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House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, December 22, 2005, at 4 p.m.

Senate

WEDNESDAY, DECEMBER 21, 2005

The Senate met at 9 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

PRAYER

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

Let us pray.

Eternal Spirit, direct our efforts so that our labors may honor You. Let our toil bring a harvest that will benefit others. Give us opportunities to live with such integrity that our lives will be living sermons.

Bless our lawmakers. Lead them into a knowledge of Your compassion. Each day, bring them new aspirations and fresh wisdom.

When disappointment comes, may they turn to You for direction. Raise them step by step above temptation until they are determined to never deviate from the right path.

Keep each of us faithful even in little things so that You can use us for Your glory.

We pray in Your wonderful Name. Amen.

NOTICE

If the 109th Congress, 1st Session, adjourns sine die on or before December 22, 2005, a final issue of the Congressional Record for the 109th Congress, 1st Session, will be published on Friday, December 30, 2005, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT-60 or S-123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Thursday, December 29. The final issue will be dated Friday, December 30, 2005, and will be delivered on Tuesday, January 3, 2006. Both offices will be closed Monday, December 26, 2005.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

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By order of the Joint Committee on Printing.

TRENT LOTT, *Chairman*.

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



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PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBAC 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. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 21, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBAC, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BROWNBAC 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. FRIST. Mr. President, in a few moments we will begin the final 10 minutes of debate before proceeding to the final votes with respect to the deficit reduction conference report. Two points of order are possible under the agreement and we will vote on the respective motions to waive. Senators, therefore, can expect us to begin voting in 15 to 20 minutes.

Following those two votes—it may be one vote but one or two votes—on the motions to waive, we will proceed to a vote on final passage on the deficit reduction measure.

After that vote, we will have 1 hour before the cloture vote on the Defense appropriations conference report. Additional votes will occur following that vote. I hope we are able to get cloture on the Defense bill and wrap up the remaining business during today's session.

As we mentioned yesterday, it is likely to be a long session. It could be short, but it could be a long session over the course of the morning and early afternoon with a number of votes.

We have asked Senators to stay close to the Chamber so that when we do have votes, we can complete them in a timely fashion.

I will yield to the Democratic leader for any comments on the course of the day.

RECOGNITION OF THE MINORITY LEADER

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

PATIENCE AND UNDERSTANDING

Mr. REID. Mr. President, I was in my office early this morning, and Gary Myrick, who works for me, came in and said, Is there anything you need? I said yes, patience.

I mentioned that to the distinguished Republican leader a few minutes ago. I think everyone needs that today. It is going to be a difficult day.

I hope we will all have patience and understanding, recognizing that these are tense times—not only because of the legislation we are dealing with but also the holidays. We are all anxious to get back to our families, but we have work to do. I hope we all have patience.

Mr. FRIST. Mr. President, I will make a final statement on the deficit reduction act. The Democratic leader also will, and then there will be 10 minutes after that before we begin to vote.

DEFICIT REDUCTION

Mr. FRIST. Mr. President, like everyone else in America, we need to tighten our belts and learn how to do more with less. For the first time in over 8 years in the Senate, we will reduce spending in an area of the budget known as entitlement spending—for the first time in 8 years.

As we all know, entitlement spending represents over 54 percent of total Federal spending today. It is going to continue to grow steadily in the years ahead.

The infrequency with which this body addresses entitlement legislation underscores the importance of the bill we are about to vote upon.

For the first time since 1997, this body, the Senate, is taking action to reduce or slow that growth in Federal entitlement spending. The legislation before us today will reduce spending nearly \$40 billion over the next 5 years. If you extrapolate that out to 10 years, it is about \$100 billion.

For some, particularly on the other side of the aisle, this legislation—and I want to put that in quotation marks—“cuts too much.”

Let me respond by saying entitlement spending is projected to grow from \$1.3 trillion to over \$1.7 trillion in 2010—\$1.3 trillion to over \$1.7 trillion over the next 5 years. If you add that up, over the next 5 years, the cumulative entitlement spending will top \$7.8 trillion.

The bill we have before us reduces that figure, the \$7.8 trillion, by a total amount of \$40 billion. That is about a half of 1 percent.

“Cuts too much?”

Furthermore, the bill doesn't—that is why I put it in quotation marks—cut entitlement spending, spending which,

if we don't pass this bill, will grow at 5.4 percent. Once we pass this bill, it will be slowed to 5.4 percent. That is not a cut. The legislation, as tough as it has been to negotiate—and much of it has played out on the floor of Senate itself—reflects tremendous work over the past several months. It is a small downpayment against greater challenges that confront our country in the years ahead.

Last week, the Congressional Budget Office issued a report entitled “The Long-Term Budget Outlook.” Let me read the very first line of that report.

As health care costs continue to grow faster than the economy and the babyboom generation nears entitlement for Social Security and Medicare, the United States faces inevitable decisions about the fundamentals of its spending policies and its means of financing those policies.

What it boils down to is the entitlement spending path we are on is simply not sustainable. The legislation we are about to vote on is a good first step on putting us back on a sustainable glide-path. But it is only the first step.

I am proud of the work on this bill to control Federal spending. I congratulate the chairman of the Senate Budget Committee, Senator GREGG, who worked nearly 9 months ago on passage of the budget resolution. The 2006 budget resolution that put in motion this process has brought us to this point of deficit reduction in this reconciliation bill today. Indeed, this final conference bill exceeds the goals set out last spring in that resolution by nearly \$6 billion.

I also thank the chairmen of the reconciliation committees and the many staff who have worked so hard in putting this bill together.

It is time we bring this year's budget process to an end with passage of this legislation today. With the New Year only a couple of weeks away, it is time for us to prepare and actually renew our focus on the continued challenges that lie ahead.

The bill shows fiscal restraint. It shows we are going to cut wasteful Washington spending. A “yes” vote demonstrates we are governing with meaningful solutions to ensure America's long-term prosperity.

The ACTING PRESIDENT pro tempore. The Democratic leader.

BUDGET RECONCILIATION

Mr. REID. Mr. President, the matter now before the Senate of the United States is a budget. But it isn't a budget based on mainstream American values; it is an ideologically driven, extreme, radical budget. It caters to lobbyists and an elite group of ultraconservative ideologues here in Washington, all at the expense of middle Americans, those with the greatest of needs, and future generations.

I rise today to express my strong opposition to the budget reconciliation conference report before this body. Rather than sharing the sacrifices

needed to get this Nation's fiscal house in order, this Republican budget and this legislation target ordinary Americans by cutting programs such as student aid, Medicare, Medicaid—all to pay for another round of budget-busting tax breaks for special interests and multimillionaires. This budget is an attack on the middle class and those in greatest need on behalf of lobbyists for the powerful. This budget is un-American. In fact, as the leading clergy of Protestants in this country has said, it is immoral.

It is important to consider what is happening in America today. Of course, we know there needs to be fiscal constraint in this country. We are spending \$2 billion a day in Iraq alone. Middle-class Americans are being squeezed. Their wages have been stagnant now for several years. Meanwhile, their costs are increasing for everything from a visit to the family physician—if, in fact, they are fortunate enough to be able to get in to one—to college tuition, home heating, gasoline for their cars. As a result, more Americans are struggling to make ends meet.

This administration and this Congress should be helping middle-class families deal with these family issues. Democrats have developed a variety of proposals to do so. Unfortunately, every one of our proposals has been repeatedly blocked by the Republican majority.

We are debating a reconciliation bill, the centerpiece of a Republican budget that not only fails to address the middle-class squeeze but makes it worse and saddles our children—my 5 children and my 15 grandchildren—with billions and billions of dollars in additional debt.

This budget which is before the Senate has a name. Every piece of legislation that comes before this body has a name. The name given to this piece of legislation by the Republican majority is the Budget Deficit Reduction Act of 2005. Try that one on. The Budget Deficit Reduction Act of 2005. It increases the deficit of this country because of the tax cuts they are giving to those who don't need them by some \$50 billion over and above these cuts. Budget Deficit Reduction Act? Is that Orwellian doublespeak?

This legislation includes the largest student aid cut in this Nation's history. We have read all the articles about the costs of college increasing. You go to a State university now in Nevada. They are considering that everyone can go to school at the University of Nevada—Reno or UNLV—or the community college system. There were no basic academic requirements. If you graduate from high school, you can go to college. They are considering raising qualifications to get in those schools to a B average—eliminating people like me from being able to go to college. That is wrong. That is what this legislation is doing. A child's ability to be educated should not be dependent upon how much money their parents have.

This legislation, instead of helping middle-class families struggling with these increased burdens, simply increases their costs and makes it even worse for them. Rather than opening doors of opportunity to all Americans, this bill will close the doors for many. Higher fees on students increase the rate of interest on student loans, weaken the financial foundation of higher education, and, I submit, weaken our country. Forcing middle-class families to pay more for college in order to partially pay for another fiscally irresponsible round of special interest tax breaks is not fair. It is bad economic policy.

In today's global and high-tech economy, America's competitive edge depends increasingly on our commitment to education. It used to be that we could go to India and grab all the engineers and bring them here. India needs them now. We cannot do that anymore. We need to educate our own students. We should be increasing a commitment to educating our children. Instead, this bill goes in the opposite direction.

Beyond the cuts in student aid, this bill also contained harmful health care cuts that will increase costs and deny access to millions of Americans. For example, Part B premiums for Medicare will go up, up for all seniors. Home health services are cut. I can remember 20 years ago, I went—a physician asked me to—to Las Vegas to visit his patients who were in hospitals. He said: They shouldn't be here, but under the rules we have, I cannot give them their medication at home. He said: Think how much money this is costing the Federal Government.

We changed it so that people could stay home and be taken care of. We are changing that. We do not save money, we lose money.

While at the last minute the Republican leadership decided under certain provisions to protect certain favored health care interests, they did not provide such protections for ordinary American seniors.

Even more troubling than the cuts in Medicare are the cuts in Medicaid. Medicaid—health care for the neediest of all Americans. This bill targets Americans with the greatest needs and the fewest resources by forcing them to pay more for health care, cutting benefits, and making it harder for them to get the prescription drugs they need. Many of these people are hurricane survivors. We saw the huddled masses on television. We saw them in New Orleans because of the disaster, but there are many communities all over America, and the huddled masses are there, also. We just did not see them on TV. What do we do to help them? Nothing. Nothing.

Many people in America are struggling to survive. These people need more help with their health care, not less. This bill cuts what little health coverage they have, if any, and increases their costs. For what? To pay for another round of tax breaks for spe-

cial interests, multimillionaires, and billionaires. That is immoral.

This legislation rips and tears at Medicare and Medicaid. This bill's cuts to Medicare and Medicaid are largely why this legislation is strongly opposed by all seniors. The largest seniors organization in America, the American Association for Retired Persons, does not like this legislation. Their chief executive officer, Bill Novelli, writes the following:

The final conference agreement does not ask for shared sacrifices to achieve budgetary savings. Rather it protects the pharmaceutical industry, the managed care industry, and other providers at the expense of low-income Medicaid beneficiaries and Medicare beneficiaries who will foot this bill.

That is not Senator REID speaking, that is Bill Novelli, CEO of the AARP.

Unfortunately, this bill's Medicare and Medicaid reductions are not the only cuts to this Nation's safety net. The bill cuts funding for child support enforcement.

When I was a young lawyer, I went after some deadbeat dads. Oh, they were hard to trap. They would move from jobs, move from towns. They could always get ahead of their children. But we changed the law so that now we have law enforcement provisions to go after these deadbeats. My son-in-law's sister, in the District Attorney's Office in Las Vegas, spends her full time going after these deadbeat dads. Well, we are going to cut back on this.

This legislation cuts foster care—foster care. Think about that. We all know of people who are foster parents. They have big hearts. They have big needs. And we are going to cut them back.

This legislation cuts back programs for low-income seniors and people with disabilities. I see the Senator from Illinois is in the Chamber. We were together in Arizona. I don't remember the man's name, but there was a man who was an Indian. He testified before us and he talked about how little money he made. He was handicapped. But he worked. And he ended his presentation by saying: I am a proud American. He had a little difficulty of speech, but it was clear what he said. There are many proud Americans who are people with disabilities and low incomes. They need our help. This legislation cuts the ability to help them.

It reduces the availability of housing for families in need. It eliminates FHA's ability to rehabilitate housing. The legislation before this body also badly weakens the Temporary Assistance for Needy Families programs which help move low-income Americans from welfare to work. There was an overwhelming bipartisan consensus in the Senate that we should not change TANF in this fast track. But the Republican leadership ignored that and decided, in the dead of the night, to make the most significant change to welfare policy in a decade.

The bill apparently includes very expensive and unfunded new requirements on States, reducing their already limited flexibility. Meanwhile, the legislation badly underfunds the childcare that parents will need to move from welfare to work. The majority is happy to harm those with the greatest needs. They have gone out of their way to accommodate lobbyists for special interests. For example, lobbyists for HMOs won a huge victory when the conferees rejected the Senate's proposal to eliminate the discredited HMO slush fund. Lobbyists for the pharmaceutical industry saved the industry from adjustments in Medicaid rebates. And lobbyists for certain types of medical equipment won special accommodations as well.

All these favors for special interests should not come as a surprise. After all, that is what we have come to expect from this Congress. The policies being pursued by this Congress are a corruption of our Nation's values. How can it be that we are about to cut student loans, Medicare and Medicaid, and then turn around and provide even more tax breaks to special interests and multimillionaires? Have they no sense of decency? Have they no sense of shame?

The capital gains and dividend tax breaks called for in the Republican budget that are so important to President Bush and this leadership would provide almost half their benefits to those with incomes of more than \$1 million. They will get a tax break of more than \$30,000 a year.

Meanwhile, the losers won't just be the ordinary Americans who will suffer cuts in student loans, Medicaid and Medicare, all Americans will lose because the tax breaks backed by the Republican leadership will cost substantially more than their spending cuts will save. As a result, the deficit will go up, interest rates will rise, the economy will suffer, and the burdens on our children and grandchildren will increase.

Finally, this budget is wrong for many other reasons and in many other dimensions. It is wrong to target middle-class families already struggling to send their kids to college. It is wrong to target Medicare and Medicaid, which serve seniors and Americans with the greatest needs. It is wrong to use these cuts to help pay for tax breaks that largely benefit those with incomes over \$1 million. It is wrong to do all this while handing out favors to special interests and their lobbyists. And it is wrong to approve a budget that will increase the deficit and burden future generations.

This is not a budget based on mainstream American values. It is an ideologically driven, extreme budget that caters to lobbyists and an elite group of ultra-conservative ideologues in Washington, all at the expense of middle-class Americans, those with the greatest needs.

This budget will be approved unless enough reasonable Senators on the

other side stand up and do the right thing. I hope they will. And I hope we can finally persuade the leadership in this body, the Republican leadership, that it is time—it is long past time—to stop catering to special interests and to start putting the American people first.

RESERVATION OF LEADER TIME

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

DEFICIT REDUCTION ACT OF 2005—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany S. 1932, which the clerk will report.

The legislative clerk read as follows:

Conference report to accompany S. 1932, an act to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 5 minutes each for the Senator from New Hampshire and the Senator from North Dakota.

The Senator from the great State of North Dakota.

Mr. CONRAD. Mr. President, the legislation before us suggests that it is deficit reduction. There are three chapters to this book on reconciliation. You have to read all three chapters to understand the meaning of the book. The first chapter provides spending cuts of \$40 billion over 5 years. Those spending cuts disproportionately take from those who have the least among us. Chapter 2 provides \$70 billion of tax cuts. So the combined effect of chapters 1 and 2 is not to reduce the deficit, it increases the deficit. And the tax cuts give to those who have the most among us.

The Chaplain, in his prayer this morning, asked us to lead lives that will be living sermons—lives that will be living sermons. I do not know of any church that teaches to take from those who have the least among us to give to those who have the most among us.

The third chapter in this book provides for a debt limit increase of \$781 billion—one of the largest increases in the debt of our country, in the history of our country.

This first chapter, as I have indicated, contains \$40 billion of spending cuts over 5 years. But the second chapter will cut taxes by \$70 billion over that same period. The net result is not deficit reduction; it is an increase in the deficit.

If we are to focus just on this first chapter, and put it into perspective, here is what we see: spending cuts of \$40 billion. It is almost indecipherable how much that is in relationship to what we will be spending over the next 5 years. We will be spending \$14.3 trillion over the next 5 years. So our col-

leagues on the other side have managed to cut one three-hundred fiftieth—one three-hundred fiftieth—of the spending. But then in chapter 2 they are going to come here and eliminate that deficit reduction by the tax cuts—again, spending reductions from those who have the least among us to give to those who have the most among us. And the extraordinary irony of all of this is that all of this—if this is implemented, the budget that is being passed—is building a wall of debt that is unprecedented in the history of our country.

If this budget is actually implemented over the next 5 years, it will increase the debt of our country from \$7.9 trillion to \$11.3 trillion. This is not just my estimate, this is the estimate of the people who have written this package.

This is from their own document. They say the debt of the country will increase each and every year by over \$600 billion. This is before the baby boomers retire. If you like deficits and debt, if you want to pass on a massive debt to our children, this is your chance. Vote for this package.

It took 42 Presidents 224 years to run up a trillion dollars of external debt, debt held by foreigners. This President has more than doubled that amount in 5 years. This is going in the wrong direction. The result is, we now owe Japan over \$680 billion. We owe China almost \$250 billion. We owe the "Caribbean Banking Centers" more than \$100 billion.

In addition to the explosion of deficits and debt, these provisions in this chapter of the book are unfair to those who have the least among us: Medicaid cuts targeting low-income beneficiaries, child support enforcement cuts, foster care cuts, on and on it goes. The spending cuts are being done to make room for more tax cuts. House Ways and Means Committee Chairman BILL THOMAS told a group of GOP lobbyists the spending cuts are necessary to make room for the tax-cutting legislation.

I will be making points of order against this bill because we believe this bill has violated the rules of this body in instance after instance after instance, repeated violations of the rules. At the appropriate time, I will bring a point of order.

I conclude as I began: This legislation, taken as a whole, all of the chapters of reconciliation, will increase the deficit and debt of our country, will have one of the largest increases in debt, \$781 billion, in our Nation's history. In addition to that, this has the wrong priorities, taking from the least among us to give to those who have the most among us. That is wrong.

I thank the Chair.

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

Mr. GREGG. What is the time situation?

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire has 5 minutes.

Mr. GREGG. Mr. President, every so often in this body—and it is quite rare—we come to a point where a vote must be cast in order to determine whether the words you speak are going to be complied with. That is this vote. All of us in this Congress tend to talk about fiscal responsibility. We all are concerned about our children and the type of Nation we are going to leave them. We know that because of the retirement of the baby boom generation, our children will face huge financial stress from the costs of Government. We know that we have on the books approximately \$44 to \$55 trillion of unfunded liability in the area of Medicaid, Medicare, and Social Security accounts that benefit seniors. That huge number is a result of the fact that there is a huge generation about to retire called the postwar baby boom generation.

The question for us, as stewards of this Nation and as stewards of our children and our grandchildren's future, is whether we are going to pass on to them this type of debt or whether we are going to step on to the turf of trying to address that issue before it overwhelms us. Whether our children have an opportunity to live as good as our generation has, to send their children to college, to own a home, to be able to live in an America which is prosperous, will be determined by whether we, as a government, are responsible in what debt and obligations we pass on to them.

For 8 years, we have ignored this problem. Today we have an opportunity to address it. This will be the first time that this Congress in 8 years has stepped onto the turf, put our toe in the water—actually, we are going up to our ankles—to address the issue of future responsibilities and how we control the spending of the Federal Government in the outyears.

We have addressed the issues on the appropriations side, discretionary spending, but we have refused, over the last 8 years, to address the issue of mandatory spending or entitlement programs. This is not a major step forward. I wish it was bigger. The Senator from North Dakota held up charts which show how unfortunate it is in its size, that it is not larger. He has pointed out that it is \$40 billion on \$14 trillion of spending. He calls that one three hundred fiftieth of a percent. It is actually about a half a percent of the spending during that period. But the point is, if we do not proceed at this time, if we do not go forward, it is still going to be \$40 billion of debt that we pass on to our children. That is what this vote is about.

It is not about the tax issue. This isn't a tax bill. It is not about the debt issue in the sense that it is not the debt extension vote. It is the one vote that we will have as a Congress to try to control the outyear debt of this

country through restraining spending. It will be the first time that we have stepped forward on the issue of one of the major entitlements, specifically Medicaid. We don't do a great deal on the numbers side of Medicaid. I wish we had done a lot more, and I tried to do a lot more. But we do take significant steps in the area of policy, on how we address Medicaid by essentially taking what the Governors have proposed, in a bipartisan approach, and putting that language into this bill to give the Governors more flexibility as to how they deliver Medicaid in the States, thus allowing them to deliver more services to more people at less of a rate of growth.

That is reflected in this chart. We can see that dedicated spending is going to go up 40 percent under this bill. It would go up 40 percent under the law, generally. We essentially reduce the rate of growth, not dramatically, but we put in place policies which will allow us to improve the system and care for more children more effectively.

This is it, folks. This is the only chance we are going to have this year. It is the only chance in the last 8 years to actually step forward and do something about deficit spending on the entitlement side.

This is our responsibility to our children. We should pass this bill, or else we should ask ourselves what type of public policy are we pursuing and what type of stewards are we of our children's future. This is the one vote we will have to reduce the rate of growth of the Federal Government.

I believe we have now used the 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. GREGG. On both sides?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. GREGG. I ask unanimous consent that as we debate the issue of points of order, which the Senator from North Dakota is going to make, we have 4 minutes on both sides.

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

The Senator from North Dakota.

Mr. CONRAD. Has the Senator yielded?

Mr. GREGG. Yes.

Mr. CONRAD. Mr. President, could the Chair advise us, what is the parliamentary circumstance we confront? My understanding is I am to be recognized to make a point of order at this point.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. CONRAD. I thank the Chair.

Mr. President, this bill contains many violations of the rules. We are here because the majority insisted on ramming through bad legislation at the last moment with little or no public scrutiny. This 774-page bill was written behind closed doors with no input from the minority. It was filed in

the dead of night and voted on in the House at the crack of dawn. Then House Members left town.

Let's remember that reconciliation is a special parliamentary process that allows legislation to be passed with fast-track procedures that restrict a Senator's right to debate and amend. Because of these fast-track procedures, the Byrd rule was adopted to prohibit extraneous, nonbudget-related provisions from being included.

The points of order that I am raising are all violations of the Byrd rule. I now raise these three points of order:

One, striking the Medicaid medical liability provision, which allows hospitals to deny treatment to low-income individuals who are unable to pay. Not only is the majority raising copayments on low-income Medicaid beneficiaries, but they are shielding hospitals from medical liability if they refuse to treat those low-income people who are unable to pay. That is wrong.

Two, striking the foster care provision that would prohibit grandparents from receiving foster care payments. The conference report includes a provision to overturn a Ninth Circuit Court case that allowed grandparents with limited incomes to receive foster care payments when parenting vulnerable children. That is as mean spirited as it is ill-conceived. We know that placing foster kids with their grandparents puts them in the most stable and healthy environment. Prohibiting support for grandparents who take in foster children is wrong.

Three, I am also raising points of order against reports focusing on policy matters that do not belong in a reconciliation bill. These reports have no budgetary effect whatsoever and should not be here.

I hope my colleagues will support these points of order so we can send this bill back to House. Let's use this opportunity to create a better product for the American people.

Mr. President, I raise the point of order pursuant—

Mr. GREGG. Will the Senator yield?

Mr. CONRAD. Let me conclude first.

Mr. GREGG. My question is whether I should make my statement before the Senator makes the point of order.

Mr. CONRAD. That is fine.

Mr. GREGG. Mr. President, the Senator from North Dakota has been cooperative and very fair, as he always has been when proceeding on these bills. He is a true professional. I know the Chair has been advised as to what the four points of order are.

I have a parliamentary inquiry: Does the Chair deem the foster care point of order to be well taken if that question is put to the Chair?

The ACTING PRESIDENT pro tempore. The Chair does not believe that particular point of order is well taken.

Mr. GREGG. Basically, if I may continue, we would be dealing with three points of order as being well taken if they are put to the Chair?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. CONRAD. Mr. President, might I inquire, on the other three points of order that I have raised, would the Chair rule that those points of order are in fact in order and appropriate?

Mr. GREGG. Not at this time is the question.

Mr. CONRAD. Yes.

The ACTING PRESIDENT pro tempore. When it is time, under the rule, the Chair will in fact so rule.

Mr. CONRAD. I thank the Chair. I thank my colleague. We have worked in a professional and cooperative way. I thank the Chairman for his inquiry.

Mr. GREGG. Mr. President, the Democratic leader on the bill has every right to make a point of order. Clearly, the Chair will rule they are well taken. Let's talk about the substance quickly.

They are essentially technical points of order. Two deal with reports and the other with an issue of liability which is very narrow, dealing with what people are told when they come into an emergency room. Essentially, the practical effect of doing these technical attacks on this bill will be that the bill must go back to the House of Representatives and the House of Representatives is going to agree and knock that language out. But the House is not here.

So what is the real practical effect of this? It is that the Katrina money in this bill will not be spent. The TANF Program, the welfare program, will lapse. The Medicare physicians payments increase, which basically makes Medicare physicians whole, will not occur. Transitional medical assistance for families who worked their way off welfare will be lost. And the therapy caps for seniors who suffer strokes will be lost during this interim period.

Why would we want to do that simply to go through a technical exercise? It makes no sense at all, other than the fact that the other side of the aisle wants to delay the process. But in the process of delaying for purely technical reasons—I mean, two reports are being challenged. We get thousands of reports in this institution. To delay the Katrina benefits for the people in the gulf coast region who have suffered is outrageous, over two reports.

To potentially stop welfare payments for up to a month because the House cannot get back here is outrageous, over two reports. To stop transitional medical assistance is outrageous, over two reports. To say nothing of the other reports. I realize if we don't enact this bill by the end of this year, there are \$18 billion worth of subsidies that are going to flow to corporate lenders which are totally inappropriate, which the HELP Committee has said we have to stop. But those subsidies will go to those lenders. The money will potentially be lost, and that money that was going to be used to reduce debt and give students more loans will be lost, potentially, unless we get this bill done by the end of the year.

We have serious issues that have to be addressed. They should not be tied

up over technicalities. That is what these points of order are about.

Mr. BAUCUS. Mr. President, I support the point of order raised by Senator CONRAD on the budget reconciliation bill. Under the Byrd rule, any provisions in a final budget reconciliation bill that are extraneous to changing the budget can be stricken. Section 6043, the emergency room copayments for non-emergency care provisions, clearly violates the Byrd rule.

Section 6043 makes far-reaching policy changes never debated in the Senate that have no place in a budget reconciliation bill. Although the provision makes major changes to Medicaid, the Emergency Medical Treatment and Labor Act, EMTALA, and even State medical malpractice liability policy, it only generates net savings of \$11 million over 5 years, one-tenth of a percent of the original budget target.

Section 6043 allows States to impose new higher costs for Medicaid patients seeking emergency room care and allows hospitals to turn patients away if they cannot pay when the hospital says there is no emergency. Under current law, Medicaid requires hospitals to provide access to emergency care when it is medically needed. In fact, Medicaid HMOs are required to cover care in cases where the individual reasonably believes there is an emergency, even when no emergency exists. And Federal law requires hospitals to screen and stabilize patients regardless of their ability to pay.

Section 6043 turns current law on its head. It will deter emergency room use by Medicaid beneficiaries and make it harder to enforce the Federal guarantee of access to emergency care for all.

The provision also includes language that makes it harder for patients to sue hospitals and doctors for poor treatment decisions about whether they need emergency care. This language would tip the burden of proof from a "preponderance of the evidence" to a "clear and convincing" evidence standard. The "preponderance" standard is the usual standard in State medical malpractice claims. It is a standard that strikes the balance between the patient and the provider. The "clear and convincing" standard tips the burden of proof toward the patient and makes it more difficult for a patient to prove his or her claim.

Similarly, the provision also changes the standard of liability from the usual State standard of "negligence" to a heightened standard of "gross negligence." It is more difficult for a patient to prove "gross negligence" than "negligence." Thus, the language changes the standard of liability to impose greater burdens on the injured patient and less accountability for the providers. This actually makes an end run around State medical malpractice liability law, lowering the standard of liability.

Neither State medical malpractice law nor EMTALA standards were the

subject of this bill. Neither was discussed in the Senate, even though both are of great concern to many in the Senate. This provision was never discussed or considered at any point in the Senate debate, in committee or on the floor. It was omitted from the Senate version.

Given this section's extremely small pricetag and its oversize policy effect, this provision is ripe for exclusion under the Byrd rule. For these reasons, I support Senator CONRAD's point of order to strike section 6043.

Mr. CONRAD. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. There is 1 minute 29 seconds.

Mr. CONRAD. Mr. President, some of these matters are technical matters. But we have rules in this body for a reason. This legislation has many violations of the rules. I have chosen a few to raise today. Why? Because, colleagues, we could be voting all day on my points of order against this bill. I have tried to reduce it to one vote to accommodate colleagues. I could be here raising 12 or 15 points of order and ask for a vote on every single one of them. I have not done that. Yes, some of these matters are technical, but they are because we have rules.

I would say that the question of Medicaid liability is not a technicality. This is a question that allows hospitals to deny treatment to low-income individuals who are unable to pay. Not only is the majority raising copayments on low-income Medicaid beneficiaries, but they are shielding hospitals from medical liability if they refuse to treat those low-income people who are unable to pay. That is wrong.

Let me just say, on the foster care matter, we have a difference with the Parliamentarian. I believe there is a violation.

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

Mr. CONRAD. Again, I believe the foster care question that prohibits grandparents from receiving foster care payments is also well taken, but we understand there is a difference.

