provision of the antitrust laws—

(A) in negotiating fees and terms and participating in any proceedings under subsection (c), any providers of a covered electronic payment system and any merchants who have access to or who are seeking access to that covered electronic payment system may jointly negotiate and agree upon the fees and terms for access to the covered electronic payment system, including through the use of common agents that represent the providers of the covered electronic payment system or the merchants on a nonexclusive basis; and

(B) any providers of a single covered electronic payment system also may jointly determine the proportionate division among such providers of paid fees.

(2) LIMITATIONS.—The immunity from the antitrust laws conferred under this subsection shall not apply to a provider of a covered electronic payment system or to a merchant during any period in which such provider, or such merchant, is engaged in—

(A) any unlawful boycott;

(B) any allocation with a competitor of a geographical area;

(C) any unlawful tying arrangement; or

(D) any exchange of information with, or agreement with, a competitor that is not reasonably required to carry out the negotiations and proceedings described in subsection (c).

(c) ESTABLISHMENT OF FEES AND TERMS.—

(1) VOLUNTARILY NEGOTIATED ACCESS AGREEMENTS.—

(A) AGREEMENTS BETWEEN NEGOTIATING PARTIES.—A voluntarily negotiated access agreement may be executed at any time between 1 or more providers of a covered electronic payment system and 1 or more merchants. With respect to the negotiating parties, such executed voluntarily negotiated access agreement shall supersede any fees or terms established by the Electronic Payment System Judges under paragraph (3) relating to that covered electronic payment system.

(B) FILING AGREEMENTS WITH THE ELECTRONIC PAYMENT SYSTEM JUDGES.—The negotiating parties shall jointly file with the Electronic Payment System Judges—

(i) any voluntarily negotiated access agreement that affects any market in the United States or elsewhere;

(ii) any documentation relating to a voluntarily negotiated access agreement evidencing any consideration being given or any marketing or promotional agreement between the negotiating parties; and

(iii) any amendment to that voluntarily negotiated access agreement or documentation.

(C) TIMING AND AVAILABILITY OF FILINGS.—The negotiating parties to any voluntarily negotiated access agreement executed after the date of enactment of this Act shall jointly file the voluntarily negotiated access agreement, and any documentation or amendment described in subparagraph (B), with the Electronic Payment System Judges not later than 30 days after the date of execution of the voluntarily negotiated access agreement or amendment or the date of the creation of the documentation, as the case may be. The Electronic Payment System Judges shall make publicly available any voluntarily negotiated access agreement, amendment, or accompanying documentation filed under this paragraph.

(2) INITIATION OF PROCEEDINGS.—The proceedings under this subsection to establish fees and terms for access to a covered electronic payment system shall be initiated in accordance with section 6.

(3) PROCEEDINGS.—

(A) IN GENERAL.—The Electronic Payment System Judges shall conduct proceedings as specified under this Act to establish fees and terms for access to a covered electronic payment system. Except as specifically provided in a voluntarily negotiated access agreement, a provider of a covered electronic payment system may not directly or indirectly charge fees or set terms for access to a covered electronic payment system that are not in accordance with the fees and terms established by the Electronic Payment System Judges pursuant to proceedings under this Act.

(B) PERIOD OF APPLICABILITY.—Except as provided in section 6, the fees and terms established under this paragraph with respect to a covered electronic payment system shall apply during the 3-year period beginning on January 1 of the second year following the year in which the proceedings to establish such fees and terms are commenced.

(C) STANDARD FOR ESTABLISHMENT OF FEES AND TERMS BY THE ELECTRONIC PAYMENT SYSTEM JUDGES.—

(i) IN GENERAL.—In establishing fees and terms for access to a covered electronic payment system under subparagraph (A), the Electronic Payment System Judges—

(I) shall be limited to selecting, without modification, 1 of the 2 final offers of fees and terms filed by the proceeding parties pursuant to section 5(c)(2)(A); and

(II) shall select the final offer of fees and terms that most closely represent the fees and terms that would be negotiated in a hypothetical perfectly competitive marketplace for access to an electronic payment system between a willing buyer with no market power and a willing seller with no market power.

(ii) STANDARDS.—In determining which final offer of fees and terms to select, the Electronic Payment System Judges—

(I) shall consider the costs of transaction authorization, clearance, and settlement that are necessary to operate and to access an electronic payment system;

(II) shall consider a normal rate of return in a hypothetical perfectly competitive marketplace;

(III) shall avoid selecting a final offer of fees and terms that would have anticompetitive effects within the issuer market, the acquirer market, or the merchant market;

(IV) may select a final offer that is a schedule of fees and terms that varies based upon cost-based differences in types of credit card and debit card transactions (which may include whether a transaction is of a signature-based, PIN-based, or card-not-present type);

(V) may select a final offer that is a schedule of fees and terms that provides alternative fees and terms for those acquirers or issuers that are regulated by the National Credit Union Administration or that, together with affiliates of the acquirer or issuer, have assets in a total amount of less than $1,000,000,000; and

(VI) may not select a final offer that is a schedule of fees and terms that varies based on type of merchant or volume of transactions (either in number or dollar value).

(D) USE OF EXISTING FEES AND TERMS AS EVIDENCE.—In establishing fees and terms for access to a covered electronic payment system under this paragraph, the Electronic Payment System Judges—

(i) shall decide the weight to be given to any evidence submitted by a proceeding party regarding the fees and terms for access to comparable electronic payment systems, including fees and terms in voluntarily negotiated access agreements filed under paragraph (1); and

(ii) shall give significant weight to fees in a voluntarily negotiated access agreement that are substantially below the fees reflective of the market power of the covered electronic payment systems that existed before the date of enactment of this Act.

SEC. 4. ELECTRONIC PAYMENT SYSTEM JUDGES.

(a) APPOINTMENT.—The Attorney General and the Chairman shall jointly appoint 3 full-time Electronic Payment System Judges, and shall appoint 1 of the 3 Electronic Payment System Judges as the Chief Electronic Payment System Judge.

(b) DUTIES.—The Electronic Payment System Judges shall establish fees and terms for access to covered electronic payment systems in accordance with this Act.

(c) RULINGS.—The Electronic Payment System Judges may make any necessary procedural or evidentiary ruling in a proceeding under this Act and may, before commencing a proceeding under this Act, make any procedural ruling that will apply to a proceeding under this Act.

(d) ADMINISTRATIVE SUPPORT.—The Attorney General and Chairman shall provide the Electronic Payment System Judges with the necessary administrative services related to proceedings under this Act.

(e) LOCATION.—The offices of the Electronic Payment System Judges and staff shall be located in the offices of the Department of Justice or the Federal Trade Commission.

(f) QUALIFICATIONS OF ELECTRONIC PAYMENT SYSTEM JUDGES.—Each Electronic Payment System Judge shall be an attorney who has at least 7 years of legal experience. The Chief Electronic Payment System Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. At least 1 Electronic Payment System Judge who is not the Chief Electronic Payment System Judge shall have significant knowledge of electronic payment systems. At least one Electronic Payment System Judge shall have significant knowledge of economics. An individual may serve as an Electronic Payment System Judge only if the individual is free of any financial conflict of interest under the standards established under subsection (m).

(g) STAFF.—The Chief Electronic Payment System Judge shall hire, at minimum, 3 full-time staff members to assist the Electronic Payment System Judges in performing the duties of the Electronic Payment System Judges under this Act.

(h) TERMS.—

(1) INITIAL APPOINTMENTS.—For the first appointments of Electronic Payment System Judges after the date of enactment of this Act—

(A) the Chief Electronic Payment System Judge shall be appointed for a term of 6 years;

(B) 1 Electronic Payment System Judge who is not the Chief Electronic Payment System Judge shall be appointed for a term of 4 years; and

(C) 1 Electronic Payment System Judge who is not the Chief Electronic Payment System Judge shall be appointed for a term of 2 years.

(2) SUBSEQUENT APPOINTMENT.—After the appointments under paragraph (1), an Electronic Payment System Judge shall be appointed for a term of 6 years.

(3) REAPPOINTMENT.—An individual serving as an Electronic Payment System Judge may be reappointed to subsequent terms.

(4) START AND END OF TERMS.—The term of an Electronic Payment System Judge shall begin on the date on which the term of the predecessor of that Electronic Payment System Judge ends. If a successor Electronic Payment System Judge has not been appointed as of the date on which the term of office of an Electronic Payment System Judge ends, the individual serving that term may continue to serve as an interim Electronic Payment System Judge until a successor is appointed.

(i) VACANCIES OR INCAPACITY.—

(1) VACANCIES.—The Attorney General and the Chairman shall act expeditiously to fill any vacancy in the position of Electronic Payment System Judge, and may appoint an interim Electronic Payment System Judge to serve until an Electronic Payment System Judge is appointed to fill the vacancy under this section. An Electronic Payment System Judge appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

(2) INCAPACITY.—If an Electronic Payment System Judge is temporarily unable to perform the duties of an Electronic Payment System Judge, the Attorney General and Chairman may appoint an interim Electronic Payment System Judge to perform such duties during the period of such incapacity.

(j) COMPENSATION.—

(1) JUDGES.—The Chief Electronic Payment System Judge shall receive compensation at the rate of basic pay payable for level AL–1 for administrative law judges under section 5372(b) of title 5, United States Code, and each Electronic Payment System Judge who is not the Chief Electronic Payment System Judge shall receive compensation at the rate of basic pay payable for level AL–2 for administrative law judges under such section. The compensation of the Electronic Payment System Judges shall not be subject to any regulations adopted by the Office of Personnel Management under its authority under section 5376(b)(1) of title 5, United States Code.

(2) STAFF MEMBERS.—Of the 3 staff members appointed under subsection (g)—

(A) the rate of pay of 1 staff member shall be not more than the basic rate of pay payable for level 10 of GS–15 of the General Schedule;

(B) the rate of pay of 1 staff member shall be not less than the basic rate of pay payable for GS–13 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS–14 of such Schedule; and

(C) the rate of pay of 1 staff member shall be not less than the basic rate of pay payable for GS–8 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS–11 of such Schedule.

(3) LOCALITY PAY.—All rates of pay established under this subsection shall include locality pay.

(k) INDEPENDENCE OF ELECTRONIC PAYMENT SYSTEM JUDGES.—

(1) IN MAKING DETERMINATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Electronic Payment System Judges—

(i) shall have full independence in establishing fees and terms for access to covered electronic payment systems and in issuing any other ruling under this Act; and

(ii) may consult with the Attorney General and the Chairman on any matter other than a question of fact.

(B) CONSULTATION.—The Electronic Payment System Judges shall consult with the Attorney General and the Chairman regarding any determination or ruling that would require that any act be performed by the Attorney General or the Chairman, and any such determination or ruling shall not be binding upon the Attorney General or the Chairman.

(2) PERFORMANCE APPRAISALS.—

(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Department of Justice or Federal Trade Commission, and subject to subparagraph (B), the Electronic Payment System Judges shall not receive performance appraisals.

(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Attorney General and the Chairman adopt regulations under subsection (m) relating to the sanction or removal of an Electronic Payment System Judge and such regulations require documentation to establish the cause of such sanction or removal, the Electronic Payment System Judge may receive an appraisal related specifically to the cause of the sanction or removal.

(l) INCONSISTENT DUTIES BARRED.—No Electronic Payment System Judge may undertake duties that conflict with the duties and responsibilities of an Electronic Payment System Judge under this Act.

(m) STANDARDS OF CONDUCT.—The Attorney General and the Chairman shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Electronic Payment System Judges and the proceedings under this Act.

(n) REMOVAL OR SANCTION.—The Attorney General and the Chairman acting jointly may sanction or remove an Electronic Payment System Judge for violation of the standards of conduct adopted under subsection (m), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing. The Attorney General and the Chairman may suspend an Electronic Payment System Judge during the pendency of such a hearing. The Attorney General and the Chairman shall appoint an interim Electronic Payment System Judge during the period of any suspension under this subsection.

SEC. 5. PROCEEDINGS OF ELECTRONIC PAYMENT SYSTEM JUDGES.

(a) PROCEEDINGS.—

(1) IN GENERAL.—The Electronic Payment System Judges shall act in accordance with regulations issued by the Electronic Payment System Judges, the Attorney General, and the Chairman, and on the basis of a written record, prior determinations and interpretations of the Electronic Payment System Judges under this Act, and decisions of the court of appeals of the United States.

(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Electronic Payment System Judges shall preside over hearings in proceedings under this Act en banc. The Chief Electronic Payment System Judge may designate an Electronic Payment System Judge to preside individually over such collateral and administrative proceedings as the Chief Judge considers appropriate.

(b) PROCEDURES.—

(1) COMMENCEMENT.—The Electronic Payment System Judges shall cause to be published in the Federal Register a notice of commencement of proceedings under section 3(c) to establish fees and terms for access to a covered electronic payment system.

(2) MANDATORY NEGOTIATION PERIOD.—

(A) IN GENERAL.—Promptly after the commencement of a proceeding under section 3(c) to establish fees and terms for access to a covered electronic payment system, the Electronic Payment System Judges shall initiate a period for negotiations for the purpose of achieving a voluntarily negotiated access agreement. Nothing in this paragraph shall preclude the proceeding parties or any members thereof from conducting negotiations before or after the mandatory negotiation period for the purpose of achieving a voluntarily negotiated access agreement.

(B) LENGTH.—The period for negotiations initiated under subparagraph (A) shall be 3 months.

(C) DETERMINATION OF NEED FOR FURTHER PROCEEDINGS.—At the close of the period for negotiations initiated under subparagraph (A), the Electronic Payment System Judges shall determine if further proceedings under this Act are necessary.

(3) PROCEEDING PARTIES IN FURTHER PROCEEDINGS.—

(A) IN GENERAL.—In any further proceeding ordered by the Electronic Payment System Judges under paragraph (2)(C), there shall be only 2 proceeding parties, 1 consisting of all providers of the covered electronic payment system and the other consisting of all merchants that have access to or seek access to the covered electronic payment system. Each proceeding party shall bear its own costs. A provider of a covered electronic payment system or a merchant that has access to or seeks access to the covered electronic payment system may choose not to participate in the proceeding as a member of a proceeding party, but unless such provider or merchant executes a voluntarily negotiated access agreement, such provider or merchant shall be bound by the determination of the Electronic Payment System Judges with regard to the fees and terms for access to the covered electronic payment system.

(B) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to prohibit the proceeding parties or any members thereof in a proceeding under subparagraph (A) from negotiating and entering into a voluntarily negotiated access agreement at any other time.

(4) REGULATIONS.—

(A) AUTHORIZATION.—

(i) IN GENERAL.—The Electronic Payment System Judges may issue regulations to carry out the duties of the Electronic Payment System Judges under this Act. All regulations issued by the Electronic Payment System Judges are subject to the approval of the Attorney General and the Chairman. Not later than 120 days after the date on which all Electronic Payment System Judges are appointed under section 4(h)(1), the Electronic Payment System Judges shall issue regulations to govern proceedings under this subsection. In setting these regulations, the Electronic Payment System Judges shall consider the regulations issued by the Copyright Royalty Judges under section 803(b)(6) of title 17, United States Code.

(ii) SCOPE.—The regulations issued under clause (i) shall include regulations regarding

the procedures described in subparagraph (B).

(B) PROCEDURES.—

(i) WRITTEN DIRECT STATEMENTS.—The written direct statements of the proceeding parties shall be filed by a date specified by the Electronic Payment System Judges, which may be not earlier than 4 months, and not later than 5 months, after the end of the voluntary negotiation period under paragraph (2). Notwithstanding the preceding sentence, the Electronic Payment System Judges may allow a proceeding party to file an amended written direct statement based on new information received during the discovery process, not later than 15 days after the end of the discovery period specified in clause (ii).

(ii) DISCOVERY SCHEDULE.—Following the submission to the Electronic Payment System Judges of written direct statements by the proceeding parties, the Electronic Payment System Judges shall meet with the proceeding parties to set a schedule for conducting and completing discovery. Such schedule shall be determined by the Electronic Payment System Judges. Discovery in such proceedings shall be permitted for a period of not longer than 60 days, except for discovery ordered by the Electronic Payment System Judges in connection with the resolution of motions, orders, and disputes pending at the end of such period.

(iii) INITIAL DISCLOSURES.—

(I) IN GENERAL.—In a proceeding under this Act to determine fees and terms for access to a covered electronic payment system, certain persons shall make initial disclosures not later than 30 days after the date of commencement of the proceeding, in accordance with this clause.

(II) ISSUERS, ACQUIRERS, AND OWNERS.—Any person who is 1 of the 10 largest issuers for a covered electronic payment system in terms of number of cards issued, any person who is 1 of the 10 largest acquirers for a covered electronic payment system based on dollar amount of transactions made by merchants they serve, and any person who owns or controls the relevant covered electronic payment system and establishes the terms and conditions through which issuers and acquirers participate in the covered electronic payment system, shall produce to the Electronic Payment System Judges and to both proceedings parties—

(aa) an itemized list of the costs necessary to operate the covered electronic payment system that were incurred by the person during the most recent full calendar year before the initiation of the proceeding; and

(bb) any access agreement between that person and 1 or more merchants with regard to that covered electronic payment system.

(III) MERCHANTS.—Any person who is 1 of the 10 largest merchants using the relevant covered electronic payment system, determined based on dollar amount of transactions made with the covered electronic payment system, shall produce to the Electronic Payment System Judges and to both proceeding parties—

(aa) an itemized list of the costs necessary to access the electronic payment system during the most recent full calendar year prior to the initiation of the proceeding; and

(bb) any access agreement between that person and 1 or more providers with regard to that covered electronic payment system.

(IV) DISAGREEMENT.—Any disagreement regarding whether a person is required to make an initial disclosure under this clause, or the contents of such a disclosure, shall be resolved by the Electronic Payment System Judges.

(iv) DEPOSITIONS.—

(I) IN GENERAL.—In a proceeding under this Act to determine fees and terms for access to a covered electronic payment system, each proceeding party shall be permitted to take depositions of every witness identified by the other proceeding party. Except as provided in subclause (III), each proceeding party also shall be permitted to take 5 additional depositions in the entire proceeding.

(II) ORGANIZATIONAL ENTITIES.—A deposition notice or subpoena may name as the deponent a person who is an individual or a person who is not an individual. Such deposition notice or subpoena shall describe with reasonable particularity the matters on which examination is requested. If the deposition notice or subpoena names a person who is not an individual, the deponent person so named shall designate 1 or more officers, directors, or managing agents, or other individual persons who consent to testify on behalf of the deponent person, and may set forth, for each individual person designated, the matters on which the individual person will testify. A subpoena shall advise a nonparty deponent person of the duty of the deponent person to make such a designation. An individual person designated under this subclause shall testify as to matters known or reasonably available to the deponent person.

(III) ADDITIONAL DEPOSITIONS.—The Electronic Payment System Judges may increase the permitted number of depositions for good cause in exceptional circumstances, and shall resolve any disputes among persons within either proceeding party regarding the allocation of the depositions permitted under this clause.

(v) WRITTEN DISCOVERY.—In a proceeding under this Act to determine fees and terms for access to a covered electronic payment system, each proceeding party shall be permitted to serve written discovery requests on 10 persons. These written discovery requests may include requests for production or inspection, a total of no more than 10 requests for admission in the entire proceeding, and a total of no more than 25 interrogatories in the entire proceeding. The Electronic Payment System Judges may increase the permitted number of requests for admission or interrogatories for good cause in exceptional circumstances, and shall resolve any disputes among persons within either proceeding party regarding the allocation of the requests for admission or interrogatories permitted under this clause.

(vi) SUBPOENAS.—Upon the request of a party to a proceeding to determine fees and terms for access to a covered electronic payment system, the Electronic Payment System Judges may issue a subpoena commanding a person to appear and give testimony, or to produce and permit inspection of documents or tangible things, if the resolution of the proceeding by the Electronic Payment System Judges may be substantially impaired by the absence of such testimony or production of documents or tangible things. A subpoena under this clause shall specify with reasonable particularity the materials to be produced or the scope and nature of the required testimony. Nothing in this clause shall preclude the Electronic Payment System Judges from requesting the production by a person of information or materials relevant to the resolution by the Electronic Payment System Judges of a material issue of fact.

(vii) OBJECTIONS TO DISCOVERY REQUESTS.—

(I) IN GENERAL.—Any objection to a request or subpoena under clause (v) or (vi) shall be resolved by a motion or request to compel production made to the Electronic Payment System Judges in accordance with regulations adopted by the Electronic Payment System Judges. Each motion or request to compel discovery shall be determined by the Electronic Payment System Judges, or by an Electronic Payment System Judge when permitted under subsection (a)(2). Upon such motion or request to compel discovery, the Electronic Payment System Judges may order discovery under regulations established under this paragraph.

(II) CONSIDERATIONS.—In determining whether discovery will be granted under this clause, the Electronic Payment System Judges may consider—

(aa) whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the proceeding parties, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

(bb) whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

(cc) whether the proceeding party seeking discovery has had ample opportunity by discovery in the proceeding or by other means to obtain the information sought.

(viii) VOLUNTARILY NEGOTIATED ACCESS AGREEMENTS.—In proceedings to determine fees and terms for access to a covered electronic payment system, the Electronic Payment System Judges shall make available to the proceeding parties all documents filed under section 3(c)(1).

(ix) SETTLEMENT CONFERENCE.—The Electronic Payment System Judges shall order a settlement conference between the proceeding parties to facilitate the presentation of offers of settlement between the parties. The settlement conference shall be held during the 21-day period beginning on the date on which the discovery period ends and shall take place outside the presence of the Electronic Payment System Judges.

(x) DIRECT AND REBUTTAL HEARINGS.—At the conclusion of the 21-day period described in clause (ix), the Electronic Payment System Judges shall determine if further proceedings under this Act are necessary. If the Electronic Payment System Judges determine further proceedings under this Act are necessary, the Electronic Payment System Judges shall schedule a direct hearing of not more than 30 court days and a rebuttal hearing of not more than 20 court days during which both proceeding parties will be allowed to offer witness testimony and documents.