I raise the point of order pursuant to section 313(b)(1)(A) of the Congressional Budget Act of 1974 against section 5001(b)(3) and section 5001(b)(4) of the conference report because those provisions of title V regarding Medicaid produce no budgetary changes in outlays or revenues; and pursuant to section 313(b)(1)(D) of the Congressional Budget Act of 1974 against section 7404 regarding foster care, and the portion of section 6043 beginning on page 92, line 19, through page 93, line 2, which relates to the negligent standard for hospitals and physicians who treat Medicaid patients because any changes in outlays or revenues associated with those two provisions are merely incidental to the nonbudgetary components of those provisions.

I hope my colleagues will vote to sustain this point of order.

Mr. GREGG. Mr. President, I move to waive section 313 of the Congressional

Budget Act for consideration of sections 5001(b)(3), 5001(b)(4), and the relevant sections of 6043 of the conference report to accompany S. 1932.

I understand the Chair is going to rule that the fourth point of order relative to foster care is not well taken.

I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 52, nays 48, as follows:

[Rollcall Vote No. 362 Leg.]

YEAS—52

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Specter
Burr	Gregg	Stevens
Chambliss	Hagel	Sununu
Coburn	Hatch	Talent
Cochran	Hutchison	Thomas
Coleman	Inhofe	Thune
Collins	Isakson	Vitter
Cornyn	Kyl	Voivovich
Craig	Lott	Warner
Crapo	Lugar	
DeMint	Martinez	

NAYS—48

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Chafee	Kohl	Salazar
Clinton	Landrieu	Sarbanes
Conrad	Lautenberg	Schumer
Corzine	Leahy	Smith
Dayton	Levin	Snowe
Dodd	Lieberman	Stabenow
Dorgan	Lincoln	Wyden

The PRESIDING OFFICER (Mr. MARTINEZ). On this vote, the yeas are 52, the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. GREGG. Mr. President, I move to reconsider the vote.

Mr. CONRAD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, am I recorded?

The PRESIDING OFFICER. The Senator is recorded.

Mr. CONRAD. Mr. President, could we have order in the Chamber?

The PRESIDING OFFICER. The Chamber will please be in order. Senators will please take their conversations off the floor.

The Senator from North Dakota.

Mr. CONRAD. Mr. President, it is my understanding I would now have the right to offer a second point of order.

The PRESIDING OFFICER. The unanimous consent agreement did authorize that.

Mr. CONRAD. Has the Chair ruled on the point of order?

The PRESIDING OFFICER. The Chair is about to do so.

Mr. GREGG. Mr. President, the Chair is about to rule on the points of order which were just offered, is that correct?

The PRESIDING OFFICER. Correct. The point of order is sustained against section 5001(b)(3), section 5001(b)(4), and that portion of section 6043(a) proposing a new subsection (e)(4) to section 1916A of the Social Security Act as added by section 6041 and as amended by section 6042 of this act. The point of order is not sustained against section 7404.

Mr. CONRAD. I thank the Chair. I now ask if it is in order that I would offer a second point of order under the unanimous consent agreement.

The PRESIDING OFFICER. The unanimous consent agreement did so authorize.

Mr. CONRAD. Mr. President, colleagues, I see no need to ask colleagues to cast another vote. Therefore, I will withhold on the second point of order and we could go right to passage of the reconciliation conference report.

Mr. GREGG. I suggest that is a good approach.

TY8RD-PARTY PAYORS

Mr. BOND. Mr. President, I rise to engage the chairman of the Finance Committee in colloquy regarding clarification of some Medicaid provisions relating to strengthening the government's ability to identify and collect payment from liable third party payors.

Under current law, Medicaid is the payor of last resort. In general, federal law requires available third parties must meet their legal obligation to pay claims before the Medicaid program pays for the care of an individual.

The conference report amends the list of third parties named in section 1902(a)(25) of the Social Security Act for which States must take all reasonable measures to ascertain the legal liability to include, among others, pharmacy benefits managers.

Once only the back office to health plans, employers, and State governments, pharmacy benefit managers have expanded their business model to include serving as risk-bearing entities under the Medicare Part D program.

I would like to clarify that the addition of pharmacy benefit managers to the definition of liable third parties is in the instance when they are at risk for the underlying benefit, such as operating as a plan sponsor for purposes of providing health benefits or as a riskbearing entity under the new Medicare Part D program as a stand-alone PDP. This addition is not meant to make pharmacy benefit managers liable when they are acting merely in an administrative capacity on behalf of a liable third party.

Mr. GRASSLEY. I thank the Senator from Missouri. Yes, I want to clarify the intent is not to create an addi-

tional liability where none exists today. Pharmacy benefit managers may not be liable third parties. It is dependent upon whether they are ultimately responsible for the payment of a claim. It is my understanding that the health plan or employer contracting with the pharmacy benefit manager is ultimately at risk for the underlying claim, so it is my belief this will not create new liability for the pharmacy benefit manager.

Mr. BOND. I thank the Chairman.

BONA FIDE SERVICES—CLARIFYING THE TREATMENT OF DISTRIBUTOR SERVICE FEES UNDER THE NEW MEDICAID PHARMACY REIMBURSEMENT METRIC

Mr. LOTT. Mr. President, I again commend Chairman GRASSLEY for the leadership role he has taken in crafting much needed reductions in the mandatory spending programs that fall under his jurisdiction as chairman of the Senate Finance Committee. Regarding the changes to the Medicaid pharmacy reimbursement formula, we both share a strong commitment to ensuring that the Federal dollar is spent in a wise and proper manner while maintaining patient access to their medicines.

I do want to take this opportunity to clarify specifically how bona fide services fees, which are negotiated between a manufacturer and pharmaceutical distributor, should be treated under the new Medicaid pharmacy reimbursement metric.

Manufacturers pay bona fide service fees for specific services provided by the distributor. Service fees are a relatively new business model to the pharmaceutical distribution industry and how they should be treated under Federal reimbursement programs first came into question as the new Average Sales Price, ASP, metric under the Medicare Modernization Act was being implemented. I am pleased to note that Congress specifically did not include service fees as a price concession to be incorporated into the ASP calculation and CMS subsequently confirmed that, "Bona fide service fees that are paid by a manufacturer to an entity, that represent fair market value for bona-fide service provided by the entity, and are not passed on in whole or in part to a client or customer of the entity should not be included in the calculation of ASP."

In light of this, I wanted to make it clear that it was not the Chairman's intent to have manufacturers include such bona fide services fees in the new Medicaid pharmacy reimbursement equation.

Mr. GRASSLEY. The Senator from Mississippi is correct. It was not the intent of the conferees to suggest that by dropping bona fide services fees from the final agreement that those service fees should be included in the calculation of the Medicaid Average Manufacturer Price, AMP, based reimbursement methodology as established in the pharmacy reimbursement provisions of the conference agreement.

I thank my colleague from Mississippi for seeking this clarification.

CONTINUED DUMPING SUBSIDY OFFSET ACT

Mr. CRAIG. Mr. President, I rise to commend Chairman GREGG on his leadership regarding the Deficit Reduction Act. The Budget Committee has had to make hard decisions and has labored to do so fairly. I have seen first-hand and appreciate the Chairman's dedication to the integrity of this process.

On behalf of myself and Senator BURNS, I would like to state for the record our understanding of the effect of the language in the bill regarding repeal of the Continued Dumping Subsidy Offset Act CDSOA.

We understand that the bill requires distribution of all antidumping and countervailing duties finally determined, ultimately assessed on any and all imports of merchandise that are entered, or withdrawn from warehouse, for consumption by the deadline of October 1, 2007.

Further, we understand that liquidation or assessment of duties need not occur prior to the deadline of October 1, 2007, as a condition of distribution and that the duties ultimately assessed will be distributed regardless of the date on which they are finally determined and collected.

In other words, while appeals to U.S. courts or NAFTA panels or other proceedings at administrative agencies may prevent final assessment and collection of the duties owed until after the deadline of October 1, 2007, so long as the imports are entered, or withdrawn from warehouse, for consumption by that date, the duties ultimately assessed will be distributed annually under the processes currently specified in law.

Finally, we understand that subsection (b) specifies that the CDSOA shall operate "as if" there had been no repeal; meaning that Customs will maintain all existing aspects of the program codified at 19 U.S.C. §1675c, and contained in accompanying regulations, including all accounting procedures, all administrative and other mechanisms, and all infrastructure in place to collect, account for, track, and distribute duties on merchandise entered, or withdrawn from warehouse, for consumption by the deadline of October 1, 2007. And at all times we would expect that collections of duties are to be pursued aggressively by U.S. Customs and Border Protection.

Mr. FRIST. It is my understanding that my colleague is correct in his interpretation of the language agreed to by the conferees. In essence, the Continued Dumping Subsidy Offset Act will remain in effect for all imports of merchandise that are entered, or withdrawn from warehouse, for consumption by the deadline of October 1, 2007. However, duties collected on products entering on or after October 1, 2007, will be deposited with the U.S. Treasury. Since the WTO has declared the CDSOA as putting us out of compliance with our WTO obligations, other nations have begun to retaliate against our exports. This will bring us into

compliance with that ruling and hopefully will bring to an end the sanctions U.S. companies are currently facing.

Mr. CRAIG. I thank the leader for that clarification and I appreciate all of his hard work in reaching this compromise language.

Mr. SANTORUM. Mr. President, I rise today in support of S. 1932, the Deficit Reduction Act of 2005, but I want to take a few minutes to discuss a specific aspect of that bill—the reauthorization of the welfare reform law. As many of my colleagues have heard me say, I believe the 1996 welfare reform law is one of the great legislative successes during my time in the U.S. Senate. Since the bill's enactment, welfare caseloads have been cut in half, more than 7 million individuals and 2 million families have exchanged a welfare check for a paycheck, and welfare reform has lifted 2.3 million children out of poverty.

We must build upon this success to move the 2 million families that remain on welfare into the workforce by ending the practice of simply extending the program and passing a legislative reauthorization of the welfare reform law. On January 24, 2005, I introduced S.6, the MORE Act, that included a reauthorization of TANF. A bipartisan reauthorization bill, S. 667, passed the Senate Finance Committee with my support on March 9, 2005. While I continue to believe that such reauthorization would have been best suited by moving the Senate Finance Committee reported bill, S. 667, under regular order; we unfortunately have been unable to reach an agreement with our colleagues on the other side of the aisle to bring this bill to the floor.

After over 3 years of trying to move forward on this reauthorization, our colleagues in the House have included TANF reauthorization in their budget reconciliation bill. Going into this process, I was concerned that some provisions in the House legislation regarding work hours, participation rates, child support enforcement and access to child care did not strike the appropriate balance needed to meet the needs of these families as they strive to move from welfare to work. I was pleased that the House had included provisions to encourage healthy marriages, promote responsible fatherhood, and support strong families. At the end of the day, the Deficit Reduction Act is not my preferred vehicle, but I am glad we are making some improvements in the program without upsetting the necessary balance.

The conference report reauthorizes the welfare program—the Temporary Assistance for Needy Families program or TANF—through fiscal year 2010 at its current funding level of \$16.9 billion annually. The bill provides an additional \$1 billion for child care over 5 years for a total of \$2.917 billion annually. While I understand and have heard from many that they want a higher amount for child care, this bill will increase the investment in child

care for working families by \$1 billion, and if we don't do this bill there will be no increase in child care at all. It is important to get this increase done this year.

I am very pleased that the conference report provides \$100 million annually for healthy marriage promotion, and \$50 million annually for the promotion of responsible fatherhood. The need for these programs is clear. Children growing up in married, two-parent homes are less likely to be victims of abuse, engage in high risk behaviors, and suffer from emotional problems. Children who live absent their biological fathers are, on average, five times more likely to be poor, and at least two to three times more likely to use drugs, to experience educational, health, emotional and behavioral problems, to be victims of child abuse, and to engage in criminal behavior than their peers who live with both parents.

However the benefits are also clear. Married families are 5 times less likely to be in poverty than are single-parent families. Adults benefit from marriage through lower mortality rates, better health, greater financial well-being, less suicide, greater happiness, and suffer less violence by intimate partners. Children with involved, loving fathers are significantly more likely to do well in school, have healthy self-esteem, exhibit empathy and pro-social behavior, and avoid high-risk behaviors such as drug use, truancy, and criminal activity compared to children who have uninvolved fathers. These grants can be used to provide information on the value of marriage, conflict resolution, relationship skills and financial management. Increasing healthy two-parent marriages is a proven means to reduce poverty and improve child well-being.

This conference report also makes modest changes in the implementation of the TANF program. First, it updates work participation rates. The 1996 Welfare Reform Act, P.L. 104-193, contemplated that all states would meet a 50-percent participation rate by 2002. Because the current caseload reduction credit is based on the 1995 caseload level, most States—including my home State of Pennsylvania—have an actual participation rate standard of zero. States currently achieve their credit because of their ability to count a decade-old caseload decline. The conference report updates the credit to the more relevant date of 2005, thereby ensuring that the intent of the 1996 welfare reform act is realized.

The bill also closes a loophole on work participation rates. To avoid having to meet caseload requirements, some states set up separate programs and moved their harder-to-place clients to those programs to avoid the work requirements. The bill removes the ability to game the system by including these separate state programs in the work calculation, closing a loophole.

I have seen a number of reports that indicate that this bill changes work requirements, narrows what is considered work, et cetera. I want to be clear that this bill maintains the current work requirements. The bill does not change the current-law standard of 30 hours and maintains the separate 20-hour standard for adults with a child six years of age and under. It also maintains current-law activities that count as work, including allowing 12 months for education and training. The measure leaves it to the states to determine whether activities may be counted as work activities, and how to count and verify reported hours of work.

I have heard a number of my colleagues say that this bill "cuts" money from child support enforcement. I hope they go back and read the bill. The changes in child support actually increase child support enforcement and gets support to the families. The conference report includes provisions that increase States' ability to improve child support collection. Under current law, much of the child support that is owed to families on welfare is assigned to the State. The conference agreement would allow \$423 million owed to families on welfare and those who have left welfare to go directly to those families—a significant improvement over current law.

The supposed "cut" is a restoration of the current state-matching requirement. Currently, States are required to match certain Federal funds with state funds, showing a State investment in the child support enforcement program. However, States have been taking Federal funds from one grant and then using them as the "Federal" matching funds rather than using State funds. The conference report prevents States from "double dipping" by using Federal funds to draw down additional matching federal funds for child support enforcement.

Additionally, the conference report provides \$100 million for grants to ensure that the safety, permanence and well-being needs of children are met in a timely manner. The funds may also be used for the training of judges, attorneys, and other legal personnel in child welfare cases.

The measure also provides an increase of \$200 million for the Safe and Stable Families program. The purpose of this program is to enable States to develop, expand or operate coordinated programs of community-based family support services for family preservation services, family reunification services, and adoption promotion.

A number of organizations may have misunderstood the changes relating to the alleged "cuts" in foster care. There are two provisions relating to foster care that might have led to this misperception, so let me speak on them for a minute.

First, the conference agreement restores long-standing foster care eligibility criteria relating to the *Rosales v. Thompson* decision. That decision

from the Ninth Circuit Court of Appeals broadened eligibility for Federal foster care benefits to include almost every child in foster care in the nine affected States—California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska and Hawaii—instead of only children removed from low-income homes that TANF is intended to help. The conference agreement again ensures the same policy applies nationwide. As this decision did not apply in Pennsylvania, this change does not affect my home State.

Second, the bill limits the amount of administrative expenses when States are slow to place children in safe and suitable situations. I should be clear that this proposal does not reduce foster care benefits because the funds in question do not support payments to families. Instead, the proposal addresses how much Federal funding States may claim to operate their foster care programs and under what circumstances Federal funding may be claimed. Current law requires the placement of a child in a licensed foster family home or a child care institution as a condition of eligibility for federal foster care maintenance payments. As part of meeting this duty, States may make certain administrative claims on behalf of "candidates" for federal foster care. "Candidates" are children who have not been removed from their homes but are at imminent risk of removal.

The proposal allows the State to claim Federal administrative funds for up to 12 months while children are "candidates" for Federal foster care and the State is working to license the home as safe and appropriate for the child. In January 2005, the Department of Health and Human Services, HHS, issued a proposed regulation making this change. So States have been on notice that this issue was of concern for almost a year. Fourteen States have indicated that they would be affected by the proposed regulation; however Pennsylvania was not one of those States.

In summary, millions of our fellow citizens have replaced the dependency on government handouts with the dignity and opportunity of work. Children and families will now have opportunities to strengthen their families through programs to support marriage and responsible fatherhood. Thousands of children will have access to childcare through the \$1 billion in new funding. And we have strengthened our child welfare programs. On balance, I think the reconciliation bill, as it relates to welfare reform, is a step in the right direction. I remain committed to ensuring that work remains a gateway to opportunity for all Americans and urge my colleagues to support passage of S. 1932, the Deficit Reduction Act of 2005.

Mr. KOHL. Mr. President, I once again rise to reluctantly, but adamantly, oppose the budget reconciliation bill before us today. I say reluc-

tantly because the Senate ought to use the reconciliation procedure for the purposes for which it was intended: making difficult choices to reduce spending. We have an obligation to bring our Nation's budget back into balance so we don't saddle future generations with endless debt and economic ruin. However, this budget fails on every level to achieve this goal. And even worse, the budget cuts that this bill does make fall squarely on lower-income Americans who can least afford them.

One provision in this conference agreement that I support relates to extension of the Milk Income Lost Contract, MILC, program. MILC, which expired at the end of the last fiscal year, provides countercyclical support for the Nation's dairy sector. It is targeted. It is fair. It is essential. Moreover, it enjoys the President's support. It makes sense as part of the balanced Agriculture package in this bill.

But even this one bright spot is not enough to save this bill or the budget plan of which it is a part. This bill is just one piece of a fraudulent, fiscally, and morally bankrupt budget which I cannot endorse. While the conference agreement we are now voting on cuts almost \$40 billion in spending, waiting in the wings is a tax-cut bill that will likely cost more than \$70 billion in tax cuts for the wealthy. The math simply doesn't add up. You can't pass a bill to cut spending by \$40 billion and follow it up with a tax bill that will cost more than \$70 billion and claim you are reducing the deficit it's simply untrue and irresponsible.

I am willing to make the hard choices to bring our budget deficit down, but this conference agreement does not reflect our Nation's priorities. I cannot support taking vital services away from families that need them the most—and use those cuts as a fig leaf to hide tax breaks for those who need them the least.

I am particularly disappointed that the House and Senate conference committee has come back with an agreement that is actually worse than the original Senate-passed bill. This so-called compromise causes more harm to low-income Americans while shielding powerful special interests, such as pharmaceutical companies and the managed care industry, from any sacrifice.

This conference report achieves much of its savings by requiring low-income Medicaid beneficiaries to pay more out-of-pocket for health care, and taking away health care services for which many beneficiaries are currently covered. Even more egregious, negotiators dropped a common-sense provision in the Senate-passed bill that would have saved billions of dollars by eliminating a slush fund for private insurance companies in the Medicare prescription drug program.

This bill before us also fails our Nation's students who are struggling to pay for college. Student loans help to

ensure that every student in America can choose higher education regardless of his or her financial or social background. These programs are an investment in our future and an investment in a diverse, educated population who will lead this country in the 21st century.

At a time of rising tuition costs, this conference report would actually make college less affordable. It would establish a fixed interest rate instead of maintaining today's lower variable rates—leaving the typical student borrower, who has \$17,500 in student loan debt, having to pay up to an additional \$5,800 in order to repay his or her college loans. It is simply unacceptable to make the largest raid on the student aid program in history at a time when millions of families are struggling to keep up with skyrocketing tuition costs. And it is inexcusable to do this in order to pay for tax breaks for the wealthiest in our society.

I urge my colleagues to reject this bill—and the irresponsible and cruel budget of which it is a part. It does not reflect the right budget priorities, and it certainly does not reflect the values of American families. And adding insult to injury, these harmful cuts will not even help our country dig its way out of a large and growing budget deficit. This bill will soon be combined with tax breaks for the wealthiest Americans that exceed, by tens of billions of dollars, the value of the cuts themselves, and leave our fiscal situation in even worse shape than before. We should reject this reckless budget plan and instead work to make the responsible choices that the American people expect.

EXPIRING TAX PROVISIONS

Mr. BAUCUS. Mr. President, the Senate is wrapping up legislative business shortly, but there are a few expiring tax provisions that have unfortunately not been extended yet. Chief among them is the protection from the onerous alternative minimum tax, or AMT. Both the higher exemption level and the protection for personal nonrefundable credits expire on December 31, and because of this, 17 million taxpayers face a tax increase next year if we fail to act. Further, a great number of U.S. businesses rely on important tax credits, such as the research and development tax credit and the work opportunity tax credit, both of which expire at the end of the year. This is not the first time this unfortunate situation has occurred, but it is my hope and intention that as soon as the Senate reconvenes next year, that we would take up these items and ensure that they are extended without any intervening lapse. Is that also the intention of my good friend from Iowa, Chairman GRASSLEY?

Mr. GRASSLEY. I thank you, Senator BAUCUS for raising the issue. Providing relief from the alternative minimum tax for millions of American families is critically important. The alternative minimum tax is badly in

need of reform and I know he is anxious to work with me on that important task. Until such time, we must provide annual relief to prevent further expansion of that tax's reach. I was proud that we were able to accomplish that objective as part of the tax reconciliation bill that passed the Finance Committee and the Senate at the end of November. I remain committed to seeing that AMT relief enacted into law. In addition, we should act quickly on other expiring tax provisions to provide simplification and certainty for individuals and businesses, alike.

Mr. BAUCUS. I thank the Chairman for his statement. I look forward to working with him to pass legislation as quickly as possible to provide a seamless extension of these provisions. This will ensure the fewest disruptions for taxpayers and administrative problems for the IRS.

Mr. HATCH. Mr. President, I rise today to express my support for the budget reconciliation bill conference report. As I have stated here during the different stages of debate on this year's budget, the most notable thing about this reconciliation bill is not the size of the reduction of the spending growth but rather the fact that it effectively takes the foot off the accelerator of spending growth and begins to touch on the brakes.

But to get us there, the conferees had to make some hard choices. I will be frank—I would prefer that we pass a bill similar to the one the Senate passed in November. That bill met our budgetary goals, and it struck the right balance. The conference report changes some social programs, and I understand the concerns many throughout Utah have expressed about how these changes will impact care.

That is why I spoke with Health and Human Services Secretary Michael Leavitt last night to discuss how this bill might affect social services in Utah. His assurances that the budget bill will not hurt our more vulnerable citizens were key to my decision to support S. 1932. Secretary Leavitt, who spent more than a decade serving as Utah's Governor, also committed to maintaining a watchful eye over implementation of this law to make sure that all Utahns' interests are protected.

So despite this, my paramount concern was that we act now to curb the growth in entitlement spending because it threatens every one of our children and grandchildren with an unbearable tax burden. This conference report marks the beginning of a much needed change—a change that must occur if we are to gain control of the fiscal future of this country. As many of my colleagues have pointed out, this conference report, if enacted, will represent the first time since 1997 that we have been able to reduce spending growth in entitlement programs.

The conference report before us includes a reduction in Federal outlays totaling almost \$40 billion over the

next 5 fiscal years. This, I am pleased to see, is nearly \$5 billion more than the Senate version of the bill that we passed last month. While I am certainly not happy with all of the individual changes in the conference report, I do like its direction toward more savings growth.

One reason I am so anxious to turn the corner in slowing spending growth on these entitlement programs is that the long-term projections for Federal spending on the three largest entitlement programs—Social Security, Medicare, and Medicaid—are truly alarming. In fact, a new report released last month by the Heritage Foundation states that fully funding these three programs will force Federal spending, as a share of GDP, to increase from today's level of 20 percent to almost 33 percent by 2050.

Moreover, according to the report, the cost of these three programs alone could jump from 8.4 percent of GDP today to 18.9 percent of GDP by 2050. Failing to curb the growth in these programs leaves us with three very unattractive and dangerous alternatives. The first would be to raise taxes dramatically. As we know, such a move would choke off economic growth and leave us vulnerable to economic recessions which would exacerbate rather than help the problem.

The second alternative is equally untenable—eliminate all other spending, eventually to include all discretionary spending. This, of course, is absurd since our defense, homeland security, and other vital spending is included in this category. The final alternative is to continue to allow the deficits to continue to build up as we try to keep on financing the growing debt with loans from other countries.

Therefore, our only real choice is to begin to slow down the growth in these programs. This conference report does start us on this path.

However, I acknowledge this conference report is far from perfect. It retains some flaws from the Senate version of the bill, and it came back from conference with some new flaws.

That being said, I believe this legislation is a step in the right direction. The Medicare provisions are more in line with the Senate version, and overall it targets Medicare's resources to better serve our seniors and disabled. The conference report ensures that beneficiaries don't lose their doctors because of budget cuts, and it expands services while making significant budget savings in noncritical areas.

While I do not agree with everything in this bill, I am pleased that the legislation restores the stabilization fund for the Medicare Advantage regional PPOs and allows the Medicare Part B penalty to be waived for international missionaries. It also will expand the Program of All Inclusive Care for the Elderly, PACE, to beneficiaries living in rural areas. PACE offers alternative services to individuals who may need nursing home care but want to live at

home if possible. This provision will provide another important choice for long-term care services for beneficiaries in rural areas. I filed all three of these policies as amendments when the Finance Committee considered the budget reconciliation bill.

For Medicare beneficiaries this legislation encourages preventive care for seniors and the disabled. Some of the important provisions in this area include the following: preventive screening tests for abdominal aortic aneurysm; exemption for colorectal cancer screening tests from the Medicare deductible; a 1.6-percent update to the composite rate for end stage renal disease, ESRD, services in 2006; and an expansion of Medicare reimbursement for services at federally qualified health centers, FQHC, by allowing them to provide diabetes self-management training services and medical nutrition therapy services.

In addition, this legislation makes needed reforms to home health payments in order to reduce disparities in provider payment and improve quality and transparency. First, the bill calls for a 1-year, 5-percent add-on payment for home health agencies that serve rural beneficiaries which will help many home health agencies in Utah. Rural home health agencies have much lower Medicare margins than urban home health agencies, and as a Senator who represents a primarily rural State, I believe that this needs to be addressed. The legislation freezes home health payments in 2006. In its March 2005 report to Congress, the Medicare Payment Advisory Commission recommended this freeze in home health payments because Medicare pays home health agencies approximately 17 percent more than it costs agencies to provide home health services. Finally, the legislation also provides financial incentives to home health agencies that report quality data beginning in 2007.

One of the most important provisions in this legislation protects physicians from a 4.4-percent scheduled reduction beginning on January 1, 2006 and, instead, allowed the 2005 payment rates to continue through 2006. I am still committed to fixing this problem once and for all, and I hope that we may accomplish this in 2006 since this issue will need to be addressed once again since physicians are estimated to continue to receive negative cuts of approximately 5 percent from 2006 to 2011. Congress needs to enact a long-term solution as quickly as possible.

With regard to therapy services, for years Congress has worked to find a permanent solution to the problem of overutilization of therapy services. Although I have consistently supported a moratorium on therapy caps, this bill leaves a January 2006 expiration of the moratorium in tact, and I am committed to continue encouraging my colleagues to reinstate this important moratorium.

Now, let me turn to Medicaid. This has been a tremendously successful

program but also a very costly one. We have a responsibility to address the dramatic growth in spending, but I was not happy that some of the key provisions have not been considered thoroughly by the Senate. Given expressions of concern voiced to me by my constituents, I only reluctantly give my support to the overall measure.

I would have preferred the Senate language, which did not change the law with respect to beneficiary eligibility. That is why I will be working closely with Secretary Leavitt and other Cabinet-level officials to ensure Utah is treated fairly as this law is implemented.

I would like to take a couple of minutes to share my thoughts on some aspects of the Medicaid portion of this bill. One issue that was debated in both the House and the Senate was the real asset transfer rules. Under current law, Medicaid asset transfer rules are easily skirted—courses are offered to teach attorneys how to circumvent the law. This is plain wrong. The reforms in the Deficit Reduction Omnibus Reconciliation Act will make it more difficult for these transfers to occur and will allow more Medicaid resources to go to those who are in genuine need.

Our current asset transfer policy is flawed. The policy not only allows for exploitation, it encourages it. The current statute has loopholes that allow wealthy seniors to qualify for Medicaid. Let me make one point clear—Medicaid exists to protect the most vulnerable, not the most wealthy.

We need a fair, equitable policy. We need to protect the Medicaid Program for those who need it most. The legislation before us today addresses this situation by closing the loopholes in Medicaid. First, it prevents seniors from intentionally protecting their assets—people should not be allowed to hide their money in order to receive Medicaid nursing home coverage. Second, the bill changes the lookback period as well as the penalty period. Today, an older American can shelter half of his or her assets the day before applying for Medicaid.

The conference report starts the penalty period clock when a senior applies for Medicaid, and the lookback period is changed from 3 years to 5 years. Currently, an older person will face a penalty if assets are transferred for the purposes of qualifying for Medicaid within 5 years of applying for Medicaid. This provision significantly strengthens the asset transfer policy.

The new law does not allow an individual with more than \$500,000 in home equity to be able to qualify for Medicaid. It does provide State flexibility to increase the cap to \$750,000. This is sound policy. Those with home equity over \$500,000 should not take Medicaid money from those for whom the Medicaid Program was designed: low-income children, pregnant women, and individuals with disabilities. Also, the policy only applies to individuals. It does not apply to applicants who have

a spouse or a dependent child at home. In theory, the State is supposed to be able to put a lien on that home anyway.

Finally, seniors who have a hardship can apply for a waiver. The policy strengthens protections for seniors seeking an undue hardship waiver beyond current law or the Senate-passed version. I don't want to make it harder for people who really need the Government's help. But I do want to prevent seniors from intentionally taking advantage of the system. We need to protect Medicaid for those who need it most.

I discussed this matter in great detail with the Utah Medicaid Director and was assured that, in my home State of Utah, individuals who are under suspicion for transferring assets inappropriately are always given the right to appeal if their request for Medicaid coverage is in question. I understand there are several States, such as Utah, who handle this matter in fair and thoughtful way.

The budget reconciliation conference agreement also makes existing Federal reimbursement rates for drugs more accurate. It makes the average manufacturer price, AMP, of drugs available to the public so that pharmacists and wholesalers will get lower prices through greater competition, and excludes prompt pay discounts paid to wholesalers from the new pharmacy reimbursement rates.

AMP is the average price at which manufacturers sell their drugs to wholesalers, but starting in 2007, the Federal Government will not pay more than 250 percent of the AMP of the lowest cost version of a generic drug. Under current law, the Federal upper limit is 150 percent of the lowest published price. The new payment rates are based on the existing rules governing generic drugs.

The AMP data will also be made available to States and the public. This will create more transparency and competition in drug pricing. CBO has estimated that transparency will help reduce drug costs by hundreds of millions of dollars. Competition and transparency will bring prices down for consumers and protect the taxpayer from needless waste.

The final bill also requires the Secretary to work with private companies that routinely monitor and track drug payment rates for private health plans. The Secretary will then be required to share this information, known as retail sales prices, with States. This will provide State officials with better information about actual market-based prices, such as the rates paid by the Federal Employee Health Benefit Plans pay for prescription drugs. All of this information will provide greater accountability and ensure that Medicaid is paying pharmacists fairly for all drugs, and I am pleased that these provisions were included in the legislation.

The Deficit Reduction Omnibus Reconciliation Act also contains important reforms that will provide Medicare beneficiaries, seniors, and the disabled with better options to manage their care. Under the Deficit Reduction Omnibus Reconciliation Act, States will now be able to provide home and community-based services as an optional benefit to seniors, the disabled, persons with a developmental disability, mental retardation, or a related condition. Coverage of these services will allow more individuals to receive better health care and other assistance. These services will also mean that more persons can remain in their homes, without needing to go into nursing homes. These reforms will help reduce spending by allowing individuals to receive the kinds of care they want, in the settings they prefer, at prices far below what Medicaid usually pays for nursing home care. In addition, no one who currently is receiving care through an institution will be forced to leave that institution in order to receive community-based care.

The final conference report also will allow every State to establish a Long-Term Care Partnership Program. Long Term Care Partnership Programs allow individuals to protect a portion of their assets from Medicaid recoveries if they purchase long-term care insurance. Currently only four States (California, Connecticut, Indiana and New York) are allowed to have these programs. By expanding access to these programs, the new law will help create incentives for people to purchase long term-care insurance. Encouraging the purchase of long-term care insurance will mean that more people will be able to pay for their own nursing care, and fewer will have to rely on Medicaid as a safety net to meet their long-term care needs.

Another area that is addressed in this legislation is Medicaid beneficiary cost-sharing. There is a lot of misinformation about this provision, and I would like to explain this provision in more detail. Under current law, States may require cost-sharing but it is not enforceable. In other words, if a beneficiary does not pay his or her copayment, the health care provider is forced to absorb the beneficiary's copayment. This is why we have such difficulty encouraging providers to participate in the Medicaid Program. Many will not, and all Medicaid beneficiaries suffer as a result.

I believe that the conference report includes reasonable policy that allows States to ask beneficiaries over the poverty line to participate in the cost of their own care. Let me make one clarification—the House-passed legislation required States to impose cost-share requirements on beneficiaries with no income. I do not agree with that policy, and it is included in this bill.

A beneficiary who is above the poverty line may pay up to percent of his or her monthly income to the cost of their care, but that is only if the State

decides to impose additional cost-sharing requirements. And let me assure my colleagues that no state is required to impose cost-sharing requirements on these beneficiaries. I will add that even the National Governors Association support reasonable responsible cost-sharing. In fact, Governors testified before the Senate Finance Committee earlier this year and told committee members that they support this policy.

I am aware that substantial concerns have been raised about the provision permitting States to provide Medicaid coverage to children under age 19 through "benchmark" or "benchmark equivalent" coverage. In short, some fear this language might abrogate the right of those children to receive Early Periodic Screening, Diagnostic and Testing, EPSDT, benefits.

For the benefit of my colleagues, I will ask unanimous consent that a statement just issued by Centers for Medicare and Medicaid Services Administration, Mark McClellan, M.D., Ph.D., be printed in the RECORD.

As Dr. McClellan has made quite clear, children through age 18 will continue to receive EPSDT. It is my hope this assurance will make many child advocates more comfortable with this bill.

With regard to the welfare portion of the conference report, I was disappointed to see Congress's efforts to reduce the budget contain limitations on welfare, childcare, and child support policy. These vital programs should have been reauthorized through the normal legislative process, not tucked away in a protected budget reconciliation bill which is designed to reduce the Federal deficit. The welfare, childcare, and child support language included in the budget reconciliation bill has almost nothing to do with reducing the deficit and everything to do with changing the rules of these important programs without proper legislative scrutiny or debate.

While I am completely frustrated with the Senate's inability to reauthorize the Temporary Assistance for Needy Families, TANF, legislation using the normal legislative process, I do not believe it is in the best interest of the participants of these programs to include sweeping policy changes in a bill designed to reduce the deficit.

However, I am appreciative of Chairman GRASSLEY's efforts to ensure that childcare funding was increased. Although the increase is limited to \$1 billion over the next 5 years, I am hopeful we will be able to secure even larger increases in childcare funding in the near future. Providing quality childcare to low-income families is crucial when we are scrambling to help families become self-sufficient, and I am committed to ensuring the Federal Government continues to help these children and families.

As well, I am appreciative of the chairman's efforts to secure 3 years of supplement TANF grants. The State of Utah has been a large beneficiary of

these grants, and as we work to meet the stricter TANF work requirements outlined in this bill, we will continue to have supplemental grants from HHS to help us train and prepare our TANF recipients.

Now I would like to discuss the portion of the deficit reduction conference report that addresses the Continued Dumping and Subsidy Offset Act, which is commonly referred to as the Byrd amendment. The Byrd amendment amended the Tariff Act of 1930 to require that duties, collected as a result of antidumping and countervailing duty laws, be distributed to the affected entities. At the time it was introduced, I supported this measure as a commonsense proposal.

However, since that time, the World Trade Organization has allowed our trading partners to impose tariffs on various U.S. goods, and the Byrd amendment has gone from a commonsense solution to an impediment to U.S. companies' ability to sell their goods abroad.

First, I must reemphasize my strong support for laws that not only make trade free but fair. Accordingly, I have spoken directly to the Secretary of Commerce, Carlos Gutierrez, and United States Trade Representative, Ambassador Rob Portman, about the vital importance of vigorous enforcement of our trade laws.

Though I have never and will never advocate modifying our laws because of outside pressure, American companies and employees in Utah and all over the country have come to me and asked for my help in repealing the Byrd amendment. Currently, the United States is negotiating, as part of the Doha Round talks, a new trade regime in which international markets would become even more open to U.S. goods and services. If completely successful, the Institute for International Economics estimates that American households could gain as much as an additional \$5,000 per year. If today's international trade barriers were reduced by just a third, the average American family of four would enjoy \$2,500 per year in additional income, according to a University of Michigan study.

Freer trade helps more than just Americans. The poorest countries stand to gain considerably. According to a Center for Global Development study, a successful conclusion to the Doha Round would result in an additional \$200 billion flowing to developing nations, reducing poverty and economic hardship. Not to mention, the Institute for International Economics estimates that trade liberalization over the last 50 years has brought an additional \$10,000 per year to the typical American household.

In order to achieve our objectives in the Doha Round, many of our trading partners will be required to make substantial concessions on import duties and subsidies. However, those who oppose our noble goals could use our refusal to repeal the Byrd amendment as

a means to hinder our negotiating strategy. Simply put, these opponents will state that if the United States cannot follow the existing rules of trade, rules which our Nation largely crafted and implemented, how can we be trusted if most trade barriers are repealed?

Therefore, as I said before, I admire the Byrd amendment's commonsense approach, but I believe under the present circumstances the time has come for this legislation to be modified, in order to strengthen the ability of our Nation to achieve the larger goal of bringing down foreign barriers to U.S. goods and services.

Therefore, I support the changes incorporated in the Deficit Reduction Conference Report. This legislation achieves a fair compromise by repealing the Byrd amendment; however, at the same it would permit Byrd amendment payments to U.S. companies through October 1, 2007. This should provide an adequate time for companies to plan for the future while preserving a strong negotiating position for U.S. interests.

Despite its shortcomings in some areas, this reconciliation package contains several very important provisions in the intellectual property area that benefit the Nation and my home State of Utah.

I am pleased that a hard date for the transition from analog to digital television was included in the final package. This important provision will free up crucial radio spectrum that is currently occupied by broadcaster's analog television signals. Although the digital transition inevitably resolves a number of difficult issues, it also has several important benefits. It is my understanding that over \$7 billion of the proceeds from the eventual auction of spectrum licenses is expected to be used for deficit reduction. Perhaps more importantly, the transition will provide both the necessary funding and available spectrum for public safety officials and emergency personnel across the country to upgrade their communications infrastructure. And, finally, a portion of the anticipated proceeds will be used for various programs intended to minimize any negative financial impact on consumers, rural broadcasters, and others affected by the transition.

I am particularly pleased that a provision setting aside a small fraction of the proceeds to help fund the upgrade of television translator stations was included. This provision responds to a serious concern that I have had regarding the financial viability of upgrading the network of translator stations across Utah that are used to serve many of the rural communities in my home State. In the context of the debate over the digital transition, it came to my attention that upgrading these translators, which retransmit television signals to communities beyond the reach of the primary broadcast towers, would impose a substantial—and disproportional—financial burden on broad-

casters that were primarily located in mountainous western States. Due to the vast area covered by the Salt Lake City television market and the high concentration of translator stations in the State, there was a substantial concern that upgrading the cost of these translators would be prohibitive. The approach taken in the reconciliation package is similar to the proposal contained in S. 1600, which I cosponsored with Senator SNOWE, and I would like to take this opportunity to thank Senators SNOWE, STEVENS, and INOUE—and their respective staffs—for their help on this issue.

As with other portions of this bill, there are aspects to the education provisions I support and others I don't. However, I am pleased overall with the significant amount of savings while still allowing for spending on important programs.

The major area of savings comes from the reduction in corporate lender profits on student loans, in the form of a requirement that lenders rebate the Federal Government the difference between the borrower rate and the lender rate when the borrower rate exceeds the lender rate. In addition, guaranty agencies are required to deposit 1 percent of their collections in the Federal Reserve Fund; there is a reduction of borrower origination fees by .50 percent for each award, and there is an elimination of the recycling of 9.5 percent loans.

Even with these much needed savings, I disagreed with fixing the interest rate for undergraduate and graduate nonconsolidation borrowing at 6.8 percent, preferring a choice of a fixed or variable rate.

However, I am very pleased with increasing grant aid for students studying math and science, named SMART grants. I was involved in the original creation of the SMART Grants Program through my work on the HELP Committee. These grants will give first year students awards of \$700 and \$1,300 for second year students, provided they have completed rigorous programs at the secondary level. Third and fourth year students may receive up to \$4,000 in grant aid if they major in math, science, or foreign language.

I know these programs will give Utah students, particularly those of low or moderate means, greater access to a college education and will boost our local and national economy as we seek to meet the demands of the 21st century workforce.

Again, this legislation is not perfect. It is not a perfect answer to several of the social policy problems that confront our Nation. It is not a perfect answer to the growing Federal budget deficit either. It is not Draconian and it is not mean-hearted. This deficit reduction conference report is merely a good first step in stemming the tide of red ink that runs down the pages of the Federal budget, stealing taxpayer dollars to service a monstrous Federal

debt and robbing our children of a safe and secure financial future. For these important and self evident reasons, I support this bill.

I ask unanimous consent the statement issued by the Centers for Medicare and Medicaid Services Administration to which I referred earlier be printed in the RECORD.

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

STATEMENT BY MARK B. MCCLELLAN, M.D.,
PH.D., ADMINISTRATOR, CENTERS FOR MEDICARE & MEDICAID SERVICES

Questions have been raised about the new section 1937 of the Social Security Act (SSA) (as added by the Deficit Reduction Act of 2005) that permits states to provide Medicaid benefits to children through benchmark coverage or benchmark equivalent coverage. If a state chooses to exercise this option, the specific issue has been raised as to whether children under 19 will still be entitled to receive EPSDT benefits in addition to the benefits provided by the benchmark coverage or benchmark equivalent coverage. The short answer is: children under 19 will receive EPSDT benefits.

After a careful review, including consultation with the Office of General Counsel, CMS has determined that children under 19 will still be entitled to receive EPSDT benefits if enrolled in benchmark coverage or benchmark equivalent coverage under the new section 1937. CMS will review each State plan amendment (SPA) submitted under the new section 1937 and will not approve any SPA that does not include the provision of EPSDT services for children under 19 as defined in section 1905(r) of the SSA.

In the case of children under the age of 19, new section 1937(a)(1) is clear that a state may exercise the option to provide Medicaid benefits through enrollment in coverage that at a minimum has two parts. The first part of the coverage will be benchmark coverage or benchmark equivalent coverage, as required by subsection (a)(1)(A)(i), and the second part of the coverage will be wrap-around coverage of EPSDT services as defined in section 1905(r) of the SSA, as required by subsection (a)(1)(A)(ii). A State cannot exercise the option under section 1937 with respect to children under 19 if EPSDT services are not included in the total coverage provided to such children.

Subparagraph (C) of section 1937(a)(1) permits states to also add wrap-around or additional benefits. In the case of children under 19, wrap-around or additional benefits that a state could choose to provide under subparagraph (C) must be a benefit in addition to the benchmark coverage or benchmark equivalent coverage and the EPSDT services that the state is already required to provide under subparagraph (A) of that section. Subparagraph (C) does not in any way give a state the flexibility to fail to provide the EPSDT services required by subparagraph (A)(ii) of section 1937(a)(1).

Mr. BINGAMAN. Mr. President, across the country, more than 6 million children live with relatives, and of those, 4.5 million live with grandparents. A majority of relatives providing care for children are not part of the child welfare system. In fact, only a quarter of all relatives caring for a child receive either a foster care payment or another source of payment. Most relatives do not receive any Federal financial support, and sadly, nearly 20 percent of all grandparents raising their grandchildren live in poverty.

Unfortunately, the conference agreement on the Deficit Reduction Act of 2005 severely cuts Federal assistance to foster care funding and makes it significantly harder for relatives to provide care for a child. I believe this is a step in the wrong direction, and I oppose these cuts.

Kinship care is an important option for permanency for children in the child welfare system and often appropriate when adoption is not possible. Subsidized guardianship makes it possible for a relative to step in and care for a child. In my State of New Mexico, subsidized guardianship is available, and nearly 10 percent of children live with nonparent relatives. Grandparents and other relative caregivers are often the best chance for a loving and stable childhood for a child in their care, and it is important that we acknowledge their hard work and dedication.

I commend grandparents and other relatives who step forward to care for a child. Their efforts help keep children out of foster care and provide safe, permanent and stable homes, often at great personal sacrifice. Supportive programs like subsidized guardianship allow caring relatives to provide care that they may not otherwise be able to give, and help children exit foster care into the care of nurturing relatives. I would like to express my gratitude and appreciation for the invaluable care provided by relatives for children in need.

Mr. KOHL. Mr. President, I join many of my colleagues today in expressing sincere disappointment in the conference report to the budget reconciliation legislation. I could certainly echo the sentiments that we have already heard regarding the Medicaid and TANF provisions included in this conference report—two sections that will directly penalize hard working families, and prevent many from moving towards self-sufficiency. Or I could repeat the comments that this report represents not a compromise between the House and Senate bills, but an abuse of power that will harm rather than help, millions of families.

While I share my colleagues' dissatisfaction with this conference report, I would like to highlight a section that may have been overlooked. The conferees made interesting decisions in the area of child support—they chose to include provisions that would allow States to "pass through" child support payments to families, provisions that I have fought to pass for several years. Yet in the same conference report, they chose to make deep cuts to the Child Support Enforcement Program, cuts that may inhibit States ability from actually passing through those child support dollars.

I believe the inclusion of the child support "pass through" provisions is one of the few successes of this legislation. These provisions are similar to those included in S. 321, the Child Support Distribution Act. Senator SNOWE and I have worked together for the past

several years on this legislation, which allows States to "pass through" more child support collections to the families that need them, rather than send those dollars to the Federal Government.

Specifically, the conference report has three major provisions related to the Child Support Distribution Act. The conference report eliminates pre-assistance assignment rules—families applying for the Temporary Assistance to Needy Families program would no longer be required to turn over their right to child support that accrues before they are receiving assistance. In addition, the Conference Report gives states the option to distribute more child support to families who have left assistance. Finally, for families currently receiving assistance, it allows States to let families keep more child support, rather than sending it to the Federal Government.

These changes were included in the bipartisan, Senate Finance Committee-passed welfare reauthorization legislation. It is unfortunate, given the wide support for these provisions, that the cuts contained in this bill will place such a financial burden on the States that they will unlikely be able to actually pass through the funding to the families.

The original House bill included a 40-percent cut to Federal child support funding. Thus, it would seem that the \$5 billion cut included in the conference report before us is somehow less significant. This could not be further from the truth. According to the Congressional Budget Office, this conference report would mean that more than \$8 billion in child support payments would go uncollected over the next 10 years. I will say that again so that my colleagues are clear: \$8 billion in funds will not go to hardworking, single parent families; \$8 billion that is owed to these families, that they rely on to meet their children's needs.

These payments would go uncollected because the conference report retains a provision that 74 of my colleagues voted against last week. I offered a motion to instruct that asked conferees to reject the provisions in the House bill that would restrict the ability of States to draw down matching funds on child support incentive payments. In addition, I sent a letter to conferees that was signed by 49 Senators asking that this restriction not be included in the conference report.

I have heard some of my colleagues argue that this is simply closing a loophole, that this funding source was not what Congress intended. I say to my colleagues that this is not the case. The reforms made to the child support system in 1998 created the performance-based system that has been proven to be so successful. Since this system was put in place, States have doubled their collection rates and have significantly improved their performance on every other measure.

The changes in this conference report would undo these successes. In fact, the

cuts will actually drive up costs in other programs, such as TANF, food stamps, and Medicaid. That is why these cuts are opposed by the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislatures, among others.

It is highly ironic that the conference report gives States the option to pass through more child support to families that deserve it, while also passing on a financial burden that will directly restrict their ability to do so. This bill will hurt millions of families, and it should have been defeated.

Mr. LEVIN. Mr. President, we all know that times have been getting tougher for low- and middle-income working families. Compared to 5 years ago, more Americans now live in poverty, the median household income has dropped, and more live without the security of health insurance. Clearly, Congress should be adopting budget policies aimed at improving these troubling trends. But instead, this misguided budget reconciliation conference report would make things worse.

This legislation takes funds from important programs like Medicaid, student loans, child support enforcement, foster care assistance, and Supplemental Security Income for the elderly and disabled poor. The stated purpose of these nearly \$40 billion in cuts and harmful program changes is to trim the deficit, but we all know that these savings will not ultimately be used toward that goal; they are designed to pave the way for the \$50 billion to \$100 billion in new tax cuts that the majority will attempt to push through early next year. We should not be making cuts to vital services simply so the President and the majority can finance more tax cuts that mainly benefit the wealthiest among us.

Under this bill, families that rely on Medicaid will face significant increases in the costs for access to health care services and medications, which will lead many of our most vulnerable citizens to forgo needed care. The Congressional Budget Office, CBO, estimates that the increases in Medicaid copayments and premiums and the reductions in Medicaid benefits will total \$16 billion over the next 10 years. Also of particular concern to Michigan is a provision that eliminates the State's provider managed care assessment. When that provision goes into effect, it will cost Michigan \$280 million per year.

The conference agreement also makes things worse for those who use student loans. Despite already soaring education costs, this conference report cuts funding for student loan programs by \$12.7 billion over 5 years, nearly one-third of the total cuts imposed by this legislation. Most of these reductions are achieved by increasing interest rates and fees paid by students and parents. In the fight for global competitiveness, a highly educated workforce is one of America's best assets. It

is shortsighted to cut investments in education.

This legislation will make also substantial changes to the Temporary Assistance for Needy Families, TANF, program. The changes include imposing harsh new work requirements without providing nearly enough childcare assistance. The CBO estimates that States will need over \$12 billion in new funding over the next 5 years to maintain current childcare programs and meet the new work requirements by increasing participation in welfare-to-work programs. The conference agreement, however, includes just \$1 billion in childcare funding over the next 5 years. The shortfall means that many States will need to scale back childcare slots for poor working families not on welfare, forcing families to choose between lower quality, less stable childcare or not working at all.

Unfortunately, this conference agreement also contains a House provision that would repeal the Continued Dumping and Subsidy Offset Act, CDSOA, of 2000, despite an overwhelming 71 to 20 Senate vote instructing conferees to reject the provision. The CDSOA was enacted in 2000 to enable U.S. businesses and workers to survive in the face of continued unfair trade by allowing Customs to distribute duties collected on unfairly traded imports to those U.S. companies and workers injured by continued dumped and unfairly subsidized imports. I do not believe we should repeal this law, nor do a bipartisan majority of Senators.

Additionally, under this bill, Federal funding for child support enforcement will be cut about \$1.5 billion over the next 5 years. As a result, the CBO estimates that \$2.9 billion in child support owed to children will go uncollected over 5 years.

The hardships that will be caused by this legislation are significant and broad-reaching. Yet the three-part budget reconciliation package that includes this conference report will not even make a dent in our deficits. Both the House and Senate have passed tax reconciliation bills that cut revenues far more than this bill cuts spending. As most grade school math students can tell you, when you bring in less money than you spend, you will end up in trouble. And that is where the President's tax policies have put us today.

We have got over \$8 trillion in debt. Financing further tax cuts with debt is simply fiscally irresponsible. In the most recent fiscal year, we spent over \$350 billion just to pay the interest on our debt. That is 14 percent of the Federal Government's spending last year. We simply cannot afford to continue building up this massive debt.

One of a few positive aspects about this conference report is the inclusion of an extension of the Milk Income Loss Compensation, MILC, Program, which was set to expire this year. Milk is Michigan's largest agricultural commodity, and the MILC Program has been essential in preserving our dairy farms in times of dairy price declines.

Mr. President, the reconciliation process is supposed to bring Government programs and tax policies passed over the years in line with the broader budgetary goals of the Congress. It should be a fiscal sanity check, making sure our policies support our goals. At a time when one in six American children lives in poverty, our budget goals should be to help, not hurt, the neediest among us. Our goals should also focus on reducing the mountain of debt that we are leaving for our children and grandchildren. Unfortunately, by cutting vital programs to finance tax cuts that mainly benefit the wealthy, this legislation moves us in the wrong direction on both counts. I will oppose this conference report.

Mr. ALEXANDER. Mr. President, today the Senate approved the Deficit Reduction Omnibus Reconciliation Act of 2005. I voted in favor of this bill because it is the first comprehensive deficit reduction legislation approved by the Senate since 1997, and it will save \$39.7 billion over the next 5 years. This is an important first step toward containing the unsustainable growth of entitlement programs and putting us on the road to a balanced budget.

None of us is happy about everything that is included in a big bill like this. One area in which I am disappointed is language reauthorizing the welfare reform program, also known as Temporary Assistance for Needy Families, TANF. This is a program that needs to be reauthorized on a more permanent basis, instead of the temporary extensions that have been approved year after year.

In thinking about reauthorization of welfare reform, I believe three things need to happen. First, States need more authority to decide what will work best in their State. Second, States need more flexibility to allow educational activities to count toward work hours. I have been told by TANF offices in Tennessee that if they can get TANF recipients into school, they do not see them on the welfare rolls again. Third, we need more money for child care. If the TANF program is going to require poor parents—including single mothers—to work, these parents must have safe child care for their children. Last year, I supported—and the Senate passed by a vote of 78 to 20—an amendment to increase child care funding by \$6 billion. This bill only includes a \$1 billion increase for child care.

Unfortunately, the welfare reform language included in the deficit reduction bill falls short in all three of these areas. I would have preferred that the Senate hold a full debate on TANF reauthorization, with Senators able to offer amendments. However, I understand that the Senate conferees felt that the deficit reduction bill represented the best chance of reauthorization after years of delay and temporary extensions.

In the coming year, I look forward to working with Chairman GRASSLEY and

other colleagues to craft legislation that addresses some of these shortcomings and continues the successful transformation of the TANF program that began with enactment of the landmark welfare reform law in 1996.

Mr. FEINGOLD. Mr. President, this budget reconciliation package that arrived from the House-Senate conference will leave our country's budget and the American people in a far worse state of affairs than they are today. I am disappointed that congressional leaders have chosen to use the budget reconciliation process to achieve controversial goals that will make life harder for those Americans in greatest need of help, and I will oppose this legislation.

As I stated when this bill passed the Senate, using reconciliation to push through legislation that will worsen our budget deficit and add billions more to the mountain of debt our children and grandchildren will have to pay is a perversion of a process designed to expedite measures to reduce the deficit.

Reconciliation was intended to help facilitate the enactment of measures to reduce the deficit and therefore secure the Nation's financial stability. It is ironic that it should be used to enact measures that not only aggravate our budget deficits and increase our massive debt, but also makes cuts to programs that help many Americans maintain their financial security.

There are substantial and unprecedented changes to the Medicaid program included in this bill. Rather than cut the wasteful, \$10 billion Medicare Advantage slush fund that gives superfluous payments to insurance companies, conferees have chosen to cut benefits and shift costs onto the poorest in America. Usage of Medicaid is expected to drop significantly, forcing beneficiaries to become sicker and eventually utilize emergency room care. In fact, the Congressional Budget Office estimates that 17 million people will pay more for health services under Medicaid over 10 years, half of whom would be children. Is this how we want to take care of the needy in our society? This will be harmful not only to those in need of health care, but also to our hospitals, which will be burdened with more patients who are unable to pay. This shift of health care costs from the Government to Medicaid beneficiaries will only cost our hospitals and taxpayers more money in the long run—and this is being done under the guise of saving money and balancing our budget.

Perhaps the most worrying changes to our health care programs are the statutory changes to Medicaid and Medicare. This conference agreement institutes systemic limitations on services that will have effects for decades to come. Included in the bill are provisions that will force unlimited charges onto the poor for their health care where previously there were protections for those in near poverty. As if

loss of these protections were not enough, this will also allow health care providers to deny health care to people too poor to afford these charges.

This legislation also freezes Medicare payments to home health care providers. Home health is the most cost-efficient and comfortable way to provide long term care. By freezing home health care payments, access will drop, and many of the sickest in our country will be denied this option.

In addition to cutting into people's health care, this report cuts into welfare and child care funding on which many American families depend. Last week, the Senate passed a motion to instruct conferees that urged welfare reauthorization to be removed from the budget package. I voted for this motion, which passed overwhelmingly. Despite the success, the House chose to include welfare reauthorization anyway. This was done under the radar in a move that was largely unseen by people who will be affected by the changes. And the changes are significant. This reauthorization represents the largest change in welfare policy since 1996, and it will impose expensive new work requirements on states with no additional funding provided. So those on welfare will be working more hours, and what will they do with their children? Child care funds have been cut by \$1 billion in this bill. This is \$7.4 billion less than CBO estimates to be the cost to states of meeting the new work requirements, and more than \$11 billion less than what states will need to ensure that their current child care programs can stay afloat through all the additional changes in the budget package. These are unconscionable cuts to programs that serve as safety nets for the most vulnerable.

I am also deeply troubled that almost one-third of the savings in the budget reconciliation bill come at the expense of the student loan program. I regret that a portion of the savings within the student loan program is achieved by increasing fees paid by student and parent borrowers. While I may support provisions in this agreement that eliminate unnecessary subsidies for lenders, the money saved through this elimination should go toward making college more affordable and increase grant aid such as Pell Grants. I regret that this money is not funneled back towards increased aid for America's students.

This agreement also increases the maximum subsidized loan amounts that first and second year students can borrow and increases the maximum amount of unsubsidized loans that graduate students can borrow. While increasing loan limits will help students cover the costs of their education, I find it disheartening that we as a Congress are pushing more of a financial burden on these students as tuition rates around the country increase. Rather than cutting money from the student loan program and requiring students to borrow more and

pay more in fees, we should instead be working to find ways to make a college education affordable to all students.

While I welcome the addition of some new grant aid for Pell-eligible students, I have heard concerns from my constituents in Wisconsin that the requirements accompanying the increased aid will make the program difficult to administer and could exclude many of the Pell-eligible students from receiving this aid. One requirement for freshman and sophomore Pell-eligible students to receive this aid is the condition that the student must have completed a "rigorous secondary school program". Under the agreement, the Secretary of Education determines whether or not the student has fulfilled that requirement. What is not clear, however, is how the Secretary will actually measure which programs are deemed rigorous and therefore which students will receive the aid. I am concerned that students who attend disadvantaged schools will not be eligible for the aid under the wording in this agreement.

Another troubling aspect of the new grant aid is the requirement that students attend school full-time during their first year of college. This provision would eliminate many Pell-eligible students who attend school part-time and work part-time. Again, I think this sends the wrong message to our youth who are considering attending college and attempting to finance their education.

We can do better for young Americans in Wisconsin and around the nation by working to increase aid in an inclusive manner and working to make a college education more affordable to all. These cuts to the student loan program are another reason that I will vote to oppose this conference agreement.

If there is a silver lining to this sham of a budget reconciliation package, it is the conference committee's decision to retain the Senate's extension of the Milk Income Loss Contract, MILC, program and reject cuts to Food Stamps. Even this support for these two vital programs is tempered by short-sighted cuts to other agriculture programs such as the limits placed on conservation programs that assist farmers in their stewardship of the land.

I will not support using reconciliation to enact harmful, controversial policies that will worsen budget deficits and increase the debt. No matter how many pieces you slice it into, the reconciliation instruction in the budget resolution will leave us with bigger deficits, not smaller ones.

This budget sends the message that those living in poverty are Congress' lowest priority; and this reveals a profound lack of empathy and kindness for the most defenseless in our society. When Congress and the White House become serious about cleaning up the fiscal mess they created, and when they are willing to spread the burden of that clean up across all programs—de-

fense and non-defense discretionary programs, entitlements, and the spending done through the Tax Code—I am ready to help. But so long as we see reconciliation measures that cut aid to those most vulnerable, and cuts to Government spending is done on the backs of the poor, I must oppose them.