(xi) SPONSORING WITNESSES.—No evidence, including exhibits, may be submitted in the written direct statement or written rebuttal statement of a proceeding party without a sponsoring witness, except for—

(I) requests for admission that have been admitted by the receiving proceeding party;

(II) evidence of which the Electronic Payment System Judges have taken official notice;

(III) incorporation by reference of past records; or

(IV) good cause shown.

(xii) HEARSAY.—Hearsay may be admitted in proceedings under this Act to the extent determined relevant and reliable by the Electronic Payment System Judges.

(xiii) APPLICABILITY OF THE FEDERAL RULES OF EVIDENCE.—To the extent not inconsistent with this subparagraph, the Federal Rules of Evidence shall apply to proceedings under this Act.

(5) PENALTIES FOR FAILURE TO COMPLY WITH A DISCOVERY REQUEST.—

(A) FAILURE TO COMPLY.—A person has failed to comply with a discovery request if the person, or an employee or agent of the person, fails, without substantial justification, to—

(i) make initial disclosures required under paragraph (4)(B)(iii);

(ii) be sworn or answer a question as a deponent after being directed to do so by the Electronic Payment System Judges under clause (iv) or (vi) of paragraph (4)(B);

(iii) answer an interrogatory submitted under paragraph (4)(B)(v);

(iv) produce nonprivileged documents requested under clause (v) or (vi) of paragraph (4)(B); or

(v) admit the genuineness of any document or the truth of any matter as requested under paragraph (4)(B)(v), and the person requesting the admissions thereafter proves the genuineness of the document or the truth of the matter.

(B) FALSE OR MISLEADING RESPONSES.—For purposes of this Act, any disclosure, answer, or response that is false or substantially misleading, evasive, or incomplete shall be deemed a failure to comply with a discovery request.

(C) NEGATIVE INFERENCE IN CURRENT PROCEEDING.—If any person fails to comply with a discovery request, the Electronic Payment System Judges may issue an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the current proceeding in accordance with the claim of the proceeding party seeking discovery and obtaining the order.

(D) CIVIL PENALTY.—

(i) GENERALLY.—Any person who fails to comply with a discovery request under this Act shall be subject to a civil penalty, which shall be assessed by the Electronic Payment System Judges, of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

(ii) NOTICE AND HEARINGS.—No civil penalty may be assessed under this subparagraph except under an order of the Electronic Payment System Judges and unless the person accused of the violation was given prior notice and opportunity to request and participate in a hearing before the Electronic Payment System Judges with respect to the violation.

(iii) DETERMINING AMOUNT.—In determining the amount of any penalty assessed under this subparagraph, the Electronic Payment System Judges shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(iv) REVIEW.—Any person who requested a hearing with respect to a civil penalty under this subparagraph and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit. Such a petition may be filed not later than 30 days after the date on which the order making such assessment was issued. The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, an order of the Electronic Payment System Judges under this subparagraph, or the court may remand the proceeding to the Electronic Payment System Judges for such further action as the court may direct. The Attorney General shall represent the Electronic Payment System Judges before the court.

(v) ENFORCEMENT.—If any person fails to pay an assessment of a civil penalty after the civil penalty has become a final and unappealable order or after the appropriate court has entered final judgment, the Electronic Payment System Judges shall request the Attorney General to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(c) DETERMINATION OF ELECTRONIC PAYMENT SYSTEM JUDGES.—

(1) TIMING.—The Electronic Payment System Judges shall issue a determination in a proceeding not later than the earlier of—

(A) 11 months after the end of the 21-day settlement conference period under subsection (b)(4)(B)(ix); or

(B) 15 days before the date on which the fees and terms in effect for the relevant covered electronic payment system expire.

(2) DETERMINATION.—

(A) FILING OF FINAL OFFER.—Before the commencement of a direct hearing in a proceeding under subsection (b)(4)(B)(x), each proceeding party shall file with the Electronic Payment System Judges and with the other proceeding party a final offer of fees and terms for access to the covered electronic payment system. A proceeding party may not amend a final offer submitted under this subparagraph, except with the express consent of the Electronic Payment System Judges and the other proceeding party.

(B) SELECTION BETWEEN FINAL OFFERS.—After the conclusion of the direct hearing and rebuttal hearing, the Electronic Payment System Judges shall make their determination by selecting 1 of the 2 final offers filed by the proceeding parties. The Electronic Payment System Judges shall make their selection in accordance with the standards described in section 3(c)(3)(C).

(C) VOTING AND DISSENTING OPINIONS.—A final determination of the Electronic Payment System Judges in a proceeding under this Act shall be made by majority vote. An Electronic Payment System Judge dissenting from the majority on any determination under this Act may issue a dissenting opinion, which shall be included with the determination.

(3) REHEARINGS.—

(A) IN GENERAL.—The Electronic Payment System Judges may, in exceptional cases, upon motion of a proceeding party, order a rehearing, after the determination in the proceeding is issued under paragraph (2), on such matters as the Electronic Payment System Judges determine to be appropriate.

(B) TIMING FOR FILING MOTION.—Any motion for a rehearing under subparagraph (A) shall be filed not later than 15 days after the date on which the Electronic Payment System Judges deliver to the parties in the proceeding their initial determination concerning fees and terms.

(C) PARTICIPATION BY OPPOSING PARTY NOT REQUIRED.—In any case in which a rehearing is ordered under this paragraph, any opposing proceeding party shall not be required to participate in the rehearing, except that nonparticipation may give rise to the limitations with respect to judicial review provided for in subsection (d)(1).

(D) NO NEGATIVE INFERENCE.—The Electronic Payment System Judges may not draw a negative inference from lack of participation in a rehearing.

(E) CONTINUITY OF FEES AND TERMS.—

(i) IN GENERAL.—If the decision of the Electronic Payment System Judges on any motion for a rehearing is not rendered before the expiration of the fees and terms in effect for the relevant covered electronic payment system, in the case of a proceeding to determine successor fees and terms for fees and terms that expire on a specified date, the initial determination of the Electronic Payment System Judges that is the subject of the rehearing motion shall be effective as of the day following the date on which the fees and terms that were previously in effect expire.

(ii) FEE PAYMENTS.—The pendency of a motion for a rehearing under this paragraph shall not relieve a person obligated to make fee payments for access to a covered electronic payment system who would be affected by the determination on that motion from paying the fees required and complying with the terms under the relevant determination.

(iii) OVERPAYMENTS AND UNDERPAYMENTS.—Notwithstanding clause (ii), if fees described in clause (ii) are paid—

(I) the recipient of such fees shall, not later than 60 days after the date on which the motion for rehearing is resolved or, if the motion is granted, 60 days after the date on which the rehearing is concluded, return any excess fees described in clause (ii), to the extent necessary to comply with the final determination by the Electronic Payment System Judges of fees and terms for access to the covered electronic payment system; and

(II) a person obligated to make fee payments shall, not later than 60 days after the date on which the motion for rehearing is resolved or, if the motion is granted, 60 days after the date on which the rehearing is concluded, pay the recipient the amount of any underpayment of fees described in clause (ii), to the extent necessary to comply with the final determination by the Electronic Payment System Judges of fees and terms for access to the covered electronic payment system.

(4) CONTENTS OF DETERMINATION.—A determination of the Electronic Payment System Judges shall establish the fees and terms for access to the relevant covered electronic payment system, shall be supported by the written record, and shall set forth the findings of fact relied on by the Electronic Payment System Judges. The Electronic Payment System Judges shall make publicly available in their entirety all determinations issued under this paragraph.

(5) CONTINUING JURISDICTION.—The Electronic Payment System Judges may, with the approval of the Attorney General and the Chairman, issue an amendment to a written determination to correct any technical or clerical errors in the determination in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the proceeding parties and shall be published in the Federal Register.

(6) PROTECTIVE ORDER.—The Electronic Payment System Judges may issue such orders as may be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is published or made available to the public, except that any fees and terms of an access agreement, including voluntarily negotiated access agreements filed under section 3(c)(1), may not be excluded from publication.

(7) PUBLICATION OF DETERMINATION.—Not later than 60 days after the date on which the Electronic Payment System Judges issue a determination under this subsection, the Attorney General and the Chairman shall cause the determination, and any corrections thereto, to be published in the Federal Register. The Electronic Payment System Judges also shall publicize the determination and any corrections in such other manner as the Attorney General and the Chairman consider appropriate, including publication on the Internet. The Electronic Payment System Judges also shall make the determination, corrections, and the accompanying record available for public inspection and copying.

(8) LATE PAYMENT.—A determination of Electronic Payment System Judges—

(A) may include terms with respect to late payment; and

(B) may not include any provision in such terms described in subparagraph (A) that prevents a provider of a covered electronic payment system from asserting other rights or remedies provided under this Act.

(d) JUDICIAL REVIEW.—

(1) APPEAL.—Any determination of the Electronic Payment System Judges under subsection (c) may, not later than 30 days after the date of publication of the determination in the Federal Register, be appealed, to the United States Court of Appeals for the District of Columbia Circuit, by any aggrieved member of a proceeding party under this Act who would be bound by the determination. Any proceeding party that did not participate in a rehearing may not raise any issue that was the subject of that rehearing at any stage of judicial review of the hearing determination. If no appeal is brought within the 30-day period under this paragraph, the determination of the Electronic Payment System Judges shall be final, and shall take effect as described in paragraph (2).

(2) EFFECT OF FEES AND TERMS.—

(A) FEE PAYMENTS.—The pendency of an appeal under this subsection shall not relieve a person obligated to make fee payments for access to a covered electronic payment system who would be affected by the determination on appeal from paying the fees required and complying with the terms under the relevant determination or regulations.

(B) OVERPAYMENTS AND UNDERPAYMENTS.—Notwithstanding subparagraph (A), if fees described in subparagraph (A) are paid—

(i) the recipient of such fees shall, not later than 60 days after the date on which the appeal is resolved return any excess fees described in subparagraph (A) (and interest thereon, if ordered under paragraph (3)), to the extent necessary to comply with the final determination of fees and terms on appeal; and

(ii) a person obligated to make fee payments shall, not later than 60 days after the date on which the appeal is resolved, pay the recipient the amount of any underpayment of fees described in subparagraph (A) (and interest thereon, if ordered under paragraph (3)), to the extent necessary to comply with the final determination of fees and terms on appeal.

(3) JURISDICTION OF COURT.—If the United States Court of Appeals for the District of Columbia Circuit, under section 706 of title 5, United States Code, modifies or vacates a determination of the Electronic Payment System Judges, the court may enter its own determination with respect to the amount or distribution of fees and costs, and order the repayment of any excess fees, the payment of any underpaid fees, and the payment of interest pertaining respectively thereto, in accordance with its final judgment. The court also may vacate the determination of the Electronic Payment System Judges and remand the case to the Electronic Payment System Judges for further proceedings.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 6. INSTITUTION OF PROCEEDINGS BEFORE ELECTRONIC PAYMENT SYSTEM JUDGES.

(a) INITIAL PROCEEDINGS.—

(1) TIMING.—Proceedings under this Act shall be commenced as soon as practicable after the date of enactment of this Act to establish fees and terms for access to covered electronic payment systems under section 3(c), which shall be effective during the period beginning on January 1, 2011, and ending on December 31, 2012. The Electronic Payment System Judges shall cause notice of commencement of such proceedings to be published in the Federal Register.

(2) PROCEDURES SPECIFIC TO THE INITIAL PROCEEDINGS.—

(A) DISCOVERY PERIOD.—Notwithstanding section 5(b)(4)(B)(ii), discovery in the initial proceedings described in paragraph (1) shall be permitted for a period of 90 days, except for discovery ordered by the Electronic Payment System Judges in connection with the resolution of motions, orders, and disputes pending at the end of such period.

(B) CONSIDERATION OF CHANGES IN FEES AND TERMS BETWEEN DATE OF ENACTMENT AND INITIAL DETERMINATION.—In establishing the fees and terms under section 3(c) for access to covered electronic payment systems, to be effective during the period beginning on January 1, 2011, and ending on December 31, 2012, the Electronic Payment System Judges shall consider changes in fees and terms made by a covered electronic payments system between the date of enactment of this Act and such initial determination. Based upon such consideration, the Electronic Payment System Judges may adjust the fees established for the period beginning on January 1, 2011, and ending on December 31, 2012, to reflect the economic impact such changes had on the parties.

(b) SUBSEQUENT PROCEEDINGS.—After completion of the proceedings required under subsection (a), proceedings under section 3(c) to establish fees and terms for access to covered electronic payment systems shall be commenced in 2011, and every 3 years thereafter.

SEC. 7. GENERAL RULE FOR VOLUNTARILY NEGOTIATED ACCESS AGREEMENTS.

(a) IN GENERAL.—Any fees or terms described in subsection (b) shall remain in effect for such period of time as would otherwise apply to fees and terms established under this Act, except that the Electronic Payment System Judges shall adjust any such fees to reflect inflation during any additional period the fees remain in effect beyond that contemplated in the voluntarily negotiated access agreement.

(b) FEES AND TERMS.—The fees or terms described in this subsection are fees or terms for access to a covered electronic payment system under this Act that—

(1) are agreed upon as part of a voluntarily negotiated access agreement for a period shorter than would otherwise apply under a determination under this Act; and

(2) are adopted by the Electronic Payment System Judges as part of a determination under this Act.

By Mr. BAUCUS (for himself and Mr. CONRAD):

S. 1213. A bill to amend title XI of the Social Security Act to provide for the conduct of comparative effectiveness research and to amend the Internal Revenue Code of 1986 to establish a Patient-Centered Outcomes Research Trust Fund, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, last year, America spent $2.4 trillion on health care. That is 1/6 of our economy. Yet we ranked last among major industrialized nations in the Commonwealth Fund's National Scorecard on Health System Performance, which ranks the number of deaths that could be prevented before age 75 through effective health care.

Some analysts estimate that as much as 30 percent of our spending is for ineffective, redundant, or inappropriate care. That's care that does nothing to improve the health of Americans.

Our system also leaves nearly 50 million Americans without health coverage and 25 million more with inadequate coverage. Most bankruptcies and foreclosures in America are related to medical costs.

Our system needs reform.

Today, along with Senator CONRAD, the Chairman of the Budget Committee, I am proud to introduce a bill that would improve health care in America by helping doctors and patients to make better, more-informed health care decisions.

This legislation would increase the chances that Americans receive the right care. This bill would provide for research that can help physicians and patients know more about what works best in medicine, and what does not.

Some patients, receive medical treatments that work well. Some patients receive treatments that do not. In many cases, doctors simply don't have enough reliable evidence to decide which treatments are best for which patients.

Rapid innovation and advancements in medicine have led to an ever-changing array of new and sometimes expensive technologies. The age of personalized medicine and genetic engineering will provide even more choices for patients and their physicians. Indeed, both patients and physicians can face great difficulty in choosing among treatment options.

Patients and physicians need more credible information about how treatments for a specific condition compare to each other. Today, the vast majority of medical information shows how treatments work compared to placebos. Most medical information does not show how treatments work compared to each other.

For example, men with prostate cancer have a choice among 3 common treatments surgery, radiation, and chemotherapy. Each approach yields different outcomes in terms of survival, ability to return to work, and other measures of quality of life.

Comparative effectiveness research would compare each approach in a systematic way. That way, doctors and patients would have more information about how options work, and for whom. The bill that I introduce today would do just that.

This bill would facilitate comparisons across a broad spectrum of health care interventions and health care strategies that are used to prevent, treat, diagnose and manage health conditions. By evaluating and comparing what works best, patients and providers can make more informed decisions about care.

More specifically, this bill would create a nonprofit institute that would be responsible for setting national health care research priorities. The institute, called the Patient-Centered Outcomes Research Institute, would be a private

entity. It would be governed by a multi-stakeholder, public-private sector Board of Governors. It would not be an agency of the Federal Government.

Keeping the Institute a private, nonprofit entity would shelter it from potential political influence from both the executive and legislative branches of Government. The independence and expertise of the Institute would result in more credible and more useful research for Americans.

The Institute would set national priorities for comparative effectiveness research and facilitate studies that would help to answer the most pressing questions about what works, and what doesn't.

The Institute would have the authority to contract with experienced Federal agencies—such as the National Institutes of Health and the Agency for Health Care Research and Quality, or with private researchers—to carry out the actual research. The Institute would also be responsible for disseminating the findings of the research in ways that make sense to both patients and providers.

The Institute's work would not happen behind closed doors. The bill would provide opportunities for public input and scientific review of the integrity of the research being conducted. The Institute's meetings would be accessible to the public, and open forums would help to solicit and obtain input on the Institute's activities and agenda. Also, public comment periods would be made available to discuss research findings.

The Institute's work would benefit all Americans who receive health care. So both public and private payers would fund the Institute. After an initial investment from general revenues, the Institute would be funded by an all-payer system, drawing from both public and private sources.

Comparative effectiveness research would not be the ultimate decision maker. Instead, it would provide an additional tool to improve health quality. The Institute would be a health care resource, a scientific entity, a source of knowledge, and a provider of information.

According to the Institute of Medicine, this research would provide better evidence—objective information—so that doctors and patients could make better decisions.

If we are truly to reform our health care system, then we must get more evidence into the hands of the people making medical decisions. This research is not only about reducing health care costs. It is focused on addressing significant gaps in knowledge.

It is not just the academics and economists who agree. Patient advocates like the National Breast Cancer Coalition, provider groups like the American Medical Association, and consumer groups like AARP can see the benefits of this research quite clearly. They have all extended their support.

The American Recovery and Reinvestment Act made a significant investment towards this type of research. But that was just a first step. We must ensure that this research will be sustained in the years to come.

From cars to toasters, Americans are able to readily view and evaluate information about the quality and effectiveness of so many of the items that they buy. It seems only logical that they should have information on what works and what does not when it comes to their health, especially with one in every 6 of this country's dollars leing spent on health care.

It is time for Americans and their doctors to be wield the world's most advanced science, so that the most personal health care decisions, like so many of the other decisions we make, are made with access to the best available information.

I urge my colleagues to support this common-sense measure.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1213

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Patient-Centered Outcomes Research Act of 2009''.

SEC. 2. COMPARATIVE EFFECTIVENESS RESEARCH.

(a) IN GENERAL.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new part:

''PART D—COMPARATIVE EFFECTIVENESS RESEARCH

''COMPARATIVE EFFECTIVENESS RESEARCH

''SEC. 1181. (a) DEFINITIONS.—In this section:

''(1) BOARD.—The term 'Board' means the Board of Governors established under subsection (f).

''(2) COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH.—

''(A) IN GENERAL.—The term 'comparative clinical effectiveness research' means research evaluating and comparing the clinical effectiveness, risks, and benefits of 2 or more medical treatments, services, and items described in subparagraph (B).

''(B) MEDICAL TREATMENTS, SERVICES, AND ITEMS DESCRIBED.—The medical treatments, services, and items described in this subparagraph are health care interventions, protocols for treatment, care management, and delivery, procedures, medical devices, diagnostic tools, pharmaceuticals (including drugs and biologicals), and any other strategies or items being used in the treatment, management, and diagnosis of, or prevention of illness or injury in, patients.

''(3) COMPARATIVE EFFECTIVENESS RESEARCH.—The term 'comparative effectiveness research' means research evaluating and comparing the implications and outcomes of 2 or more health care strategies to address a particular medical condition for specific patient populations.

''(4) CONFLICTS OF INTEREST.—The term 'conflicts of interest' means associations, including financial and personal, that may be reasonably assumed to have the potential to bias an individual's decisions in matters related to the Institute or the conduct of activities under this section.

''(5) INSTITUTE.—The term 'Institute' means the 'Patient-Centered Outcomes Research Institute' established under subsection (b)(1).

''(b) PATIENT-CENTERED OUTCOMES RESEARCH INSTITUTE.—

''(1) ESTABLISHMENT.—There is authorized to be established a nonprofit corporation, to be known as the ''Patient-Centered Outcomes Research Institute'' which is neither an agency nor establishment of the United States Government.

''(2) APPLICATION OF PROVISIONS.—The Institute shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Nonprofit Corporation Act.

''(3) FUNDING OF COMPARATIVE EFFECTIVENESS RESEARCH.—For fiscal year 2010 and each subsequent fiscal year, amounts in the Patient-Centered Outcomes Research Trust Fund (referred to in this section as the 'PCORTF') under section 9511 of the Internal Revenue Code of 1986 shall be available, without further appropriation, to the Institute to carry out this section.

''(c) PURPOSE.—The purpose of the Institute is to assist patients, clinicians, purchasers, and policy makers in making informed health decisions by advancing the quality and relevance of evidence concerning the manner in which diseases, disorders, and other health conditions can effectively and appropriately be prevented, diagnosed, treated, monitored, and managed through research and evidence synthesis that considers variations in patient subpopulations, and the dissemination of research findings with respect to the relative clinical outcomes, clinical effectiveness, and appropriateness of the medical treatments, services, and items described in subsection (a)(2)(B).

''(d) DUTIES.—

''(1) IDENTIFYING RESEARCH PRIORITIES AND ESTABLISHING RESEARCH PROJECT AGENDA.—

''(A) IDENTIFYING RESEARCH PRIORITIES.—The Institute shall identify national priorities for comparative clinical effectiveness research, taking into account factors, including—

''(i) disease incidence, prevalence, and burden in the United States;

''(ii) evidence gaps in terms of clinical outcomes;

''(iii) practice variations, including variations in delivery and outcomes by geography, treatment site, provider type, and patient subgroup;

''(iv) the potential for new evidence concerning certain categories of health care services or treatments to improve patient health and well-being, and the quality of care;

''(v) the effect or potential for an effect on health expenditures associated with a health condition or the use of a particular medical treatment, service, or item;

''(vi) the effect or potential for an effect on patient needs, outcomes, and preferences, including quality of life; and

''(vii) the relevance to assisting patients and clinicians in making informed health decisions.

''(B) ESTABLISHING RESEARCH PROJECT AGENDA.—

''(i) IN GENERAL.—The Institute shall establish and update a research project agenda for comparative clinical effectiveness research to address the priorities identified under subparagraph (A), taking into consideration the types of such research that might address each priority and the relative value (determined based on the cost of conducting such research compared to the potential usefulness of the information produced by such research) associated with the different types of research, and such other factors as the Institute determines appropriate.