Mr. SPECTER. On a close call I have decided to vote for the conference report on the reconciliation bill because the benefits slightly outweigh the disadvantages in evaluating the tradeoffs.

I start with the proposition that the savings of \$40 billion over 5 years in the conference report is closer to the \$35 billion passed by the Senate than to the \$50 billion cuts passed by the House of Representatives. This deficit reduction amounts to less than one-half of 1 percent of total Federal spending, an estimated \$13.8 trillion over the next 5 years.

Medicaid was a special concern where the conference report of a \$4.8 billion reduction was much closer to the Senate figure of \$4.3 billion than to the House cut of \$11 billion. While I would have preferred targeting different reductions, the conference report does give the States flexibility in the use of Medicaid funds so that the States will be in a position to ameliorate hardships resulting from the proposed reductions.

It was important that the conference report included \$1 billion in additional budget authority in fiscal year '07 for the Low Income Home Energy Assistance Program, LIHEAP, which the Congressional Budget Office estimates will result in \$625 million in outlays as we approach the fiscal year '07 winter season which is likely to be very harsh. It is anticipated that there will be an additional \$2 billion for fiscal year '06 added to LIHEAP in the Defense appropriations bill although that is not a certainty because the Senate will not act on that bill until after the vote on reconciliation.

I am further encouraged by the elimination of some \$700 million on cuts for the Food Stamp Program and the rejection of the House passed \$5 billion reduction in child support enforcement to aid local governments which finally came in at a \$1.5 billion cut.

After visiting many first responders around the State, I was pleased to see the reconciliation bill add \$1 billion for first responders who will be very important in any prospective emergency situation.

I was also pleased to see the one year moratorium on inpatient rehabilitation hospital provisions which require 50 percent of Medicare beneficiaries to meet certain ailment criteria for 2 years.

I was opposed to the repeal of the Continued Dumping and Subsidiary Offset Act, CDSOA, program but there was finally a compromise to give the program 2 more years.

Of special significance to Pennsylvania was the addition of \$998 million

for the Milk Income Loss Compensation, MILC, Program which is very important to the financial status of nearly 9,000 dairy farms in the State.

In making judgments on legislation like the reconciliation bill, we are really faced with a Hobson's choice. None of the options is desirable. We are constantly choosing among the lesser of the evils.

In the overall context of discretionary spending which is involved in the reconciliation bill and in the appropriations bill for Labor, Health and Human Services and Education, there are palpably insufficient funds available for such domestic programs. As chairman of the Subcommittee on Labor, Health and Human Services and Education, it was my responsibility to structure legislation that came within the allocations approved by the Budget Committee and Appropriations Committee.

With a 1-percent cut at the outset and another projected one percent across the board cut and the failure to keep up with inflation, the subcommittee sustained a cut in real dollars approaching \$7 billion. At the conference on the bill for the Departments of Labor, Health and Human Services, and Education, I said publicly that I would not support the bill unless my vote was indispensable for its passage. If the bill is not passed, we face the alternative of a continuing resolution which will be \$3 billion less than the bill, so there is no alternative, as a matter of basic arithmetic, but to support the bill.

I have already put my Senate colleagues on notice, including the leadership, that I will not support next year's budget unless there is adequate funding for domestic discretionary programs with special emphasis on Labor, Health and Human Services, and Education. I will also work to correct any inequities or hardships which result from the reconciliation bill.

Mr. WYDEN. Mr. President, I cannot support the devastating cuts to health care that are in the budget reconciliation conference report. I have fought to slow health care spending, but that is not what is in this conference report. This conference report slashes and bums the health care countryside like the barbarians descending on Rome. This conference report is not about reform or creating a decent health system for the poor and for seniors—it is about dismantling the system as we know it.

For starters, the Senate-passed bill increased drug rebates so that Medicaid beneficiaries would get better prices on their drugs. The Senate bill increased the minimum rebates that drug manufacturers are required to pay the Medicaid Program for drugs. The Senate package also contained a provision that would have expanded the rebate to include managed care drug plans. None of these improvements, which would have produced savings of \$10.5 billion over 10 years and have

helped ensure Medicaid participants get better prescription drug prices, is included in the conference report.

The conference report reopens the Medicare Modernization Act, MMA,—not to make improvements in the drug benefit but to push those with a little more income to pay higher Part B premiums sooner. It seems to me that given the confusion, the unhappiness, the need for more and better counseling for seniors on their choices, and the need to assure cost containment in the Part D drug benefit, you should have gone farther than what is in the product before us and made real improvements. One improvement that won a majority of 51 votes on the Senate floor was an amendment I offered with Senator SNOWE to allow Medicare to use its purchasing power to benefit seniors. Giving Medicare that power would have produced a real benefit for seniors, but that is not included here. “

The home health cuts in this conference report will hurt a service that is vital to seniors. The conference report freezes home health payments for a year. Home health care has been demonstrated to be cost effective alternative to institutional care in both the Medicare and Medicaid Programs. In Oregon, what is proposed here will compound the negative impact of other cuts. Since 1997, when Congress first enacted cuts in home health, Oregon has lost 30 home health agencies. Oregon's home health agencies' profit margins are already at a negative 21.75 percent, and 33 of 60 home health agencies are in rural areas. I fear what will happen to Oregon's seniors when home health agencies' payments are frozen, but their costs keep going up.

The conference report increases copayments and premiums for the poor. I happen to believe that everyone should pay something on the spot for care unless they destitute, but the increases required here will force people who can get care today to forgo care tomorrow. Oregon has learned from experience in this area. When Oregon instituted strict copayment and premium payment policies 55,000 people dropped off Medicaid, and most of those were people with chronic health problems, like high blood pressure and diabetes. The reconciliation bill says States can increase substantially the copayments that many Medicaid beneficiaries are required to pay to access health services and medications. Sure, there will be savings, but they will be achieved because people just won't get care or just won't seek care. That is not, in my view, good public health policy, and completely undermines the purpose of Medicaid.

The conference report makes it harder for people to qualify for Medicaid long-term care. The conference report embraces the House provisions that restrict eligibility for Medicaid long-term care services and squeeze more savings out of those who need Medicaid. These provisions are far more onerous than the Senate passed bill, cast-

ing a wide net that will force every applicant to prove they had not transferred assets years before a disabling accident, stroke, heart attack, broken hip, or diagnosis of Alzheimer's disease simply in order to catch a few who intentionally transfer assets. These provisions even go after to middle-class Americans who make modest gifts to relatives like their grandchildren or who contribute to charity. How can anyone expect the average American who experiences a decline in their health years after having made a contribution to charity or given their grandchild some money toward a college fund to keep records on all of this? People won't be able to document many of the things they will be required to so that families or nursing homes will end up eating the money during the period in which their loved ones are not qualified.

Lastly, the conference report negates a court decision concerning disproportionate share payments. One of the lawsuits brought on this issue was brought by a number of Oregon hospitals. The result of overturning the decision in this case is that many hospitals will be harmed because those people who are part section 1115 waivers as an “expansion population” would no longer be counted for the purposes of calculating Medicare disproportionate share payments. This harms safety net hospitals.

There are many other reasons to reject this conference report, but the truly harmful health care provisions stand out starkly among a sea of damaging provisions. These, alone, are reason enough to reject this budget document.

Mr. CORZINE. Mr. President, I rise today to pay tribute to the 2½ million grandparents acting as primary caregivers to their grandchildren. The situation may occur as a result of a death in the family, a parent being away in the military, or the effect of abuse and neglect.

I commend grandparents and other relatives who step forward to care for these children, often at great personal sacrifice, providing an alternative to foster care and giving them a safe, stable home. Supportive programs like subsidized guardianship help children exit foster care into the permanent care of caring and nurturing relatives.

In my State of New Jersey, 8 percent of the children live with nonparent relatives. Grandparents and other relative caregivers are often the best chance for a loving and stable childhood for the children in their care, but their hard work and dedication often go unnoticed.

I am deeply saddened that today the Senate made cuts in the budget that would deprive so many kinship caregivers of critical Federal support. We should be expanding support for these caregivers, not reducing it.

Mr. President, today I offer my formal acknowledgement and deepest appreciation for the ongoing service of

these caregivers to our country and our Nation's most valuable asset, our children. I commend Generations United for their hard work in helping improve the lives of our children.

Mr. LEAHY. Mr. President, it has been said that a great test of morality is what people do when they have power. The fast-track budget reconciliation rules mean that the majority party can essentially do whatever it wants in a reconciliation bill if they act in lockstep. The reason is simple. Reconciliation debates in the Senate can only last 20 hours and the final version of the bill—a reconciliation conference report—only can be debated for 10 hours.

The majority party can even orchestrate a single meeting with conferees and immediately gavel it over almost when it starts, doing everything behind-the-scenes with no consultation and without sharing drafts of even sweeping policy changes in proposed major laws.

They not only can do such things, they just did them.

But let me start at the beginning. The President's budget proposal for programs under the oversight of the Judiciary Committee, issued in February of this year, called for a user fee on the manufacture and importation of gunpowder and other explosives of two cents per pound. The President requested that Congress enact these user fees—some called it a tax—to raise \$600 million over the next five years. Because of that White House proposal on gunpowder and other explosives, the budget resolution of the other body called for the Judiciary Committee to meet a target of \$600 million.

The Senate-passed budget resolution did not require any cuts to be made by the Judiciary Committee. This is the usual approach for the Judiciary Committee since the Committee controls few, yet very important, mandatory spending programs. For example, it is difficult to make significant reductions to mandatory programs, including: pensions for U.S. Judges; the Crime Victim's Trust Fund; salaries of U.S. Marshals; the Radiation Exposure Compensation Trust Fund; the Copyright Owners' Fund; the diversion control fee account of the Drug Enforcement Agency; border patrol salaries and expenses; the assets forfeiture fund for U.S. Marshals, and other sources. It is also difficult to increase Patent and Trademark Office fees or Copyright Office fees since there is not a compelling reason to do so.

In the end, in order to comply with the budget resolution, the Judiciary Committee of the Senate and the Judiciary Committee of the other body were required to come up with \$300 million in revenue or to make \$300 million in cuts.

The first casualty in this process was the White House proposal to tax gunpowder and other explosives. There was little support by the majority party for even making half the President's pro-

posed increases in the gunpowder tax. Many other alternatives were considered by the majority party.

Finally, a proposal was worked out in the Judiciary Committee that had my support, and the strong support of universities and many business leaders. For example, the National Association of State Universities and Land-Grant Colleges, Motorola, Oracle, Sun Microsystems, Texas Instruments, Intel, Microsoft, Hewlett-Packard, Qualcomm, for high-tech workers. The House also included immigration fees in their proposal.

However, after an aborted conference meeting which started at 9 p.m. last Friday night, and ended a few minutes later, what has the Majority party proposed as a compromise on the immigration fees? They came up with increasing fees on all citizens to get into federal courts and into bankruptcy court. The bankruptcy fee increase raises some ironies. The increase in fees for citizens trying to seek judicial relief narrows access to courts.

So we have gone from the President's proposal to tax gunpowder and other explosives and mysteriously ended up with a tax on citizens to get into federal court and bankruptcy court. Nevertheless, the majority party—as long as they are in lockstep together—has nearly absolute power in a reconciliation bill that enjoys only limited debate. History will record what they have done with that power.

What is especially unfortunate is that the version of the reconciliation bill reported out by the Senate Judiciary Committee, and approved by the full Senate by unanimous consent to the Budget Reconciliation Act, was a bipartisan amendment offered by Senator SPECTER and myself to allocate the extra \$278,000,000 in revenue provided from the Judiciary Committee markup on reconciliation to supplement funding that is demonstrably needed for the Bulletproof Vest Partnership Fund, programs authorized by the Justice For All Act, and a Copyright Royalty Judges Program.

The Judiciary Committee markup on its reconciliation title provided \$278,000,000 more in revenue than was mandated by the Budget Resolution instructions.

The Specter-Leahy Senate proposal approved by the full Senate—would have provided \$60,000,000 over the next five years for such initiatives as the Bulletproof Vest Partnership Program, to help law enforcement agencies purchase or replace body armor for their rank-and-file officers.

Recently, concerns over body armor safety surfaced when a Pennsylvania police officer was shot and critically wounded through his new vest outfitted with a material called Zylon, which is a registered trademark. The Justice Department has since announced that Zylon fails to provide the intended level of ballistic resistance.

Unfortunately, an estimated 200,000 vests outfitted with that material have

been purchased—many with Bulletproof Vest Partnership funds—and now must be replaced. Law enforcement agencies nationwide are struggling to find the funds necessary to replace defective vests with ones that will actually stop bullets and save lives. Our Senate Judiciary provisions would have funded those efforts. Unfortunately, the majority party dropped this language.

Our Senate Judiciary language—approved by the full Senate—also provided more than \$216,000,000 for programs authorized by the Justice For All Act of 2004, a landmark law that enhances protections for victims of Federal crimes, increases Federal resources available to State and local governments to combat crimes with DNA technology, and provides safeguards to prevent wrongful convictions and executions.

The Senate Judiciary Committee language also would have funded training of criminal justice and medical personnel in the use of DNA evidence, including evidence for post-conviction DNA testing. It would have promoted the use of DNA technology to identify missing persons. With these funds, State and local authorities would have been better able to implement and enforce crime victims' rights laws, including Federal victim and witness assistance programs.

State and local governments would have been able to apply for grants to develop and implement victim notification systems to share information on criminal proceedings in a timely and efficient manner. That language would have helped improve the quality of legal representation provided to both indigent defendants and the public in State capital cases.

Last, but certainly not least, our amendment provided \$6,500,000 over five years for the Copyright Royalty Judges Program at the Library of Congress. The Copyright Royalty Distribution Reform Act of 2004 created a new program in the Library to replace most of the current statutory responsibilities of the Copyright Arbitration Royalty Panels program. The Copyright Royalty Judges Program was supposed to determine distributions of royalties that are disputed and set or adjust royalty rates, terms and conditions, with the exception of satellite carriers' compulsory licenses. The Senate-passed language would have helped pay the salaries and related expenses of the three royalty judges and three administrative staff required by law to support this program.

Unfortunately, instead of raising more funds than we needed through widely supported increases in immigration fees and using them for these law enforcement and other programs we are instead going to increase the cost of access to federal courts and not fund any of these other priorities.

What may be the most troubling aspect of this abuse of power is that by substantially increasing fees to get

into federal courts the majority party raised \$253 million more in revenue than it needed to meet the reconciliation target. That means that all the above priorities in the Senate-passed bill including bulletproof vests for law enforcement, use of DNA technology to identify missing persons, and better enforcement of crime victims' rights laws could have been included at only slightly reduced levels of support.

The Republican Congress has missed a great opportunity in this abuse of power.

Mr. LEAHY. Mr. President, I also must express my opposition to the irresponsible domestic budget policy that has been forwarded by the majority party. The Senate is being asked to approve spending and budget bills that make deep cuts to programs that serve some of our country's neediest citizens. A time of year typically signified by wishes of goodwill towards all, it is difficult to be anything but outraged by this attack on critical components of our social safety net.

While many in the majority party have claimed that these bills are needed in order to reduce the deficit, with the knowledge that the leadership will make passing massive tax cuts benefiting some of the wealthiest among us a priority during the next session, this argument is simply disingenuous.

Instead of putting the country on the road to fiscal security, these bills expose the agenda of the majority that blatantly undermines American families and make clear where the priorities of the majority party lie. It is not with the family that relies on Medicaid for their health insurance, the student who, without student aid, cannot afford to attend college, or the mother who needs childcare so that she can go to work and put food on the table for her family. Nor is it with the single mother who has been abandoned without child support, the grandparent raising their grandchild on a fixed income, or the worker who has lost his or her job and is trying to be retrained.

No, the priorities of this majority party consistently lie with the powerful special interests and big drug companies. At every opportunity the Republican leadership has had to choose between supporting the American people or wealthy corporate interests, and they have sided with the corporate interests. Even by the standards of this first session of the 109th Congress, with the consistent erosion of consumer protections and support for American working families, these bills sink to new lows. As a result, dozens of health, education, labor, and human services programs will be cut and millions of people who rely on these programs will suffer.

Some of the most egregious policies in these bills expose the disparity between the treatment of big drug companies and those individuals who must rely on Medicaid as their primary form of health care. With numerous options on the table, the Republican leadership

chose to use the budget reconciliation bill to increase Medicaid co-payments and premiums, potentially eliminated federal standards for comprehensive Medicaid care, and created highly restrictive rules governing the transfer of assets for those who require care in a nursing home. Rather than do away with an unnecessary multi-billion dollar slush fund for insurers and drug companies, a small group of Congressional budget writers has chosen to freeze home health payments that ensure seniors are able to receive care in the comfort of their own homes.

In addition, this year's Labor, Health and Human Services, Labor-HHS, appropriations bill shortchanges our country's rural health programs. For instance, the bill eliminates five programs, including funding for Rural EMS and Health Education Training Centers, which are critical to the fragile network of the rural health care infrastructure.

One of the most disappointing aspects of the Labor-HHS Bill was the treatment of the National Institutes of Health, NIH. Not since 1970 has the NIH been provided an increase as small as the one contained in this bill. As a result, the vital medical research being done around the country, including in my home state at the University of Vermont, will suffer. The search for cures to innumerable diseases will be slowed and foreign competitors will be given a chance to exploit our shortsightedness.

Not only will this Congress take the step of cutting education for the first time in ten years, these will be the biggest cuts in history to student loan programs. A remarkable \$12.7 billion will be cut from student aid programs so that there will be no increase to the Pell Grant for an astonishing fourth year in a row. While making changes to eliminate loopholes in student loan lending laws, it appears that small lenders that specialize in providing comprehensive loan counseling to students have been given short-shrift. It appears that from almost every angle, students are assaulted by these policies.

For those education programs that are lucky enough to escape the knife, they will either be frozen or given minimal increases. I am curious to know how our Nation's schools can be expected to meet and exceed the standards set forth in the No Child Left Behind Act, when Congress is content to slash funding by three percent, leaving these programs to sink more than \$13 billion below their authorized levels. It has been almost 5 years since Congress passed this legislation, and we have consistently failed to meet our commitment to students, parents and teachers.

In what is becoming a hallmark of this Republican leadership, these conference reports are loaded down with controversial legislation approved by neither body. Despite bipartisan support for legislation approved by the

Senate Finance Committee earlier this year, Senators are being asked to approve a five-year reauthorization of the Temporary Assistance to Needy Families Program that would impose strict new working requirements with only nominal new funding for child care support. At the same time Congress asks single mothers to work longer hours, it cuts money for child support enforcement, dollars that are used to track down deadbeat dads.

Though it is a sad commentary on the current state of affairs when one of the lone bright spots for health and human service programs is that this bill includes no cuts to the Food Stamp program, I would be remiss if I did not mention my appreciation that this program remained unscathed. While protecting Food Stamps should be hailed as a victory, the Community Food and Nutrition Program, a modestly sized program that helps support anti-hunger advocacy groups, was not so fortunate. The work being done on the local levels by these groups is extremely important, and it is my hope that these funds will be restored next year.

The programs and services I have mentioned are but a few of the dozens of cuts that will negatively impact families across the country. As we usher out the final days of 2005 and the 1st Session of the 109th Congress, I am saddened that the last actions of this body will be to pass such harmful bills. After more than 30 years in the Senate, I know that we can do better and it is my sincere hope that when we return next year, we will reverse the wayward direction set by such policies and implemented by such legislation.

Mr. DODD. Mr. President, for most Americans, the holiday season is a time for giving. But for the Congress, it seems, the holiday season is also a time for taking, at least judging by the budget reconciliation legislation before this body.

Americans around the country, are concerned about their economic security. Whether they work in a factory or behind a desk, they are feeling increasingly vulnerable to the volatilities of the global economy. While American families are concerned about economic security, this budget reconciliation legislation would cut the safety net that protects them. The burden would fall most heavily on working Americans, in particular, on low-income parents and children, the elderly, and people with disabilities. Moreover, while supporters of this bill cite fiscal discipline as the rationale for making harmful cuts, when this bill is considered in combination with its companion tax reconciliation legislation, the total package would increase the deficit rather than reduce it. For these reasons I cannot support this funding cut reconciliation bill.

I have been a strong proponent of fiscal responsibility throughout my service in this body. I have introduced and supported pay-as-you go budget rules; supported the landmark Gramm-Rudman-Hollings budget process reforms;

and, during the 1990's, voted to balance the budget for the first time in 30 years. This budget reconciliation legislation, does not advance the cause of fiscal responsibility. Every penny saved in funding cuts and then some will be spent on new tax breaks, most of which will benefit a small number of affluent individuals who neither need nor seek such reckless largesse from their leaders in Washington. The Senate has already approved \$60 billion worth of tax cuts over the next 5 years, and the House has approved more than \$90 billion.

Under the Bush administration, our National debt has grown from \$5.7 trillion to more than \$8 trillion. The portion of that debt held by foreign creditors has more than doubled. And our Federal budget has fallen from a \$236 billion surplus in 2000 to a \$319 billion deficit in 2005. The Republican budget reconciliation package would only make this record of fiscal recklessness worse.

The cuts in this bill, if enacted, would make it harder for working Americans to find a job and afford such basic needs as health care and child care. At a time when international competition demands that we invest in our people and our society, this bill radically scales back our Nation's crucial commitments. At a time when we should be expanding access to higher education for all Americans, this bill puts college further out of reach for many students. And at a time when many businesses and millions of Americans cannot afford even the most basic health care coverage, this bill passes the buck, and the burden of paying, onto those who are already struggling to afford care. Instead of offering solutions, this bill offers more lip service to a failed, partisan ideological agenda that weakens our Nation's long-term strength.

Perhaps most controversially, the bill before us would make the biggest changes to Temporary Assistance to Needy Families, TANF, policy since 1996, going even beyond the provisions in the House-passed reconciliation bill. The Republican majority hopes to ram through these changes without any debate or consideration by this body. This is no way to run a country by not just ignoring those in the minority, but actively trampling over dissenting views.

Children in low-income families will suffer the most. This section of the bill creates new, unrealistic work requirements for TANF recipients that would effectively amount to a backdoor way of cutting funds. It authorizes \$2.5 billion less this year for child care than what is necessary to keep pace with inflation, which, over the next 10 years, will create a more than \$11 billion shortfall and cause an estimated 255,000 children to lose care. It cuts child support enforcement, which will reduce child support collections by \$3.4 billion over 10 years. And it completely eliminates Federal foster care support for

grandparents and other relatives who care for children who have been abused or neglected and removed from their parents.

These cuts reflect a fundamental lack of understanding by the Republican majority of the struggles most Americans face every day. Moreover, they are based upon a faulty economic rationale. Though our overall economy grew somewhat between 2000 and 2004, those who benefited from that growth are mostly at the top of the income pyramid. Indeed, the number of children living below one-half of the poverty line rose by nearly 1.5 million. Somewhere, the link has been broken, and not all families are sharing in our Nation's economic growth. Instead of looking for solutions, the cuts in this bill would exacerbate the problems faced with courage every day by American families. If history is any guide, the families forced off of TANF would be those who, without a lifeline, are the most likely to fall into deep poverty. Child care assistance helps working parents keep their jobs and parents who have lost their jobs find new ones. If adequate child care and other supports are not available to low-income workers, the TANF rolls will increase again. We would be taking a step backward in helping people move from welfare to work. We should be constantly innovating and strengthening our policies in this area, not blindly cutting them in favor of unaffordable tax policies, as this reconciliation package would do.

In addition, this reconciliation bill would also reduce health care coverage and increase costs for some of the most vulnerable members of our society. Most troublingly, this conference agreement proposes to increase co-payments and premiums for Americans who rely on Medicaid for their health care. Under this agreement, low-income Medicaid beneficiaries would be forced to pay more for their needed health care services and medicines. This, despite the fact that a recognized and growing body of evidence demonstrates that ill Medicaid beneficiaries will likely forego medical treatment in the face of increases in co-payments. Such decisions often lead to greater health problems, and larger health care costs, later on. On top of these co-payment increases, this package will additionally allow States to increase the premiums that Medicaid beneficiaries must pay to enroll in the program in the first place.

Also deeply troubling about this agreement is its granting to States the ability to decrease the scope of their Medicaid programs. The Federal Government currently requires State Medicaid programs to adhere to a set of standards that ensure comprehensive health care coverage for Medicaid beneficiaries. This agreement will significantly lower these standards and will allow States to lessen needed coverage for those most in need.

As alarming as these provisions are, just as galling is what this bill lacks.

The Senate-passed reconciliation package rightly contained two significant and cost-saving provisions that are absent from the package currently before us. First, the Senate bill sought to increase the rebates that pharmaceutical manufacturers must pay the Federal Government for medicines provided to Medicaid beneficiaries. Second, the same bill achieved \$10 billion in savings by eliminating the so-called "stabilization" fund designed to encourage preferred provider organizations to participate in the Medicare program. Both of these valuable provisions have gone missing in this conference agreement.

Finally, in addition to weakening the safety net that allows Americans to weather tough times, this budget reconciliation legislation also shortchanges the millions of families trying to send their children to college. It provides no general increase in need-based aid. Instead, it limits the increase to a narrowly defined subset of students who may or may not demonstrate as much need as their peers. In fact, there are so many restrictions on who qualifies for the increased Pell funds that I question how many students will actually receive it.

This version of reconciliation also ignores a number of other provisions that were important to the Senate: loan forgiveness for child care workers, protections as we open up distance learning, and more consumer information for students that are consolidating loans. All of these provisions have disappeared. Instead we are left with a narrowly crafted bill that does not help all students achieve their college dreams. In my opinion, this bill represents a lost opportunity for students and a lost opportunity for this body to assist them.

The conference agreement before us today ignores the values and concerns of ordinary Americans. Instead of investing our resources intelligently in the priorities that will make America strong and secure into the future like education, health care and the fight against terrorism it weakens important safety net provisions, decreases health care coverage and increases cost burdens, and reduces access to higher education. America needs priorities that reflect our values as a country and that prepare our people, especially our children, for a future of freedom, prosperity and security. Regrettably, this reconciliation legislation falls far short.

Ms. MIKULSKI. Mr. President, the spending cut bill before us is shameful. I have always said that it is my job to look out for the day-to-day needs of Marylanders and the long-term needs of the Nation. I am sorry to say this bill does neither. In the holiday season, this bill makes draconian spending cuts in critically important programs. This is not done for balancing the budget, which I support. It is done to pay for more tax cuts to the super-wealthy.

These spending cuts don't only hurt hard-working Americans. They chip

away at the very foundation of the American dream and do so at the worst possible time. For example, we face unprecedented challenges from increased global competition. Our country has always had the ability to rise above these challenges because of America's incredible capacity to innovate. It is our responsibility to empower Americans to innovate. Unfortunately, this bill represents the wrong priorities for this country, not those held by the vast majority of Americans.

Nowhere do individual and national priorities more closely converge than funding for education. Education has always been our country's greatest engine for climbing the ladder of opportunity. It is also the greatest engine for our national aspiration: that each generation will have a better life than the one that came before. International trade and outsourcing have already shuttered several of our industries and threaten to do the same to others. Other countries are investing heavily to train and educate their people. They are manufacturing products less expensively than could be done here at home, often due to their weak labor and environmental protections. That is why we must preserve America's remarkable lead in the amazing race to innovate. To do this, we must realize that innovation starts with a well-educated population.

Unfortunately, this bill makes the biggest cuts to student loan programs in history. For the fourth year in a row, the maximum Pell grant will remain the same. And while Pell grants stagnate, interest rates for student loans will increase. Republicans have also made it more difficult for students to consolidate their loans so that they will end up paying more for college. So not only is there less student aid available but this bill actually makes it tougher to qualify for need-based aid so that it will only go to a small group of students, decreasing the number of low-income people who are eligible to receive aid. It also gives private lenders and banks an unfair advantage over more cost efficient Federal loan programs, which increases costs for taxpayers.

These cuts couldn't come at a worse time. College tuition is on the rise and financial aid isn't keeping up. Pell grants cover only 40 percent of average costs at a 4-year public college. Twenty years ago, they covered 80 percent. Our students are graduating with so much debt it is like their first mortgage. College is part of the American dream; it shouldn't be part of the American financial nightmare. Families are looking for help. And I am sad to say the Republicans don't offer them much hope. This bill has all the wrong priorities. Instead of easing the burden on middle-class families and increasing student aid for all students, they want to help out big business cronies with lavish tax breaks.

We need to do more to help middle-class families afford college. We need

to increase the maximum Pell grant to \$4,500 and double it over the next 6 years. We need to make sure student loans are affordable. And we need a bigger tuition tax credit for the families in the middle who aren't eligible for Pell grants but still can't afford college.

My family believed in the American dream. They believed there is no barrier to having hopes. Through hard work and sacrifice, everyone should be able to pursue a higher education. But belief in the American dream is shrinking. There is not a dream deficit, there is a wallet deficit. There is not a talent deficit, there is an opportunity deficit. And at a time when the opportunity ladder is already creaky and shaky, the Republicans are trying to tear down this ladder by making massive cuts to student aid. Sadly, this will cripple our Nation's ability to innovate and compete in the global market.

Those aren't the only bad things in this bill. It also slashes health care. I believe that every American should have the right to affordable health care, especially as they get old and need it the most. Unfortunately, this conference report cuts a net \$6.9 billion in existing Medicaid spending. This will force beneficiaries to pay higher premiums and receive less health care coverage.

I am particularly alarmed by the bill's changes to eligibility for long-term care coverage for elderly Americans needing care. This bill would require the government to look back at a senior's assets for the past 5 years and consider the value of their home to be eligible for long-term care. This is unfair. We should be supporting our elders, not punishing them.

And that is not all. As temperatures drop and heating prices rise, this bill will literally leave Marylanders and Americans in the cold. Oil companies are now making record profits. Republicans beat back each of our attempts to eliminate tax giveaways to these same companies. Now energy prices are soaring and the bill falls \$1.3 billion short in funding the Low-Income Home Energy Assistance Program. LIHEAP helps hard-working Americans afford to stay warm. But it won't have enough funds to do this next year.

The reconciliation bill also suspends important Federal housing programs that preserve affordable housing. Republicans are prioritizing additional tax cuts for the superwealthy by killing a program to preserve affordable housing for working families. They too will be left out in the cold. The Millennium Housing Commission cited a lack of affordable housing as the primary cause of homelessness. So here again, the spending cut bill serves to squash our aspirations.

When many of our families first moved to the United States, they were drawn to the promise of a better life—the "American dream." They could aspire to a better life for themselves, their families, and their kids. They

knew that hard work could make that dream a reality. For many generations, this country allowed each generation to be better off than the one before it. If we follow the course laid out before us today, our children are not going to be able to say the same thing.

Mr. President, America can do better. We must look out for both the day-to-day needs of those who have elected us and also the Nation's long-term interests. This bill does neither. I strongly oppose this bill and urge my colleagues to do the same.

Mr. KENNEDY. Mr. President, as we all know, the Budget Reconciliation Act contains an appalling number of devastating cuts that will hurt millions of Americans. But I do commend the conferees for including the Family Opportunity Act, which will remove the barriers in current law that penalize families struggling to stay together and make ends meet when their children have high health costs because of disabilities.

For the past 6 years, Senator GRASSLEY and I have worked with many parents and leaders in communities across the country to reach this milestone. Countless parents, family members, citizens, friends, neighbors, and colleagues face this problem today. As they make very clear, the Nation is failing families with severely disabled children by not giving them access to the health care they need to stay home and live in their communities. Many of them have been on the front lines in raising the Nation's awareness of their plight, and they have been fearless and tireless warriors for justice, and this legislation could not have happened without them. Today, their long wait is nearly over.

The Family Opportunity Act is for them. It allows families of children with severe disabilities to purchase health care coverage under Medicaid, without first having to impoverish themselves or give up custody of their disabled children.

Almost 1 in 10 children in America has significant disabilities. But many do not have access to even the most basic health care they need, because their private health insurance won't cover them. Often, their needs are treated as "exclusions" in their policies—no coverage for hearing aids, for services related to mental retardation, for physical therapy, for services at school, and on and on.

That is why this legislation is so important—these children will now have access to these needed services and have a genuine opportunity at least to achieve full potential.

When we think of disabled children, we tend to think of them as disabled from birth. But fewer than 10 percent of such children are born with their disabilities. A bicycle accident or a serious fall or illness can suddenly disable even the healthiest of children. Many of them with significant disabilities do not have access to even the most basic health services, because their families can't afford them.

No longer will these families be forced to become poor, stay poor, or even do the unthinkable by putting their children in institutions or giving up custody of them, so that their children can qualify for Medicaid.

Families of special needs children often have to turn down jobs, turn down raises, or turn down overtime pay to keep a child eligible for benefits under Medicaid.

No longer will parents be forced to give up their children or give up being part of our Nation's economy.

This bill will change the life of 13-year-old Alice in Oklahoma, who was disabled because of multiple dystrophy. Under this bill, she will be able to have a personal assistant living at home with her family. She will be able to go to her neighborhood school.

This bill will change the life of Johnny in Indiana, who has a severe mental illness and needs numerous mental health therapies and drugs. His mother will no longer be forced to give up custody of him in order to obtain the treatment he needs. Her goal of being a productive citizen and keeping her son at home will no longer be denied because her son will now have the health care and support he needs.

This bill will transform the life of Abby in Massachusetts, who is 6 years old and has multiple disabilities. Her parents are deeply concerned about her future if the existing buy-in State program for Medicaid is weakened. Without the buy-in, her parents would be bankrupted by her current medical bills. Now Abby and her family will have real opportunity to grow and work and prosper.

The legislation also gives States greater flexibility to enable children with mental health disabilities to obtain the health care they need in order to live at home and in their communities, instead of being placed in institutions.

It establishes Family to Family Information Centers in each State to help parents find the resources they need to meet the unique health care requests of their disabled children.

Six years ago this week, President Clinton signed the Ticket to Work Act into law. That legislation demonstrates our commitment to give adults with disabilities the right to lead independent and productive lives, without giving up their health care.

Today we make the same commitment to children with disabilities and their families.

These provisions will undoubtedly be among the most important bills passed by this Senate. It closes the health care gap for the Nation's most vulnerable population, and enables families of disabled children to be equal participants in the American dream. It will truly change lives, and I commend my colleagues in both the House and the Senate on both sides of the aisle for their dedicated and their leadership that have made this day possible at long last.

Mr. ROCKEFELLER. Mr. President, last week I came before this body to highlight the potentially harmful effects of budget reconciliation on our Nation's working families. I asked my colleagues to hold firm against the special interests in order to protect the Federal guarantee of Medicaid benefits for the 50 million Americans who depend on this vital program for health care. When the Medicaid motion to instruct conferees passed by a vote of 75 to 16, I thought the Senate was serious about preserving access to health coverage for children, pregnant women, the elderly, and disabled across our country.

However, my hope quickly faded when the budget reconciliation conference report was released earlier this week. Instead of providing more assistance to families in need, the reconciliation conference report includes even greater cuts than those passed in the House of Representatives to vital safety net programs like Medicaid.

Under this conference bill, the early and periodic screening, diagnostic, and treatment, EPSDT, benefit, which provides children with access to necessary immunizations, checkups, and preventive services, is eliminated. This means that low-income children—no matter how poor—will no longer be guaranteed vision, hearing and dental screenings; coverage for eyeglasses; therapy services, medical equipment that will allow them to attend school; or any other Medicaid services. Without access to this comprehensive benefit, many children will not get the vital medical care they need and will develop medical conditions that could have been prevented.

The reconciliation language also begins to erode Federal laws protecting Medicaid recipients from burdensome cost-sharing. Under this bill, States would be allowed to index nominal cost sharing amounts by medical inflation, which grows at least twice as fast as wages. States would also be allowed to charge co-insurance up to four times higher than the 5 percent co-insurance allowed today. This means that Medicaid beneficiaries could pay as much as 20 percent of the cost of any Medicaid service—which for some would consume their entire monthly income. Such cost-sharing requirements are unacceptable for a safety-net program designed to help working families when times get tough.

This bill gives States the green light to vary benefit packages based on factors such as geography and disease. If enacted, Medicaid recipients will no longer have equal protection under the law. Instead, residents in rural areas of a State could receive fewer Medicaid benefits than those living in more populated, urban areas. Individuals with diseases that are expensive to treat may receive a narrower set of benefits than those with diseases that are less expensive to treat. And, if residents and diseases are treated differently in a State, then providers can also be reim-

bursed differently depending on their geographic location and the types of patients they treat. Such a haphazard benefit system will lead to more emergency room visits by beneficiaries and decreased provider participation in the Medicaid program. It would appear that, for some of my colleagues on the other side of the aisle, the vote in favor of the motion to instruct conferees was nothing more than a procedural motion—more rhetoric than substance, more posturing than true concern—because many of the Medicaid provisions included in the budget reconciliation package got even worse after the Senate voted overwhelmingly in opposition to increased beneficiary cost-sharing, barriers to eligibility and enrollment, and any other provisions that would undermine the Federal guarantee of Medicaid coverage.

In all my time in the Senate, I cannot remember a time when we have considered such drastic cuts to safety-net programs that threaten to devastate working families. These are families who struggle to eat and pay their bills, let alone pay for much needed health care services; families of limited means who have done their best to contribute to a system that is now essentially turning its back on them. The cuts contained in this budget reconciliation conference report are reprehensible.

This country has a moral obligation to help our fellow Americans in their time of need. We should not offer billions of dollars in additional giveaways to the wealthiest Americans and special interests at the expense of working families already struggling to make ends meet.

I believe we can do better. Hard-working Americans deserve better; low-income children deserve better; the elderly, the disabled and parents who want to see their children go to college and succeed deserve better. We have a responsibility, Mr. President, and I would hope we would live up to that responsibility.

Mr. VITTER. Mr. President, I am pleased that we have passed the Deficit Reduction Act today. It is a good first step to curbing run away spending in our entitlement programs, and it provides essential Medicaid relief to hurricane victims in my state.

However, I am deeply concerned with the provision in the bill that repeals the Continued Dumping and Subsidy Offset Act, also known as the Byrd amendment. Many of my colleague and I signed a letter to the conferees urging that this repeal be excluded from the final bill. This important law helps counter unfair trade practices of other countries by using revenues from duties collected to compensate injured industries. In Louisiana, most of our seafood industries have been severely affected by illegal dumping from China and other nations, and the Byrd amendment is one of the few things that could effectively help the families in these industries, who are now also reeling from Hurricanes Katrina and Rita,

to survive in their business and maintain our unique culture and way of life.

I have been very frustrated with the Commerce Department and the Customs Department efforts to comply with the Byrd amendment as it stands now. Commerce does not properly set the duty collection rates, and Customs is severely lax in collecting tariffs that are due. Seafood tariffs uncollected stand at over \$200 million from China alone right now. As these tariffs are not collected as they should be, illegal dumping continues, and our seafood and other industries are not being paid what they are due under the law.

This bill supposedly has a phase out of CDSOA for 2 years, in which pending cases are supposed to be paid. I fear with the current record of collections and distribution, this 2 year phaseout won't give much relief. I do not feel that this phaseout is adequate, and the repeal this important law should not have been included in this bill. It is not right to use industries that are victims of illegal trade practices to carry a large burden of balancing the budget.

I urge my colleagues to help me force the bureaucrats to do their work, collect these tariffs, and make the already due payments under the Byrd amendment. While the law may be unwisely repealed in this bill, the previously due payment should be paid and paid quickly.

Mr. GREGG. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to concur in the House amendment with the Senate amendment.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 50, nays 50, as follows:

[Rollcall Vote No. 363 Leg.]

YEAS—50

Alexander	Dole	McCain
Allard	Domenici	McConnell
Allen	Ensign	Murkowski
Bennett	Enzi	Roberts
Bond	Frist	Santorum
Brownback	Graham	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Specter
Burr	Hagel	Stevens
Chambliss	Hatch	Sununu
Coburn	Hutchison	Talent
Cochran	Inhofe	Thomas
Coleman	Isakson	Thune
Cornyn	Kyl	Vitter
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeMint	Martinez	

NAYS—50

Akaka	DeWine	Leahy
Baucus	Dodd	Levin
Bayh	Dorgan	Lieberman
Biden	Durbin	Lincoln
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Murray
Byrd	Harkin	Nelson (FL)
Cantwell	Inouye	Nelson (NE)
Carper	Jeffords	Obama
Chafee	Johnson	Pryor
Clinton	Kennedy	Reed
Collins	Kerry	Reid
Conrad	Kohl	Rockefeller
Corzine	Landrieu	Salazar
Dayton	Lautenberg	

Sarbanes	Smith	Stabenow
Schumer	Snowe	Wyden

The VICE PRESIDENT. On this vote, the yeas are 50, the nays are 50. The Senate being equally divided, the Vice President votes in the affirmative, and the motion to concur in the House amendment with a further amendment is agreed to.

Mr. FRIST. I move to reconsider the vote.

Mr. McCONNELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. FRIST. Mr. President, the next hour, we will spend in our precloture period before proceeding to the cloture vote on the Defense appropriations bill. I believe the Democrat leader spelled out how that time will be used.

At this point, I ask unanimous consent that the time on our side be divided as follows: Senator MURKOWSKI, 5 minutes; Senator COCHRAN, 2 minutes; Senator LOTT, 3 minutes; Senator DOMENICI, 5 minutes; Senator GREGG, 5 minutes; Senator STEVENS be given the last 5 minutes of the debate; and 5 minutes to be designated by Senator STEVENS.

The VICE PRESIDENT. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank colleagues for their cooperation during the consideration of budget reconciliation. I especially thank the staffs on both sides, who spent several sleepless nights working on this matter. I very much thank my staff director, Mary Naylor, and all of my staff for their extraordinary effort.

I also salute my colleague, the chairman of the Committee on the Budget, for his professionalism as we considered the matter. Special thanks to his staff, as well. I know this has been an extraordinarily trying period. We appreciate so much the effort and work they put into it.

The PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I join the Senator from North Dakota in especially thanking our staffs, most of whom have not slept for a series of nights. They have done an exceptional job, led by Scott Gudes on our side and, obviously, Mary on the Democrat side. We have staff who put in huge hours to make us look effective and efficient around here, and they do an extraordinary job on our behalf.

I also thank the Senator from North Dakota. This bill has reappeared in the Senate sort of like Haley's Comet: it comes through about every 3 months as we try to deal with it and move forward in the reconciliation budget process. In each instance, the Senator from North Dakota has been extraordinarily professional, has moved forward in what I consider to be the tradition of this Senate, which is comity and co-

operation, in order to make the Senate accomplish its business. I only wish he had more charts.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006—CONFERENCE REPORT—Resumed

The PRESIDENT pro tempore. Under the previous order, there will now be 1 hour of debate equally divided between the two leaders or their designees on H.R. 2863. The time has been allocated by the two leaders. The first will be designated to Senator FEINGOLD who is recognized for 2 minutes.

Mr. FEINGOLD. Mr. President, I hope today the Senate will side with rules, history, and future when it is time for this Senate to go on record as to whether it is okay to break the rules to do something you cannot otherwise get done.

My colleagues know I do not support drilling in the Arctic Refuge. But this is not simply a debate about oil, wildlife, and energy policy. The debate we are having and the vote we are about to have is about how this institution and this democracy operate. Some have said there is precedent for violating rule XXVIII. My response is simple: Abusing the process and breaking the rules in the past does not justify doing so now, especially knowing it was a mistake.

We worked in a bipartisan fashion to reinstate these very rules in 2000. We did this because these rules are designed to protect all of us against abuses of power. If Senators do not stand up to the current and very troubling tactics we are seeing, what hope is there of stopping future attempts to hijack other legislation to pass proposals that cannot stand on their own merits?

There are clearly Members who are determined to open the Arctic Refuge to drilling. I suspect every Member also has a couple of things we desperately want signed into law. However, we have a responsibility to respect the rules and traditions of the Senate. I urge my colleagues to vote against cloture and to vote to uphold the rules of this institution in which we are honored to serve.

I yield the floor.

The PRESIDENT pro tempore. Senator BOXER is recognized for 2 minutes.

Mrs. BOXER. Mr. President, if this Senate is going to operate and function, it has to follow its own rules. It is very obvious that including drilling in a wildlife refuge in a military bill is not following our own rules. It is no wonder the people in the country are cynical. It is wrong to do this.

Members should stand on line, do it the right way. If Members want a bill passed, do it the right way. This is not a Senate where one person can dictate how things get done.

I hope the Senate would understand when you are discussing a wildlife refuge, which was first set aside by President Eisenhower, that we would do better than putting it into a military bill

that is a must-pass piece of legislation. I am very pleased that Senator STEVENS said if he does not get his way on this, and the Senate decides not to include it here, that we will be able to strip that provision and get those funds where they need to go, to our troops.

I am very pleased about that. I hope the Senate will speak strongly in a bipartisan way and vote "no" on cloture. I yield the floor.

The PRESIDENT pro tempore. The Senator from New Mexico, Mr. BINGAMAN, is recognized for 3 minutes.

Mr. BINGAMAN. Mr. President, I speak briefly in opposition to the motion to invoke cloture.

The point I want to make, which has not been made to an adequate extent here, is that the provisions to open the Arctic Wildlife Refuge that are contained in this conference report are very different from what the Senate adopted in the budget reconciliation. In fact, the version of the legislation that is before us has never passed the House. It has never passed the Senate. It has been substantially changed from what we previously sought.

First, the Department of Defense conference report language limits the ability of the Secretary to protect environmentally sensitive areas in the Coastal Plain to only 45,000 acres out of the 1.5 million-acre Coastal Plain. It cuts off the ability of the Secretary to withhold lands from leasing under other authority.

In addition, the language that is before us requires the Secretary to offer for lease no less than 200,000 acres of the Coastal Plain within 22 months of the date of enactment. That is new.

In addition, there are provisions with regard to judicial review that are new and unprecedented. Unlike the budget reconciliation language, the conference report prohibits review of a secretarial action in a civil or criminal enforcement proceeding of any action that the Secretary takes subject to judicial review under these provisions.

In addition, there is a new presumption put forth in this language that the Secretary's preferred action related to any lease sale is correct unless otherwise provided by clear and convincing evidence.

We should not be taking this action. We should clearly not be taking this action as part of a Defense appropriations bill, which is very much needed in order to provide the resources for our troops in harm's way today. I urge my colleagues to oppose cloture on this provision, on this conference report as it is currently constituted. We can come back at a time when we can actually look at the provisions we are being forced to vote on and consider them on their merits.

Mr. REID, I yield the floor.

The PRESIDENT pro tempore. Senator LIEBERMAN is recognized for 3 minutes.

Since he is not here, who seeks recognition?

Mr. REID. Mr. President, is there a quorum call in effect?

The PRESIDENT pro tempore. No, there is not.

Mr. REID. Whose time is running now?

The PRESIDENT pro tempore. The minority has one-half hour, as we understand it, and the time is running against that one-half hour.

Ms. CANTWELL. Mr. President, parliamentary inquiry.

The PRESIDENT pro tempore. Will the Senator repeat herself, please.

Ms. CANTWELL. Parliamentary inquiry.

The PRESIDENT pro tempore. The Senator from Washington.

Ms. CANTWELL. Is the agreement to have the time evenly divided between both sides and no specific request for how the sequencing of time is allocated under the order?

The PRESIDENT pro tempore. Under the previous order, there is an hour divided between the two leaders. The leader had designated that time. The first designation was made, but it is not—it is equally divided. There is no sequence.

Mr. REID. Mr. President, if the Senator from Washington will yield, I think what we would like is maybe to have some back-and-forth debate here. I am wondering if there is someone on the majority side who wishes to speak at this time and can use their time. There is somebody here who could yield that time, I am sure.

The PRESIDENT pro tempore. The Senator from Alaska is recognized for 5 minutes.

Ms. MURKOWSKI. Mr. President, thank you.

It is December 21. This is the shortest day of the year. On Alaska's North Slope today, it is pretty dark. The Sun went down, I was told, November 18 at 1:40 p.m. It is not going to rise again until January 23 at 1:01 p.m. Today's weather forecast on the North Slope is for it to be about 30 degrees below zero. Most of us would be hunkering down and hiding out from the cold and the dark. But right now Alaska's North Slope and the oil activities are humming because this is the time of year we do our work up there. And why do we do it? Do we do it because we like the cold, we like to be in the cold and in the dark? No. We do it because this is how we provide for the protections for the area. We explore and we work when the tundra is frozen. This is when we build the ice bridges. This is when we do the exploration. We do it because we care for the environment up there.

It hurts to hear some of the discussion and some of the argument and some of the misinformation about how we in Alaska derive our resources, how we pull the oil from the ground up North. We have been providing about 20 percent of this Nation's domestic oil from Prudhoe Bay for the past 30 years, and we have been doing a good job of it. We have been providing not only for the environment, we have been providing the jobs, and we have been providing the revenues. We have been

helping this country in an effort to keep our balance of payments from booming even more than they already are. We are doing what this country needs when it comes to domestic production. We need the authorization of the Congress to do more, to open this small area up on the Coastal Plain to oil exploration and development.

There has been some discussion that in this bill, in the Defense bill, we are opening up in excess of the 2,000 acres we have agreed upon. The language is very clear. It says: 2,000 acres. It does not allow for the Natives to add additional acreage on top of the 2,000. It is a 2,000-acre limitation.

There has also been some challenge or some suggestion by the minority leader that somehow with this legislation the judicial review has been changed or altered in some way that would lessen the judicial review. That is absolutely not correct. There have been technical corrections in this legislation that differ from the earlier legislation that was introduced, but the judicial review remains in place.

There has been some suggestion that the State of Alaska will sue for a 90-percent share of the revenues rather than the 50-50 share.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter signed by the Attorney General of the State of Alaska that clearly provides that the issue has been settled in terms of the 50-50 split because the issue has been appealed all the way to the U.S. Supreme Court. The State considers the decision by the U.S. Court of Federal Claims to be settled law. So those arguments people will make that we should not move forward with opening ANWR at this point in time are simply not true.

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

STATE OF ALASKA, DEPARTMENT OF
LAW, OFFICE OF THE ATTORNEY
GENERAL

Anchorage, AK, December 20, 2005.

Senator TED STEVENS,
Hart Building,
Washington, DC.

DEAR SENATOR STEVENS: You have requested our response to a question that has arisen regarding the State of Alaska's previous claims against the federal government over oil revenues due to the State under the Alaska Statehood Act.

In 1993, the State sued the federal government over the right arising out of the Alaska Statehood Act to mineral revenues from federal leases. The State argued that the Statehood Act constituted a contract that entitled Alaska to 90% of gross mineral leasing revenues from federal mineral leases in Alaska. This issue was litigated in the United States Court of Federal Claims. *State of Alaska v. United States*, 35 Fed. Cl. 685 (1996). In 1996, the court found against Alaska. It stated that "there was no promise on the part of the Federal Government to pay Alaska, in perpetuity, 90 percent of gross mineral leasing revenue from federal mineral leases in Alaska." *Id.* at 704.

The State then appealed this decision to the United States Court of Appeals for the Federal Circuit, which affirmed the Court of

Claims decision discussed above. *State of Alaska v. United States*, 1997 WL 382032 at *1 (Fed. Cir. July 8, 1997). Finally, the State petitioned the United States Supreme Court, which denied certiorari. *State of Alaska v. United States*, 522 U.S. 1108, 118 S. Ct. 1035 (1998).

Because the issue has been appealed all the way to the United States Supreme Court, the State considers the decision by the United States Court of Claims to be settled law.

Additionally, I would like to clarify an issue raised in the press and the Congress regarding the State's role, if any, in the lawsuit filed on December 19, 2005 by the Alaska Gasline Port Authority against ExxonMobil Corp. and BP P.L.C. et al, alleging violations of numerous laws, including the Sherman Act. The State of Alaska is not a 'Party to this lawsuit.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

DAVID W. MÁRQUEZ,
Attorney General.

Ms. MURKOWSKI. Mr. President, what ANWR represents to this country is energy security, national security, from the perspective of reducing our vulnerability on foreign sources of oil. When we talk about vulnerability in this country, and recognizing the vulnerability and the exposure of our men and women who are serving us over in Iraq, over in Afghanistan, we have to do everything we possibly can in this country to provide for their protection. Eighty percent of the Government's oil consumption is by our military. We need to keep this in mind. If we can do anything more to help with our domestic production so that we can decrease this reliance, we need to do so.

What ANWR offers to us is energy security, domestic security in the sense of jobs, and truly environmental security. I need to stress that. We have been doing a responsible job up North for the past 30 years. We want to continue that, to fill the pipeline that is now about half capacity.

Let me amplify a bit on why ANWR is so important for this Nation.

Since we debated ANWR during the budget resolution process this spring, we have finished a 14-year-effort to craft a new comprehensive energy bill. In that bill we have provided incentives and tax breaks to increase renewable energy: wind, solar, biomass, geothermal, ocean energy supplies. We promoted, by tax breaks, the purchase of hybrid and alternate clean cars to cut fuel consumption. We also mandated a doubling of the production of ethanol to help displace foreign oil.

We hiked the efficiency standards for a host of appliances to reduce electricity demand—hopefully by 40 percent, saving enough electricity to equal the output of 170 new 300-megawatt power plants. We promoted new technology, proposing to spend \$3 billion to develop new hydrogen-fueled cars and to perfect the next generation of nuclear power.

We also made it easier to import more natural gas to ease our pending supply shortage. We approved \$5.6 billion in tax breaks to promote energy efficiency and the growth of alter-

native fuels—more than twice what we spent to promote oil and gas production.

But outside of some minor changes that may speed oil leasing in the National Petroleum Reserve in Alaska—the Nation's last designated place for petroleum production—and a few very minor regulatory changes, we did little to directly increase domestic oil and gas production.

We delayed that action until now, when we hopefully will permit oil development from a tiny portion of the Arctic coastal plain in my home State of Alaska.

ANWR oil will certainly help stabilize our energy prices while generating more than \$36 billion in Federal revenues within 20 years—\$2.5 billion according to this reconciliation bill—money that is vital given our \$319 billion deficit for fiscal year 2005 and the recent CBO forecast that we will still face a \$314 billion deficit this year, not counting spending to counter the effects of Hurricanes Katrina, Rita and Wilma. While both numbers are down, we clearly need more revenues.

ANWR will reduce our balance of payments deficit because we won't be buying as much oil overseas. Last year we paid \$166 billion to buy oil overseas—a quarter of our ballooning trade deficit. We are paying even more this year. Keeping those billions a year in America that ANWR oil production will equal at current prices is important.

It will produce hundreds of thousands of American jobs in most every State, with estimates ranging from a high of over 1 million total jobs to a low of 735,000.

These are jobs mostly in the lower 48 States; 12,000 jobs in Washington State; 80,000 jobs in California; 48,000 jobs in New York; 34,200 in Pennsylvania; 34,000 jobs in Florida, 5,500 jobs in Arkansas, even 2,700 jobs in Hawaii, our fellow non-contiguous sister State to the south, according to forecasts by Wharton Econometrics Forecasting Associates.

It is because of these jobs and the other economic benefits, that so many groups support ANWR development, from many in organized labor to farmers, and from truckers to manufacturers, all of whom know that ANWR oil will help stabilize everything from the cost of spring planting and fall harvesting to the thousands of products made from oil: from antihistamines to compact discs and from heart replacement valves to shampoo.

That is why groups from the U.S. Chamber of Commerce to the Americans for Tax Reform, from the Alaska Gas Association to the Alliance for Energy and Economic Growth, and unions such as the International Union of Operating Engineers, the Seafarers International Union, the Teamsters, the United Association of Plumbers and Pipefitters, the Laborers' International Union, the United Brotherhood of Carpenters and Joiners, and the Building

and Construction Trades Department all are supporting ANWR's opening.

According to USGS estimates, ANWR's Coastal Plain has an even chance containing the second largest oil field in North America. During this debate opponents may well again repeat that there isn't enough oil there to be worth developing, that it only represents a tiny supply or only will decrease our dependence on foreign oil by a few percent.

Those arguments are utter nonsense. It is like saying we should never have produced the East Texas oil fields since the area only contained 5.3 billion barrels—a half to a third of ANWR's likely production. East Texas has produced oil, created jobs and protected our national security the past 75 years of through WWII, and Korea, Vietnam, and the Persian Gulf.

ANWR production is likely to provide all the oil that South Dakota will need for 499 years. It is likely to provide all the oil that Minnesota will need for 84 years, for New York for 34 years, for California for 16 years. That is a lot of oil.

When you consider that the American Farm Bureau Federation reports that American farmers in the 2003–2004 planting season lost \$6.2 billion in income because of higher fuel and fertilizer costs—farmers facing an even bleaker price picture this fall given high prices and drought—then it's clear that all the oil and gas ANWR may produce will be precious to help hold down or reduce those costs in the future.

Remember that ANWR's oil would have offset the oil that we lost in the Gulf of Mexico because of hurricane damage—oil that could well have prevented prices from skyrocketing at the pump this summer and fall.

Discounting ANWR's likely oil is also like saying we as a nation should never have opened the neighboring Prudhoe Bay oil field in Alaska because Prudhoe Bay would only supply us with a 3-year supply of oil. Prudhoe Bay has provided America with up to a quarter of our domestic oil supply for the past 28 years. It has already saved us from spending more than \$200 billion to buy imported oil and new technology has consistently raised the amount of oil the field will produce.

Initially Prudhoe was expected to produce only 35 percent of its oil. Now it's likely to produce more than 16.5 billion barrels—65 percent of its oil in place. The same increase in production might occur at ANWR and could raise production totals to between 10 and 27 billion barrels—the mean being nearly 18 billion barrels, if it happens.

We know industry has spent about \$40 billion on the trans-Alaska oil pipeline and the wells and production facilities at Prudhoe Bay in the past three decades—78 percent of that spending going to states in the lower 48.

From just 1980 to 1994 California businesses received \$3.2 billion in work because of Alaska oil development, Washington State firms \$1.7 billion, New York \$680 million, Minnesota businesses \$100 million.

There is no question that ANWR oil development will be good for the country's economy and its national security. But it also will be good for the global environment and it won't harm Alaska's environment, wildlife or beautiful landscape.

Let me shock those on the other side of this issue. As a life-long Alaskan, a mother with two sons with a family that loves the outdoors, let me say again I would be the first to oppose ANWR's opening if I had any concerns about what oil development will do to our landscape, our air, our water and our wildlife. But I don't.

I have been to Prudhoe Bay, have seen the impacts of oil there and know that Prudhoe's development has not damaged Alaska's environment.

And I know that by using 21st century technology and advanced engineering that has been perfected since the field's construction 30 years ago, that ANWR can be developed safely and the environment even better protected.

First let's look again at Prudhoe's experience. There was much concern that development there would harm the environment and damage the Central Arctic Caribou herd that lives in the field. Neither happened.

The Central Arctic herd continues to calve and nurse their young in the area's oil fields. The herd has grown from 3,000 animals in 1974 to nearly 32,000 today. This 10-fold increase shows that caribou and oil production can co-exist quite nicely, thank you.

Wildlife studies have shown that several bird species have grown since the field was built—specifically brant, snow geese and spectacled eiders, although as the National Academy of Sciences reported last year some nesting distributions may have changed and brant and eiders in general are having problems, perhaps because of reach warmer climate conditions.

I'm sure someone will mention polar bears. I am quite prepared to talk about the very healthy condition of Alaska polar bear stocks. For the moment let me say that only two bears over the past 38 years have been harmed in Alaska because of oil development and with new infrared detection equipment, we can make sure that no bears will be disturbed during denning by ANWR's development.

Americans can be assured that opening the coastal plain will have even less impact on Alaska's environment. That is because new technology has reduced the impact on the environment and the footprint of development.

3-D and 4-D seismic that I mentioned earlier now allow us to locate oil without surface disruption.

Underground directional drilling allow us to recover oil 4 miles away and hopefully up to 8 miles away with-

in a few years, meaning that only a tiny portion of surface habitat will be disturbed between drill sites.