''(ii) CONSIDERATION OF NEED TO CONDUCT A SYSTEMATIC REVIEW.—In establishing and updating the research project agenda under clause (i), the Institute shall consider the need to conduct a systematic review of existing research before providing for the conduct of new research under paragraph (2)(A).

''(2) CARRYING OUT RESEARCH PROJECT AGENDA.—

''(A) COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH.—In carrying out the research project agenda established under paragraph (1)(B), the Institute shall provide for the conduct of appropriate research and the synthesis of evidence, in accordance with the methodological standards adopted under paragraph (10), using methods, including the following:

''(i) Systematic reviews and assessments of existing research and evidence.

''(ii) Primary research, such as randomized clinical trials, molecularly informed trials, and observational studies.

''(iii) Any other methodologies recommended by the methodology committee established under paragraph (7) that are adopted by the Board under paragraph (10).

''(B) CONTRACTS FOR THE MANAGEMENT AND CONDUCT OF RESEARCH.—

''(i) IN GENERAL.—The Institute may enter into contracts for the management and conduct of research in accordance with the research project agenda established under paragraph (1)(B) with the following:

''(I) Agencies and instrumentalities of the Federal Government that have experience in conducting comparative clinical effectiveness research, such as the Agency for Healthcare Research and Quality, to the extent that such contracts are authorized under the governing statutes of such agencies and instrumentalities.

''(II) Appropriate private sector research or study-conducting entities that have demonstrated the experience and capacity to achieve the goals of comparative effectiveness research.

''(ii) CONDITIONS FOR CONTRACTS.—A contract entered into under this subparagraph shall require that the agency, instrumentality, or other entity—

''(I) abide by the transparency and conflicts of interest requirements that apply to the Institute with respect to the research managed or conducted under such contract;

''(II) comply with the methodological standards adopted under paragraph (10) with respect to such research;

''(III) take into consideration public comments on the study design that are transmitted by the Institute to the agency, instrumentality, or other entity under subsection (i)(1)(B) during the finalization of the study design and transmit responses to such comments to the Institute, which will publish such comments, responses, and finalized study design in accordance with subsection (i)(3)(A)(iii) prior to the conduct of such research; and

''(IV) in the case where the agency, instrumentality, or other entity is managing or conducting a comparative effectiveness research study for a rare disease, consult with the expert advisory panel for rare disease appointed under paragraph (5)(A)(iii) with respect to such research study.

''(iii) COVERAGE OF COPAYMENTS OR COINSURANCE.—A contract entered into under this subparagraph may allow for the coverage of copayments or co-insurance, or allow for other appropriate measures, to the extent that such coverage or other measures are necessary to preserve the validity of a research project, such as in the case where the research project must be blinded.

''(C) REVIEW AND UPDATE OF EVIDENCE.—The Institute shall review and update evidence on a periodic basis, in order to take into account new research, evolving evidence, advances in medical technology, and changes in the standard of care as they become available, as appropriate.

''(D) TAKING INTO ACCOUNT POTENTIAL DIFFERENCES.—Research shall—

''(i) be designed, as appropriate, to take into account the potential for differences in the effectiveness of health care treatments, services, and items as used with various subpopulations, such as racial and ethnic minorities, women, age, and groups of individuals with different comorbidities, genetic and molecular sub-types, or quality of life preferences; and

''(ii) include members of such subpopulations as subjects in the research as feasible and appropriate.

''(E) DIFFERENCES IN TREATMENT MODALITIES.—Research shall be designed, as appropriate, to take into account different characteristics of treatment modalities that may affect research outcomes, such as the phase of the treatment modality in the innovation cycle and the impact of the skill of the operator of the treatment modality.

''(3) STUDY AND REPORT ON FEASIBILITY OF CONDUCTING RESEARCH IN-HOUSE.—

''(A) STUDY.—The Institute shall conduct a study on the feasibility of conducting research in-house.

''(B) REPORT.—Not later than 5 years after the date of enactment of this section, the Institute shall submit a report to Congress containing the results of the study conducted under subparagraph (A).

''(4) DATA COLLECTION.—

''(A) IN GENERAL.—The Secretary shall, with appropriate safeguards for privacy, make available to the Institute such data collected by the Centers for Medicare & Medicaid Services under the programs under titles XVIII, XIX, and XXI as the Institute may require to carry out this section. The Institute may also request and, if such request is granted, obtain data from Federal, State, or private entities, including data from clinical databases and registries.

''(B) USE OF DATA.—The Institute shall only use data provided to the Institute under subparagraph (A) in accordance with laws and regulations governing the release and use of such data, including applicable confidentiality and privacy standards.

''(5) APPOINTING EXPERT ADVISORY PANELS.—

''(A) APPOINTMENT.—

''(i) IN GENERAL.—The Institute shall, as appropriate, appoint expert advisory panels to assist in identifying research priorities and establishing the research project agenda under paragraph (1). Panels shall advise the Institute in matters such as identifying gaps in and updating medical evidence in order to ensure that the information produced from such research is clinically relevant to decisions made by clinicians and patients at the point of care.

''(ii) EXPERT ADVISORY PANELS FOR PRIMARY RESEARCH.—The Institute shall appoint expert advisory panels in carrying out the research project agenda under paragraph (2)(A)(ii). Such expert advisory panels shall, upon request, advise the Institute and the agency, instrumentality, or entity conducting the research on the research question involved and the research design or protocol, including the appropriate comparator technologies, important patient subgroups, and other parameters of the research, as necessary. Upon the request of such agency, instrumentality, or entity, such panels shall be available as a resource for technical questions that may arise during the conduct of such research.

''(iii) EXPERT ADVISORY PANEL FOR RARE DISEASE.—In the case of a comparative effectiveness research study for rare disease, the Institute shall appoint an expert advisory panel for purposes of assisting in the design of such research study and determining the relative value and feasibility of conducting such research study.

''(B) COMPOSITION.—

''(i) IN GENERAL.—An expert advisory panel appointed under subparagraph (A) shall include individuals who have experience in the relevant topic, project, or category for which the panel is established, including—

''(I) practicing and research clinicians (including relevant specialists and subspecialists), patients, and representatives of patients; and

''(II) experts in scientific and health services research, health services delivery, and evidence-based medicine.

''(ii) INCLUSION OF REPRESENTATIVES OF MANUFACTURERS OF MEDICAL TECHNOLOGY.—An expert advisory panel appointed under subparagraph (A) may include a representative of each manufacturer of each medical technology that is included under the relevant topic, project, or category for which the panel is established.

''(6) SUPPORTING PATIENT AND CONSUMER REPRESENTATIVES.—The Institute shall provide support and resources to help patient and consumer representatives on the Board and expert advisory panels appointed by the Institute under paragraph (5) to effectively participate in technical discussions regarding complex research topics. Such support shall include initial and continuing education to facilitate effective engagement in activities undertaken by the Institute and may include regular and ongoing opportunities for patient and consumer representatives to interact with each other and to exchange information and support regarding their involvement in the Institute's activities. The Institute shall provide per diem and other appropriate compensation to patient and consumer representatives for their time spent participating in the activities of the Institute under this paragraph.

''(7) ESTABLISHING METHODOLOGY COMMITTEE.—

''(A) IN GENERAL.—The Institute shall establish a standing methodology committee to carry out the functions described in subparagraph (C).

''(B) APPOINTMENT AND COMPOSITION.—The methodology committee established under subparagraph (A) shall be composed of not more than 17 members appointed by the Comptroller General of the United States. Members appointed to the methodology committee shall be experts in their scientific field, such as health services research, clinical research, comparative effectiveness research, biostatistics, genomics, and research methodologies. Stakeholders with such expertise may be appointed to the methodology committee.

''(C) FUNCTIONS.—Subject to subparagraph (D), the methodology committee shall work to develop and improve the science and methods of comparative effectiveness research by undertaking, directly or through subcontract, the following activities:

''(i) Not later than 2 years after the date on which the members of the methodology committee are appointed under subparagraph (B), developing and periodically updating the following:

''(I) Establish and maintain methodological standards for comparative clinical effectiveness research on major categories of interventions to prevent, diagnose, or treat a clinical condition or improve the delivery of care. Such methodological standards shall provide specific criteria for internal validity, generalizability, feasibility, and timeliness of such research and for clinical outcomes measures, risk adjustment, and other relevant aspects of research and assessment

with respect to the design of such research. Any methodological standards developed and updated under this subclause shall be scientifically based and include methods by which new information, data, or advances in technology are considered and incorporated into ongoing research projects by the Institute, as appropriate. The process for developing and updating such standards shall include input from relevant experts, stakeholders, and decision makers, and shall provide opportunities for public comment. Such standards shall also include methods by which patient subpopulations can be accounted for and evaluated in different types of research. As appropriate, such standards shall build on existing work on methodological standards for defined categories of health interventions and for each of the major categories of comparative effectiveness research methods (determined as of the date of enactment of the Patient-Centered Outcomes Research Act of 2009).

''(II) A translation table that is designed to provide guidance and act as a reference for the Board to determine research methods that are most likely to address each specific comparative clinical effectiveness research question.

''(ii) Not later than 3 years after such date, examining the following:

''(I) Methods by which various aspects of the health care delivery system (such as benefit design and performance, and health services organization, management, information communication, and delivery) could be assessed and compared for their relative effectiveness, benefits, risks, advantages, and disadvantages in a scientifically valid and standardized way.

''(II) Methods by which efficiency and value (including the full range of harms and benefits, such as quality of life) could be assessed in a scientifically valid and standardized way.

''(D) CONSULTATION AND CONDUCT OF EXAMINATIONS.—

''(i) IN GENERAL.—Subject to clause (iii), in undertaking the activities described in subparagraph (C), the methodology committee shall—

''(I) consult or contract with 1 or more of the entities described in clause (ii); and

''(II) consult with stakeholders and other entities knowledgeable in relevant fields, as appropriate.

''(ii) ENTITIES DESCRIBED.—The following entities are described in this clause:

''(I) The Institute of Medicine of the National Academies.

''(II) The Agency for Healthcare Research and Quality.

''(III) The National Institutes of Health.

''(IV) Academic, non-profit, or other private entities with relevant expertise.

''(iii) CONDUCT OF EXAMINATIONS.—The methodology committee shall contract with the Institute of Medicine of the National Academies for the conduct of the examinations described in subclauses (I) and (II) of subparagraph (C)(ii).

''(E) REPORTS.—The methodology committee shall submit reports to the Board on the committee's performance of the functions described in subparagraph (C). Reports submitted under the preceding sentence with respect to the functions described in clause (i) of such subparagraph shall contain recommendations—

''(i) for the Institute to adopt methodological standards developed and updated by the methodology committee under such subparagraph; and

''(ii) for such other action as the methodology committee determines is necessary to comply with such methodological standards.

''(8) PROVIDING FOR A PEER-REVIEW PROCESS FOR PRIMARY RESEARCH.—

''(A) IN GENERAL.—The Institute shall ensure that there is a process for peer review of the research conducted under paragraph (2)(A)(ii). Under such process—

''(i) evidence from research conducted under such paragraph shall be reviewed to assess scientific integrity and adherence to methodological standards adopted under paragraph (10); and

''(ii) a list of the names of individuals contributing to any peer-review process during the preceding year or years shall be made public and included in annual reports in accordance with paragraph (12)(D).

''(B) COMPOSITION.—Such peer-review process shall be designed in a manner so as to avoid bias and conflicts of interest on the part of the reviewers and shall be composed of experts in the scientific field relevant to the research under review.

''(C) USE OF EXISTING PROCESSES.—

''(i) PROCESSES OF ANOTHER ENTITY.—In the case where the Institute enters into a contract or other agreement with another entity for the conduct or management of research under this section, the Institute may utilize the peer-review process of such entity if such process meets the requirements under subparagraphs (A) and (B).

''(ii) PROCESSES OF APPROPRIATE MEDICAL JOURNALS.—The Institute may utilize the peer-review process of appropriate medical journals if such process meets the requirements under subparagraphs (A) and (B).

''(9) DISSEMINATION OF RESEARCH FINDINGS.—

''(A) IN GENERAL.—The Institute shall disseminate research findings to clinicians, patients, and the general public in accordance with the dissemination protocols and strategies adopted under paragraph (10). Research findings disseminated—

''(i) shall convey findings of research so that they are comprehensible and useful to patients and providers in making health care decisions;

''(ii) shall discuss findings and other considerations specific to certain subpopulations, risk factors, and comorbidities, as appropriate;

''(iii) shall include considerations such as limitations of research and what further research may be needed, as appropriate;

''(iv) shall not include practice guidelines, coverage recommendations, or policy recommendations; and

''(v) shall not include any data the dissemination of which would violate the privacy of research participants or violate any confidentiality agreements made with respect to the use of data under this section.

''(B) DISSEMINATION PROTOCOLS AND STRATEGIES.—The Institute shall develop protocols and strategies for the appropriate dissemination of research findings in order to ensure effective communication of such findings and the use and incorporation of such findings into relevant activities for the purpose of informing higher quality and more effective and timely decisions regarding medical treatments, services, and items. In developing and adopting such protocols and strategies, the Institute shall consult with stakeholders, including practicing clinicians and patients, concerning the types of dissemination that will be most useful to the end users of the information and may provide for the utilization of multiple formats for conveying findings to different audiences.

''(C) DEFINITION OF RESEARCH FINDINGS.—In this paragraph, the term 'research findings' means the results of a study or assessment.

''(10) ADOPTION.—Subject to subsection (i)(1)(A)(i), the Institute shall adopt the national priorities identified under paragraph (1)(A), the research project agenda established under paragraph (1)(B), the methodological standards developed and updated by the methodology committee under paragraph (7)(C)(i), any peer-review process provided under paragraph (8), and dissemination protocols and strategies developed under paragraph (9)(B) by majority vote. In the case where the Institute does not adopt such national priorities, research project agenda, methodological standards, peer-review process, or dissemination protocols and strategies in accordance with the preceding sentence, the national priorities, research project agenda, methodological standards, peer-review process, or dissemination protocols and strategies shall be referred to the appropriate staff or entity within the Institute (or, in the case of the methodological standards, the methodology committee) for further review.

''(11) COORDINATION OF RESEARCH AND RESOURCES AND BUILDING CAPACITY FOR RESEARCH.—

''(A) COORDINATION OF RESEARCH AND RESOURCES.—The Institute shall coordinate research conducted, commissioned, or otherwise funded under this section with comparative clinical effectiveness and other relevant research and related efforts conducted by public and private agencies and organizations in order to ensure the most efficient use of the Institute's resources and that research is not duplicated unnecessarily.

''(B) BUILDING CAPACITY FOR RESEARCH.—The Institute may build capacity for comparative clinical effectiveness research and methodologies, including research training and development of data resources (such as clinical registries), through appropriate activities, including using up to 20 percent of the amounts appropriated or credited to the PCORTF under section 9511(b) of the Internal Revenue Code of 1986 with respect to a fiscal year to fund extramural efforts of organizations such as the Cochrane Collaboration (or a successor organization) and other organizations that develop and maintain a data network to collect, link, and analyze data on outcomes and effectiveness from multiple sources, including electronic health records.

''(C) INCLUSION IN ANNUAL REPORTS.—The Institute shall report on any coordination and capacity building conducted under this paragraph in annual reports in accordance with paragraph (12)(E).

''(12) ANNUAL REPORTS.—The Institute shall submit an annual report to Congress and the President, and shall make the annual report available to the public. Such report shall contain—

''(A) a description of the activities conducted under this section during the preceding year, including the use of amounts appropriated or credited to the PCORTF under section 9511(b) of the Internal Revenue Code of 1986 to carry out this section, research projects completed and underway, and a summary of the findings of such projects;

''(B) the research project agenda and budget of the Institute for the following year;

''(C) a description of research priorities identified under paragraph (1)(A), dissemination protocols and strategies developed by the Institute under paragraph (9)(B), and methodological standards developed and updated by the methodology committee under paragraph (7)(C)(i) that are adopted under paragraph (10) during the preceding year;

''(D) the names of individuals contributing to any peer-review process provided under paragraph (8) during the preceding year or years, in a manner such that those individuals cannot be identified with a particular research project; and

''(E) a description of efforts by the Institute under paragraph (11) to—

''(i) coordinate the research conducted, commissioned, or otherwise funded under

this section and the resources of the Institute with research and related efforts conducted by other private and public entities; and

''(ii) build capacity for comparative clinical effectiveness research and other relevant research and related efforts through appropriate activities.

''(F) any other relevant information (including information on the membership of the Board, expert advisory panels appointed under paragraph (5), the methodology committee established under paragraph (7), and the executive staff of the Institute, any conflicts of interest with respect to the members of such Board, expert advisory panels, and methodology committee, or with respect to any individuals selected for employment as executive staff of the Institute, and any bylaws adopted by the Board during the preceding year).

''(e) ADMINISTRATION.—

''(1) IN GENERAL.—Subject to paragraph (2), the Board shall carry out the duties of the Institute.

''(2) NONDELEGABLE DUTIES.—The activities described in subsections (b)(3)(D), (d)(1), and (d)(10) are nondelegable.

''(f) BOARD OF GOVERNORS.—

''(1) IN GENERAL.—The Institute shall have a Board of Governors, which shall consist of the following members:

''(A) The Secretary of Health and Human Services (or the Secretary's designee).

''(B) The Director of the Agency for Healthcare Research and Quality (or the Director's designee).

''(C) The Director of the National Institutes of Health (or the Director's designee).

''(D) 18 members appointed by the Comptroller General of the United States not later than 6 months after the date of enactment of this section, as follows:

''(i) 3 members representing patients and health care consumers.

''(ii) 3 members representing practicing physicians, including surgeons.

''(iii) 3 members representing agencies that administer public programs, as follows:

''(I) 1 member representing the Centers for Medicare & Medicaid Services who has experience in administering the program under title XVIII.

''(II) 1 member representing agencies that administer State health programs (who may represent the Centers for Medicare & Medicaid Services and have experience in administering the program under title XIX or the program under title XXI or be a governor of a State).

''(III) 1 member representing agencies that administer other Federal health programs (such as a health program of the Department of Defense under chapter 55 of title 10, United States Code, the Federal employees health benefits program under chapter 89 of title 5 of such Code, a health program of the Department of Veterans Affairs under chapter 17 of title 38 of such Code, or a medical care program of the Indian Health Service or of a tribal organization).

''(iv) 3 members representing private payers, of whom at least 1 member shall represent health insurance issuers and at least 1 member shall represent employers who self-insure employee benefits.

''(v) 3 members representing pharmaceutical, device, and diagnostic manufacturers or developers.

''(vi) 1 member representing nonprofit organizations involved in health services research.

''(vii) 1 member representing organizations that focus on quality measurement and improvement or decision support.

''(viii) 1 member representing independent health services researchers.

''(2) QUALIFICATIONS.—

''(A) DIVERSE REPRESENTATION OF PERSPECTIVES.—The Board shall represent a broad range of perspectives and collectively have scientific expertise in clinical health sciences research, including epidemiology, decisions sciences, health economics, and statistics.

''(B) CONFLICTS OF INTEREST.—

''(i) IN GENERAL.—In appointing members of the Board under paragraph (1)(D), the Comptroller General of the United States shall take into consideration any conflicts of interest of potential appointees. Any conflicts of interest of members appointed to the Board under paragraph (1) shall be disclosed in accordance with subsection (i)(4)(B).

''(ii) RECUSAL.—A member of the Board shall be recused from participating with respect to a particular research project or other matter considered by the Board in carrying out its research project agenda under subsection (d)(2) in the case where the member (or an immediate family member of such member) has a financial or personal interest directly related to the research project or the matter that could affect or be affected by such participation.

''(3) TERMS.—

''(A) IN GENERAL.—A member of the Board appointed under paragraph (1)(D) shall be appointed for a term of 6 years, except with respect to the members first appointed under such paragraph—

''(i) 6 shall be appointed for a term of 6 years;

''(ii) 6 shall be appointed for a term of 4 years; and

''(iii) 6 shall be appointed for a term of 2 years.

''(B) LIMITATION.—No individual shall be appointed to the Board under paragraph (1)(D) for more than 2 terms.

''(C) EXPIRATION OF TERM.—Any member of the Board whose term has expired may serve until such member's successor has taken office, or until the end of the calendar year in which such member's term has expired, whichever is earlier.

''(D) VACANCIES.—

''(i) IN GENERAL.—Any member appointed to fill a vacancy prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.

''(ii) VACANCIES NOT TO AFFECT POWER OF BOARD.—A vacancy on the Board shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

''(4) CHAIRPERSON AND VICE-CHAIRPERSON.—

''(A) IN GENERAL.—The Comptroller General of the United States shall designate a Chairperson and Vice-Chairperson of the Board from among the members of the Board appointed under paragraph (1)(D).

''(B) TERM.—The members so designated shall serve as Chairperson and Vice-Chairperson of the Board for a period of 3 years.

''(5) COMPENSATION.—

''(A) IN GENERAL.—A member of the Board shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(B) TRAVEL EXPENSES.—While away from home or regular place of business in the performance of duties for the Board, each member of the Board may receive reasonable travel, subsistence, and other necessary expenses.

''(6) DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.—The Board may—

''(A) employ and fix the compensation of an executive director and such other personnel as may be necessary to carry out the duties of the Institute;

''(B) seek such assistance and support as may be required in the performance of the duties of the Institute from appropriate departments and agencies of the Federal Government;

''(C) enter into contracts or make other arrangements and make such payments as may be necessary for performance of the duties of the Institute;

''(D) provide travel, subsistence, and per diem compensation for individuals performing the duties of the Institute, including members of any expert advisory panel appointed under subsection (d)(5), members of the methodology committee established under subsection (d)(7), and individuals selected to contribute to any peer-review process under subsection (d)(8); and

''(E) prescribe such rules, regulations, and bylaws as the Board determines necessary with respect to the internal organization and operation of the Institute.