The size of so-called well pads has decreased 70 percent to 88 percent since Prudhoe Bay. The proof can be seen in that the Tarn field was opened in 1998 disturbing just 6.7 acres. Not the 65 acres for a well-pad at Prudhoe Bay. The Alpine field that we in the Senate visited in March, today produces 120,000 barrels a day from a central well pad that is just 43 acres in size—67 if you count the attached air strip.

Ice roads today are used for winter drilling—roads that melt without any disturbance to the tundra in summer when the animals arrive on the coastal plain. New composite mats also can be used to reduce gravel fill and dust. And pipelines technically can be placed underground to prevent any surface disturbance to animals or birdlife, although there are no problems with above ground pipelines. There won't be a "spider web" of development as some have claimed.

Drilling restrictions will prevent noise in summer that might scare a mother caribou, and as insurance, development can be barred by the Secretary of the Interior to guarantee habitat for a core caribou caving area or for bird nesting areas.

Opponents often say that development will destroy "America's Serengeti." We are proposing to limit the "footprint" of development to just 2,000 acres of Federal land. That is no more land than a moderately-sized American farm—the average farm in North Dakota is 1,400 acres—while an area larger than all of South Carolina will remain wild and protected. With the new technology it will be possible to leave nearly 100 square miles of undisturbed habitat between well sites. The animals of the African veld in Tanzania should be so lucky.

Opponents of opening ANWR always address two more issues: that oil spills on the North Slope of Alaska has shown that development should not be allowed, and that air quality from energy production should also prevent development. Let me briefly respond to both concerns.

Concerning oil spills opponents list numbers claiming a high number of spills, but fail to mention that companies have to report spills of most any substance more than a gallon in size, whether of water, or oil or chemicals.

According to the Alaska Department Environmental Conservation, there have been an average of 263 spills on the North Slope yearly during the past decade, but the average oil spill was just 89 gallons—2 barrels of oil—and that 94 percent of that oil was totally cleaned up. By comparison the rest of the state had seven times more spills per year than the Prudhoe Bay oil field.

According to the National Academy of Science's 2003 study, if you look at all oil spills from 1977 through 1999, 84 percent of all spills were less than 2

barrels in size and only 454 barrels of oil per year may have been released to the environment, compared to 378,000 barrels of oil that enter North American waters as a result of just urban runoff—those drips at filling stations and other spills. That may be less oil than enters the Alaska environment naturally because of oil seeps on the North Slope.

Concerning air quality, we have heard mention that Prudhoe Bay has destroyed the air quality. There is no truth to those claims.

It is true that the nation's largest oil field does add emissions into the air, mostly nitrogen dioxide and larger particulate matter. But field meets the stringent air quality standards in place for Class II attainment areas—areas where Congress has set higher standards to prevent any Significant Deterioration (PSD) of air quality.

Looking at nitrogen dioxide, in its worse year, 2000, such emissions were only a quarter of the public health standard for the area. For sulfur dioxide, in its worse year 1997, the Prudhoe Bay field emitted 16 times less sulfur dioxide than the public health standard and only a quarter of the tough standards for a Class II area.

For carbon monoxide, during its worse period, one eight-hour period in 1991 near Kuparuk, the field was 35 times lower than the public health standard. I could continue with particulate matter but the story is the same.

The truth is that the Prudhoe Bay area—the nation's largest oil field—releases eight times less nitrogen dioxide into the air than the metropolitan Washington area does per year, according to the Metropolitan Washington Council of Governments.

More important the releases have no impacts on the environment. There is no evidence that the releases are affecting the Arctic environment or the environment downwind. The air quality complaints are groundless.

To environmentalists who say we are harming Alaska, please remember that an area of more than 192 million acres, the size of all the states that stretch from Maine to Orlando, Fla.—almost the entire East Coast—are already protected in parks, refuges and forests in Alaska. We aren't proposing to touch any of those areas.

Now let me explain why I suggested that ANWR development is actually good for the global environment.

Right now America is using about 20 million barrels of oil a day and importing more than 11 million barrels of that oil. That oil is increasingly coming from countries with less stringent environmental standards than America. America has the toughest environmental standards in the world. We should be doing all we can to satisfy our oil needs at home, not exporting environmental issues overseas to Russia or Colombia or Venezuela.

Secondly, even with greater efforts at conservation—efforts that I strongly

supported in the just-passed comprehensive energy bill—we are still going to need oil.

We could park every car and truck in America tomorrow and we still will need ANWR's oil to meet our needs for plastics, road construction materials, roofing materials, and those petrochemical feed stocks that are the stuff of everything from soft contact lenses to aspirin and from house paint to toothpaste.

And in case anyone tries to argue that opening ANWR will somehow increase carbon dioxide and maybe, perhaps, increase global warming, let me say that if we don't open ANWR we will need to import ever more oil to America in foreign tankers. Those tankers will need to travel tens of thousands of miles farther to reach American shores. They run on diesel fuel and will produce far more carbon dioxide than transporting Alaskan oil to lower 48 ports will.

Thirdly, if we don't open ANWR we will need to import ever more oil. When we reach 68 percent dependency we will need the equivalent of 30 giant super tankers, each loaded with 500,000 barrels of crude oil a day, to dock at U.S. ports. That will be more than 10,000 shiploads of oil a year, most likely foreign-flagged and foreign-crewed tankers passing our rocky coastlines and entering our crowded harbors. Those ships create many more times the environmental risk to America's coasts than developing our own energy, using American technology, American doubled-hulled ships, whose performance is governed by American law.

For years the mantra of environmentalists has been "Think globally, act locally." The best action we can take locally is to produce more of the oil we consume every day.

Let me briefly touch on whether Alaska Natives continue to support oil development on the coastal plain. Earlier this spring some questioned that support because of a petition that was signed by some in Kaktovik—the only village directly in the ANWR area, an area where 78 percent of residents, 2 years ago supported oil development, according to a community poll. While I have letters signed by a number of those who signed the anti-development petition—letters saying they were misled by the petition sponsor and that they do still support ANWR's on-shore oil development—let me just reassure my colleagues that Alaska Natives clearly support oil development in my State.

I have a letter from all members of the Kaktovik City Council and from its Mayor sporting oil development.

The latest statewide public opinion poll in Alaska by Dittman Research finds that only 23 percent of Alaskans oppose ANWR development. In this day and age, getting more than 70 percent of any body anywhere in support of anything is a major achievement.

The Alaska Federation of Natives—that is the umbrella for all Native

groups in the State—is clearly on record supporting ANWR development.

I visited Kaktovik during August to see for myself the current level of support or concern with development in the coastal plain. I can say clearly that while villagers would like us to solve their Native land allotment concerns by next year—the 100th anniversary of when the land allotments were authorized and want us in Congress to protect subsistence whaling—and while they clearly want to be consulted on development and aided to avoid any impacts—that they generally support environmentally sensitive development onshore on the coastal plain.

Natives on the North Slope of Alaska have seen for themselves the impacts of oil development and have seen the benefits that oil can bring: good jobs, better schools, improved health care, modern water and sewer systems, adequate housing and better opportunities for their children and their grandchildren.

Natives who have lived in the area for thousands of years simply want to be consulted and to have their wisdom reflected in the regulatory decisions made to control energy development. That is a perfectly reasonable position for local residents to take and I certainly will support them to make sure their knowledge and wisdom are listened to.

They simply want respect and we in government clearly should respect their knowledge as oil development proceeds.

I As long as we include reasonable environmental and regulatory protections, Alaska Natives support responsible oil development on the Arctic coastal plain.

And this bill provides \$35 million in impact aid, money that hopefully will alleviate any impacts from ANWR development and assist Alaska Native Corporations and their members who live along the Trans-Alaska oil pipeline corridor.

This amendment is largely based on an ANWR stand-alone bill, S. 1891, that I introduced this fall. So that there is no mistaking the clear intent of this legislation as it is considered for final passage, let me state the following:

After 18 years of debate since release of the final environmental impact statement covering Arctic oil development in 1987, more than 50 hearings, dozens of field trips, passage of ANWR legislation in the 106th Congress, and passage of ANWR-opening legislation by the House in the 108th Congress and by both the House and Senate in the reconciliation act process in the 109th Congress, it is absolutely clear that it is the intent of Congress—should this bill pass—that oil and gas development be permitted in the entire ANWR coastal plain on an expedited basis. That means that development should be permitted on the Federal lands as permitted by this legislation without delay in order to be producing revenues within 5 years.

It is clearly the intent of Congress as spelled out in the provision, that the existing LEIS is sufficient to cover new preleasing activities and that it is the intent of Congress that the LEIS is still sufficient to govern oil development with modest updating.

Concerning the 92,000 acres of native-owned lands, lands owned by the Arctic Slope Regional Corporation and the Kaktovik Inupiat Corporation, Congress by this division in the Defense appropriations bill is authorizing immediate development as allowed by the 1983 land trade that allowed Natives to select lands in the coastal plain and as allowed by the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act.

Specifically, there should be no question that it is the intent of Congress that the phrase "prelease activity" is intended to include all activities that normally take place prior to a lease sale, including surface geological exploration or seismic exploration. The Secretary has promulgated regulations governing surface geological and geophysical exploration programs for the refuge's coastal plain pursuant to Section 1002 of ANILCA. These regulations, set out at Part 37 of Title 50 of the Code of Federal Regulations, are consistent with the LEIS and include adequate environmental safeguards. Although the primary purpose of those regulations was to govern the exploration necessary to produce the "1002" report to Congress, they include provision for additional surface geological and geophysical exploration "if necessary to correct data deficiencies or to refine or improve data or information already gathered." 50 CFR Section 37.11.

This authority is adequate for the Secretary to process any requests for permits for prelease surface exploration, but is not the exclusive authority for processing such requests. This amendment provides independent and sufficient authority for the Secretary, acting through the Bureau of Land Management, to issue prelease permits for surface geological exploration or seismic exploration. Permits for prelease surface exploration, whether or not pursuant to Part 37 of Title 50, that incorporate environmental safeguards similar to those in Part 37 of Title 50 are consistent with the LEIS and the requirements of this section.

Another area I would like to clarify is relating to the provision that allows the Arctic Slope Regional Corporation to begin oil production from their lands. It should be clear that the section in this bill removes the prohibition in Section 1003 of ANILCA against the production of oil and gas and leasing or other development leading to production of oil and gas for lands within the "1002" Coastal Plain Area, as depicted on the map prepared by the U.S. Geological Survey entitled "Arctic National Wildlife Refuge 1002 Coastal Plain Area," dated September 2005,

including both Federal lands private lands, primarily owned by Alaska Native corporations, and now or hereafter acquired within the 1002 Coastal Plain Area and preserves all rights of access to those lands, including for oil and gas pipelines, provided for in Sections 1110 and 1111 of ANILCA.

There is much more that I can say. For now let me just say that both Republicans and Democrats agree that American independence on foreign oil threatens our national security, and yet, we continue to import over half of our oil needs. And we haven't yet done enough to reverse that trend.

Only by passing ANWR, in conjunction with the other environmental steps we have already taken in the energy bill, can we produce more oil from American soil, with American workers; oil that will be used to heat American homes and power America's farms and industries.

In a sentence, ANWR is a part of the solution to America's dependence on foreign energy sources. Not the entire solution, but one real part of it. The one part not yet addressed by Congress this year.

ANWR is the place and the time is now.

I yield the floor.

The PRESIDENT pro tempore. Who yields time?

Senator COCHRAN is recognized for 4 minutes.

Mr. COCHRAN. Mr. President, I understood I had 2 minutes under the order.

The PRESIDENT pro tempore. The occupant of the Chair has additional time and is yielding the additional 2 minutes.

Mr. COCHRAN. I appreciate the generosity of the Presiding Officer.

I am pleased to advise the Senate that after a great deal of hard work, including Senators on both sides of the aisle, Members of the other body, we have been successful in adding to this conference report as an amendment a disaster assistance provision that makes money available now to those in the Gulf States region who have been seriously harmed, hurt, devastated by Hurricane Katrina and Hurricane Rita.

The Senators from Louisiana and Mississippi, of course, have been probably the most directly affected in terms of the demands being made on the Federal Government now for a sensitive and generous response to the needs of our region. We are very grateful to those who have joined with us and supported the addition of these funds, \$29 billion in total amount in this bill, to provide disaster assistance to that region.

We appreciate the administration's sensitivity to this and the request that the President made for a reallocation of previously appropriated funds in the amount of \$17 billion. We urged that be increased. The House agreed. The Senate agreed to support this. Our committee did. Now it is before this body. I hope all Senators will support this

conference report. It is very important that this money be given to the region now. Any further delays are going to be not just frustrating but devastating to the economic well-being, the emotional stability of that region of our country that has been so harmed, in an unprecedented way, by this disaster. We appreciate the support of all Senators.

I thank the Chair.

The PRESIDENT pro tempore. The Senator from Louisiana is recognized for 4 of the minutes designated to me.

Mr. VITTER. I thank the Chair.

Mr. President, I stand in strong support of the motion to invoke cloture, and I ask all of my colleagues to come together, put the interests of the country, including the interests of the citizens of the gulf coast, first, ahead of politics, ahead of partisanship, and move this important legislation forward.

In the last 48 hours, we have heard a whole lot about this package and about this upcoming vote. So much of it has been about partisan ideology and politics and procedure. Let me tell you what this vote is about in my home in Louisiana. It is about another "P" word. It is about people, real people trying to live and survive and rebuild in the real world. Nearly 4 months ago, 1,000 people, my fellow Louisiana citizens, were killed during the devastation of Katrina. Today, 4 months later, nearly a million people are still reeling. They remain lost because of our continuing delay and inaction, people who have no homes, no cars, no jobs, in many cases all of their personal possessions gone.

My hometown was flooded. The city of New Orleans, once a thriving city of 450,000 people, is today, almost 4 months later, under 100,000 people. My neighbors want to come home. We want to rebuild in earnest. Tens of thousands of businesses want to reestablish themselves and offer jobs again to their hundreds of thousands of employees. This vote is crucial for that to happen. That is why it is not about partisan ideology and politics and procedure that we have heard about for so many days; it is about people, real people with enormous and real challenges in the real world.

The question is simple. It is, in Louisiana, whether those people will be flooded a third time. Why do I say a third time? The first time was because of mother nature, because of the ferocity of Hurricane Katrina causing untold flooding and damage in southeast Louisiana. But the second time was the day after Hurricane Katrina when the levees broke. That wasn't the biggest natural disaster in American history. That was the biggest manmade disaster in American history because of fundamental design flaws in that system.

Now we are on the Senate floor debating whether those same people will be flooded a third time, flooded by inaction, flooded by the results of partisan ideology and politics and getting all tangled up in arcane procedure.

Let's not flood these good people a third time. Let's act—yes, late, but not too late—to give them a clear vision forward so they can rebuild their lives.

I urge all of my Senate colleagues to put real people, facing real challenges, the biggest of their lives in the real world, ahead of partisan ideology and politics and procedure. I urge my colleagues to vote yes on cloture.

I yield back my time.

The PRESIDENT pro tempore. The Senator from Washington is recognized for 12½ minutes.

Ms. CANTWELL. Mr. President, I yield 2 minutes of my time to the Senator from California.

The PRESIDENT pro tempore. The Senator from California is recognized for 2 minutes.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Washington, and I thank the Chair.

ANWR is an issue that arouses great passion on both sides of this issue, but there are strong arguments that underlie the belief that the opening of these critical 1½ million acres of pristine wilderness is small, from an oil production perspective, and very damaging environmentally.

First, the Arctic Refuge Coastal Plain, where the drilling would occur, is the ecological heart of the Refuge. It is the center of wildlife activity. If ANWR were opened for drilling, the wilderness would be crisscrossed by roads, pipelines, powerplants, and other infrastructure. The Department of Interior estimates that 12,500 acres would be directly impacted by drilling. I strongly believe that destroying this wilderness does very little to reduce energy costs, nor does it do very much for oil independence. It will produce too little oil to have a real impact on prices or overall supply, and it would offer a number of false hopes.

On average, ANWR is expected to produce about 800,000 barrels of oil a day and, in 2025, these 800,000 barrels per day would represent but 3 percent of the projected 25 million barrels of oil a day of U.S. consumption. By changing SUV mileage requirements to equal sedans, we produce a million barrels of oil a day savings.

I don't believe we can drill our way to energy independence. I urge a "no" vote.

The PRESIDENT pro tempore. Who yields time? The Senator from Washington was yielded 12½ minutes and has yielded 2½ minutes of that.

Ms. CANTWELL. Mr. President, I reserve the balance of my time. I see the Senator from New Mexico seeks recognition.

The PRESIDENT pro tempore. The Senator from New Mexico is recognized for 5 minutes.

Mr. DOMENICI. Mr. President, I rise today to talk about the bill before us in one respect. I want to talk about ANWR. Actually, ANWR has been waiting too long to become part of the United States of America's inventory of reserves of crude oil for our people and for our future.

I had the luxury of going up there in the extreme cold to see what this is all about. I want to share with my fellow Senators a couple of facts that seem to be unnoticed. First of all, all of the activity that takes place with reference to drilling, takes place with reference to preparing, takes place with getting the oil ready to put into a pipeline—all of that activity takes place in the dead of winter. That means the roads are built on ice. That means the holes are drilled in the ice. That means the oil comes to the surface to be put into pipelines while it is below zero and everything is frozen.

So when Senators or visitors are taken there in the warm climate and they see the soft ground that you cannot hardly put a truck on, the marshes that everybody wants to preserve, everybody should understand that there is no activity taking place under those conditions. Everything is done—the drilling, the preparation, the production—while it is all frozen. When the warmth comes, the activity disappears. What is left are a very few small signs of the activity of man that has produced oil.

I saw 60 acres of the Alaskan frozen tundra—60 acres—upon which an entire drilling operation took place, all in winter. That 60 acres was producing 150,000 barrels of oil a day. All that will be there are wellheads. Actually, as you drill, they look like little out-houses very close together, in which a well is drilled, and scores of underground wells are drilled from it, vertical and horizontal, taking the oil out of the ground, with no new holes. When you are finished, there will be the plugs on top of that and a station that pulls it together, and everything else will disappear, and out comes 150,000 barrels of oil.

Can you envision in this 1.5 million acres 2,000 acres of it being used in multiples of 60 acres to produce what is expected from ANWR? How will that harm anything—that 1.5 million acres? They always quote President Eisenhower. It was set aside and designated, written there that this might be important for our future because it has in it and under it petroleum and petroleum products. That was known when it was set aside. We have been sitting around waiting, this great country, to produce it.

The last point, they say it is not very important in terms of size. Mr. President, the reserves on that property, at \$30 a barrel, were calculated to be the equivalent of the reserves in the State of Texas. Now we understand that at \$60 a barrel it has probably doubled. That means it is more than the State of Texas. So for everyone who talks about a 1-cent impact on gasoline, maybe we could also say it is not very important, so why don't we close down all the wells in Texas; they are not very important. And they have a lot of environmental problems. They were drilled in a different era. If you are worried about the environment, take a

flight over Texas—no aspersions on Texas because it is my State also. But that is a lot of oil, the equivalent of Texas, and to run around America and say it is not important is economic arrogance.

The United States needs oil that belongs to itself. We own it. I honestly believe, having seen it and studied it, that those who say we will destroy that part of the beauty of Alaska are missing the point. It will not even be seen. You will not be able to locate—

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

Mr. DOMENICI. You won't be able to see or locate what transpired. Yet America will be safer. I hope we do this. This is the appropriate vehicle. I hope cloture is imposed.

The PRESIDING OFFICER (Ms. MURKOWSKI). The majority has 16 minutes and the minority has 22 minutes left. Who yields time?

The Senator from West Virginia is recognized.

Mr. BYRD. Madam President, the issue of drilling in the Arctic National Wildlife Reserve is close to the heart, dear to the heart of the senior Senator from Alaska. I love him. I admire his unyielding commitment to the people of his State. I honor him for that. I consider him a dear friend, a friend over a long period of time, a friend who is close to my heart.

My remarks today do not reflect upon him or upon his efforts in regard to the people he represents. My concern is with the rules of the Senate. My concern is with the Senate rules in this book and how the rules are threatened—threatened—by what has been unfolding in recent days.

If cloture is invoked on the conference report, Senators have discussed raising a rule XXVIII point of order—that is what we hear—against the conference report. That point of order is expected to be sustained by the Chair. The question may then be put to the Senate to overturn the ruling of the Chair and, in effect, to negate—get this—in effect to negate rule XXVIII in order to retain ANWR provisions in the conference report.

It has been noted that if the Senate negates the rule, language included in the conference report would restore rule XXVIII by directing the Presiding Officer to apply the precedents of the Senate in effect at the beginning of the 109th Congress.

It is true that noncontroversial, extraneous matter is often included in conference reports. There is no doubt about that. It is true that Senators acquiesce on many occasions, choosing not to invoke rule XXVIII. That is true. That is a fact. It is also true that the Senate can reinterpret and set new precedents for the application of its rules whenever it pleases. The Senate can do that. That is as it ought to be. But what has been discussed in recent days is very different—hear me—very different.

It will allow a simple majority of Senators, as opposed to the two-thirds

majority required by Senate rule V, to effectively suspend rule XXVIII by negating it and then restoring it so that the rule cannot be used to prevent the passage of the ANWR provisions that have been inserted into the conference report.

I say to my colleagues—hear me, hear me, my colleagues on both sides of the aisle—that I abhor, I abhor, I abhor this idea. Shame.

If such a scheme were carried into effect, it could seriously impair the Senate rules. Hear me. I know about the rules. I spent years in using the rules. Nothing would stand in the way of a majority—nothing—nothing would stand in the way of a majority, be it Republican or be it Democrat, from routinely negating and replacing Senate rule XXVIII in order to insert controversial legislation into a conference report. This is a very clever, a very clever, a very clever thing that is being put forth here.

Today, this process could be employed to suspend rule XXVIII, but tomorrow, it could be employed to suspend the rule XVI prohibition against legislation on appropriations bills, and the day after that, it could be used to suspend who knows whatever rules.

Mr. STEVENS. Will the Senator yield?

Mr. BYRD. Not yet. I will be happy to yield to my friend. He is my friend. I love him, I told him that, but I love the Senate better. I love the Senate more. I love this man from Alaska. I do, I love him. I feel my blood in my veins is with his blood. I love him, but I love the Senate more. I came here and swore an oath to uphold the Constitution of the United States, and I would die upholding that oath, just as the Romans honored an oath. And I feel the same about that. I love my friend from Alaska, I say, I love him, but I cannot go down that road. I have told him so. I love him, but I love the Senate more.

I know he is going to speak, and I would love to follow him, but I won't be able to, so let my words stand. The record stands.

If permitted today, the process could be utilized again and again and again, with terrible consequences for the Senate rules. I understand that Senators are working to avoid this scenario. I hope that effort is successful. Allowing this process to continue unfolding as it has in recent days would cause significant harm to the Senate as an institution.

Senators should realize that if negated in the next hour, rule XXVIII would not be restored in its current form until the President signs into law the Defense appropriations conference report, which could take as long as 10 days. In that time, any remaining conference reports, whether a rewritten PATRIOT Act or a continuing resolution, could include almost any—almost any—nongermane provisions without being subject to a rule XXVIII point of order.

It is ironic—oh, it is ironic.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BYRD. May I have 5 more minutes?

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. I would not object as long as the majority's time is extended the same period of time.

Mr. REID. I don't think we will ask the time be extended. Madam President, does Senator CANTWELL have 5 minutes for him?

Ms. CANTWELL. Did I understand—

Mr. REID. Senator BYRD has asked for 5 more minutes out of the time of the Senator from Washington. Madam President, does she have it?

Ms. CANTWELL. I think I understand that the Senator from Alaska asked for additional time.

Mr. STEVENS. I did not hear the Senator.

Mr. REID. Madam President, I ask unanimous consent that the time for the majority and minority be extended 5 minutes each.

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

Mr. BYRD. Madam President, it is ironic that the Senator from Alaska and I find ourselves on opposite sides of this issue. In the year 2000, we worked together to restore rule XXVIII after it had been negated 4 years earlier. We agreed that it ought to be restored to try to facilitate a return to the regular order in the Senate. My friend remembers as I do the yearend Omnibus appropriations bills that would come back from conference where conferees had to accept all sorts of new matter never before considered by the House or Senate. We included an amendment in the fiscal year 2001 Consolidated Appropriations Act to restore rule XXVIII, with the support of the majority and the minority leaders. Now the question may be put to the Senate to negate rule XXVIII again.

I understand the passions surrounding the issue of ANWR, and I honor my friend from Alaska. He is standing up for his State, but I am standing for the Senate. I am standing for the Senate, the Senate's rules under the Constitution of the United States. I understand the passions surrounding the issue of ANWR, but we abandon and undermine these rules at a terrible, terrible price. What a price. This institution and the liberties that its rules protect must come first—must come first—before political party, whatever it be, Republican or Democrat, and before legislative maneuvering. Those battles are fleeting, but the Senate must stand forever.

I do not want to see the Senate, the forum of the States and the last exalted refuge that guarantees a voice to the minority among the din of an overwhelming majority, I do not want to see the Senate take the position that a majority of Senators are entitled to suspend the Senate rules whenever they prove inconvenient. So I urge my

colleagues—please, listen, my friends on both sides of the aisle, Democrats and Republicans—I urge my colleagues to think carefully about this issue. The powerful abolitionist Senator Charles Sumner called the Senate rules the very temple, the very temple of constitutional liberty, and he was right. I plead with my colleagues to not dismantle that temple of constitutional liberty. I urge my colleagues to preserve rule XXVIII in its current form and, if raised, to oppose any motion to overturn the ruling of the Chair.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire has 5 minutes.

Mr. GREGG. Madam President, I rise to praise the Senator from Alaska for bringing this bill forward. This bill has a lot of very important language in it obviously dealing with our national defense, dealing with our ability to be energy independent. But there are two items I wish to focus on because if this bill fails, if the cloture motion does not occur, they are going to be dramatically impacted.

The first is the Low-Income Home Energy Assistance Program. There has been a lot of grandstanding in the Chamber over the last few months, with Members coming down here and offering proposals for how they were going to fund Low-Income Home Energy Assistance, otherwise known as LIHEAP.

Most of those proposals have come forward without any offsets, have added to the deficit and, therefore, have been subject to a 60-vote point of order, and the people offering them knew they were not going to pass, but they wanted to take a position.

This is the first bill that will increase LIHEAP, low-income energy assistance, and allow those people who are going to have a very tough winter to be able to pay for their energy costs. This bill has 2 billion additional dollars for low-income energy assistance in it, and it is paid for. It is done in a fiscally responsible way.

Without that money, we will go back to the LIHEAP funding levels which are traditional here, and we will not be able to pick up the extra costs of LIHEAP, which is low-income energy assistance, which is a function of increased oil costs—a very serious problem for a lot of low income people who are trying to figure out how they are going to be able to heat their homes this winter.

So if this bill goes down under the cloture motion, we lose the LIHEAP dollars, and all those folks who have come to the Chamber and claimed they were for LIHEAP will have to explain that.

Secondly, this bill has in it a major initiative in the area of defending our borders; \$1.1 billion is put into this bill to upgrade the capabilities of the Border Patrol. The Border Patrol needs to be dramatically expanded as to personnel and detention facilities, but nei-

ther of those events can happen until the capital needs of the Border Patrol are improved so that the additional agents can be taken care of.

We as a Congress have increased the number of agents by 1,500 in the last year, the number of detention beds by 1,000, but we have not addressed the capital needs. They need new helicopters, new cars, new buildings and facilities to house people. They need some issues relative to their training facilities so that we can train more border patrol. All that money is right here.

Everybody who has come to this Chamber talking about the need for a better Border Patrol and better capacity to monitor who is coming into our country, well, it cannot be done without a strong Border Patrol, and this bill commits to that.

I congratulate the Senator from Alaska for putting in that money. We need to get it in the pipeline. We need to get it in the pipeline now so that the Border Patrol will have the capital resources it needs to make sure they can move forward with our goal, which is to secure the border so we know who is coming across the border and the people who are coming across the border illegally are apprehended.

It is a good bill. There are a lot of good proposals in this bill. But those two items—getting energy assistance money out to low-income individuals who need it, and as we head further into this winter, it is going to be critical that we have that money; and supporting the Border Patrol effort and making sure that our borders are secure through expanding the capital commitment to the Border Patrol with additional helicopters, additional housing, additional motor vehicles, and other physical activity they need down there, training facilities—are very critical elements of policy in this bill which will be lost potentially and most likely actually if this cloture motion is not agreed to.

Therefore, I strongly encourage our colleagues to vote for cloture.

I reserve the remainder of my time and yield it to the senior Senator from Alaska.

The PRESIDING OFFICER. Who yields time?

Mr. LOTT. Could I inquire about the time remaining so we can keep some balance about how the time is divided?

The PRESIDING OFFICER. The majority has 16 minutes remaining, and the minority has 15 minutes remaining.

Mr. LOTT. Madam President, then I will take advantage of this time.

The PRESIDING OFFICER. The Senator is recognized for 4 minutes.

Mr. LOTT. Madam President, I say to my colleagues, so many of them have worked hard on this. They have produced a product that has some very important things in it. I know some people will be concerned about the process, as I am. I have been concerned, and I have been on both sides of the process question. But this is probably the biggest, most important bill of this year. We need to realize that.

Some people say: Oh, this is so unprecedented, and why are we here? I have been here a while—not as long as the distinguished Senator from West Virginia—but this is not unprecedented. This is where we are just about every year. Almost every year, we get down to the end and we have some sort of omnibus or combination of bills, and so there is nothing so unusual or outlandish about all of this.

I wish to take just a minute to thank all who have been involved in putting this legislation together, particularly my senior colleague from Mississippi, Senator COCHRAN. He held the line. He insisted on some reprogramming of the money that had been approved by the Senate earlier for installations that were damaged by the hurricane and to also include additional money when some people did not want to include the money that was needed for our people who are so desperate in the Katrina and Rita devastated areas. But he held the line, and he came up with a bill that has \$29 billion in reprogrammed money out of money that was already there—this is reprogramming, not adding to the deficit—plus some funds for restoration of our eroding lands in Louisiana and Mississippi. This is so vitally important to our region.

I have hesitated speaking because I am concerned I am going to get emotional and not be able to get through this without showing the same feeling I hear from my constituents in Mississippi, people in Louisiana and Texas. We need this so desperately, and we need it now.

I know we have been arguing for years about ANWR. I am not going to rehash the merits of it. I think it is time we do this. We need the energy. I think a lot of the alarms that are expressed about it are not accurate. I admire Senator STEVENS for his tenacity and the leadership of Senator MURKOWSKI for trying to get this done. It is an awfully small piece of land. It is something we really need. I hope we would not allow this big, important bill to be defeated on this point.

The most important thing I wish to say today is how badly we need this help. There are people right now literally living in tents, small trailers, and double-wides who do not know what they are going to do with their lives. There are people living with their relatives miles and States away because they lost their home. They have a slab, a mortgage, no insurance. Many of them lost their job. Some of them lost loved ones. Some of them lost their truck and their dog.

I talked to a man yesterday who cried twice on the phone, pleading with me to tell him what he could do. They have hit the wall. Right now, they are at that moment of exhaustion, frustration, and decision. If we do not provide this help now, if it is put off another month or 2 months or 3 months, Heaven help us.

So I plead with my colleagues. I know we might not have designed this

bill this way in a different time or a different set of circumstances. I do not begrudge anybody for what they have done, but I cannot let this day go without pleading that we get this done and get it done now.

I am scheduled to go home tonight to make a speech in the morning to the Biloxi, MS, Chamber of Commerce, an area that was devastated by this hurricane. I have done this for 32 years in a row. If we do not get this bill done, I cannot go home and face those people. Please help us, and I will help my colleagues as long as I can avoid this sort of situation in the future.

I thank my colleagues for their time and for the support they have already given us.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Louisiana.

Ms. LANDRIEU. I ask unanimous consent to speak for 1 minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I rise following my colleague from Mississippi, to associate myself with his remarks. I see my colleague, Senator VITTER, on the Senate floor, and Senator COCHRAN is not too far away. This is a crucial vote for those of us along the gulf coast who have faced not just two killer storms but multiple levee breaks that have put this great economy of the Nation's only energy coast at risk. While we would not design the bill this way if left up to the four of us who have been negotiating this package with the help of many of our colleagues through the process, I add my voice to say it is imperative that we get this \$29 billion of direct aid, not to FEMA but directly to our Governors and to our people to give them hope that this region can be rebuilt. Without this, it will be impossible, and they cannot wait another day.

I thank my Senate colleagues.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Madam President, is there time left? What is the situation with the time?

The PRESIDING OFFICER. The minority has 15 minutes. The majority has 12 minutes remaining.

The Senator from Washington.

Mr. REID. I ask unanimous consent the Senator from Alaska be given the last speech on this matter.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. I yield to the Senator from Massachusetts 3 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I have as passionate a feeling against the Arctic Refuge drilling as I know the Presiding Officer and the Senator from Alaska, the senior Senator, have for it. I do not believe, when you look at the facts dispassionately, on their face,

that it is going to do any of the things that are promised. On its face, drilling in the Alaska National Wildlife Refuge does not help solve America's drilling problem. We are overly dependent. We have only 3 percent of the oil reserves in the world. There is no way for this to make a dent in the world oil supplies, in the supply or price of gasoline or America's energy independence. But that is not the debate today. The debate today is what the Senator from West Virginia was talking about.

Every so often in the Senate we have a gut check about what it means to be a Senator and why we are here and what our duty is—our duty. The arguments we have just heard from the Senator from New Hampshire and the Senator from Mississippi—we all agree we want border money. We all agree we want the money for our troops. We agree we want the money for those hurricane victims. Every single one of us in the Senate knows how this place works. If we say no to this breaking of the rules, which is what is creating this impasse, within hours we can pass this bill with the border money, with our troop money, and with the hurricane money. We can do that.

There is only one thing stopping us. What is stopping us is the fact that in an effort to do what they could not do by following the rules, they are now going to break the Senate rules for a matter of expediency.

Mr. BYRD. Shame.

Mr. KERRY. That is what is at stake. That is the vote.

Mr. BYRD. Shame.

Mr. KERRY. The whole reason this is being put on DOD is to make it tough on Senators. And it is tough—

Mr. BYRD. Yes.

Mr. KERRY. Because they fear going home and somebody says: You voted against the troops.

This is not about the troops. We are all supportive of the troops, and we can have the money for the Defense bill, but we should do it according to the rules of the Senate.

Mr. BYRD. Right.

Mr. KERRY. That is what we are here for. That is what this is about. There is not one Senator here who does not understand that if we say no to cloture now, this can be stripped out. The Senator from Alaska himself has said he would strip it out, that if it does not happen they can take it out, reconvene the conference, we come back, and if it means an extra day to preserve the rules of the Senate, we ought to take that extra day.

The fact is, this bill could have been passed 3 months ago, and it was held up because of a stubborn insistence on the issue of torture. Now it is being held up in order to break the rules in order to be able to do ANWR. I hope our colleagues will stand up for the Senate. It is not pro-ANWR or against ANWR. It is not pro-troops or against troops. It is for the Senate.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. I yield 1 minute to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. I thank my friend and colleague who has done such a wonderful job on this issue, the Senator from Washington.

I rise to oppose this motion and to clearly state, along with my colleagues, that we all support funding our troops. We support helping those in the gulf who have been hurt and are in such difficult times. We all support the Low-Income Home Energy Assistance Program. We have had the opportunity to vote on these. This is a question of whether something that cannot pass following the rules gets put into a bill that we all support on behalf of our troops, and somehow we are blackmailed into passing that in order to get the funding for the troops that we all want and that we all support.

I oppose this tactic. I appreciate that there are people on both sides of the aisle, well-meaning people who disagree on whether we should drill in the Alaska National Wildlife Reserve. I say no. But this is about whether we will support our troops and not allow the process to be hijacked. Let's vote no and get on about the business of funding our troops.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Washington.

Ms. CANTWELL. Madam President, if I could be notified when I have used 5 minutes.

I rise today to ask my colleagues to reject this cynical ploy that has brought us to this point today. Just a few days before the holidays, we are presented with this Defense bill that has become a Christmas tree. It is a Christmas tree decorated with giveaways and back-door exemptions, and special rules for the oil industry.

We have been debating the topic of ANWR for 25 years. No one should condone such a blatant maneuver as taking the bill that provides funding for our men and women in uniform, and stuffing into it a provision that was in neither the House nor Senate bills; a provision that gives away to the oil industry the ability to drill in the Arctic National Wildlife Refuge; a provision that hasn't gone through the normal rules and processes that any other business in the Senate would have to go through.

This Senator strongly objects to these provisions for Arctic drilling on the merits of the issue. I welcome a debate on the merits of the issue. But regardless of those issues, my colleagues should understand that every Member of this institution should object to the way this provision has been added to this legislation. These measures were slipped into the Defense spending bill, and they are a violation of the Senate rules. What is more, these provisions were changed after the bill was voted out of conference. After my colleagues had signed the conference report, the

language related to ANWR was changed. So not only was it not in the House or Senate conference bills, it was changed after members had signed their names to the conference report.

Madam President, this is a frontal assault, as my colleague, the Senator from West Virginia said, on the institution, on the Senate, and I ask my colleagues to consider, what is next? If we are to allow legislation like this to move forward, what do we have to look forward to in the future? Will we be drilling off the coast of Florida? Will we be drilling in the Great Lakes? Will we be drilling anywhere, just because it can be put in a defense measure?

I ask my colleagues to make sure that we send a message that is loud and clear, that we are not for breaking Senate rules.

Over the last week or so there have been more than 20 different editorials from papers across the country, from New Hampshire to Oregon, from Minnesota to Florida and elsewhere around the country, talking about these issues and why we should not be in this situation.

From the Oregon newspaper—basically it said this is a shortsighted plan, and it is “disgusting that lawmakers would try to equate oil profits with our Nation's true defense needs.”

Another newspaper in New York said it was an eleventh hour ploy in Congress by Republican leadership, lowering the bar and slapping Alaskan oil drilling onto a must-pass bill to pay for the Iraq war.

Another criticism from the Oregonian:

A vote for the Arctic is not a vote against our Nation's military.

We are not going to be blackmailed into passing this legislation, just because someone at the eleventh hour sticks this language in.

I saw in a news commentary, the Scarborough Report—this from somebody who supports drilling in Alaska—who basically said that this provision is a “politically toxic rider to funding our troops in Baghdad, in Iraq, in Afghanistan, and across the world. It is unforgivable,” this tactic.

And the military, retired leaders sent a letter saying:

... any effort to attach this controversial legislative language authorizing drilling to the Defense appropriations conference report will jeopardize Congress' ability to provide our troops and their families with the resources they need in a timely fashion.

We did not have to get to this point. We did not have to get to this point today, where Members are being forced to vote on drilling in the Arctic just because we have to pass a Defense appropriations bill.

I ask my colleagues to consider this. I do believe in a different view than this legislation when it comes to energy independence. I do believe that being dependent on foreign oil at more than 50 percent today is too much. There is no way we are going to drill our way to energy independence in the

United States. God only gave the United States 3 percent of the world's oil reserves, so we should move off of that and on to other supply.

Today we are here as Senators to say whether we are going to allow the Senate rules to be broken; whether we are going to try to pass some language that never appeared in any Senate bill, but mysteriously appeared in this conference report at the eleventh hour.

I do not think we should give a green light to oil companies in this fashion, giving them the ability to circumvent seven Federal laws and countless regulations, regulations with which every other business in America has to comply.

The PRESIDING OFFICER. The Senator has consumed 5 minutes.

Ms. CANTWELL. I thank the Chair. I will consume another minute.

I hope the Senate will turn down this language, that we will make sure we do not give an exemption to oil companies from all these laws, and that we certainly do not do so on the backs of our military men and women.

I yield the floor and yield 3 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, when I first ran for the Senate in 1988, the question of whether to allow drilling for oil in the Arctic Refuge was an important choice before the voters of Connecticut. My opponent supported it. I opposed it. I opposed it because I wanted to protect this magnificent piece of America's land and life forever, pretty much as nature's God, as our Founders would have said, created it.

Second, I thought drilling for oil in the Arctic Refuge perpetuated a dangerous myth that we could drill our way out of energy dependence on foreign oil.

When I came to the Senate, I found, of course, many people who supported drilling for oil in ANWR as strongly as I opposed it. Over the last 17 years, we have had, almost every year, good, fair fights on this issue according to the rules. In most of them, those of us who oppose oil drilling in the Arctic Refuge have prevailed because the proponents have not been able to achieve the 60 votes necessary under the Senate rules. What they have done in the last year or so is attempted to suspend and circumvent those rules, first on the budget matters, circumventing the Byrd rule. In the Senate, they prevailed. In the House, a very courageous band of Republicans and Democrats stood up and said no.

At the eleventh hour, the proponents of oil drilling in ANWR have attached this provision where it does not belong—on the Department of Defense appropriations bill—in the hope that we will be intimidated into voting for something we don't believe is right because we don't want to be accused of threatening support for our troops. I have too much of a sense of responsibility, too much respect for the Senate,

and too much respect for my constituents to be intimidated to support something I believe is wrong and clearly in contravention of our rules.

Somebody said to me the other day: Senator LIEBERMAN, you are such a strong supporter of the military. How can you intend to cast this vote which will threaten funding for our troops in the middle of a war?

My answer is: I am not the one threatening support for our military in the middle of the war. It is those who have had the audacity and disrespect for our rules to attach this provision to funding for our troops who are endangering it.

Second, if we yield to this tactic this time on ANWR, next year it will be someone else's pet policy attached to the Department of Defense appropriations bill, and the year after, yet another.

In my opinion, if you support our military and you want security of funding, particularly in time of war, you will vote against cloture to protect the sanctity, if you will, the primacy of this funding for the military.

Finally, if, as I hope and believe, the Senate rises up and denies cloture, our troops will not lose their funding. Members of Congress of both parties and the President will not allow that to happen. My dear friend, the senior Senator from Alaska, is too much of a patriot, no matter how disappointed he is if cloture is denied, to take that anger out on our troops.

I appeal to my colleagues to vote against cloture. I am going to do it, not just because I am opposed to drilling for oil in the Arctic Refuge but because I support the U.S. military, and I refuse to have the military and its funding held hostage to this move in violation of the Senate rules.

I yield the floor.

Ms. CANTWELL. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. Two minutes.

Ms. CANTWELL. I yield the remaining 2 minutes to the Senator from Illinois, who has been hard working on this subject.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 2 minutes.

Mr. DURBIN. Madam President, I thank the Senator from Washington for her leadership, along with Senator LIEBERMAN, Senator KERRY, and others.

This vote on cloture comes down to two basic issues. The first is the issue of energy.

Fifty years ago, President Eisenhower set this land aside. He said this Wildlife Refuge will be here for future generations. We ought to protect it and preserve it. Now we are being told that in the name of energy, we have no choice but to drill in this Wildlife Refuge.

What are we saying to Americans? What are we saying to our children? That we are so bereft of ideas, that we

are so devoid of leadership, that we are so self-consumed, the only thing we can do to provide energy for America is to break our promise to future generations to protect this important piece of our heritage? I think not. The alternative is innovation. The alternative is conservation. The alternative is a real energy policy—not drilling in a wildlife refuge.

To think that we are bringing up this issue on the Defense appropriations bill—there was a time when this bill was considered in a sacred manner. It was usually the first appropriations bill. It was very rarely ever embroiled in a political controversy not directly related to the military. But this time, it is the second-to-last appropriations bill. It has become the vehicle for a variety of controversial political issues.

We show no respect for our men and women in uniform by taking this bill to this point in history where it becomes the showplace and the forum for all of these political squabbles. We should show respect for our men and women in uniform by defeating this cloture motion, by taking out this objectionable provision, and by quickly moving to pass this bill so we fully fund all that is necessary to help our men and women in uniform. The senior Senator from Alaska promised it, said that is what will occur.

I hope we prevail on the motion against cloture, that we can move very quickly to pass a clean Defense appropriations.

The PRESIDING OFFICER. The minority leader.

Mr. REID. Madam President, Senator FRIST and I have spoken. After the distinguished Senator from Alaska gives the closing statement, Senator FRIST will speak, and then I will speak. We will use leader time.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, I hope the good Lord will help me hold my temper, and I think that will be the case.

The Senator from Illinois said some things that were not true. I have not promised him one single thing. As a matter of fact, I asked for his apology once; I wouldn't accept it now.

I wish to tell the Senator that I first went to the North Slope—and there are people from the North Slope right up in the gallery—I went to the North Slope first in 1953 as a young U.S. attorney. I have been going there ever since. My best friends in Alaska are up there. My first wife used to go up there and go on whaling trips and spend days with them. We know this Arctic. You don't know the Arctic at all. They will tell you, as I will tell you, that it is 2,000 acres of Arctic. Is that worth this fight? Did I bring this fight on? It was the minority in the House that refused to vote for the rule that we passed on the reconciliation bill. This provision was in the reconciliation bill. The majority voted for it. Every other time it has been brought up, except once, the

minority has filibustered keeping the commitment made to me by two Democratic Senators in 1980, Senator Jackson and Senator Tsongas. They wrote the amendment; I didn't. They wrote the amendment that kept this area open for oil and gas leases.

I tell the Senator from Illinois that I was the one who drew the order that was issued creating an Arctic wildlife range in 1958 in which oil and gas leasing was specifically permitted. It has never been closed. The Jackson-Tsongas amendment kept it open for oil and gas exploration and development subject to an environmental impact statement being approved by both Congress and the President. But we are here today now.

As my good friend from West Virginia says, we are in the temple. I have lived in the temple now for 37 years. I have studied beside my friend from West Virginia. But I will tell him he is wrong. Nothing in this bill will allow the majority to go amok. No majority could do anything.

In the spirit of trying to prevent what happened before when the Chair was overruled in 1996—and it took 4 years before we restored rule XXVIII—in the spirit of that, we put a provision in this bill, at the suggestion of the former Parliamentarian, that we assured there would not be that hiatus. Should someone raise a point of order against this and the Chair would be overruled, we put a provision in it that would prevent rule XXVIII from being suspended again.

I have been called a lot of things in the last few weeks. I didn't think of putting this in the Defense bill. It was a group from the House, Members of the minority, who came to me and asked me to do this, put it in the Defense appropriations bill. I have managed the Defense appropriations bill, or my good friend from Hawaii now has managed it, since 1981. I challenge anyone in the Senate to say they have greater commitment to the military than the two of us.

As a matter of fact, as I look at the minority, I ask any one of you, has anyone ever come to me as chairman of the appropriations or any other function and told me that you needed help for your State, that I have turned you down? I have fought with you. I don't care whether it was Senator HARKIN, Senator BYRD, every Member. I have probably been the most bipartisan Senator on this side of the aisle in history other than Arthur Vandenberg.

Now, once again, let me say this. Every time this subject has come up—living up to the commitment of Senator Tsongas and Senator Jackson—but once, the minority has filibustered. That once we did get it passed and President Clinton vetoed it. So here I am now, after 25 years, and my two friends—they were friends, Senator Tsongas and Senator Jackson—they were friends so close that it caused people at home to place full-page ads in the paper saying: TED STEVENS, come

home. You don't represent us. We believe the Congress will keep this commitment.

That was made in 1980. I have labored here and I have never violated the rules. There is nothing I have done here that has violated the rules. Nothing in the bill before us violates the rules. I have lived by the rules.

Now I find myself second in age and second in seniority to my friend from West Virginia—at least I am the senior one on this side.

I will talk about this amendment. First, we cannot change the judicial review provision.

Mr. KERRY. Will the Senator yield?

Mr. STEVENS. I will not yield. No one yielded to me.

The impact of what I am saying is, we needed a new income stream.

I went to New Orleans with my friend Senator VITTER, and I sought Senator LANDRIEU's people down there. I saw the Gulf Coast States. They have lost everything. I have never seen a disaster such as that. I was faced with a question of how to find a revenue stream to help my friends. I know they are my friends. I know disasters when I see them.

I also was faced with a question from the border security people saying, they have to have money this year. We could not get it. We could not get approval of emergencies.

So I met with the Congressional Budget Office. I said, I think you have underestimated the income from ANWR, you have underestimated income from spectrum sales. I have a letter from CBO somewhere. I will be glad to put it in the RECORD. They said, yes, we did underestimate revenues from ANWR. It will be at least twice as much as estimated, but we cannot change it now. But it is true. They also agreed with me, making the assumptions I made, that there will be more money from spectrum. We allocated the spectrum money in the bill in excess to the amount committed in the bill just passed. We take care of those needs.

The first responders is the first group. When you look at the first responders group, they need equipment. There are people involved in homeland security. This bill has \$3.1 billion for them in terms of the border security. There is \$1.1 billion in emergency funds offset by future revenues from ANWR.

The second group deals with the first responders, particularly in New York and throughout the country. That tragedy made us aware that first responders could not communicate with one another. In this bill, we have allocated \$1 billion for first responders. That is interoperable communications, equipment, grants. We know if that is there, they will be able to communicate with one another if, in fact, there is such a disaster.

We have also public safety people. They have come to me in the last week—this is a list of all the groups that have come to me now—in support

of this bill. They need money to train and respond in the event we have another terrorist attack.

Also in this bill is money for home heating. Part of the income from ANWR is dedicated to home heating. The bill provides \$2 billion in emergency money—yes, I said emergency—for 2006 in this bill.

If you take out ANWR, you take out that money. If you take out that money, you do not have money for LIHEAP this year other than what is in the bill just passed and that is what was available last year. As we all know, the price of energy has gone up.

Yes, a vote for this bill—and to bring cloture to this bill—helps our Nation's farmers—our State does not have many farmers. We have some great people out there trying to farm. They do a good job, but they do not have the problems of what I call the south 48. Their problems are high fuel prices, which we are paying, but also fertilizer. Fertilizer prices are off the wall. We do not have that.

We are able to get the money for disaster funding in this bill for farmers in dealing with the conservation programs that are so necessary to ensure productivity for the lands of our country for generations to come.

Some Members of the minority have challenged my sincerity with regard to this. I lived through an earthquake. I lived through the flood in Fairbanks in 1966. This vote is a vote for the people of Louisiana, Alabama, Texas, Florida, and Mississippi. As I said, I went down there. I viewed the damage of that city. I saw devastation in China in World War II where the Japanese wiped out cities, but I never saw devastation like I saw in New Orleans. It was mile after mile after mile of homes of ordinary people, not just damaged, but just not there. Not there.

When I came back, I made a commitment to the two Senators that I would help them. I have tried to keep that promise.

This bill provides on the Katrina side \$29 billion for education, housing, reconstruction of disaster areas. It is very needed. The people of New Orleans cannot go home for Christmas. I cannot go home for Christmas. I have already canceled my trip. I spent one time before in the chair on New Year's Eve. I don't look forward to it. I want Members to know we will be here until we settle this problem. The severability clause in this bill is not new. It has been there before.

I am not a fair-weather friend. I have not turned down one person on that side of the aisle in my life without trying to help. I did not even go to you and say, Please help me. I did talk to one or more of you about the fact that I thought this was the thing to do. I don't deserve some of the comments that have been made by some Senators in this Senate right now.

We are going to stay here until this is finished. As I said, a vote for cloture is a vote for the troops. The Senator

from Massachusetts says it is not. But the easiest way to get the money to troops is to vote for cloture. We will be home for Christmas if we do.

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. STEVENS. I say this to my friend from West Virginia: In all the time we have worked together I have great admiration for you and studied at your feet, but I do not believe I deserved that speech on the rules. I have not violated the rules. I do not ask the Senate to violate the rules. I ask them to vote for cloture, which is part of the rules, and see where we go from there.

Mr. REID. All time is expired; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. I claim my leader time.

The PRESIDING OFFICER (Mr. ALEXANDER). The minority leader.

Mr. REID. Mr. President, the Senate is a body of process and a body of order. We have rules. These rules separate us from the House of Representatives. The Founding Fathers, visionary as they were, recognized that. That is why this Senate has worked so well, the Constitution. These rules separate us from the House of Representatives. The House is subject to partisan desires of the majority. We are not.

For more than 200 years, through Democratic majorities and Republican majorities, the Senate has lived by these rules. But twice this year—once this spring and now today—the Republican majority has shown us how far they are willing to go outside the rules to get what they want.

The first attempt to flex their muscle, to show their power and change the Senate rules, was the so-called nuclear option. This was stopped when courageous Senators, Democrats and Republicans, from both sides of the aisle stood against it.

We need to see this same bipartisan courage today. The majority is threatening to break the rules again—that is what this is all about—but this time they are holding the U.S. military—yes, those men and women, as we stand here, are standing up in Iraq and Afghanistan—our military is being held hostage by this issue, Arctic drilling.

Senator STEVENS is violating rule XXVIII in order to pass ANWR. The Senator knows he lacks the votes to get this boon for special interests passed the right way, so he is willing to break the rules to jam it through.

Yes, I have worked with Senator STEVENS all the time I have been in the Senate. I have great admiration and respect for the Senator from Alaska. But the bill does not leave just the ANWR provision standing out there like a sore thumb. Another gift to special interests is the drug immunity provision. The legislation was not included in either the House or the Senate versions of the Senate appropriations bill, and conferees were given written assurances it would not appear in the conference report. Yet here it is because

House and Senate leaders, in the middle of the night, insisted that the rules be broken to include it.

This process is not fair to the Senate, and certainly not fair to the U.S. military, and certainly—certainly—not fair to the American people. It is time we said no to an abuse of power, no to those who seek to abuse the rules in the name of special interests, and no to turning the Senate into the House of Representatives.

We have rules for a reason. We have rules in the Senate for a reason. Why? To create stability. It creates certainty. These rules serve the majority, and they serve the minority, and they should not be broken because of special interests. They should not be broken because of the powerful.

I am going to vote against cloture today. Now, I know there are some in the majority who have threatened various things if cloture is not invoked. But I say, Mr. President, thankfully, we have Senator STEVENS' own words to tell us what will happen. Here is what the distinguished Senator from Alaska said, the bill manager. He told the Fairbanks Daily News-Miner, this past Sunday:

If a Senate filibuster over ANWR stops the defense bill, the legislation can be quickly modified and passed so there is no impact on the military's finances.

He went on to say:

If we lose, then . . . ANWR will be out.

It is that simple. Senator STEVENS is a man of his word, as he stated on the floor today. And he said if we don't get cloture, the bill goes back to the conferees. Mr. President, I do not know how this vote is going to turn out. We all know it is very close. But I hope ANWR gets taken out. All of us stand with our troops. And all of us want to do what is right for the Senate and for our country. That is why our best course of action is to vote "no" on cloture and follow the roadmap Senator STEVENS himself has provided.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. America is watching what this body does. And America tells us to win the war on terror. Do not accept retreat and defeat. America is watching this body, and they are telling us to do something about energy prices, that of home heating oil and gasoline prices, and to increase the energy supply in this country.

America tells us to strengthen our porous borders, to enforce the laws of the land. We are a nation of laws. Yes, we are a nation of immigrants, a wonderful nation of immigrants, but a nation of laws.

America tells us to support the victims of Hurricanes Rita and Katrina, and what we are about to vote on in this bill is all of the above. The Democrats should not filibuster our Defense appropriations bill. And that is what we will be voting on in a few minutes.

We are a nation at war. Right now, our troops are engaged on the battlefield with a determined enemy. The

consequences of failure to invoke cloture on this Defense appropriations bill, when we have troops in the field, are grave. We have a responsibility not only to fully support our troops when they are at war but a responsibility also to secure our economic viability. We need to reduce that dependence—that dangerous dependence—on foreign sources of oil.

The ANWR provision promises to unlock up to 14 billion barrels of oil, nearly 1 million barrels a day at full production. ANWR has been determined by experts to be the single largest and most promising onshore oil reserve in North America. We need to put these energy resources to work for America to reduce those prices, which every American feels, for our economic security and, indeed, for our national security.

The ANWR provision is responsible. It is reasonable. It is critical to meeting our economic and security priorities.

And then we have the victims of Hurricanes Rita and Katrina. They have suffered terrible loss—we have suffered with them—and devastation. This bill, the bill we are about to vote upon, includes a long-term funding stream for gulf coast recovery, as well as the most significant Katrina aid recovery package that Congress has yet allocated, including funds to immediately strengthen and repair the New Orleans levees.

The Defense bill provides \$3 billion for border security to tighten those borders. We are a nation of laws. It is time to enforce them. There is \$1 billion for interoperable communications equipment, the first priority of the 9/11 Commission.

We have long-term funding, as Senator GREGG has spoken to, to help low-income Americans pay their heating bills this winter. I am disturbed—disturbed—that there are Senators who believe it is a victory to kill, to filibuster, to stop, to block this bill.

I urge my colleagues to carefully consider the consequences of the vote they are about to cast and the profound reverberations it will have on America's economic and national security.

A vote for cloture is, indeed, a vote for our troops.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 2863, the Department of Defense Appropriations Act of 2006.

Bill Frist, John Cornyn, John Thune, Jeff Sessions, Lindsey Graham, Saxby Chambliss, Richard Shelby, Jon Kyl, Mike Crapo, Mitch McConnell, Ted Stevens, Thad Cochran, C.S. Bond, Conrad

Burns, Pete Domenici, Judd Gregg, John Warner.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 2863, the Department of Defense Appropriations Act of 2006, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 56, nays 44, as follows:

[Rollcall Vote No. 364 Leg.]

YEAS—56

Akaka	Dole	McConnell
Alexander	Domenici	Murkowski
Allard	Ensign	Nelson (NE)
Allen	Enzi	Roberts
Bennett	Graham	Santorum
Bond	Grassley	Sessions
Brownback	Gregg	Shelby
Bunning	Hagel	Smith
Burns	Hatch	Snowe
Burr	Hutchison	Specter
Chambliss	Inhofe	Stevens
Coburn	Inouye	Sununu
Cochran	Isakson	Talent
Coleman	Kyl	Thomas
Collins	Landrieu	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	

NAYS—44

Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Frist	Obama
Byrd	Harkin	Pryor
Cantwell	Jeffords	Reed
Carper	Johnson	Reid
Chafee	Kennedy	Rockefeller
Clinton	Kerry	Salazar
Conrad	Kohl	Sarbanes
Corzine	Lautenberg	Schumer
Dayton	Leahy	Stabenow
DeWine	Levin	Wyden
Dodd	Lieberman	

The PRESIDING OFFICER. On this vote, the yeas are 56 and the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

Mr. FRIST. I enter a motion to reconsider the previous vote.

The PRESIDING OFFICER. The motion is entered.

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

The PRESIDING OFFICER (Mr. BURR). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CORRECTING THE ENROLLMENT OF H.R. 2863

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the concurrent resolution correcting the enrollment of H.R. 2863

which is at the desk and was introduced by Senator CANTWELL and relates to the conference report to accompany the Defense appropriations bill; I further ask consent that there be 30 minutes for debate equally divided between the two leaders or their designees; that no amendments or motions be in order, and that following that time the Senate proceed to a vote on the adoption of the resolution; I further ask that immediately following that vote the Senate proceed to a vote on the adoption of the conference report to accompany H.R. 2863; provided further that the cloture vote with respect to the Defense authorization be vitiated and the Senate proceed to an immediate vote on adoption of that conference report following the vote on the Defense appropriations measure; I further ask consent that once the House has agreed to the concurrent resolution without amendment, then the Labor-HHS conference report be considered adopted; further that if the concurrent resolution that corrects the enrollment of the Defense bill is not agreed to tomorrow, then passage of the Defense appropriations bill is vitiated.

Finally, I ask consent that if the House has not adopted the resolution, then, notwithstanding the adoption of the adjournment resolution, the Senate would reconvene Thursday, December 22, at 8 p.m.

I further ask consent that following the above action, the Senate proceed to a bill at the desk relating to the extension of the PATRIOT Act, the bill be considered read three times and passed, and the motion to reconsider be laid on the table.