''(7) MEETINGS AND HEARINGS.—The Board shall meet and hold hearings at the call of the Chairperson or a majority of its members. In the case where the Board is meeting on matters not related to personnel, Board meetings shall be open to the public and advertised through public notice at least 7 days prior to the meeting.

''(8) QUORUM.—A majority of the members of the Board shall constitute a quorum for purposes of conducting the duties of the Institute, but a lesser number of members may meet and hold hearings.

''(g) FINANCIAL OVERSIGHT.—

''(1) CONTRACT FOR AUDIT.—The Institute shall provide for the conduct of financial audits of the Institute on an annual basis by a private entity with expertise in conducting financial audits.

''(2) REVIEW OF AUDIT AND REPORT TO CONGRESS.—The Comptroller General of the United States shall—

''(A) review the results of the audits conducted under paragraph (1); and

''(B) submit a report to Congress containing the results of such audits and review.

''(h) GOVERNMENTAL OVERSIGHT.—

''(1) REVIEW AND REPORTS.—

''(A) IN GENERAL.—The Comptroller General of the United States shall review the following:

''(i) Processes established by the Institute, including those with respect to the identification of research priorities under subsection (d)(1)(A) and the conduct of research projects under this section. Such review shall determine whether information produced by such research projects—

''(I) is objective and credible;

''(II) is produced in a manner consistent with the requirements under this section; and

''(III) is developed through a transparent process.

''(ii) The overall effect of the Institute and the effectiveness of activities conducted under this section, including an assessment of—

''(I) the utilization of the findings of research conducted under this section by health care decision makers; and

''(II) the effect of the Institute and such activities on innovation and on the health economy of the United States.

''(B) REPORTS.—Not later than 5 years after the date of enactment of this section, and not less frequently than every 5 years thereafter, the Comptroller General of the United States shall submit a report to Congress containing the results of the review conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

''(2) FUNDING ASSESSMENT.—

''(A) IN GENERAL.—The Comptroller General of the United States shall assess the adequacy and use of funding for the Institute and activities conducted under this section under the PCORTF under section 9511 of the Internal Revenue Code of 1986. Such assessment shall include a determination as to whether, based on the utilization of findings by public and private payers, each of the following are appropriate sources of funding for the Institute, including a determination of whether such sources of funding should be continued or adjusted, or whether other sources of funding not described in clauses (i) through (iii) would be appropriate:

''(i) The transfer of funds from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund under section 1841 to the PCORTF under section 1183.

''(ii) The amounts appropriated under subparagraphs (A), (B), (C), (D)(ii), and (E)(ii) of subsection (b)(1) of such section 9511.

''(iii) Private sector contributions under subparagraphs (D)(i) and (E)(i) of such subsection (b)(1).

''(B) REPORT.—Not later than 8 years after the date of enactment of this section, the Comptroller General of the United States shall submit a report to Congress containing the results of the assessment conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

''(i) ENSURING TRANSPARENCY, CREDIBILITY, AND ACCESS.—The Institute shall establish procedures to ensure that the following requirements for ensuring transparency, credibility, and access are met:

''(1) PUBLIC COMMENT PERIODS.—

''(A) IN GENERAL.—The Institute shall provide for a public comment period of not less than 45 and not more than 60 days at the following times:

''(i) Prior to the adoption of the national priorities identified under subsection (d)(1)(A), the research project agenda established under subsection (d)(1)(B), the methodological standards developed and updated by the methodology committee under subsection (d)(7)(C)(i), the peer-review process generally provided under subsection (d)(8), and dissemination protocols and strategies developed by the Institute under subsection (d)(9)(B) in accordance with subsection (d)(10).

''(ii) Prior to the finalization of individual study designs.

''(iii) After the release of draft findings with respect to a systematic review and assessment of existing research and evidence under subsection (d)(2)(A)(i).

''(B) TRANSMISSION OF PUBLIC COMMENTS ON STUDY DESIGN.—The Institute shall transmit public comments submitted during the public comment period described in subparagraph (A)(ii) to the entity conducting research with respect to which the individual study design is being finalized.

''(2) ADDITIONAL FORUMS.—The Institute shall, in addition to the public comment periods described in paragraph (1)(A), support forums to increase public awareness and obtain and incorporate public input and feedback through media (such as an Internet website) on the following:

''(A) The identification of research priorities, including research topics, and the establishment of the research project agenda under subparagraphs (A) and (B), respectively, of subsection (d)(1).

''(B) Research findings.

''(C) Any other duties, activities, or processes the Institute determines appropriate.

''(3) PUBLIC AVAILABILITY.—The Institute shall make available to the public and disclose through the official public Internet website of the Institute, and through other forums and media the Institute determines appropriate, the following:

''(A) The process and methods for the conduct of research under this section, including—

''(i) the identity of the entity conducting such research;

''(ii) any links the entity has to industry (including such links that are not directly tied to the particular research being conducted under this section);

''(iii) draft study designs (including research questions and the finalized study design, together with public comments on such study design and responses to such comments);

''(iv) research protocols (including measures taken, methods of research, methods of analysis, research results, and such other information as the Institute determines appropriate) with respect to each medical treatment, service, and item described in subsection (a)(2)(B);

''(v) any key decisions made by the Institute and any appropriate committees of the Institute;

''(vi) the identity of investigators conducting such research and any conflicts of interest of such investigators; and

''(vii) any progress reports the Institute determines appropriate.

''(B) Notice of each of the public comment periods under paragraph (1)(A), including deadlines for public comments for such periods.

''(C) Public comments submitted during each of the public comment periods under paragraph (1)(A), including such public comments submitted on draft findings under clause (iii) of such paragraph.

''(D) Bylaws, processes, and proceedings of the Institute, to the extent practicable and as the Institute determines appropriate.

''(E) Not later than 90 days after receipt by the Institute of a relevant report or research findings, appropriate information contained in such report or findings.

''(4) CONFLICTS OF INTEREST.—The Institute shall—

''(A) in appointing members to an expert advisory panel under subsection (d)(5) and the methodology committee under subsection (d)(7), and in selecting individuals to contribute to any peer-review process under subsection (d)(8) and for employment as executive staff of the Institute, take into consideration any conflicts of interest of potential appointees, participants, and staff; and

''(B) include a description of any such conflicts of interest and conflicts of interest of Board members in the annual report under subsection (d)(12), except that, in the case of individuals contributing to any such peer review process, such description shall be in a manner such that those individuals cannot be identified with a particular research project.

''(j) RULES.—

''(1) GIFTS.—The Institute, or the Board and staff of the Institute acting on behalf of the Institute, may not accept gifts, bequeaths, or donations of services or property.

''(2) ESTABLISHMENT AND PROHIBITION ON ACCEPTING OUTSIDE FUNDING OR CONTRIBUTIONS.—The Institute may not—

''(A) establish a corporation other than as provided under this section; or

''(B) accept any funds or contributions other than as provided under this part.

''(k) RULES OF CONSTRUCTION.—

''(1) COVERAGE.—Nothing in this section shall be construed—

''(A) to permit the Institute to mandate coverage, reimbursement, or other policies for any public or private payer; or

''(B) as preventing the Secretary from covering the routine costs of clinical care received by an individual entitled to, or enrolled for, benefits under title XVIII, XIX, or XXI in the case where such individual is participating in a clinical trial and such costs would otherwise be covered under such title with respect to the beneficiary.

''(2) REPORTS AND FINDINGS.—None of the reports submitted under this section or research findings disseminated by the Institute shall be construed as mandates, guidelines, or recommendations for payment, coverage, or treatment.

''LIMITATIONS ON USE OF COMPARATIVE EFFECTIVENESS RESEARCH BY THE SECRETARY

''SEC. 1182. The Secretary may only use evidence and findings from comparative effectiveness research conducted under section 1181 to make a determination regarding coverage under title XVIII if such use is through an iterative and transparent process which meets the following requirements:

''(1) Stakeholders and other individuals have the opportunity to provide informed and relevant information with respect to the determination.

''(2) Stakeholders and other individuals have the opportunity to review draft proposals of the determination and submit public comments with respect to such draft proposals.

''(3) In making the determination, the Secretary considers—

''(A) all other relevant evidence, studies, and research in addition to such comparative effectiveness research; and

''(B) evidence and research that demonstrates or suggests a benefit of coverage with respect to a specific subpopulation of individuals, even if the evidence and findings from the comparative effectiveness research demonstrates or suggests that, on average, with respect to the general population the benefits of coverage do not exceed the harm.

''TRUST FUND TRANSFERS TO PATIENT-CENTERED OUTCOMES RESEARCH TRUST FUND

''SEC. 1183. (a) IN GENERAL.—The Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund under section 1841, in proportion (as estimated by the Secretary) to the total expenditures during such fiscal year that are made under title XVIII from the respective trust fund, to the Patient-Centered Outcomes Research Trust Fund (referred to in this section as the 'PCORTF') under section 9511 of the Internal Revenue Code of 1986, the following:

''(1) For fiscal year 2013, an amount equal to $1 multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of title XVIII during such fiscal year.

''(2) For each of fiscal years 2014, 2015, 2016, 2017, 2018, and 2019, an amount equal to $2 multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of title XVIII during such fiscal year.

''(b) ADJUSTMENTS FOR INCREASES IN HEALTH CARE SPENDING.—In the case of any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a)(2) for such fiscal year shall be equal to the sum of such dollar amount for the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

''(1) such dollar amount for the previous fiscal year, multiplied by

''(2) the percentage increase in the projected per capita amount of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary before the beginning of the fiscal year.''.

(b) COORDINATION WITH PROVIDER EDUCATION AND TECHNICAL ASSISTANCE.—Section 1889(a) of the Social Security Act (42 U.S.C. 1395zz(a)) is amended by inserting ''and to enhance the understanding of and utilization by providers of services and suppliers of research findings disseminated by the Patient-Centered Outcomes Research Institute established under section 1181'' before the period at the end.

(c) PATIENT-CENTERED OUTCOMES RESEARCH TRUST FUND; FINANCING FOR TRUST FUND.—

(1) ESTABLISHMENT OF TRUST FUND.—

(A) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding at the end the following new section:

''SEC. 9511. PATIENT-CENTERED OUTCOMES RESEARCH TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Patient-Centered Outcomes Research Trust Fund' (hereafter in this section referred to as the 'PCORTF'), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section and section 9602(b).

''(b) TRANSFERS TO FUND.—

''(1) APPROPRIATION.—There are hereby appropriated to the Trust Fund the following:

''(A) For fiscal year 2010, $10,000,000.

''(B) For fiscal year 2011, $50,000,000.

''(C) For fiscal year 2012, $150,000,000.

''(D) For fiscal year 2013—

''(i) an amount equivalent to the net revenues received in the Treasury from the fees imposed under subchapter B of chapter 34 (relating to fees on health insurance and self-insured plans) for such fiscal year; and

''(ii) $150,000,000.

''(E) For each of fiscal years 2014, 2015, 2016, 2017, 2018, and 2019—

''(i) an amount equivalent to the net revenues received in the Treasury from the fees imposed under subchapter B of chapter 34 (relating to fees on health insurance and self-insured plans) for such fiscal year; and

''(ii) $150,000,000.

The amounts appropriated under subparagraphs (A), (B), (C), (D)(ii), and (E)(ii) shall be transferred from the general fund of the Treasury, from funds not otherwise appropriated.

''(2) TRUST FUND TRANSFERS.—In addition to the amounts appropriated under paragraph (1), there shall be credited to the PCORTF the amounts transferred under section 1183 of the Social Security Act.

''(3) AMERICAN RECOVERY AND REINVESTMENT FUNDS.—In addition to the amounts appropriated under paragraph (1) and the amounts credited under paragraph (2), of amounts appropriated for comparative effectiveness research to be allocated at the discretion of the Secretary of Health and Human Services under the heading Agency for Healthcare Research and Quality under the heading Department of Health and Human Services under title VIII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), $10,000,000 shall be transferred to the Trust Fund.

''(4) LIMITATION ON TRANSFERS TO PCORTF.—No amount may be appropriated or transferred to the PCORTF on and after the date of any expenditure from the PCORTF which is not an expenditure permitted under this section. The determination of whether an expenditure is so permitted shall be made without regard to—

''(A) any provision of law which is not contained or referenced in this chapter or in a revenue Act, and

''(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

''(c) TRUSTEE.—The Secretary of Health and Human Services shall be a trustee of the PCORTF.

''(d) EXPENDITURES FROM FUND.—Amounts in the PCORTF are available, without further appropriation, to the Patient-Centered Outcomes Research Institute established by section 2(a) of the Patient-Centered Outcomes Research Act of 2009 for carrying out part D of title XI of the Social Security Act (as in effect on the date of enactment of the Patient-Centered Outcomes Research Act of 2009).

''(e) NET REVENUES.—For purposes of this section, the term 'net revenues' means the amount estimated by the Secretary of the Treasury based on the excess of—

''(1) the fees received in the Treasury under subchapter B of chapter 34, over

''(2) the decrease in the tax imposed by chapter 1 resulting from the fees imposed by such subchapter.

''(f) TERMINATION.—No amounts shall be available for expenditure from the PCORTF after September 30, 2019, and any amounts in such Trust Fund after such date shall be transferred to the general fund of the Treasury.''.

(B) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end the following new item:

''Sec. 9511. Patient-Centered Outcomes Research Trust Fund.''.

(2) FINANCING FOR FUND FROM FEES ON INSURED AND SELF-INSURED HEALTH PLANS.—

(A) GENERAL RULE.—Chapter 34 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter:

''Subchapter B—Insured and Self-Insured Health Plans

''SEC. 4375. HEALTH INSURANCE.

''(a) IMPOSITION OF FEE.—There is hereby imposed on each specified health insurance policy for each policy year ending after September 30, 2012, a fee equal to the product of $2 ($1 in the case of policy years ending during fiscal year 2013) multiplied by the average number of lives covered under the policy.

''(b) LIABILITY FOR FEE.—The fee imposed by subsection (a) shall be paid by the issuer of the policy.

''(c) SPECIFIED HEALTH INSURANCE POLICY.—For purposes of this section:

''(1) IN GENERAL.—Except as otherwise provided in this section, the term 'specified health insurance policy' means any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States.

''(2) EXEMPTION FOR CERTAIN POLICIES.—The term 'specified health insurance policy' does not include any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

''(3) TREATMENT OF PREPAID HEALTH COVERAGE ARRANGEMENTS.—

''(A) IN GENERAL.—In the case of any arrangement described in subparagraph (B)—

''(i) such arrangement shall be treated as a specified health insurance policy, and

''(ii) the person referred to in such subparagraph shall be treated as the issuer.

''(B) DESCRIPTION OF ARRANGEMENTS.—An arrangement is described in this subparagraph if under such arrangement fixed payments or premiums are received as consideration for any person's agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how such coverage is provided or arranged to be provided.

''(d) ADJUSTMENTS FOR INCREASES IN HEALTH CARE SPENDING.—In the case of any policy year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a) for such policy year shall be equal to the sum of such dollar amount for policy years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

''(1) such dollar amount for policy years ending in the previous fiscal year, multiplied by

''(2) the percentage increase in the projected per capita amount of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary of Health and Human Services before the beginning of the fiscal year.

''(e) TERMINATION.—This section shall not apply to policy years ending after September 30, 2019.

''SEC. 4376. SELF-INSURED HEALTH PLANS.

''(a) IMPOSITION OF FEE.—In the case of any applicable self-insured health plan for each plan year ending after September 30, 2012, there is hereby imposed a fee equal to $2 ($1 in the case of plan years ending during fiscal year 2013) multiplied by the average number of lives covered under the plan.

''(b) LIABILITY FOR FEE.—

''(1) IN GENERAL.—The fee imposed by subsection (a) shall be paid by the plan sponsor.

''(2) PLAN SPONSOR.—For purposes of paragraph (1) the term 'plan sponsor' means—

''(A) the employer in the case of a plan established or maintained by a single employer,

''(B) the employee organization in the case of a plan established or maintained by an employee organization,

''(C) in the case of—

''(i) a plan established or maintained by 2 or more employers or jointly by 1 or more employers and 1 or more employee organizations,

''(ii) a multiple employer welfare arrangement, or

''(iii) a voluntary employees' beneficiary association described in section 501(c)(9),

the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, or

''(D) the cooperative or association described in subsection (c)(2)(F) in the case of a plan established or maintained by such a cooperative or association.

''(c) APPLICABLE SELF-INSURED HEALTH PLAN.—For purposes of this section, the term 'applicable self-insured health plan' means any plan for providing accident or health coverage if—

''(1) any portion of such coverage is provided other than through an insurance policy, and

''(2) such plan is established or maintained—

''(A) by one or more employers for the benefit of their employees or former employees,

''(B) by one or more employee organizations for the benefit of their members or former members,

''(C) jointly by 1 or more employers and 1 or more employee organizations for the benefit of employees or former employees,

''(D) by a voluntary employees' beneficiary association described in section 501(c)(9),

''(E) by any organization described in section 501(c)(6), or

''(F) in the case of a plan not described in the preceding subparagraphs, by a multiple

employer welfare arrangement (as defined in section 3(40) of Employee Retirement Income Security Act of 1974), a rural electric cooperative (as defined in section 3(40)(B)(iv) of such Act), or a rural telephone cooperative association (as defined in section 3(40)(B)(v) of such Act).

''(d) ADJUSTMENTS FOR INCREASES IN HEALTH CARE SPENDING.—In the case of any plan year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a) for such plan year shall be equal to the sum of such dollar amount for plan years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

''(1) such dollar amount for plan years ending in the previous fiscal year, multiplied by

''(2) the percentage increase in the projected per capita amount of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary of Health and Human Services before the beginning of the fiscal year.

''(e) TERMINATION.—This section shall not apply to plan years ending after September 30, 2019.

''SEC. 4377. DEFINITIONS AND SPECIAL RULES.

''(a) DEFINITIONS.—For purposes of this subchapter—

''(1) ACCIDENT AND HEALTH COVERAGE.—The term 'accident and health coverage' means any coverage which, if provided by an insurance policy, would cause such policy to be a specified health insurance policy (as defined in section 4375(c)).

''(2) INSURANCE POLICY.—The term 'insurance policy' means any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

''(3) UNITED STATES.—The term 'United States' includes any possession of the United States.

''(b) TREATMENT OF GOVERNMENTAL ENTITIES.—

''(1) IN GENERAL.—For purposes of this subchapter—

''(A) the term 'person' includes any governmental entity, and

''(B) notwithstanding any other law or rule of law, governmental entities shall not be exempt from the fees imposed by this subchapter except as provided in paragraph (2).

''(2) TREATMENT OF EXEMPT GOVERNMENTAL PROGRAMS.—In the case of an exempt governmental program, no fee shall be imposed under section 4375 or section 4376 on any covered life under such program.

''(3) EXEMPT GOVERNMENTAL PROGRAM DEFINED.—For purposes of this subchapter, the term 'exempt governmental program' means—

''(A) any insurance program established under title XVIII of the Social Security Act,

''(B) the medical assistance program established by title XIX or XXI of the Social Security Act,

''(C) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or the spouses and dependents thereof) by reason of such individuals being—

''(i) members of the Armed Forces of the United States, or

''(ii) veterans, and

''(D) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

''(c) TREATMENT AS TAX.—For purposes of subtitle F, the fees imposed by this subchapter shall be treated as if they were taxes.

''(d) NO COVER OVER TO POSSESSIONS.—Notwithstanding any other provision of law, no amount collected under this subchapter shall be covered over to any possession of the United States.''.

(B) CLERICAL AMENDMENTS.—

(i) Chapter 34 of such Code is amended by striking the chapter heading and inserting the following:

''CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES

''SUBCHAPTER A. POLICIES ISSUED BY FOREIGN INSURERS

''SUBCHAPTER B. INSURED AND SELF-INSURED HEALTH PLANS

''Subchapter A—Policies Issued By Foreign Insurers''.

(ii) The table of chapters for subtitle D of such Code is amended by striking the item relating to chapter 34 and inserting the following new item:

''CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES''.

SEC. 3. COORDINATION WITH FEDERAL COORDINATING COUNCIL FOR COMPARATIVE EFFECTIVENESS RESEARCH.

Section 804 of Division A of the American Recovery and Reinvestment Act of 2009 (42 U.S.C. 299b–8) is amended—

(1) in subsection (c)—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new paragraph:

''(3) provide support to the Patient-Centered Outcomes Research Institute established under section 1181(b)(1) of the Social Security Act (referred to in this section as the 'Institute').'';

(2) in subsection (d)(2)—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) INCLUSION OF CHAIRPERSON OF THE BOARD OF GOVERNORS OF THE PATIENT-CENTERED OUTCOMES RESEARCH INSTITUTE.—In the case where the Chairperson of the Board of Governors of the Patient-Centered Outcomes Research Institute established under section 1181(f) of the Social Security Act is a senior Federal officer or employee with responsibility for a health-related program, the members of the council shall include such Chairperson.''.

(3) in subsection (e)(2), by striking ''regarding its activities'' and all that follows through the period at the end and inserting ''containing—

''(A) an inventory of its activities with respect to comparative effectiveness research conducted by relevant Federal departments and agencies; and

''(B) recommendations concerning better coordination of comparative effectiveness research by such departments and agencies.'';

(4) by redesignating subsection (g) as subsection (h); and

(5) by inserting after subsection (f) the following new subsection:

''(g) COORDINATION WITH THE PATIENT-CENTERED OUTCOMES RESEARCH INSTITUTE.—The Council shall coordinate with the Institute in carrying out its duties under this section.''.

SEC. 4. GAO REPORT ON NATIONAL COVERAGE DETERMINATIONS PROCESS.

Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the process for making national coverage determinations (as defined in section 1869(f)(1)(B) of the Social Security Act (42 U.S.C. 1395ff(f)(1)(B)) under the Medicare program under title XVIII of the Social Security Act. Such report shall include a determination whether, in initiating and conducting such process, the Secretary of Health and Human Services has complied with applicable law and regulations, including requirements for consultation with appropriate outside experts, providing appropriate notice and comment opportunities to the public, and making information and data (other than proprietary data) considered in making such determinations available to the public and to nonvoting members of any advisory committees established to advise the Secretary with respect to such determinations.

Mr. CONRAD. Mr. President, today I join my good friend and colleague, Senator BAUCUS, in introducing the Patient-Centered Outcomes Research Act of 2009. This proposal builds on the legislation we introduced during the last Congress. Our legislation is the product of months of careful deliberations regarding the best way to expand the quality and quantity of evidence available to patients, physicians, and other health care decision-makers about the comparative clinical effectiveness of health care services and treatments. We have met with dozens of key stakeholders and thought leaders to discuss various aspects of this legislation. People have come to us with many constructive suggestions, many of which are reflected in the bill that we are introducing today. I am proud of the result. This legislation lays the groundwork for improving health care quality and patient outcomes, enhancing patient safety, and reducing overall health care costs in the long run.

As Chairman of the Senate Budget Committee, I am acutely aware of the long-term budget challenges facing our Nation. Health care spending is growing at an unsustainable rate. Although demographic changes associated with the retirement of the baby boom generation contribute to this spending growth, the most significant factor is growth in health care costs in excess of per capita GDP growth. According to Congressional Budget Office projections, by 2050, Medicare and Medicaid spending alone will consume 12 percent of our Nation's gross domestic product.

But excess growth in per capita health care costs is not just a challenge for Federal health spending and the Federal budget. If we continue on the current trajectory, the private sector will also be overwhelmed by rising health care costs. In fact, total health care spending is projected to grow from about 17.6 percent of GDP in 2009—which is far higher than in other industrialized countries—to more than 37 percent of GDP in 2050.

Clearly, we need to address the underlying causes of rising health care costs, not just in the Medicare and Medicaid programs, but in the overall health care system. Simply cutting Medicare and Medicaid without making other changes will do little to solve the larger problem we face. Skyrocketing health care costs are hurting families, businesses, and State and Federal budgets. In a speech before the

Business Roundtable on March 12th, President Obama emphasized this point: ''Medicare costs are consuming our Federal budget. Medicaid is overwhelming our State budgets. At the fiscal summit we held in the White House a few weeks ago, the one thing on which everyone agreed was that the greatest threat to America's fiscal health is not the investments we've made to rescue our economy. It is the skyrocketing cost of our health care system.''

Health care reform is about achieving three important goals: choice, quality, and affordability. To achieve these three goals, we must confront the fact that our health care system does not deliver care as effectively or efficiently as it should. There is widespread agreement that Americans are not getting good value for the money we are already spending on health care. According to work by the Dartmouth Atlas Project, nearly 30 percent of total spending in our health care system, or $700 billion per year, is wasteful and does nothing to improve health outcomes.

Despite our high level of health care spending, health outcomes in the United States are no better than health outcomes in the other OECD countries. Indeed, the U.S. spends twice as much as other OECD nations on health care, yet Americans have shorter average life expectancies and higher average mortality rates than residents of other OECD countries. OECD data show that the U.S. has one of the highest rates of medical errors among industrialized nations and that U.S. patients are more likely to receive duplicate tests and more likely to visit an emergency room for a condition that could have been treated in a regular office visit than most other nations in the comparison. Similarly, a 2008 Commonwealth Fund report found that the U.S. is last among 19 industrialized nations in preventable mortality, or deaths that could have been prevented if individuals had access to timely and effective care.

We can and must find ways to deliver health care more efficiently, reduce ineffective or unnecessary care, and get better health outcomes without harming patients.

One solution is to generate better information about the relative clinical effectiveness of alternative health strategies—and encourage patients and providers to use that information to make better choices about their health. Many health care services and treatments are absorbed quickly into routine medical care—yet there is little evidence that these services and treatments are any more clinically effective than existing treatments and services. Generating more comparative clinical effectiveness research is one of the keys to transforming our health care system away from a system based on volume toward a system that focuses on evidence-based medicine and improving patient outcomes.

The Federal Government currently funds some comparative effectiveness research through the Agency for Healthcare Research and Quality, AHRQ, the National Institutes of Health, NIH, and the Veterans Health Administration. For example, the Effective Health Care Program at AHRQ has been a successful initiative. But comparative effectiveness research is not the primary focus of any Federal agency—nor is this Federal funding occurring permanently on a large scale.

Provisions included in the American Recovery and Reinvestment Act, ARRA, temporarily expanded existing Federal efforts by providing $1.1 billion to AHRQ, NIH, and the Secretary of Health and Human Services, HHS, for such research through 2010. Important work is currently underway to develop recommendations for how best to utilize some of these resources. In particular, I would like to commend the work being done by the Institutes of Medicine, IOM, to convene a panel of experts that is tasked with making recommendations on how to spend the $400 million provided to the HHS Secretary through ARRA. The IOM panel has been doing extraordinary work in gathering ideas and input from a very broad group of stakeholders under a very tight timeline. I look forward to seeing the results of its work at the end of the month. It is this model of allowing for input from a broad set of stakeholders and of conducting priority-setting activities in a transparent way that we are hoping to advance in the legislation we are introducing today.

The Congressional Budget Office, CBO, the Medicare Payment Advisory Commission, MedPAC, and the IOM have all discussed the positive impact of creating a new entity charged solely with conducting research on the comparative effectiveness of health interventions, including pharmaceuticals, medical devices, medical procedures, diagnostic tools, medical services and other therapies.

In its June 2007 report to Congress, MedPAC issued a unanimous recommendation that ''Congress should charge an independent entity to sponsor credible research on comparative effectiveness of health care services and disseminate this information to patients, providers, and public and private payers.''

And the Congressional Budget Office agrees. In a report, entitled, ''Research on the Comparative Effectiveness of Medical Treatments: Issues and Options for an Expanded Federal Role,'' former CBO Director Peter Orszag wrote that, ''generating better information about the costs and benefits of different treatment options—through research on the comparative effectiveness of those options—could help reduce health care spending without adversely affecting health overall.''

The IOM also supports getting better information into the hands of patients and providers. As part of its report, ''Learning What Works Best: The Nation's Need for Evidence on Comparative Effectiveness in Health Care,'' the Institute concluded that, ''[a] substantially increased capacity to conduct and evaluate research on clinical effectiveness of interventions brings many potential opportunities for improvement across a wide spectrum of healthcare needs.''

This bill that Senator BAUCUS and I are introducing today represents an important step in creating a long-term vision for expanding comparative clinical effectiveness research. The bill would significantly expand the conduct of comparative clinical effectiveness research to get better information into the hands of patients and providers in the hopes of improving health outcomes and reducing unnecessary or ineffective care.

The purpose of this bill is to provide patients and physicians with objective and credible evidence about which health care treatments and services are most clinically effective for particular patient populations. The research conducted under our bill would evaluate and compare the clinical effectiveness of two or more health care interventions, protocols for treatment, care management, and delivery, procedures, medical devices, diagnostic tools, and pharmaceutical, including biologicals

Access to better evidence about what works best will help patients and health care providers make better-informed decisions about how best to treat particular diseases and conditions. Our hope is that the evidence generated by this research could lead to savings in the overall health care system over the long-term by empowering patients and doctors with information about treatments and services that may be clinically ineffective, while at the same time improving health care outcomes and quality.

Specifically, our bill creates a private, nonprofit corporation, known as the Patient-Centered Outcomes Research Institute, which would be responsible setting national research priorities and carrying out a comparative clinical effectiveness research agenda. In conducting the research, the Institute would contract with AHRQ, the VA, and other appropriate public and private entities and could use a variety of research methods, including clinical trials, observational studies and systematic reviews of existing evidence.

Many leading experts on this issue, such as MedPAC, have concerns that a large entity within the Federal government would be vulnerable to political interference that could hamper the Institute's credibility, and, therefore, limit the usefulness of its research. As a result, we chose a model outside of the Federal government, but subject to government oversight.

In order to ensure that the information developed is credible and unbiased, our bill establishes a 21-Member Board of Governors to oversee the Institute's activities. Permanent board members would include the HHS Secretary and

the Directors of AHRQ and NIH. The remaining 18 board members would be appointed by the Comptroller General of the U.S. and would include a balanced mix of patients, physicians, public and private payers, academic researchers, philanthropic organizations, quality improvement entities, and medical technology manufacturers.

To ensure further credibility, the Institute is also required to appoint expert advisory panels of patients, clinicians, researchers and other stakeholders that would assist in the development and carrying out of the research agenda; establish a methodology committee that would help create methodological standards by which all research commissioned by the Institute must be conducted; create a peer review process through which all primary research findings must be assessed; and develop protocols to help translate and disseminate the evidence in the most effective, user-friendly way.

Moreover, Senator BAUCUS and I want to ensure that the operations of the Institute are transparent and focused on the needs of patients. Therefore, we built in a strong role for public comment prior to all key decisions made by the Institute. For example, the bill requires public comment periods prior to the approval of research priorities and individual study designs. In addition, the bill calls for public forums to seek input, requires that all proceedings of the Institute be made public at least seven days in advance and be made available through annual reports, and requires that any conflicts of interest be made public and that board members recuse themselves from matters in which they have a financial or personal interest.

Because all health care users will benefit from this research, our legislation funds the Institute with contributions from both public and private payers. These contributions will include mandatory general revenues from the Federal Government, amounts from the Medicare Trust Funds equal to $2 per beneficiary annually, and amounts from a $2 fee per-covered life assessed annually on insured and self-insured health plans. Funding will ramp up over a series of years. By the 5th year, we expect the Institute's total annual funding to reach nearly $600 million per year and continue to grow thereafter.

The concept of an all-payer approach for comparative effectiveness research has been embraced by a number of health care experts. For example, on the subject of comparative effectiveness information in its June 2008 report, MedPAC stated: ''The Commission supports funding from federal and private sources as the research findings will benefit all users—patients, providers, private health plans, and federal health programs. The Commission also supports a dedicated funding mechanism to help ensure the entity's independence and stability. Dedicated broadly based financing would reduce the likelihood of outside influence and would best ensure the entity's stability . . .''

To ensure accountability for these funds and to the Institute's mission, our bill requires an annual financial audit of the Institute. In addition, the bill requires GAO to report to Congress every five years on the processes developed by the Institute and its overall effectiveness, including how the research findings are used by health care consumers and what impact the research is having on the health economy. Finally, the bill requires a review of the adequacy of the Institute's funding, which will include a review of the appropriateness and adequacy of each funding source.

Let me take a moment to address some of the criticisms that might be levied against this proposal. Some may say this Institute will impede access to care and will deny coverage for high-cost health care services. That is simply not the case. Our proposal explicitly prohibits the Institute from making coverage decisions or setting practice guidelines. It will be up to medical societies and patient groups to use the research findings as they see fit. Moreover, to the extent that high-cost health care services or new technologies are studied by the Institute and found to be clinically ineffective compared to other services and technologies, such evidence will be made public to consumers and providers so that they can make informed choices.

We have been working with colleagues on the other side of the aisle who have concerns about the impact this research could have on patient safety and access to health care treatments and services. For several months, we have been engaged in an active dialogue to address these concerns. While I am disappointed that those discussions did not result in cosponsorships for this legislation at this time, I look forward to continuing that dialogue in a constructive manner as we work to include a long-term vision for comparative effectiveness research in a comprehensive health reform bill.

In the meantime, we have made a number of meaningful changes to our legislation that address the concerns voiced by our colleagues. For example, we have placed a greater focus on aspects of personalized medicine and included new patient safeguards to ensure that when CMS uses this research it does so through a process that is transparent, allows for public comment, and takes into account the benefits to particular subpopulations.

This bill is a balanced, carefully crafted proposal that has taken into consideration the recommendations of a broad range of stakeholders and thought-leaders. We welcome further discussion and suggested improvements. But we refuse to allow this proposal to get bogged down in political maneuvering or scare tactics. Our nation needs to immediately ramp up and sustain a major comparative clinical effectiveness research initiative to improve health outcomes and reduce ineffective and inefficient care.

Senator BAUCUS and I will work jointly to push for the expeditious enactment of this bill as part of a comprehensive health reform bill. I urge all of my colleagues to join our effort and cosponsor the Patient-Centered Outcomes Research Act of 2009. There is no time to waste.

By Mr. LIEBERMAN (for himself, Mr. CASEY, Mr. BOND, Ms. STABENOW, Mr. CARDIN, Mr. SANDERS, Mr. WHITEHOUSE, and Mr. CRAPO):

S. 1214. A bill to conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to improve the quality of life for the people of the United States, and for other purposes; to the Committee on Environment and Public Works.

Mr. LIEBERMAN. Mr. President, I rise to speak about the National Fish Habitat Conservation Act, which I am introducing today along with my colleagues Senators BOND, CASEY, STABENOW, CARDIN, WHITEHOUSE, and SANDERS. This legislation will significantly advance ongoing efforts to restore and protect fish habitat, improve the health of our waterways and ensure that we have robust fish populations far into the future.

Today, nearly half of our fish populations are in decline and half of our waters are impaired, which is why it is especially important that we work together to protect and restore remaining habitat. The National Fish Habitat Conservation Act will leverage federal, state and private funds to support voluntary regional conservation partnerships, which in turn will allow federal and state governments, the recreational and commercial fishing industries, the conservation community, and businesses to work together—for the first time—to effectively conserve aquatic habitats.

Our legislation authorizes $75 million annually for fish habitat projects. Based on the highly successful North American Wetlands Conservation Act model, the bill establishes a multi-stakeholder National Fish Habitat Board to recommend science-based conservation projects to the Secretary of Interior for funding. Regional partners will then work to implement those conservation projects to protect, restore and enhance fish habitats and fish populations.

The National Fish Habitat Conservation Act will go a long way toward ensuring the viability of our fish and their habitats for generations to come. I look forward to working with my colleagues to pass this important legislation and reverse the decline of our ailing waterways and fisheries.

By Mr. CASEY (for himself and Mr. SCHUMER):

S. 1215. A bill to amend the Safe Drinking Water Act to repeal a certain

exemption for hydraulic fracturing, and for other purposes; to the Committee on Environment and Public Works.

Mr. CASEY. Mr. President, I rise today to introduce the Fracturing Responsibility and Awareness of Chemicals, FRAC, Act along with my colleague, Senator SCHUMER, that protects drinking water and public health from the risks associated with an oil and gas extraction process called hydraulic fracturing. Specifically, our bill does two things. First, it repeals an exemption to the Safe Drinking Water Act that was granted to oil and gas companies four years ago. Second, it requires oil and gas companies to publicly disclose the chemicals used in hydraulic fracturing.

The regulation of hydraulic fracturing under the Safe Drinking Water Act is supported by 77 groups, including 14 groups from Pennsylvania.

The oil and gas industry uses hydraulic fracturing in 90 percent of wells. The process, which is also called ''fracking,'' involves injecting tens of thousands of gallons of water mixed with sand and chemical additives deep into the rock under extremely high pressure. The pressure breaks open the rock releasing trapped natural gas, which is then captured. Fracking often occurs near underground sources of drinking water. Unfortunately, a provision included in the 2005 Energy Policy Act exempted hydraulic fracturing from compliance with the Safe Drinking Water Act. The oil and gas industry is the only industry to have this exemption.

The Casey-Schumer legislation is extremely important to people living in Pennsylvania, especially those living in communities along a geological formation called the Marcellus Shale. The Marcellus is a geological formation covering 34 million acres extending from southern New York, through central and western Pennsylvania, into the eastern half of Ohio and across most of West Virginia. The deepest layer of the Marcellus formation—the Marcellus Shale—contains a significant amount of natural gas trapped in deep rock formations up to 9,000 feet below ground. Last year, a professor at Penn State estimated that there was 168 million cubic feet of natural gas in the Marcellus Shale. In the industry it is what is known as a ''Super Giant gas field.'' It is enough natural gas to provide for the entire country for 7 years. This vast amount of natural gas combined with a more complete knowledge of the natural fractures in the Marcellus Shale through which the gas can be easily extracted, has led to what Pennsylvanians are calling a gas rush.

As I have mentioned, fracking involves injecting water mixed with chemicals. My major concern is that the chemicals added to the water to create fracking fluids are highly toxic. We're talking about chemicals like formaldehyde, benzene, and toluene. These chemicals are injected right below underground drinking water. This is especially important to Pennsylvania because our state has the second highest number of private wells for drinking water in the nation, second only to Michigan. Three million Pennsylvanians are dependent on private wells to provide safe drinking water to their homes. So massive drilling to get to the natural gas in the Marcellus Shale is not required to comply with the Safe Drinking Water Act, but drilling is happening right next to drinking water supplies. You can see why Pennsylvanians are concerned about their future access to safe drinking water.

Now, the oil and gas industry would have you believe that there is no threat to drinking water from hydraulic fracturing. But the fact is we are already seeing cases in Pennsylvania, Colorado, Virginia, West Virginia, Alabama, Wyoming, Ohio, Arkansas, Utah, Texas, and New Mexico where residents have become ill or groundwater has become contaminated after hydraulic fracturing operations began in the area. This is not simply anecdotal evidence; scientists have found enough evidence to raise concerns as well. In a recent letter supporting our bill, 23 health professionals and scientists wrote the following:

> . . . Oil and gas operations are known to release substances into the environment that are known to be very hazardous to human health, including benzene, arsenic, mercury, hydrogen sulfide, and radioactive materials. The demonstrated health effects caused by these substances include cancers, central nervous system damage, skin and eye irritation, and lung diseases. For example, fluids used in the hydraulic fracturing process may contain toxic chemicals such as 2–butoxyethanol, formaldehyde, sodium hydroxide, glycol ethers, and naphthalene. For these reasons, we support regulation of hydraulic fracturing under the Safe Drinking Water Act and the disclosure of all chemical constituents in hydraulic fracturing fluids to public agencies, including the disclosure of constituent formulas in cases of medical need. Moreover, we support full regulation of stormwater runoff, which can pollute drinking water supplies, under the Clean Water Act.
>
> There are growing reports of individuals living near oil and gas operations who suffer illnesses that are linked to these activities, yet there has been no systemic attempt to gather the necessary data, establish appropriate monitoring, analyze health exposure or assess risk related to any of these activities. This should be done, in addition to full Health Impact Assessments to inform future planning and policy efforts.

In Dimock, Pennsylvania, we have a recent example of the risks involved with hydraulic fracturing. On New Year's Day, Norma Fiorentino's drinking water well exploded. It literally blew up. Stray methane leaked and migrated upward through the rock and into the aquifer as natural gas deposits were drilled nearby. An investigation by the Commonwealth of Pennsylvania shows that a spark created when the pump in the well house turned on may have led to the explosion. The blast cracked in half the several-thousand-pound concrete slab at the drilling pad on Ms. Fiorentino's property and tossed it aside. Fortunately, no one was hurt in the explosion. But throughout the town, several drinking water wells have exploded and nine wells have been found to contain so much natural gas that one homeowner was advised to open a window if he plans to take a bath. Tests of the well water show high amounts of aluminum and iron, which leads researchers to believe that drilling fluids are contaminating the water along with the gas. So this is a real concern. We are talking about serious implications if we don't develop the Marcellus Shale carefully and responsibly.

I would point out that Pennsylvania has a long history of developing our natural resources to power the region and the nation. In fact, Pennsylvania is home to the Drake Well near Titusville, Pennsylvania, which celebrates its 150th anniversary this year. The Drake Well was the first commercial oil well in the United States and it launched the modern petroleum industry. In addition to oil, Western Pennsylvania has long produced natural gas. Pennsylvania also mines coal which we use to provide electricity to many of our neighboring states. Pennsylvanians are proud of the contributions we have made to the growth of our nation. Contributions that were made because we developed our abundant natural resources. But we also bear the burden of some environmental legacies, most created in previous generations when we were not as concerned with responsible development. We have old natural gas wells that were not capped and leak methane into homes in Versailles, PA. We have acid mine drainage that we spend millions of dollars every year to try and remediate. These examples are the lessons from which we need to learn.

Pennsylvania will develop the natural gas in the Marcellus Shale. We are doing it right now, and we will see more drilling over the next few years. But we must develop the Marcellus Shale using the best environmental practices to protect our communities and our state. That is why I am introducing the Fracturing Responsibility and Awareness of Chemicals Act. This legislation will ensure that hydraulic fracturing does not unnecessarily jeopardize our groundwater. There are affordable alternatives that oil and gas companies can use so that they are not risking contaminating drinking water wells with potentially hazardous chemicals.

I think Norma Fiorentino from Dimock, Pennsylvania, summed it up best when she told a reporter, ''You can't buy a good well.''

So I urge all of my colleagues to support this legislation and ensure that our groundwater is protected as we responsibly develop our natural resources.

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

S. 1215

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fracturing Responsibility and Awareness of Chemicals (FRAC) Act''.

SEC. 2. REGULATION OF HYDRAULIC FRACTURING.

(a) UNDERGROUND INJECTION.—Section 1421(d) of the Safe Drinking Water Act (42 U.S.C. 300h(d)) is amended by striking paragraph (1) and inserting the following:

''(1) UNDERGROUND INJECTION.—

''(A) IN GENERAL.—The term 'underground injection' means the subsurface emplacement of fluids by well injection.

''(B) INCLUSION.—The term 'underground injection' includes the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations relating to oil or gas production activities.

''(C) EXCLUSION.—The term 'underground injection' does not include the underground injection of natural gas for the purpose of storage.''.

(b) DISCLOSURE.—Section 1421(b) of the Safe Drinking Water Act (42 U.S.C. 300h(b)) is amended—

(1) in paragraph (1)(C), by inserting before the semicolon the following: '', including a requirement that any person using hydraulic fracturing disclose to the State (or to the Administrator in any case in which the Administrator has primary enforcement responsibility in a State) the chemical constituents (but not the proprietary chemical formulas) used in the fracturing process''; and

(2) by adding at the end the following:

''(4) DISCLOSURES OF CHEMICAL CONSTITUENTS.—

''(A) IN GENERAL.—The State (or the Administrator, as applicable) shall make available to the public the information contained in each disclosure of chemical constituents under paragraph (1)(C), including by posting the information on an appropriate Internet website.

''(B) IMMEDIATE DISCLOSURE IN CASE OF EMERGENCY.—

''(i) IN GENERAL.—Subject to clause (ii), the regulations promulgated pursuant to subsection (a) shall require that, in any case in which the State (or the Administrator, as applicable) or an appropriate treating physician or nurse determines that a medical emergency exists and the proprietary chemical formula or specific chemical identity of a trade-secret chemical used in hydraulic fracturing is necessary for emergency or first-aid treatment, the applicable person using hydraulic fracturing shall immediately disclose to the State (or the Administrator) or the treating physician or nurse the proprietary chemical formula or specific chemical identity of a trade-secret chemical, regardless of the existence of—

''(I) a written statement of need; or

''(II) a confidentiality agreement.

''(ii) REQUIREMENT.—A person using hydraulic fracturing that makes a disclosure required under clause (i) may require the execution of a written statement of need and a confidentiality agreement as soon as practicable after the determination by the State (or the Administrator) or the treating physician or nurse under that clause.''.

By Mr. KOHL:

S. 1219. A bill to amend subtitle A of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such subtitle for a 1-year period ending June 22, 2010; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Antitrust Criminal Penalties Enforcement and Reform Act of 2004 Extension Act. This legislation extends a critical component of the Antitrust Criminal Penalty Enforcement and Reform Act of 2004, set to expire on June 22, which encourages participation in the Antitrust Division's leniency program. As a result, the Justice Department will be able to continue to detect, investigate and aggressively prosecute price-fixing cartels which harm consumers.

The Antitrust Division of the Department of Justice has long considered criminal cartel enforcement a top priority, and its Corporate Leniency Policy is an important tool in that enforcement. Criminal antitrust offenses are generally conspiracies among competitors to fix prices, rig bids, or allocate markets of customers. The Leniency Policy creates incentives for corporations to report their unlawful cartel conduct to the Division, by offering the possibility of immunity from criminal charges to the first-reporting corporation, as long as there is full cooperation. For more than 15 years, this policy has allowed the Division to uncover cartels affecting billions of dollars worth of commerce here in the U.S., which has led to prosecutions resulting in record fines and jail sentences.

An important part of the Division's Leniency Policy, added by the Antitrust Criminal Penalties Enforcement and Reform Act of 2004, limits the civil liability of leniency participants to the actual damages caused by that company—rather than triple the damages caused by the entire conspiracy, which is the typical in civil antitrust lawsuits. This removed a significant disincentive to participation in the leniency program—the concern that, despite immunity from criminal charges, a participating corporation might still be on the hook for treble damages in any future antitrust lawsuits.

Maintaining strong incentives to make use of the Leniency Policy provides important benefits to the victims of antitrust offenses, often consumers who paid artificially high prices. It makes it more likely that criminal antitrust violations will be reported and, as a result, consumers will be able to identify and recover their losses from paying illegally inflated prices. The policy also requires participants to cooperate with plaintiffs in any follow-on civil lawsuits, which makes it more likely that the plaintiff consumers will be able to build strong cases against all members of the conspiracy.

Since the passage of ACPERA, the Antitrust Division has uncovered a number of significant cartel cases through its leniency program, including the air cargo investigation, which so far has yielded over a billion dollars in criminal fines. In that investigation, several airlines pled guilty to conspiring to fix international air cargo rates and international passenger fuel surcharges. Not only were criminal fines levied, but one high-ranking executive pled guilty and agreed to serve eight months in prison. In fiscal year 2004, before the passage of ACPERA, criminal antitrust fines totaled $350 million. Criminal antitrust fines in fiscal year 2009 have already surpassed $960 million. Scott Hammond, the Deputy Assistant Attorney General for Criminal Enforcement in the Antitrust Division, has stated that the damages limitation has made its Corporate Leniency Program ''even more effective'' at detecting and prosecuting cartels.

ACPERA's damages limitation is set to expire later this month, so we must act quickly to extend it. Otherwise, the Justice Department will lose an important tool that it uses to investigate and prosecute criminal cartel activity. This bill extends that provision for 1 year. Over the next year, we will fully review ACPERA, and consider potential changes to make it more effective.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1219

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Antitrust Criminal Penalties Enforcement and Reform Act of 2004 Extension Act''.

SEC. 2. DELAY OF SUNSET.

Section 211(a) of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (15 U.S.C. 1 note) is amended by striking ''5 years'' and inserting ''6 years''.

SEC. 3. EFFECTIVE DATE OF AMENDMENT.

The amendment made by section 2 shall take effect immediately before June 22, 2009.

By Mr. SPECTER (for himself and Mr. WYDEN):

S. 1220. A bill to require that certain complex diagnostic laboratory tests performed by an independent laboratory after a hospital outpatient encounter or inpatient stay during which the specimen involved was collected shall be treated as services for which payment may be made directly to the laboratory under part B of title XVIII of the Social Security Act; to the Committee on Finance.

Mr. SPECTER. Mr. President, I have sought recognition today to introduce The Patient Access to Critical Lab Tests Act. The legislation would modernize Medicare billing rules to improve beneficiary access to important, life-saving advanced diagnostic technologies.

Mapping the human genome has enabled revolutionary advances in understanding a wide variety of diseases, and ushered in an era where treatments can be tailored to individual patients based on their DNA and specific molecular character of their disease. Complex diagnostic laboratory tests make such ''personalized medicine'' possible. By understanding the molecular nature of

disease, these new technologies increasingly allow clinicians and patients to pick individualized treatment options, rather than basing treatment choices on broad assessments of what works best for a population.

Unfortunately Medicare payment, coding and coverage practices are harming Medicare beneficiary access to specialized diagnostic tests. In particular is the Centers for Medicare and Medicaid Services, CMS, Medicare ''date of service'' regulation. Under the regulation, any test furnished within 14 days after the patient's discharge from a hospital is deemed to have been performed on the day of collection, when the patient was in or at the hospital, even though the patient may no longer be at the hospital when the test is ordered, and the test is not used to guide treatment during the patient's hospital encounter. A laboratory test that is deemed to coincide with the date on which the patient was a hospital patient becomes a service furnished by the hospital, even though the hospital may have nothing to do with the ordering, performance, or use of the test.

The combination of these rules creates a host of administrative and financial disincentives for hospitals to embrace these tests.

Hospitals are required to exercise professional responsibility over these services, but are unwilling to do so for tests that are not offered by the hospital, and which are, in fact, offered by laboratories that are otherwise unaffiliated with and unfamiliar to the hospital.

Hospitals are required to bill for the service; the laboratories may not bill Medicare directly, and instead must bill the hospital for the services they provide, which means the hospital assumes the financial risk that the service is covered and that Medicare will pay for it.

In light of these administrative and financial disincentives, hospitals are encouraging physicians to delay ordering the tests until after the 14 days; others are cancelling orders altogether. These disincentives create obstacles for physicians and their patients, and genuine barriers to access these beneficial tests.

These rules also create substantial hardship for the laboratories that are seeking to develop these tests. In order for the tests to be covered, hospitals must enter into agreements with the laboratories furnishing the tests. It is administratively overwhelming for these small laboratories to seek to enter into agreements with all potential originating hospitals, which may number in the thousands when considering sites where tissue may be stored.

The legislation that I am introducing today with Senator WYDEN would require CMS to take a small, but important step toward facilitating Medicare beneficiary access to innovative, lifesaving diagnostic tests by updating the ''date of service'' regulation. Specifically, the Patient Access to Critical Lab Tests Act would permit independent laboratories offering complex diagnostic laboratory tests to bill Medicare directly for tests performed anytime following a patient's hospital stay, without forcing the hospital into an unnecessary middleman role.

Given the promise of these new technologies, it is important that all regulatory regimes keep pace with the rapidly evolving world of science and technology, and operate to promote innovation. Out-dated regulations and calcified regulatory agencies can stifle innovation and prevent new life-saving diagnostics and therapies from ever coming to market. They can also serve as a drag on our economy.

Fixing this rule is a matter of critical importance to Medicare beneficiaries, as well as to the laboratories developing these technologies.

I encourage colleagues to join Senator WYDEN and me in cosponsoring this bill. I likewise urge Senators BAUCUS and GRASSLEY to consider this important measure as part of health care reform.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1220

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Patient Access to Critical Lab Tests Act''.

SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—The Congress finds as follows:

(1) Timely access to laboratory testing is essential to ensure quality of care for patients.

(2) Genetic and molecular laboratory testing are the new cornerstones of high quality, cost-effective preventive medicine.

(3) The completion of the Human Genome Project in 2003 paved the way for a more sophisticated understanding of disease causation, which has contributed to the advent of ''personalized medicine''.

(4) Personalized medicine is the application of genomic and molecular data to better target the delivery of health care, facilitate the discovery and clinical testing of new products, and help determine a patient's predisposition to a particular disease or condition.

(5) Personalized medicine offers the promise of smarter, more effective, and safer care as physicians and patients become equipped with better information to guide treatment decisions.

(6) Some of the most encouraging personalized medicine developments involve highly specialized laboratory tests that, using biomarkers and vast stores of historical data, provide individualized information that enable physicians and patients to develop personalized treatment plans.

(7) Several outdated Medicare regulations for laboratory billing are obstructing access to highly specialized laboratory tests and delaying patients' diagnoses and treatments. These same rules are discouraging investments in development of new tests.

(8) Realizing the promise of personalized medicine will require improved regulation that appropriately encourages development of and access to these specialized tests.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) where practical, Medicare regulations and policies should be written to promote development of and access to the highly specialized laboratory tests referred to in subsection (a)(6); and

(2) the Medicare regulation described in section 414.510 of title 42, Code of Federal Regulations, is one such regulation that should be revised to permit laboratories furnishing certain specialized tests to bill for and be paid directly by Medicare for furnishing such tests.

SEC. 3. TREATMENT OF CERTAIN COMPLEX DIAGNOSTIC LABORATORY TESTS.

(a) IN GENERAL.—Notwithstanding sections 1862(a)(14) and 1866(a)(1)(H)(i) of the Social Security Act (42 U.S.C. 1395y(a)(14) and 1395cc(a)(1)(H)(i)), in the case that a laboratory performs a covered complex diagnostic laboratory test, with respect to a specimen collected from an individual during a period in which the individual is a patient of a hospital, if the test is performed after such period the Secretary of Health and Human Services shall treat such test, for purposes of providing direct payment to the laboratory under section 1833(h) or 1848 of such Act (42 U.S.C. 13951(h) or 1395w–4), as if such specimen had been collected directly by the laboratory.

(b) COVERED COMPLEX DIAGNOSTIC LABORATORY TEST DEFINED.—For purposes of this section, the term ''covered complex diagnostic laboratory test'' means an analysis—

(1) of DNA, RNA, chromosomes, proteins, or metabolites that detects, identifies, or quantitates genotypes, mutations, chromosomal changes, biochemical changes, cell response, protein expression, or gene expression or similar method or is a cancer chemotherapy sensitivity assay or similar method, but does not include methods principally comprising routine chemistry or routine immunology;

(2) that is described in section 1861(s)(3) of the Social Security Act (42 U.S.C. 1395x(s)(3));

(3) that is developed and performed by a laboratory which is independent of the hospital in which the specimen involved was collected and not under any arrangements (as defined in section 1861(w)(1) of such Act (42 U.S.C. 1395x(w)(1)); and

(4) that is not furnished by the hospital where the specimen was collected to a patient of such hospital, directly or under arrangements (as defined in section 1861(w)(1) of such Act (42 U.S.C. 1395x(w)(1)) made by such hospital.

SEC. 4. EFFECTIVE DATE.

The provisions of section 3 shall apply to tests furnished on or after the date of the enactment of this Act.

By Mr. SPECTER (for himself and Mr. ROBERTS):

S. 1221. A bill to amend title XVIII of the Social Security Act to ensure more appropriate payment amounts for drugs and biologicals under part B of the Medicare Program by excluding customary prompt pay discounts extended to wholesalers from the manufacturer's average sales price; to the Committee on Finance.

Mr. SPECTER. Mr. President, I have sought recognition today to introduce legislation that will help ensure Medicare beneficiaries' access to cancer drugs provided by community-based cancer clinics.

Cancer takes a great toll on our families, friends, and our Nation. On average, one American dies from cancer each minute and the overall cost of cancer to the U.S. is $220 billion annually. While these statistics are daunting, the rate of cancer deaths in the U.S. has decreased since 1993. This decrease is the result of earlier detection and diagnosis, more effective and targeted cancer therapies, and greater accessibility to quality care provided by oncologists. These vital services have allowed millions of individuals to lead healthy and productive lives after successfully battling cancer.

Leading the treatment against cancer, community cancer clinics treat 84 percent of Americans with cancer. Community cancer clinics are freestanding outpatient facilities that provide comprehensive cancer care in physician's office settings located in patients' communities. These clinics are especially critical in rural areas where access to larger cancer clinics is not available.

In 2003, the Medicare Prescription Drug Improvement and Modernization Act was signed into law. This legislation contained numerous provisions that were beneficial to America's seniors and medical facilities; however, it also provided a reduction in Medicare's reimbursement for cancer treatment. The new Medicare drug reimbursement rates, based on average sales price or ASP, are artificially lowered by the inclusion of prompt payment discounts. These discounts are provided by the pharmaceutical manufacturer to the distributor and are a financing mechanism between the manufacturer and the distributor for prompt payment of invoices. As such, they are not passed on to community oncology clinics, which purchase drugs from distributors. However, pharmaceutical manufacturers are required by statute to include all discounts and rebates in the calculation of ASP, including prompt payment discounts that are not provided to community oncology clinics. The inclusion of these prompt payment discounts results in the artificially lowering of Medicare drug reimbursement rates by approximately 2 percent. Community cancer clinics are reporting that they are finding more cancer drugs reimbursed by Medicare at a rate less than their cost.

The Congressional Budget Office estimated that Medicare reimbursements to oncologists would be reduced by $4.2 billion from 2004–2013. PricewaterhouseCoopers estimated that reductions will reach $14.7 billion over that time. This increased reduction will have a debilitating effect on oncologists' ability to provide cancer treatment to Medicare beneficiaries, especially those in the community setting.

This legislation will remove manufacturer to distributor prompt payment discounts from the calculation of ASP to provide a more appropriate Medicare drug reimbursement and will help ensure Medicare beneficiaries' access to community-based cancer treatment. I encourage my colleagues to work with me to move this legislation forward promptly.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1221

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSION OF CUSTOMARY PROMPT PAY DISCOUNTS EXTENDED TO WHOLESALERS FROM MANUFACTURER'S AVERAGE SALES PRICE FOR PAYMENTS FOR DRUGS AND BIOLOGICALS UNDER MEDICARE PART B.

(a) IN GENERAL.—Section 1847A(c)(3) of the Social Security Act (42 U.S.C. 1395w–3a(c)(3)) is amended—

(1) in the first sentence, by inserting ''(other than customary prompt pay discounts extended to wholesalers)'' after ''prompt pay discounts''; and

(2) in the second sentence, by inserting ''(other than customary prompt pay discounts extended to wholesalers)'' after ''other price concessions''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to drugs and biologicals that are furnished on or after January 1, 2010.

By Mr. MCCONNELL (for himself, Mrs. FEINSTEIN, Mr. MCCAIN, and Mr. DURBIN:)

S.J. Res. 17. A joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes; to the Committee on Finance.

Mr. MCCONNELL. Mr. President, I rise to introduce the annual renewal of the Burmese Freedom and Democracy Act of 2003. Once again, I am joined by Senators FEINSTEIN, MCCAIN and DURBIN who have been steadfast and longtime advocates for the Burmese people.

This resolution extends for another year the sanctions that are currently in place against the illegitimate Burmese regime, the State Peace and Development Council, SPDC. This bill would keep those sanctions in place unless and until the regime takes a number of clear steps towards democracy and reconciliation. This measure also includes renewal of the enhanced sanctions enacted last year as part of the Tom Lantos Block Burmese JADE Act of 2008.

As many of my colleagues know, the news from Burma has been particularly troubling of late. Nobel Peace Prize winner Daw Aung San Suu Kyi, who has been under house arrest for 13 of the last 19 years, was charged last month with permitting a misguided American to enter her home. As a result, she faces up to 5 years in prison. My colleagues in the Senate and I remain deeply concerned about the outcome of her ''trial.'' I was pleased that the Senate responded to this outrageous prosecution by unanimously passing S. Res. 160, which condemned the ''trial'' of Suu Kyi and the dubious actions taken by the SPDC against her.

The Obama administration has indicated that a new strategy on Burma is forthcoming, and I look forward to reviewing it. Whatever the content of this strategy, it appears from correspondence between my House colleagues and the State Department that the administration will continue to support sanctions against the Burmese regime, even as it considers additional means of effecting positive change in the troubled country.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the text of the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 17

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT TO BURMESE FREEDOM AND DEMOCRACY ACT OF 2003.

Section 9(b)(3) of the Burmese Freedom and Democracy Act of 2003 (Public Law 108–61; 50 U.S.C. 1701 note) is amended by striking ''six years'' and inserting ''nine years''.

SEC. 2. RENEWAL OF IMPORT RESTRICTIONS UNDER BURMESE FREEDOM AND DEMOCRACY ACT OF 2003.

(a) IN GENERAL.—Congress approves the renewal of the import restrictions contained in section 3(a)(1) and section 3A (b)(1) and (c)(1) of the Burmese Freedom and Democracy Act of 2003.

(b) RULE OF CONSTRUCTION.—This joint resolution shall be deemed to be a ''renewal resolution'' for purposes of section 9 of the Burmese Freedom and Democracy Act of 2003.

SEC. 3. EFFECTIVE DATE.

This joint resolution and the amendments made by this joint resolution shall take effect on the date of the enactment of this joint resolution or July 26, 2009, whichever occurs first.

Mrs. FEINSTEIN. Mr. President, I rise today with Senator MCCONNELL to introduce a joint resolution renewing the ban on all imports from Burma for another year.

I regret that we must take this action once again.

I had hoped that since we last took up this resolution last year, the ruling military junta, the State Peace and Development Council, SPDC, would have, at long last, heeded the voices of the people of Burma and the international community and put Burma on a path to democracy, human rights, and the rule of law.

Sadly, the regime responded to these calls in true fashion, by trying yet again to break the will of Burma's democratic opposition and stifle any movement for change.

Just last month, the military junta arrested and detained Nobel Peace Prize Laureate and Burma's democratically elected leader Aung San Suu Kyi on trumped-up charges of violating her house arrest.

Currently standing trial—behind closed doors and without due process—she faces up to 5 years in prison if convicted. This will come on top of spending the better part of the past 19 years isolated and alone under house arrest.

The regime's actions should come as no surprise. They represent yet another attempt to hold on to power and crush any opposition.

Almost 20 years ago, it annulled parliamentary election results overwhelmingly won by Aung San Suu Kyi's National League for Democracy.

Six years ago government-sponsored thugs attempted to assassinate Suu Kyi and other members of her National League for Democracy by attacking her motorcade in northern Burma.

Two years ago, the regime brutally put down pro-democracy demonstrations of the Saffron Revolution led by Buddhist monks.

And last year, we saw the regime ignore offers made by the international community and international humanitarian organizations to help Burma respond to the devastation caused by Cyclone Nargis, leading to countless deaths of innocent civilians.

In addition, they imposed a new constitution on the people of Burma, one that was negotiated behind closed doors without the input of the democratic opposition and one that will entrench the military's grip on power.

The SPDC understands all too well that the vast majority of Burmese citizens embrace Suu Kyi's call for freedom and democracy and reject the junta's oppressive rule.

That is why they are trying once again to silence her voice.

We cannot allow this brutal dictatorship to succeed.

For those of my colleagues who are disappointed with the lack of progress in bringing freedom and democracy to Burma since we first enacted this ban in 2003, I share their disappointment.

But now is not the time to turn back. Now is not the time to reward the regime for its oppressive tactics by lifting any part of our sanctions regime on Burma.

It has not made ''substantial and measurable progress'' towards:

ending violations of internationally recognized human rights;

releasing all political prisoners;

allowing freedom of speech and press;

allowing freedom of association;

permitting the peaceful exercise of religion and;

bringing to a conclusion an agreement between the SPDC and the National League for Democracy and Burma's ethnic nationalities on the restoration of a democratic government.

By renewing the import ban we express our solidarity with Aung San Suu Kyi and the democratic opposition who bravely stand up to the regime and reject their abuses.

They understand that the import ban is not directed at the people of Burma, but at the military junta that dominates economic and political activity in their country and denies them their rights.

And I remind my colleagues that this import ban renewal is good for 1 year and we will have the opportunity to revisit this issue again next year.

I am hopeful that the United Nations Security Council and the international community will follow our example and put additional pressure on the SPDC to release Aung San Suu Kyi and all political prisoners immediately and unconditionally and engage in a true dialogue on national reconciliation, one that will lead to a truly democratic constitution.

I urge my colleagues to pass this Joint Resolution as soon as possible.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 173—SUPPORTING NATIONAL MEN'S HEALTH WEEK

Mr. CRAPO submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 173

Whereas despite advances in medical technology and research, men continue to live an average of more than 5 years less than women, and African-American men have the lowest life expectancy;

Whereas 9 of the 10 leading causes of death, as defined by the Centers for Disease Control and Prevention, affect men at a higher percentage than women;

Whereas between ages 45 and 54, men are 3 times more likely than women to die of heart attacks;

Whereas men die of heart disease at 1½ times the rate of women;

Whereas men die of cancer at almost 1½ times the rate of women;

Whereas testicular cancer is 1 of the most common cancers in men aged 15 to 34, and when detected early, has a 96 percent survival rate;

Whereas the number of cases of colon cancer among men will reach almost 75,590 in 2009, and almost ½ of those men will die from the disease;

Whereas the likelihood that a man will develop prostate cancer is 1 in 6;

Whereas the number of men developing prostate cancer in 2009 will reach more than 192,280, and an estimated 27,360 of them will die from the disease;

Whereas African-American men in the United States have the highest incidence in the world of prostate cancer;

Whereas significant numbers of health problems that affect men, such as prostate cancer, testicular cancer, colon cancer, and infertility, could be detected and treated if men's awareness of such problems was more pervasive;

Whereas more than ½ of the elderly widows now living in poverty were not poor before the death of their husbands, and by age 100, women outnumber men 8 to 1;

Whereas educating both the public and health care providers about the importance of early detection of male health problems will result in reducing rates of mortality for these diseases;

Whereas appropriate use of tests such as prostate specific antigen exams, blood pressure screenings, and cholesterol screenings, in conjunction with clinical examination and self-testing for problems such as testicular cancer, can result in the detection of many problems in their early stages and increase the survival rates to nearly 100 percent;

Whereas women are twice as likely as men to visit the doctor for annual examinations and preventive services;

Whereas men are less likely than women to visit their health center or physician for regular screening examinations of male-related problems for a variety of reasons, including fear, lack of health insurance, lack of information, and cost factors;

Whereas National Men's Health Week was established by Congress in 1994 and urges men and their families to engage in appropriate health behaviors, and the resulting increased awareness has improved health-related education and helped prevent illness;

Whereas the governors of more than 45 States issue proclamations annually declaring Men's Health Week in their States;

Whereas since 1994, National Men's Health Week has been celebrated each June by dozens of States, cities, localities, public health departments, health care entities, churches, and community organizations throughout the Nation that promote health awareness events focused on men and family;

Whereas the National Men's Health Week Internet website has been established at www.menshealthweek.org and features governors' proclamations and National Men's Health Week events;

Whereas men who are educated about the value that preventive health can play in prolonging their lifespan and their role as productive family members will be more likely to participate in health screenings;

Whereas men and their families are encouraged to increase their awareness of the importance of a healthy lifestyle, regular exercise, and medical checkups; and

Whereas June 15 through June 21, 2009, is National Men's Health Week, which has the purpose of heightening the awareness of preventable health problems and encouraging early detection and treatment of disease among men and boys: Now, therefore, be it

Resolved, That the Senate—

(1) supports the annual National Men's Health Week in 2009; and

(2) calls upon the people of the United States and interested groups to observe National Men's Health Week with appropriate ceremonies and activities.

SENATE RESOLUTION 174—RECOGNIZING THE REGION FROM MANHATTAN, KANSAS TO COLUMBIA, MISSOURI AS THE KANSAS CITY ANIMAL HEALTH CORRIDOR

Mr. BOND (for himself, Mr. ROBERTS, Mr. BROWNBACK, and Mrs. MCCASKILL) submitted the following resolution; which was referred to the Committee on the Agriculture, Nutrition, and Forestry:

S. RES. 174

Whereas a 34 percent of the $16,800,000,000 annual global animal health industry is based in the Kansas City region;

Whereas more than 120 companies involved in the animal health industry are located in Kansas and Missouri, including 4 of the 10 largest global animal health companies and 1 of the 5 largest animal nutrition companies;

Whereas several leading veterinary colleges and animal research centers are located in Kansas and Missouri, including the College of Veterinary Medicine and the $54,000,000 Biosecurity Research Institute of Kansas State University and the College of Veterinary Medicine, the College of Agriculture, Food and Natural Resources' Division of Animal Sciences, the $60,000,000 Life Sciences Center, the National Swine Resource and Research Center, and the Research Animal Diagnostic Laboratory of the University of Missouri;

Whereas Kansas City, Missouri, is centrally located in the United States and is

close to many of the food animal end customers;

Whereas the Department of Homeland Security selected Manhattan, Kansas, as the future location for the National Bio and Agro-defense Facility (NBAF);

Whereas the $750,000,000 NBAF project will provide area economic development opportunities by employing 300 people with an annual payroll of up to $30,000,000, and will provide an additional 1,500 construction jobs;

Whereas NBAF enhances Kansas' leadership role in the Nation as the animal health research and biosciences center for the United States;

Whereas more than 45 percent of the fed cattle in the United States, 40 percent of the hogs produced, and 20 percent of the beef cows and calves are located within 350 miles of Kansas City;

Whereas there are nationally-recognized publishers in the animal health industry located in Kansas and Missouri;

Whereas Kansas and Missouri have historic roots in the livestock industry, including the cattle drives in the 1860s from Texas to the westward railhead in Sedalia, Missouri;

Whereas Kansas and Missouri are home to many prominent national and international associations within the animal health industry; and

Whereas retaining and growing existing animal health companies, attracting new animal health companies, increasing animal health research capacity, and developing commercialization infrastructure will create quality jobs and wealth for Kansas and Missouri: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the region from Manhattan, Kansas to Columbia, Missouri, including the metropolitan Kansas City area and St. Joseph, Missouri, as the ''Kansas City Animal Health Corridor'';

(2) recognizes the Kansas City Animal Health Corridor as the national center of the animal health industry, based on the unmatched concentration of animal health and nutrition businesses and educational and research assets; and

(3) expresses its commitment to establishing a favorable business environment and supporting animal health research to foster the continued growth of the animal health industry for the benefit of the economy, universities, businesses, and young people hoping to pursue an animal health career in the Kansas City Animal Health Corridor.

SENATE RESOLUTION 175—EXPRESSING THE SENSE OF THE SENATE THAT THE FEDERAL GOVERNMENT IS A RELUCTANT SHAREHOLDER IN THE OWNERSHIP OF GENERAL MOTORS AND CHRYSLER

Mr. NELSON of Nebraska submitted the following resolution; which was referred to the Committee on Banking, Housing, and Urban Affairs:

S. RES. 175

Whereas the United States is facing a deep economic crisis that has caused millions of American workers to lose their jobs;

Whereas the collapse of the American automotive industry would have dealt a devastating blow to an already perilous economy;

Whereas the Federal Government, under President George W. Bush and President Barack Obama, intervened in the American automotive industry in order to prevent additional job losses in the industry that would have resulted in a ripple effect across the entire economy;

Whereas any investment of taxpayer dollars in the American automotive industry should be temporary;

Whereas the Federal Government is a reluctant shareholder in General Motors Corporation and Chrysler Motors LLC, as any involvement is only to protect the investment of taxpayer dollars;

Whereas the Federal Government, as the primary shareholder, will not be involved in the day-to-day management of General Motors; and

Whereas the Federal Government shall closely monitor General Motors and Chrysler to ensure that they are being responsible stewards of taxpayer dollars and are taking all possible steps to expeditiously return to solvency: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Federal Government is only a temporary stakeholder in the American automotive industry and should take all possible steps to protect American taxpayer dollars and divest its ownership interests in such companies as expeditiously as possible; and

(2) the Comptroller General of the United States should conduct a study to determine the period of time it may take General Motors and Chrysler to return to solvency and for the Federal Government to complete divestiture.

SENATE RESOLUTION 176—EXPRESSING THE SENSE OF THE SENATE ON UNITED STATES POLICY DURING THE POLITICAL TRANSITION IN ZIMBABWE, AND FOR OTHER PURPOSES

Mr. FEINGOLD (for himself, Mr. ISAKSON, Mr. KERRY, Mr. INHOFE, Mr. BURRIS, Mr. WHITEHOUSE, Mr. NELSON of Florida, Mr. DURBIN, Mr. CARDIN, and Mr. BROWNBACK) submitted the following resolution; which was considered and agreed to:

S. RES. 176

Whereas, over the course of the last decade, the Zimbabwean African National Union-Patriotic Front (ZANU-PF), led by Robert Mugabe, increasingly turned to violence and intimidation to maintain power amidst government-directed economic collapse and a growing humanitarian crisis;

Whereas the Department of State's 2008 Country Report on Human Rights Practices states that the Government of Zimbabwe ''continued to engage in the pervasive and systematic abuse of human rights, which increased during the year,'' including unlawful killings, politically-motivated abductions, state-sanctioned use of excessive force and torture by security forces against opposition, student leaders, and civil society activists;

Whereas Zimbabwe held presidential and parliamentary elections on March 29, 2008, with official results showing that Mr. Mugabe won 43.2 percent of the vote, while Morgan Tsvangirai, leader of the opposition party Movement for Democratic Change (MDC), won 47.9 percent of the vote;

Whereas, in the wake of those elections, Mr. Mugabe and his allies launched a brutal campaign of violence against members and supporters of the MDC, voters and journalists, and other citizens of Zimbabwe, leading Mr. Tsvangirai to withdraw from the June 27, 2008, runoff presidential election, which Mr. Mugabe, the only remaining candidate, then won with 85 percent of the vote;

Whereas, on September 15, 2008, ZANU-PF and the MDC signed a ''Global Political Agreement'' (GPA) to form a transitional government under which Mr. Mugabe would remain President, Mr. Tsvangirai would become Prime Minister, and the parties would divide control of the ministries;

Whereas the Global Political Agreement, as written, included provisions to restore the rule of law and economic stability and growth, establish a new constitution, end violence by state and non-state actors, and promote freedom of assembly, association, expression, and communication;

Whereas the installation of the transitional government stalled for five months as Mr. Mugabe and his allies refused to compromise on control of key ministries and security agencies and continued to use the state security apparatus to intimidate and commit violence against political opponents;

Whereas, according to the United Nations, the humanitarian situation during that time deteriorated to unprecedented levels, with an estimated 5,000,000 people in Zimbabwe susceptible to food insecurity, and collapsing water and sewerage services giving rise to a cholera epidemic that has resulted in the deaths of more than 4,000 people;

Whereas, on February 11, 2009, the parties finally formed the transitional government;

Whereas there has since been some progress toward the implementation of the Global Political Agreement, including positive steps by the Ministry of Finance, such as the issuance of a Short Term Economic Recovery Program (STERP) and the abandonment of the Zimbabwe dollar in favor of foreign currencies;

Whereas many of the reform-minded individuals within the new transitional government are limited by a severe lack of qualified personnel and material resources;

Whereas the full implementation of the Global Political Agreement continues to be obstructed by hardliners in the government, and important issues regarding senior government appointments remain unresolved, notably the status of the current Reserve Bank Governor and the Attorney General;

Whereas ZANU-PF officials have made efforts to obstruct implementation of the Global Political Agreement as they continue to arrest legitimate journalists and human rights activists and delay the swearing into office of properly designated officials nominated by MDC; and

Whereas the security forces continue to operate outside the rule of law, condoning land invasions, restrictions on media access and freedoms, and harassment, arbitrary arrests, and detention of civil society activists in Zimbabwe: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States Government, in coordination with other democratic governments and international institutions desiring to help the people of Zimbabwe, should—

(1) continue to provide humanitarian assistance to meet the urgent needs of the people of Zimbabwe;

(2) make available increased resources for nongovernmental entities to provide assistance and to pay salaries or fees to appropriately qualified people in Zimbabwe to enable progress to be made in the critical areas of education, health, water, and sanitation;

(3) welcome and encourage responsible efforts by the international community to support, strengthen, and extend reforms made by ministries within the Government of Zimbabwe, especially the Ministry of Finance;

(4) provide concrete financial and technical assistance in response to requests from the people of Zimbabwe and civil society organizations in their efforts to draft and enact a new constitution based on democratic values and principles that would enable the country

to hold fair and free elections at an early date;

(5) work with and encourage regional governments and leaders to promote human rights, the restoration of the rule of law, and economic growth in Zimbabwe;

(6) maintain the existing ban on the transfer of defense items and services and the suspension of most non-humanitarian government-to-government assistance until there is demonstrable progress toward restoring the rule of law, civilian control over security forces, and respect for human rights in Zimbabwe; and

(7) support the continuation and updating of financial sanctions and travel bans targeted against those individuals responsible for the deliberate breakdown of the rule of law, politically motivated violence, and other ongoing illegal activities in Zimbabwe.

SENATE RESOLUTION 177—RECOGNIZING THE 10TH ANNIVERSARY OF THE INTERNATIONAL LABOUR ORGANIZATION'S UNANIMOUS ADOPTION OF CONVENTION 182, ''CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR''

Mr. HARKIN submitted the following resolution; which was considered and agreed to:

S. RES. 177

Whereas on June 17, 1999, the International Labour Organization (ILO) unanimously adopted Convention 182, ''Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour'', done at Geneva (T. Doc. 106-5) (in this preamble referred to as the ''Convention'');

Whereas on August 5, 1999, President William Jefferson Clinton submitted the Convention to the Senate for its advice and consent;

Whereas on October 21, 1999, the Committee on Foreign Relations of the Senate, under the chairmanship of Senator Jesse Helms, considered the Convention, and on November 3, 1999, reported it out of committee;

Whereas on November 5, 1999, the Senate unanimously agreed to the resolution of advice and consent to the ratification of the Convention;

Whereas on December 2, 1999, President Clinton signed the instruments of ratification of the Convention, as the United States became the third country to ratify the Convention;

Whereas the terms of the Convention apply to all children under 18 years of age and define the worst forms of child labor to include slavery and practices similar to slavery (including the sale and trafficking of children), forced or compulsory labor, debt bondage and serfdom, child prostitution and child pornography, the use of children in illegal activities (including drug production and trafficking), and work that is likely to jeopardize the health, safety, or morals of children;

Whereas the stated goals of the Convention include the effective elimination of the worst forms of child labor, ensuring that the parties take into account the importance of free basic education, removal of children from all work that is in violation of the Convention, and provision of rehabilitation and social integration for children who have engaged in work that it is in violation of the Convention;

Whereas since 1995, the United States has become the largest contributor to the ILO's International Program for the Elimination of Child Labor;

Whereas the Department of Labor has funded 220 projects through the International Program for the Elimination of Child Labor that have affected 1,300,000 children in 82 countries who were rescued from or prevented from entering the worst forms of child labor;

Whereas in May 2000, the United States Government enacted the Trade and Development Act of 2000 (Public Law 106-200), which included a provision that requires countries receiving duty-free access to the United States marketplace to take steps to implement the terms of the Convention in order to retain such trade privileges;

Whereas between 2000 and 2004, the worst forms of child labor declined worldwide, as the overall number of child laborers fell by 11 percent, from 246,000,000 to 218,000,000, and the number of young child laborers was reduced by 33 percent;

Whereas between 2000 and 2004, the number of children between 5 and 17 years of age who performed hazardous work fell by 26 percent, from 171,000,000 to 126,000,000; and

Whereas on the 10th anniversary of its adoption, a total of 183 countries have ratified the Convention: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the worst forms of child labor should not be tolerated, whether they occur in the United States or other countries; and

(2) on the 10th anniversary of its adoption, all parties to Convention 182, ''Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour'', done at Geneva June 17, 1999 (T. Doc. 106-5), should work toward its full implementation to realize the goal of eliminating the worst forms of child labor.

SENATE RESOLUTION 178—SUPPORTING OLYMPIC DAY ON JUNE 23, 2009, AND ENCOURAGING THE INTERNATIONAL OLYMPIC COMMITTEE TO SELECT CHICAGO, ILLINOIS AS THE HOST CITY FOR THE 2016 OLYMPIC AND PARALYMPIC GAMES

Mr. DURBIN (for himself, Mr. UDALL of Colorado, Mr. BURRIS, Mr. BENNETT, Mr. BENNET, and Mr. HATCH) submitted the following resolution; which was considered and agreed to:

S. RES. 178

Whereas Olympic Day, June 23, 2009, celebrates the Olympic ideal of developing peace through sport;

Whereas June 23 marks the anniversary of the founding of the modern Olympic movement, the date on which the Congress of Paris approved the proposal of Pierre de Coubertin to found the modern Olympics;

Whereas for more than 100 years, the Olympic movement has built a more peaceful and better world by educating young people through amateur athletics, by bringing together athletes from many countries in friendly competition, and by forging new relationships bound by friendship, solidarity, and fair play;

Whereas the United States and Chicago, Illinois advocate the ideals of the Olympic movement;

Whereas hundreds of local governments from across the United States are joining together to show their support for bringing the Olympic Games to Chicago, Illinois in 2016;

Whereas Olympic Day will encourage the development of Olympic and Paralympic Sport in the United States;

Whereas Olympic Day encourages the participation of youth of the United States in Olympic and Paralympic sport;

Whereas Olympic Day will encourage the teaching of Olympic history, health, arts, and culture among the youth of the United States;

Whereas Olympic Day will encourage the youth of the United States to support the Olympic movement and the selection of Chicago, Illinois as the host city for the 2016 Olympic and Paralympic Games; and

Whereas enthusiasm for Olympic and Paralympic sport is at an all-time high: Now, therefore, be it

Resolved, That the Senate—

(1) supports Olympic Day 2009 and the goals that Olympic Day pursues; and

(2) encourages the International Olympic Committee to select Chicago, Illinois as the host city for the 2016 Olympic and Paralympic Games.

SENATE RESOLUTION 179—CONGRATULATING THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS ON ITS 125 YEARS OF CODES AND STANDARDS DEVELOPMENT

Mr. KAUFMAN submitted the following resolution; which was considered and agreed to:

S. RES. 179

Whereas the American Society of Mechanical Engineers (ASME), which was founded in 1880 and currently includes more than 127,000 members worldwide, is a premier professional organization serving the engineering and technical community through high-quality programs in the development and maintenance of codes and standards, continuing education, research, conferences, publications, and government relations;

Whereas in 2009, ASME is celebrating its 125th anniversary of codes and standards development, commemorating a rich history of engineering progress, technological safety, and service to industry and government;

Whereas the ASME codes and standards activity began in a period of rising industrialization in the United States and grew in stature and influence as technology advanced and new industries were born;

Whereas a significant achievement in the history of ASME includes the issuance of the first ASME Boiler Code in 1914;

Whereas the ASME Boiler and Pressure Vessel Code has since been incorporated into the laws of all 50 States and is also referenced in Canada and other parts of the world;

Whereas since the publication of its first performance test code 125 years ago, titled ''Code for the Conduct of Trials of Steam Boilers'', ASME has developed more than 500 technical standards for pressure vessel technology, electric and nuclear power facilities, elevators and escalators, gas pipelines, engineering drawing practices, and numerous other technical and engineered products and processes;

Whereas ASME codes and standards and conformity assessment programs are presently used in more than 100 countries;

Whereas ASME's celebration of its 125 years of codes and standards development is a tribute to the dedicated service of technical experts and staff whose efforts result in internationally accepted standards that enhance public safety and provide lifelong

learning and technical exchange opportunities that benefit the global engineering and technology community; and

Whereas ASME honors the dedicated volunteers who participate in their codes and standards and conformity assessment programs, which today are a global operation involving more than 4,000 individuals: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates ASME on the 125th anniversary of its renowned codes and standards activity;

(2) recognizes and celebrates the achievements of all ASME volunteer members and staff who participate in the codes and standards programs;

(3) expresses the gratitude of the people of the United States for the contributions provided by ASME's codes and standards to the health, safety, and economic well-being of the citizenry of this Nation;

(4) recognizes ASME's focus on global and accessible standards development and their vision for technical competence and innovation;

(5) recognizes ASME's mission to be the essential resource for mechanical engineers and other technical professionals throughout the world for solutions that benefit humankind; and

(6) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the president of ASME.

SENATE RESOLUTION 180—TO AUTHORIZE TESTIMONY AND LEGAL REPRESENTATION IN UNITED STATES V. EDWARD BLOOMER, FRANK CORDARO, ELTON DAVIS, CHESTER GUINN, AND RENEE ESPELAND

Mr. REID (for himself and Mr. MCCONNELL) submitted the following resolution; which was considered and agreed to:

S. RES. 180

Whereas, in the cases of United States v. Edward Bloomer (CVB# H5049055), Frank Cordaro (CVB# H5049056), Elton Davis (CVB# H5049058), Chester Guinn (CVB# H5049093), and Renee Espeland (CVB# H5049095), pending in federal district court in the Southern District of Iowa, the prosecution has sought testimony from Dianne Liepa, a former employee of Senator Tom Harkin;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent former employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved that Dianne Liepa is authorized to testify in the cases of United States v. Edward Bloomer, Frank Cordaro, Elton Davis, Chester Guinn, and Renee Espeland, except concerning matters for which a privilege should be asserted.

Sec. 2. The Senate Legal Counsel is authorized to represent Dianne Liepa, and any other employee from whom evidence may be sought, in connection with the testimony authorized in section one of this resolution.

SENATE CONCURRENT RESOLUTION 25—RECOGNIZING THE VALUE AND BENEFITS THAT COMMUNITY HEALTH CENTERS PROVIDE AS HEALTH CARE HOMES FOR OVER 18,000,000 INDIVIDUALS, AND THE IMPORTANCE OF ENABLING HEALTH CENTERS AND OTHER SAFETY NET PROVIDERS TO CONTINUE TO OFFER ACCESSIBLE, AFFORDABLE, AND CONTINUOUS CARE TO THEIR CURRENT PATIENTS AND TO EVERY AMERICAN WHO LACKS ACCESS TO PREVENTIVE AND PRIMARY CARE SERVICES

Mr. MENENDEZ (for himself and Ms. STABENOW) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 25

Whereas a strong system of health care safety net providers is vital to ensuring that any health care system address access, cost, and quality challenges while providing care for the most vulnerable individuals and communities;

Whereas community health centers currently form the backbone of the health care safety net for the United States, caring for more than 1 out of every 5 uninsured low-income Americans and providing almost 1 out of every 5 office visits under Medicaid and the Children's Health Insurance Program;

Whereas more than 60,000,000 individuals in the United States are medically disenfranchised, lacking access to primary care services like those provided by health centers and other safety net providers, regardless of insurance coverage;

Whereas health centers effectively remove barriers to care by providing cost-effective, high-quality, and comprehensive preventive and primary health care, as well as effective care management for individuals with chronic conditions;

Whereas health centers have compiled a well-documented record of reducing health disparities and improving patient health outcomes, lowering the overall cost of care for their patients by 41 percent as compared to individuals who receive care elsewhere, and generating $18,000,000,000 in savings each year for the health care system;

Whereas an expansion of the highly effective Health Centers Program to provide a health care home for all 60,000,000 medically disenfranchised Americans would increase the overall savings that health centers generate for the health care system to up to $80,000,000,000 each year;

Whereas Congress has recognized the value of the care that health centers provide to those enrolled in Medicaid and the Children's Health Insurance Program by making their services a guaranteed benefit and establishing a mechanism to appropriately reimburse health centers for the quality care that they provide;

Whereas private insurance often does not appropriately reimburse safety net providers like health centers for the full spectrum of care they provide, forcing health centers to subsidize under-payments for their privately insured patients by diverting funds intended to support care for those in need; and

Whereas millions of Americans in underserved communities are in need of a health care home like those provided by health centers, which serve as a proven model of health care delivery that assures high-quality and cost-effective health care in every State of the Nation: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) all individuals should have the choice of a community health center as their health care home and every health center should be appropriately reimbursed for the high-value preventive and primary care they provide;

(2) health care reform should include measures to expand community health centers in order to reach more individuals who need a health care home;

(3) the current payment mechanisms for Federally-qualified health centers through Medicaid and the Children's Health Insurance Program are essential to ensuring access to affordable and high-quality preventive and primary care services for beneficiaries of such programs;

(4) any expansion of private insurance must include mechanisms to ensure the full participation of, and appropriate reimbursement to, Federally-qualified health centers and other safety net providers in order to ensure adequate access to care for those individuals who are medically underserved or disenfranchised; and

(5) ensuring access to all safety net providers, including Federally-qualified health centers, will be vital to ensuring that health care reform is successful in expanding access, improving quality, and reducing cost.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. SCHUMER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, June 10, 2009, at 2:30 p.m. to hear testimony on the nomination of John J. Sullivan to be a member of the Federal Election Commission.

For further information regarding this hearing, please contact Jean Bordewich at the Rules and Administration Committee, 202–224–6352.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. SCHUMER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, June 10, 2009, at 3 p.m., upon completion of the FEC confirmation hearing, to conduct an executive business meeting to consider the nomination of John J. Sullivan to be a member of the Federal Election Commission.

For further information regarding this hearing, please contact Jean Bordewich at the Rules and Administration Committee, 202–224–6352.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, June 9, 2009 at 10 a.m., in room SD–366 of the Dirksen Senate Office Building.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Tuesday, June 9, 2009 at 9:30 a.m. in room 406 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 9, 2009, at 10 a.m.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 9, 2009, at 2:30 p.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on June 9, 2009, at 2:30 p.m.

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

SUBCOMMITTEE ON AIRLAND

Mr. LEAHY. Mr. President, I ask unanimous consent that the Subcommittee on Airland of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, June 9, 2009, at 2:30 p.m.

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

SUBCOMMITTEE ON THE CONSTITUTION

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on the Constitution, be authorized to meet during the session of the Senate, on June 9, 2009, at 10 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The Legal, Moral, and National Security Consequences of 'Prolonged Detention'.''

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

SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST GUARD

Mr. LEAHY. Mr. President, I ask unanimous consent that the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Tuesday, June 9, 2009, at 9:30 a.m., in room 253 of the Russell Senate Office Building.

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

UNANIMOUS CONSENT AGREEMENT—H.R. 1256

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that on Wednesday, June 10, following a period for morning business, the Senate then resume consideration of H.R. 1256, and all postcloture time having expired, there then be an hour of debate only prior to a vote on the motion to invoke cloture on H.R. 1256, with the time equally divided and controlled between Senators DODD and ENZI or their designees; that upon the use or yielding back of that time and disposition of amendment No. 1256, the substitute amendment be agreed to and the motion to reconsider be laid upon the table, the bill be read a third time, and the Senate then proceed to vote on the motion to invoke cloture on H.R. 1256; that if cloture is invoked on H.R. 1256, then postcloture time be considered to have begun at 12:05 a.m., Wednesday, June 10, and that all postcloture time continue to run during any recess, adjournment, or period for morning business.

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

HONORING NATIVE AMERICANS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 40, which was received from the House.

The PRESIDING OFFICER. The clerk will report the joint resolution by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 40) to honor the achievements and contributions of Native Americans to the United States, and for other purposes.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the joint resolution be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the joint resolution be printed in the RECORD.

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

The joint resolution (H.J. Res. 40) was ordered to a third reading, was read the third time, and passed.

UNITED STATES POLICY DURING POLITICAL TRANSITION IN ZIMBABWE

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 176, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 176) expressing the sense of the Senate on United States policy during the political transition in Zimbabwe, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 176) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 176

Whereas, over the course of the last decade, the Zimbabwean African National Union-Patriotic Front (ZANU–PF), led by Robert Mugabe, increasingly turned to violence and intimidation to maintain power amidst government-directed economic collapse and a growing humanitarian crisis;

Whereas the Department of State's 2008 Country Report on Human Rights Practices states that the Government of Zimbabwe ''continued to engage in the pervasive and systematic abuse of human rights, which increased during the year,'' including unlawful killings, politically-motivated abductions, state-sanctioned use of excessive force and torture by security forces against opposition, student leaders, and civil society activists;

Whereas Zimbabwe held presidential and parliamentary elections on March 29, 2008, with official results showing that Mr. Mugabe won 43.2 percent of the vote, while Morgan Tsvangirai, leader of the opposition party Movement for Democratic Change (MDC), won 47.9 percent of the vote;

Whereas, in the wake of those elections, Mr. Mugabe and his allies launched a brutal campaign of violence against members and supporters of the MDC, voters and journalists, and other citizens of Zimbabwe, leading Mr. Tsvangirai to withdraw from the June 27, 2008, runoff presidential election, which Mr. Mugabe, the only remaining candidate, then won with 85 percent of the vote;

Whereas, on September 15, 2008, ZANU–PF and the MDC signed a ''Global Political Agreement'' (GPA) to form a transitional government under which Mr. Mugabe would remain President, Mr. Tsvangirai would become Prime Minister, and the parties would divide control of the ministries;

Whereas the Global Political Agreement, as written, included provisions to restore the rule of law and economic stability and growth, establish a new constitution, end violence by state and non-state actors, and promote freedom of assembly, association, expression, and communication;

Whereas the installation of the transitional government stalled for five months as Mr. Mugabe and his allies refused to compromise on control of key ministries and security agencies and continued to use the state security apparatus to intimidate and commit violence against political opponents;

Whereas, according to the United Nations, the humanitarian situation during that time deteriorated to unprecedented levels, with an estimated 5,000,000 people in Zimbabwe susceptible to food insecurity, and collapsing water and sewerage services giving rise to a cholera epidemic that has resulted in the deaths of more than 4,000 people;

Whereas, on February 11, 2009, the parties finally formed the transitional government;

Whereas there has since been some progress toward the implementation of the Global Political Agreement, including positive steps by the Ministry of Finance, such as the issuance of a Short Term Economic Recovery Program (STERP) and the abandonment of the Zimbabwe dollar in favor of foreign currencies;

Whereas many of the reform-minded individuals within the new transitional government are limited by a severe lack of qualified personnel and material resources;

Whereas the full implementation of the Global Political Agreement continues to be obstructed by hardliners in the government, and important issues regarding senior government appointments remain unresolved, notably the status of the current Reserve Bank Governor and the Attorney General;

Whereas ZANU–PF officials have made efforts to obstruct implementation of the Global Political Agreement as they continue to arrest legitimate journalists and human rights activists and delay the swearing into office of properly designated officials nominated by MDC; and

Whereas the security forces continue to operate outside the rule of law, condoning land invasions, restrictions on media access and freedoms, and harassment, arbitrary arrests, and detention of civil society activists in Zimbabwe: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States Government, in coordination with other democratic governments and international institutions desiring to help the people of Zimbabwe, should—

(1) continue to provide humanitarian assistance to meet the urgent needs of the people of Zimbabwe;

(2) make available increased resources for nongovernmental entities to provide assistance and to pay salaries or fees to appropriately qualified people in Zimbabwe to enable progress to be made in the critical areas of education, health, water, and sanitation;

(3) welcome and encourage responsible efforts by the international community to support, strengthen, and extend reforms made by ministries within the Government of Zimbabwe, especially the Ministry of Finance;

(4) provide concrete financial and technical assistance in response to requests from the people of Zimbabwe and civil society organizations in their efforts to draft and enact a new constitution based on democratic values and principles that would enable the country to hold fair and free elections at an early date;

(5) work with and encourage regional governments and leaders to promote human rights, the restoration of the rule of law, and economic growth in Zimbabwe;

(6) maintain the existing ban on the transfer of defense items and services and the suspension of most non-humanitarian government-to-government assistance until there is demonstrable progress toward restoring the rule of law, civilian control over security forces, and respect for human rights in Zimbabwe; and

(7) support the continuation and updating of financial sanctions and travel bans targeted against those individuals responsible for the deliberate breakdown of the rule of law, politically motivated violence, and other ongoing illegal activities in Zimbabwe.

RECOGNIZING 10TH ANNIVERSARY OF ILO ADOPTION OF CONVENTION 182

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 177, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 177) recognizing the 10th anniversary of the International Labour Organization's unanimous adoption of Convention 182, ''Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 177) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 177

Whereas on June 17, 1999, the International Labour Organization (ILO) unanimously adopted Convention 182, ''Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour'', done at Geneva (T. Doc. 106-5) (in this preamble referred to as the ''Convention'');

Whereas on August 5, 1999, President William Jefferson Clinton submitted the Convention to the Senate for its advice and consent;

Whereas on October 21, 1999, the Committee on Foreign Relations of the Senate, under the chairmanship of Senator Jesse Helms, considered the Convention, and on November 3, 1999, reported it out of committee;

Whereas on November 5, 1999, the Senate unanimously agreed to the resolution of advice and consent to the ratification of the Convention;

Whereas on December 2, 1999, President Clinton signed the instruments of ratification of the Convention, as the United States became the third country to ratify the Convention;

Whereas the terms of the Convention apply to all children under 18 years of age and define the worst forms of child labor to include slavery and practices similar to slavery (including the sale and trafficking of children), forced or compulsory labor, debt bondage and serfdom, child prostitution and child pornography, the use of children in illegal activities (including drug production and trafficking), and work that is likely to jeopardize the health, safety, or morals of children;

Whereas the stated goals of the Convention include the effective elimination of the worst forms of child labor, ensuring that the parties take into account the importance of free basic education, removal of children from all work that is in violation of the Convention, and provision of rehabilitation and social integration for children who have engaged in work that it is in violation of the Convention;

Whereas since 1995, the United States has become the largest contributor to the ILO's International Program for the Elimination of Child Labor;

Whereas the Department of Labor has funded 220 projects through the International Program for the Elimination of Child Labor that have affected 1,300,000 children in 82 countries who were rescued from or prevented from entering the worst forms of child labor;

Whereas in May 2000, the United States Government enacted the Trade and Development Act of 2000 (Public Law 106–200), which included a provision that requires countries receiving duty-free access to the United States marketplace to take steps to implement the terms of the Convention in order to retain such trade privileges;

Whereas between 2000 and 2004, the worst forms of child labor declined worldwide, as the overall number of child laborers fell by 11 percent, from 246,000,000 to 218,000,000, and the number of young child laborers was reduced by 33 percent;

Whereas between 2000 and 2004, the number of children between 5 and 17 years of age who performed hazardous work fell by 26 percent, from 171,000,000 to 126,000,000; and

Whereas on the 10th anniversary of its adoption, a total of 183 countries have ratified the Convention: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the worst forms of child labor should not be tolerated, whether they occur in the United States or other countries; and

(2) on the 10th anniversary of its adoption, all parties to Convention 182, ''Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour'', done at Geneva June 17, 1999 (T. Doc. 106–5), should work toward its full implementation to realize the goal of eliminating the worst forms of child labor.

SUPPORTING OLYMPIC DAY

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 178 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 178) supporting Olympic Day on June 23, 2009, and encouraging the International Olympic Committee to select Chicago, Illinois, as the host city for the 2016 Olympic and Paralympic Games.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 178) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 178

Whereas Olympic Day, June 23, 2009, celebrates the Olympic ideal of developing peace through sport;

Whereas June 23 marks the anniversary of the founding of the modern Olympic movement, the date on which the Congress of

Paris approved the proposal of Pierre de Coubertin to found the modern Olympics;

Whereas for more than 100 years, the Olympic movement has built a more peaceful and better world by educating young people through amateur athletics, by bringing together athletes from many countries in friendly competition, and by forging new relationships bound by friendship, solidarity, and fair play;

Whereas the United States and Chicago, Illinois advocate the ideals of the Olympic movement;

Whereas hundreds of local governments from across the United States are joining together to show their support for bringing the Olympic Games to Chicago, Illinois in 2016;

Whereas Olympic Day will encourage the development of Olympic and Paralympic Sport in the United States;

Whereas Olympic Day encourages the participation of youth of the United States in Olympic and Paralympic sport;

Whereas Olympic Day will encourage the teaching of Olympic history, health, arts, and culture among the youth of the United States;

Whereas Olympic Day will encourage the youth of the United States to support the Olympic movement and the selection of Chicago, Illinois as the host city for the 2016 Olympic and Paralympic Games; and

Whereas enthusiasm for Olympic and Paralympic sport is at an all-time high: Now, therefore, be it

Resolved, That the Senate—

(1) supports Olympic Day 2009 and the goals that Olympic Day pursues; and

(2) encourages the International Olympic Committee to select Chicago, Illinois as the host city for the 2016 Olympic and Paralympic Games.

CONGRATULATING THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 179 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 179) congratulating the American Society of Mechanical Engineers on its 125 years of codes and standards development.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to resolution be printed in the RECORD.

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

The resolution (S. Res. 179) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 179

Whereas the American Society of Mechanical Engineers (ASME), which was founded in 1880 and currently includes more than 127,000 members worldwide, is a premier professional organization serving the engineering and technical community through high-quality programs in the development and maintenance of codes and standards, continuing education, research, conferences, publications, and government relations;

Whereas in 2009, ASME is celebrating its 125th anniversary of codes and standards development, commemorating a rich history of engineering progress, technological safety, and service to industry and government;

Whereas the ASME codes and standards activity began in a period of rising industrialization in the United States and grew in stature and influence as technology advanced and new industries were born;

Whereas a significant achievement in the history of ASME includes the issuance of the first ASME Boiler Code in 1914;

Whereas the ASME Boiler and Pressure Vessel Code has since been incorporated into the laws of all 50 States and is also referenced in Canada and other parts of the world;

Whereas since the publication of its first performance test code 125 years ago, titled ''Code for the Conduct of Trials of Steam Boilers'', ASME has developed more than 500 technical standards for pressure vessel technology, electric and nuclear power facilities, elevators and escalators, gas pipelines, engineering drawing practices, and numerous other technical and engineered products and processes;

Whereas ASME codes and standards and conformity assessment programs are presently used in more than 100 countries;

Whereas ASME's celebration of its 125 years of codes and standards development is a tribute to the dedicated service of technical experts and staff whose efforts result in internationally accepted standards that enhance public safety and provide lifelong learning and technical exchange opportunities that benefit the global engineering and technology community; and

Whereas ASME honors the dedicated volunteers who participate in their codes and standards and conformity assessment programs, which today are a global operation involving more than 4,000 individuals: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates ASME on the 125th anniversary of its renowned codes and standards activity;

(2) recognizes and celebrates the achievements of all ASME volunteer members and staff who participate in the codes and standards programs;

(3) expresses the gratitude of the people of the United States for the contributions provided by ASME's codes and standards to the health, safety, and economic well-being of the citizenry of this Nation;

(4) recognizes ASME's focus on global and accessible standards development and their vision for technical competence and innovation;

(5) recognizes ASME's mission to be the essential resource for mechanical engineers and other technical professionals throughout the world for solutions that benefit humankind; and

(6) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the president of ASME.

AUTHORIZING TESTIMONY AND LEGAL REPRESENTATION

Mr. WHITEHOUSE. Mr. President, I now ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 180, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 180) to authorize testimony and legal representation in the United States v. Edward Bloomer, Frank Cordaro, Elton Davis, Chester Guinn and Renee Espeland.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, this resolution concerns a request for testimony and representation in actions in Federal District Court in the Southern District of Iowa. In these actions, protesters have been charged with impeding or disrupting the performance of official duties by Government employees for occupying Senator TOM HARKIN's Des Moines, IA office on February 25, 2009, and for refusing requests by the Federal Protective Service and the local police to leave the building. The prosecution has sought testimony from a former member of the Senator's staff who witnessed the relevant events. Senator HARKIN would like to cooperate by providing testimony from that person. This resolution would authorize that person to testify in connection with these actions, with representation by the Senate Legal Counsel of her and any other employee from whom evidence may be sought.

Mr. WHITEHOUSE. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 180) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 180

Whereas, in the cases of United States v. Edward Bloomer (CVB# H5049055), Frank Cordaro (CVB# H5049056), Elton Davis (CVB# H5049058), Chester Guinn (CVB# H5049093), and Renee Espeland (CVB# H5049095), pending in federal district court in the Southern District of Iowa, the prosecution has sought testimony from Dianne Liepa, a former employee of Senator Tom Harkin;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 1A 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent former employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved that Dianne Liepa is authorized to testify in the cases of United States v. Edward Bloomer, Frank J. Cordaro, Elton Davis, Chester Guinn, and Renee Espeland, except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Dianne Liepa, and any other employee from whom evidence may be sought, in connection with the testimony authorized in section one of this resolution.

ORDERS FOR WEDNESDAY, JUNE 10, 2009

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., tomorrow, Wednesday, June 10; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business for 1 hour with Senators permitted to speak for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with Republicans controlling the first half and the majority controlling the second half; and that following morning business, the Senate resume consideration of H.R. 1256, the Family Smoking Prevention and Tobacco Control Act, under the previous order.

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

PROGRAM

Mr. WHITEHOUSE. Mr. President, under the previous order, at approximately 11:30 a.m., the Senate will vote on the motion to invoke cloture on H.R. 1256.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. WHITEHOUSE. If there is no further business to come before the Senate, I ask unanimous consent it adjourn under the previous order.

There being no objection, the Senate, at 7:37 p.m., adjourned until Wednesday, June 10, 2009, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

CONSUMER PRODUCT SAFETY COMMISSION

INEZ MOORE TENENBAUM, OF SOUTH CAROLINA, TO BE CHAIRMAN OF THE CONSUMER PRODUCT SAFETY COMMISSION, VICE HAROLD D. STRATTON, RESIGNED.

INEZ MOORE TENENBAUM, OF SOUTH CAROLINA, TO BE A COMMISSIONER OF THE CONSUMER PRODUCT SAFETY COMMISSION FOR A TERM OF SEVEN YEARS FROM OCTOBER 27, 2006, VICE HAROLD D. STRATTON, RESIGNED.

ROBERT S. ADLER, OF NORTH CAROLINA, TO BE A COMMISSIONER OF THE CONSUMER PRODUCT SAFETY COMMISSION FOR A TERM OF SEVEN YEARS FROM OCTOBER 27, 2007, VICE STUART M. STATLER, RESIGNED.

DEPARTMENT OF STATE

MARIA OTERO, OF THE DISTRICT OF COLUMBIA, TO BE AN UNDER SECRETARY OF STATE (DEMOCRACY AND GLOBAL AFFAIRS), VICE PAULA J. DOBRIANSKY, RESIGNED.

KENNETH H. MERTEN, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF HAITI.

DEPARTMENT OF LABOR

WILLIAM E. SPRIGGS, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE LEON R. SEQUEIRA, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT IN THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203(A):

To be colonel

JEFFREY A. LEWIS

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

VINCENT P. CLIFTON
PATRICK J. COOK

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

DAVID J. BUTLER
JON E. CUTLER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

BARRY C. DUNCAN
GREGORY GANSER
SCOTT H. HAHN
JAMES E. PARKHILL

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

DAVID A. BIANCHI
SUBRATO J. DEB
ROBERT B. GHERMAN
DOMINIC A. JOHNSON
JOSEPH J. KOCHAN III
DAVID C. LU
STEPHEN H. MACDONALD
KEVIN C. MCCORMICK
DENNIS P. MCKENNA
DOUGLAS L. MCPHERSON
CURTIS R. POWELL
ALAN M. SPIRA
TROND A. STOCKENSTROM
DAVID J. STROH
BRUCE T. THOMPSON
SARAH WALTON

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

LISA M. BAUER
JEFFREY GARCIA
SAMUEL G. JOHNSON
DAVID W. KACZOROWSKI
JAMES D. KIELEK
LEONARD A. KIOLBASA
MICHAEL L. MULLINS
EDWARD G. OESTREICHER
CHRISTOPHER D. PEARCE
JOSEPH E. STRICKLAND

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

DWAIN ALEXANDER II
MONTE R. DEBOER
JILL R. JAMES
DANIEL G. JONES
DAVID N. KARPEL
KEVIN M. KELLY
JEAN M. KILKER
JOHN M. PRICE
DAVID M. STAUSS
JAMES A. TALBERT
THOMAS H. VANHORN
THOMAS E. WALLACE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

JAMES F. ARMSTRONG
KATHARINE E. BEASLEY
EDNA M. CANDELARIO
ALISON P. EAGLETON
LAUREN A. EVANS
DEANA M. GALLEGOS
DEBRA S. HALL
ARTHUR B. HANLEY, JR.
AMEY HEATHRILEY
LINDA M. JACOBSON
LORI V. KARNES
PAULA J. LOVELETT
DAWN D. PESTI
RHODA S. A. POWERS
MARK C. SEBASTIAN
TERESA L. SMITH
JODY L. STANLEY
KIMBERLY A. SZYMANSKI
JULIE A. ZAPPONE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

WILLIAM E. BUTLER
ROBERT F. CASAGRAND
THOMAS D. CHASE
EDWARD C. CHEVALIER
CRAIG P. DOYLE
CHARLES M. FUTRELL
JOHN D. LAZZARO
RANDALL J. RAMIAN
RONALD R. SHIMKOWSKI
JONATHAN D. WALLNER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

ROBERT J. CAREY
JOHN W. DEBERARD
PAUL DEMONCADA
DONALD L. MACONI
JOSEPH B. MATIS
ALAN R. REDMON
THOMAS D. ROACH
GARY L. ROUSE
GEORGE D. STEFFEN
DAVID J. SVENDSGAARD, JR.
GLENN A. TOOTLE
BRIAN S. VINCENT