Mr. STEVENS. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. STEVENS. If the Leader's unanimous consent request is granted, the bill is thus sent to the House. Will that bill violate rule XXVIII? I am talking about the conference report. Will that conference report violate rule XXVIII?

The PRESIDING OFFICER. The Senator would have to specify a specific provision.

Mr. STEVENS. I am speaking of the ANWR provisions and Katrina provisions and avian flu provisions. Will they violate rule XXVIII?

The PRESIDING OFFICER. In the opinion of the Chair, those provisions violate rule XXVIII.

Mr. STEVENS. I can't hear the Chair.

The PRESIDING OFFICER. Those provisions do violate rule XXVIII.

Mr. STEVENS. So if this consent is granted, rule XXVIII is violated by this conference report; is that correct? Is that my understanding?

The PRESIDING OFFICER. That issue has not been clearly joined by this agreement.

Mr. STEVENS. How do I join it? I want an agreement that this bill violates rule XXVIII.

The PRESIDING OFFICER. The Senator would need to raise a point of order when the measure is pending.

Mr. STEVENS. I suggest the absence of a quorum. I do suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. STEVENS. There has been some confusion. Let me restate my parliamentary inquiry. If sections C and E are removed, would the conference report as thus constituted contain violations of rule XXVIII?

The PRESIDING OFFICER. The Chair is of the opinion that there would be at least one violation of rule XXVIII.

Mr. STEVENS. I can assure you there are many more.

Thank you very much.

Mr. LEVIN. Mr. President, parliamentary inquiry: Has the point of order been raised against any provision that would be left in this bill?

The PRESIDING OFFICER. No, it hasn't.

Mr. LEVIN. I thank the Chair.

Mr. STEVENS. Wait. I will be glad to make a point of order, if you wish me to do it. Just so I understand the ruling, parliamentary inquiry: Did the Chair just say there is no point of order against this bill?

The PRESIDING OFFICER. The majority leader is recognized.

Mr. STEVENS. I want to make sure I understand this. I would be pleased to make a point of order so the Chair will rule, if you want me to do it. We have an understanding that there are violations of rule XXVIII in this bill.

Mr. REID. Yes, there are.

Mr. STEVENS. Thank you.

Mr. FRIST. Mr. President, I renew my unanimous consent request.

Mr. KENNEDY. Mr. President, reserving the right to object, I had requested in the time that was requested 15 minutes. That is clear. Furthermore, reserving the right to object, I ask unanimous consent to amend the resolution to strike division E, the Public Readiness and Emergency Preparedness Act. This is the provision that provides drug companies with unprecedented immunity from liability which was added to the Defense appropriations bill in the conference during the middle of the night. It does not belong in this bill. I ask unanimous consent.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. Mr. President, I object.

The PRESIDING OFFICER. There is objection.

Is there objection to the unanimous consent request?

Mrs. FEINSTEIN. Mr. President, reserving the right to object, it is my un-

derstanding—I ask that it be confirmed—that titles III and VII of the conference report to accompany H.R. 3122 concerning port security and the Combat Meth Act are not in this unanimous consent agreement. Is that correct?

Mr. FRIST. Mr. President, that is correct.

Mrs. FEINSTEIN. Mr. President, let me ask this question. The question is whether I can have such a commitment from the majority leader, since these are both bills that have passed this body unanimously and have also been conferred by the House, if we could consider them when we come back in January to be the first order of business?

Mr. FRIST. Mr. President, responding to the Senator from California, both of these issues—port security, as well as the methamphetamine—are very important issues that I believe this body unanimously will support. And after consultation with the Democratic leader, we will address those very early when we come back in January or February. They are both very important bills.

Mrs. FEINSTEIN. Does the minority leader concur in that?

Mr. REID. Without reservation.

Mrs. FEINSTEIN. Thank you. January or February. Thank you very much.

The PRESIDING OFFICER. Is there objection to the unanimous consent?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, real quickly, this means that we will have 30 minutes of total debate followed by the concurrent resolution, followed immediately by Defense appropriations, followed by the authorization by voice. That is my understanding.

Mr. LEVIN. Mr. President, reserving the right to object, I don't plan to, and I want to make sure no one needs a rollcall vote—I do not—on the authorization bill. I want to doublecheck with a few people on this side.

Mr. FRIST. We already have unanimous consent, and I believe we will do that.

Mr. LEAHY. Mr. President, might I direct a question to the distinguished majority leader through the Chair?

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, if I could have the attention of the majority leader, am I correct in my understanding that the Sununu-Leahy et al 6-month extension of the PATRIOT Act has been included? And that is where we are with the conference report still on the calendar, but the 6 months will be passed?

Mr. FRIST. Mr. President, as part of the unanimous consent is the 6-month extension on the PATRIOT Act.

Mr. LEAHY. Sununu-Leahy et al. Thank you. I thank the Chair. I thank the two distinguished leaders.

If I might note for a moment, both the distinguished Republican leader and the Democratic leader have worked

extremely hard on this, as has the Senator from New Hampshire, Mr. SUNUNU, and Mr. GREGG and others, and, of course, the distinguished chairman of the committee, Senator SPECTER.

I think this is a reasonable conclusion that will allow the Judiciary Committee to look at some of the questions which have legitimately been raised and would not have been heard had this gone through otherwise.

Mr. REID. Mr. President, I yield 15 minutes to Senator KENNEDY.

The PRESIDING OFFICER. The clerk will report the concurrent resolution.

The bill clerk read as follows:

A concurrent resolution (S. Con. Res. 74) correcting the enrollment of H.R. 2863.

The Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, I yield 15 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, will the Chair remind me when I have 3 minutes remaining?

Mr. President, over these last several months in the Senate we have addressed the issue of a potential epidemic, the pandemic flu. There have been two areas of leadership. One has been in our HELP Committee under the chairmanship of Senator ENZI and Senator BURR, where we have tried to work out a whole approach to deal with the area of epidemics and bioterrorist attacks, and another with the leadership of Senator HARKIN, who had asked that we commit some \$8 billion to be able to purchase vaccines and also antiviral drugs for influenza.

I attended the NIH announcement by the President of the United States when he actually requested \$7.1 billion to prepare for a flu pandemic. Those funds were going to be used for public health, first of all, to be able to detect flu outbreaks overseas; secondly, to be able to detect them here at home; then to be able to build containment capacities, what we call "surge" capacity; and, also to have a generously funded vaccine program, and also an antiviral program.

That is really where we were before the Defense appropriations bill.

A number of us on the HELP Committee had a series of negotiations to try to make a bipartisan recommendation to the Senate. We did so on pensions, on higher education, on work-force, and on Head Start. We were able to do so in a number of different areas. And we were moving ahead toward making a recommendation in issues related to the purchase of vaccines and antivirals. There are two important issues to consider with the purchase of pandemic influenza vaccine and antivirals. One is the danger to an individual that is going to take those vaccines or antivirals; and the other is the risk those dangers raise for the compa-

nies that produce them. One is the compensation issue, and the other is the liability issue.

We have dealt with these issues on several occasions. We dealt with them with respect to the swine flu. We dealt with these issues with smallpox. We dealt with these issues for childhood vaccines.

One thing we know from experience is, if you do not have an adequate compensation program, no matter how much money you put in for the purchase of vaccines or of antivirals, the program is not going to work. There has to be an assurance that, if first responders and others are going to go out there and take their chance with these new vaccines or other drugs, that if they become grievously ill or sick or even die there will be some compensation for them and for their families for lost wages and medical costs and the like. And there has to be the assurance to the first responders and others that those vaccines are not going to be produced negligently. Otherwise, they will not take the risk of using the vaccines or drugs. That is the framework.

We have to ask ourselves, for the liability and compensation provisions that have been put in the Defense appropriations bill, how do they line up with what has been successful in the past, with bipartisan efforts? These provisions fail in every respect of the word.

First, there is a compensation program that is not funded. It is not funded. It will depend upon future appropriations. If you want to buy a pig in a poke, buy that particular provision. All you have to do is ask my friend from Utah, Senator HATCH, how we have funded the compensation program for the downwinders. Over a long period of time, we did not have the required payments for them, when we know, as a direct result of governmental action, we adversely affected tens, even hundreds, of thousands of downwinders in the State of Utah and in the West more broadly. We have not measured up to our responsibilities to them, and the compensation program before us now is no more adequate. And as a consequence, this compensation program is not going to work.

Not only that, what have we done with regard to the manufacturers? What kind of immunity have we given to them? It's really extraordinarily broad, effectively complete. What they call the "bad actor" provision describes the circumstances in which the immunity from liability fails. And it's really very narrow, because a company's actions have to meet a very narrow definition of willful misconduct.

Page 12 of this 40-page liability section says in order to have any kind of liability, you have to have willful misconduct. This is an act or omission that is taken intentionally to achieve a wrongful purpose; knowingly without legal or factual justification; and in disregard of a known or obvious risk that is so great as to make it highly

probable that the harm will outweigh the benefit.

As if that isn't clear, and narrow, enough, on the same page, underneath this language, is a rule of construction. This rule says that this language establishes a standard for liability more stringent than a standard of negligence in any form or recklessness. So companies are not deterred from acting recklessly, or with gross negligence.

Now that is pretty narrow, but apparently it isn't narrow enough. Right here on page 12, it says that the Secretary of Health and Human Services, in consultation with the Attorney General, must issue regulations that further restrict the scope of actions or omissions that may qualify as willful misconduct.

So "willful misconduct," which should just mean intentional, isn't good enough.

Well, at least we have solved that, right, to make it as narrow as possible? Wrong. Go down to the standard of evidence. The bill changes the standard of evidence in the various trials, to "clear and convincing evidence." That is at the bottom of page 13.

The bill defines a very narrow standard of willful misconduct, and it sets a very high standard of evidence. Shouldn't that be enough? Wrong. You don't have a case against a company under these provisions unless the FDA begins an enforcement case against that company. So if FDA goes ahead and begins the case, you have a chance, right? Wrong again. FDA has to bring it and conclude it successfully before you have any right to proceed with your case.

A person might think, I am not very satisfied with how this liability provision has worked, maybe I will appeal to the courts of this country, right? Wrong. There is absolutely no, no, no, no judicial review when the Secretary of Health and Human Services grants a company immunity by issuing a declaration. No judicial review of that. And there is no judicial review of FDA's decision not to bring an enforcement action. So it is whatever the administration says, whatever the Secretary says, whatever the head of the FDA says, with changed and gimmick rules. This is a sham. There is no possibility of liability here.

Now, we would say, OK, this is bad, but this liability protection is limited to just a few products, right, products that few of us will ever have to use? It actually applies to products—vaccines, drugs, diagnostic tests—for epidemics. We rarely have to worry about epidemics, right? Well, who defines "epidemics"? It is rather interesting who defines epidemics. Senator DOMENICI says diabetes is an epidemic. Senator FRIST himself says meth abuse is an epidemic. BILL FRIST himself said obesity is an epidemic. Senator BOND says arthritis is an epidemic.

This week in Newsweek Magazine, the Secretary of Health and Human Services, who is going to enforce this provision, says this:

We're seeing an epidemic of chronic diseases. Obesity is just one example.

So how many diseases are going to be considered epidemics? A lot, perhaps, but at least we say that is all right, because it is just going to apply to drugs for that particular epidemic disease, right? Wrong again. This provides the same kind of liability protections for any of the drugs or anything else that deals with the side effects of the products for that epidemic disease.

My goodness. Generally around here we measure who the winners are and who the losers are. And we have seen over the last year and a half how the drug companies come out on top, time and time and time and time again. But never, never, never, ever, ever like they have with this sweetheart deal that was stuck into this conference report after the assurances had been given to the conferees that there were no provisions in it with regard to liability.

The Medicare drug law made it illegal for the Government to negotiate prescription drug discounts for seniors. They do it in the VA system, and drug prices for the VA are lower. But we weren't able to permit the government to negotiate drug prices for seniors. The Republican Congress blocked legislation to allow importation of safe and less expensive drugs.

And now we find in this biodefense and pandemic flu provision liability shields for companies that make dangerous drugs, with no compensation for injured patients.

That is a scandal. It has no business being in this bill. The Judiciary Committee requested an opportunity to examine it. It was rejected. We have had no hearings on this particular provision. It is the wrong thing to include in this legislation.

Let me share what one of our colleagues has said about childhood obesity:

The responsibility for this growing epidemic rests with us—the American consumer. We need to get serious about fighting fat.

Let me cite you the language of the provision, the broad definition on page 31 of what gets liability protections under this bill. It says: "Qualified pandemic or epidemic product" means any drug, biological product, any device to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic or limit harm from the pandemic or epidemic. And the term includes not only those products, but any other product, any other product that is produced to deal with the side effects of those products.

This is a scandal. It is a giveaway. It is outrageous. It is rare, if ever, that we give this kind of privileged status to any industry in the country, and give this kind of authority and power solely to one branch of the Government. There is no second guessing. There is no judicial review. There is no further involvement of the Congress. That is basically and fundamentally wrong and we are asking and committing \$3.7 billion to go down this road. It is outrageous and it is wrong.

I am sure that as soon as the Secretary of Health and Human Services issues what is called a declaration for a pandemic or epidemic to give immunity from liability to vaccines or other products, there is going to be a charge to the courts. The constitutionality of this provision is going to go into the Federal district courts and the circuit courts of appeal.

Included in the RECORD is legal authority that I believe shows that this provision, the way it is drafted, is absolutely unconstitutional because of the indefiniteness of the criteria under which the executive branch makes decisions and because there is the real possibility and likelihood of serious injury to individuals without any right to go to court or for judicial review of declarations.

This provision is going to be challenged along the way. We want to tell those in the bio industry—and they are healthy in my State and I have worked with them—if you want to work with us to get an effective compensation program, as we did in the past with smallpox or childhood vaccines, if you want to get an effective provision to deal with liability, one that is responsible and that responsible drug manufacturers will welcome, then we are more than willing to welcome you and to work with you.

But I think we can be certain that this provision will not be effective, and it is misleading the American people to say we are making a downpayment in the development of vaccines for the reasons I have mentioned this evening.

Slipping a provision into a major spending bill late at night at the end of Congressional session is a trick to shield from public debate a provision that is so wrongheaded that it would never stand public scrutiny.

The Republican congressional leadership has snuck yet another special favor to drug companies into the defense appropriations bill.

It is an outrageous provision that has nothing to do with protecting our troops, and it should be dropped from the bill.

This provision allows drug companies to flagrantly disregard basic safety measures in making a broad range of drugs or vaccines, while giving patients who are injured by shoddy products only an empty promise of compensation.

It is cynical to claim that this is what is needed to deal with avian flu.

Drug industry advocates will say that this debate is about trial lawyers, and we have heard phrases like "jackpot justice" and "runaway juries," and tales of endless lawsuits against the firms that make the vaccines. But that couldn't be further from the truth: Senator DODD and I offered a plan that included important legal protections for drug companies that make experimental flu vaccines and other drugs needed to respond to a pandemic or a bioterrorism attack as well as a compensation program modeled after the

Vaccine Injury Compensation Program that already works well for childhood vaccines.

Our proposal follows the successful examples of the past. For swine flu, for the smallpox vaccine and for childhood vaccines, the Government has set up a way to compensate the injured. Whenever Congress has provided an alternative to liability in the past, there has always been an assured means for patients to receive compensation.

The current proposal violates that past practice.

It twists and turns the law to stack the deck against patients, and abrogates basic principles of judicial review. It is no wonder the provision's authors hid it from public debate and didn't let the Senate Judiciary Committee even look at the proposal before it was jammed into the massive conference report.

If they had allowed our Judiciary Committee to examine this proposal, we would have quickly seen its constitutional flaws. I received a detailed analysis of this provision from Professor Erwin Chemerinsky, who is the Alston and Bird Professor of Law and Political Science at the Duke University School of Law.

According to his analysis, the provision gives the Secretary of HHS "unfettered discretion . . . to grant complete immunity from liability" while also "depriving all courts of jurisdiction to review those decisions."

Professor Chemerinsky has found three areas in which the provision infringes the Constitution.

First, the provision delegates powers to the executive branch without the limitation of a prescribed standard. It is an extraordinarily broad delegation—the Secretary decides when to declare emergencies, what diseases or threats to health are covered, which drugs or products will be immunized, which individual citizens lose their right to go to court and recover for injuries caused by the drugs or products, the geographic area in which these rules will apply and the length of time they will apply. This violates the non-delegation doctrine, which says that Congress may not delegate its legislative authority to the executive branch without clear guidelines.

Second, it violates federalism principles by improperly intertwining Federal and State law, making a new Federal cause of action that depends on State law. It also makes the Federal cause of action depend on the FDA or the Attorney General taking an enforcement action. It is a violation of due process, however, to allow official inaction to prevent a person from pursuing his or her rights in court.

Third, the provision completely prohibits judicial review of declarations that provide drug companies with immunity.

The U.S. Supreme Court has repeatedly stressed that the preclusion of all judicial review raises "serious questions" concerning separation of powers

and due process of law. Judicial review of government actions has long regarded as “an important part of our constitutional tradition” and an indispensable feature of that system.

I reserve whatever time I have remaining.

Mr. HATCH. Mr. President, I rise to make a few remarks concerning the Public Health and Emergency Preparedness Act of 2006 which was inserted in a year-end appropriations vehicle, the Department of Defense Appropriations Act.

Protecting the American public against acts of bioterrorism like the 2001 anthrax attacks and natural disease outbreaks such as the risk posed by the avian flu is an important national security priority.

For 4 years, I have worked in a bipartisan manner with my friend from Connecticut, Senator LIEBERMAN, on comprehensive legislation to address this concern.

We have vetted our proposal with literally hundreds of experts over the last 4 years.

We understand full well that our proposal contains a number of bold proposals that challenge our colleagues to make fundamental changes in our biomedical research, public health management, regulatory, antitrust, intellectual property, tax and civil liability systems toward the end of materially increasing our Nation’s public/private sector capacity to design, develop and distribute hopefully hundreds of new products to counter the effects for the dozens of known biological, chemical or nuclear threat agents for which we today literally have no diagnostics, vaccines or therapeutic responses.

This is a tall order.

It will likely take 20 or more years to build this capacity to the level we will need to discourage our enemies from attacking us in this manner or, if they do so, to be able to respond in the way that the public will expect to ensure the strength of American society.

We have made some progress in recent years but we have to do much more in this area.

This is the type of issue that takes time, money, creative energy and patience.

We need a Manhattan Project type of effort, and we needed it 4 years ago.

Throughout my years in the Senate, I have worked on dozens of important public health bills.

In my experience, public health bills go better if they are done on a bipartisan basis.

I have also observed over time that, generally speaking, good public health policy turns out to be good politics. I know of no disease or condition that chooses its victims along party lines.

I am pleased that a key concept of the legislation that we introduced in 2002, the “guaranteed market” for those firms that successfully develop certain bioterrorism countermeasures was finally adopted in the Bioshield I legislation passed in the 108th Congress.

In the first session of the current 109th Congress, there has been a great deal of interest in bioterrorism and pandemic diseases. This is good for the American public.

In the Senate, the HELP Committee was infused with new leadership on this issue in the persons of our new chairman, Senator ENZI, and the chairman of the new Bioterrorism and Public Health Preparedness Subcommittee, Senator BURR. Majority Leader FRIST and former Chairman GREGG have continued their longstanding involvement on these issues.

Across the aisle, led by a veteran leader in public health issues who has been on the HELP Committee or its predecessors for 43 years, Senator KENNEDY and others including Senators Harkin, Dodd and Clinton have been interested in these issues.

Throughout the Spring of this year the Bioterrorism Subcommittee held a series of bipartisan hearings and discussion roundtables that were attended by leading experts. Throughout the August recess the staffs of the committee members worked on various drafts of bioterrorism legislation that culminated in a markup in September.

Unfortunately, from my perspective, the bill that resulted from the HELP markup did not contain the intellectual property and tax provisions that Senator LIEBERMAN and I have long advocated. Such is the reality of the dance of legislation. But, as has developed in the provisions related to the guaranteed market, liability, and compensation, we believe that the day will come when these ideas from our original legislation are also seen as meritorious.

Subsequent to that markup, the Bush administration unveiled its comprehensive plan to prevent and respond to the potential catastrophic outbreak of human-to-human avian flu transmission.

Throughout the Fall, many Members of Congress, the administration, industry, the public health community and other interested parties worked on various pieces of legislation to respond to these threats. Unfortunately, as sometimes happens at the end of very busy congressional sessions, not everyone was able to work together at the same time.

For a variety of factors, we have now arrived at a point where a potentially integral piece of an effective legislative response to bioterrorism and pandemic threats has been inserted into the Department of Defense appropriations bill. Using year-end appropriations bills as vehicles can be an opportunity to solve important problems but, sometimes, can pose a risk that an inadequately vetted measure becomes law.

As many who are not members of the esteemed Appropriations Committee, I have a preference for the regular order of the authorization process. In all candor, from time to time in my career, I have availed myself of appropriations vehicles to move authorization bills

that I desired to see passed. Sometimes, as shocking as it sounds, there is gambling in Casablanca.

Comes now the newly drafted, and redrafted and redrafted, Public Readiness and Emergency Preparedness Act.

Both Senators FRIST and GREGG must be singled out in the Senate for their efforts to develop and move this new bill. In the House, I understand that Speaker HASTERT and Chairman BARTON, even as he was hospitalized, are largely responsible for this effort.

All of these good and earnest members should be recognized for attempting to tackle two of the most vexatious policy and legal issues confronting us in this critical area: liability; and compensation reform.

We need to encourage the private sector to work vigorously on scores of new, potentially dangerous drugs and biological products designed to counter both natural and bioterrorist threat agents. That is what liability reform is all about.

At the same time, if some of these products—some of which will never be tested in human clinical trials since it would be unethical to infect a patient with a microbe like the Ebola virus just to see if a potential treatment were safe and effective—turn out to injure and even kill patients, there must be a fair and funded system of compensation.

Some critics are already falsely charging that these new provisions are nothing but a Republican gift to the drug industry during the Christmas season.

Hogwash.

There should be no doubt that the sole intention of the principal drafters of this legislation is to help devise a system that will increase the readiness of our country to respond to bioterrorist or natural public health threats.

I also think it is way past time that Members of this body and others stop unjustifiably vilifying the pharmaceutical industry. Due in large part to the unique partnership between the public and private sector biomedical research enterprise—undergirded by the substantial annual \$28 billion taxpayer investment in the National Institutes of Health—we are on the verge of a revolution in our understanding of human health and disease. Let’s just hope that neither the avian flu nor the bioterrorists strike before we have developed the means to defeat these threats.

We will not defeat biological enemies with bullets or battleships. It will be accomplished with basic biological knowledge and the applied know-how required to translate ideas from the lab to the patient’s bedside.

Integral to this system and to our national security is the too often-maligned pharmaceutical industry.

They are tough, profit seeking companies. They are often their own worst enemies. They are not always right.

But nor are they always wrong. The products they produce are aimed at

preventing and treating diseases and reducing suffering. And that is not the worst business to be in by any means.

The situation is that we are confronting an enormous chicken-and-egg problem in developing new vaccines and countermeasures due to the fact that in the last several decades product liability exposure has drastically reduced our domestic vaccine production capability. I understand that in 1976, 26 companies produced vaccines for the U.S. market. This year, only five companies produce vaccines sold in the U.S. and only three have U.S. production facilities.

This constitutes both a public health and national security challenge that must be addressed.

While I have concerns about many of the precise provisions in this new language, I recognize and commend my colleagues for attempting to solve a problem that needs solving.

I have great respect for the majority leader, especially as he attempts to navigate this year's exceedingly complex package of pending bills which include the budget reconciliation bill—the first such measure in nearly 10 years—the PATRIOT Act, the Labor-HHS appropriations bill, as well as the Department of Defense authorization and appropriations bills. This is a tall order by any standard.

Although I urged the Leader not to include this new bill in the year-end legislation, I told him that I would not vote against this measure if it were part of one of the year end, must pass vehicles.

I did this largely out of deference to our majority leader.

For reasons that I will explain, if it came to a simple up-or-down vote on this measure as currently drafted, I could not yet support it and would vote no.

If this measure does in fact become enacted into law, I will be open to considering further modifications in this language should our study of this new language indicate that changes are advisable.

Many will question whether this bill, in its current form, contains too much indemnification and not enough compensation. This is a fair question.

For example, the funding mechanism in the bill does not appear to be guaranteed.

I have been down the hard road of discretionary funding with respect to the Radiation Exposure Compensation Act, which I authored, and I cannot say that I would recommend such an important program to be subject to the uncertainties of less than stable, certain funding.

Still others will question why the bill provides for no judicial review, apparently even by the United States Supreme Court, for certain actions by the Secretary of Health and Human Services?

There will be concern that the bill does not allow adequate judicial review to assure that the Secretary has not

acted either arbitrarily or capriciously in certain circumstances.

Because of the great significance of this measure, I suggest that Chairmen ENZI and SPECTER hold hearings on this language once the Congress reconvenes after the holidays.

It is, for example, important to learn what the administration thinks about this new bill and whether, upon reflection, it would urge some refinements.

I have not seen a Statement of Administration Policy on this measure.

Nor have I seen a Congressional Budget Office score so it is a little unclear to me how much this new section would cost.

The administration will be called upon to administer a new compensation program and we need to know how they plan to implement this program and whether they have any suggestions to improve the operation of this program.

As well, I would not be surprised if more Members and other interested parties will want to weigh in on the structure of the new compensation program, which is based in large part, on the current smallpox vaccine injury compensation program.

As our experience with the asbestos legislation teaches us, there is always great interest in the level of compensation injured citizens may receive, especially if they give up their possible tort remedies.

I note that there is a higher standard imposed upon the Secretary in constructing an injury table under this new bill than must be met under the current smallpox vaccine injury compensation law. Many will want to know exactly what is intended and what the practical effect of this new standard will be on the health experts who will advise the Secretary in this critical area.

There are also many questions that must be explored with respect to how the liability shield will operate in practice.

Let me state clearly that I favor a strong liability shield so that many pharmaceutical and biotechnology firms will enter this critically important field of research and development. The fact is today that there exists a pervasive climate of apprehension about product liability and litigation exposure and this is chilling the necessary private sector activity.

Clearly something must be done. It is not so clear that the new liability language is yet as good as it needs to be. For example, the way in which the willful misconduct and FDA defense provisions operate together in the context to potential court challenges merit particular attention. As well, the policy and business-behavioral ramifications of drawing a hard line between all forms of negligence and willful misconduct deserve careful thought and analysis.

In the case of dual use products, such as antibiotics, it appears that, should a bad batch of drugs be made due to ordi-

nary negligence, a patient injured when taking the product for a normal, garden-variety infection will have a much greater range of legal remedies than a person who took a pill from the same adulterated production batch but under a Secretarial declaration of a public health remedy. It is not readily apparent why this should be the case.

There may be ways to further improve and refine these provisions and other parts of the bill as well. For example, consideration is warranted with respect to whether there ought to be a subrogation provision in certain cases when the Federal Government must compensate patients for injuries caused by negligent or grossly-negligent actions of manufacturers, distributors, or others connected with developing the drug or delivering it to patients.

In any event, I think we should keep an open mind to viewing this new language as something as a work in progress.

Rather than embarking down a path of political who-struck-John on how this new section got into the bill and who drafted this provision or that provision, I think the public will be better served if we focus our future efforts on evaluating what the bill does and deciding whether there are ways we can make it better.

One thing is certain. If we do not find a better way to unleash the creative efforts of the private sector in researching and developing a panoply of new products designed to diagnose, prevent and treat bioterrorist and natural threats, the health and welfare of our Nation cannot be secure.

We have a big job ahead of us.

I urge that we move forward in a constructive, bipartisan effort to further improve the Public Readiness and Emergency Preparedness Act that has been placed in the DOD appropriations bill conference report. If others are willing to proceed in this fashion, I am certain that Senator LIEBERMAN and I, and many others, stand ready to discuss and refine this and any other piece of related legislation.

The PRESIDING OFFICER (Mr. VOINOVICH). Who yields time?

The Senator From Alaska.

Mr. STEVENS. Mr. President, I want to make sure everyone understands what we have done. I worked 3 months of my life on this bill, primarily to find a way to help the people whom I saw in New Orleans. But this unanimous consent agreement strips sections C and D out of the bill. That section D allocated the funds that were to be received from the development of ANWR and the spectrum money that we expect to come into the Treasury in excess of what was estimated in the budget and earmarked it to a gulf recovery fund and earmarked it to the LIHEAP program under a different formula than the existing formula.

The net result is that those who are going to vote for the separate resolution—and I shall vote against it—will

be taking money from the first responders. Let me go through that. There was \$3.1 billion for our first responders, for homeland security needs. We had \$1 billion for our farmers and ranchers for farm conservation programs. The gulf coast recovery fund was estimated to have \$5 billion in bonus bids and \$40 billion in royalties over the total production years of ANWR. It would have committed 50 percent to Louisiana, 25 percent to Mississippi, 10 percent to Alabama, 10 percent to Texas, and 5 percent to Florida.

When we remove that, we do remove the \$2 billion emergency spending for LIHEAP, and we remove the \$3.1 billion for border security. That is money that was there. It was not funny money. It was money for this year.

So when you go back to New York, will you tell them why? That first responder money was \$1,750,000,000 for the cities of New York, Los Angeles, San Francisco, Miami, Boston, Washington, DC, Chicago, Philadelphia, and Houston. I showed before the list of all the people who supported that.

In terms of the preparedness grants for avian flu response, and for evacuation routes, refugee feeding and housing in the event of another disaster: \$1 billion. But above all, the \$1.1 billion in 2006 money for border security for the Northern border and the Southern border, we were overwhelmed with support for that. By voting for this, you will take it out. You are taking out C and D. You are taking out all the funding.

Now, what does that mean? It means that next year when we get the budget they will pick up the estimates we were able to make. The money for ANWR will next year be, I believe, estimated—I am sure it will; I have a letter—at \$10 billion. This year it was \$5 billion. That \$5 billion that was in the budget will not be available to Louisiana. It will not be available to the disaster area. The \$10 billion we estimated in addition to the \$10 billion that is already in the budget for spectrum auctions will take place in 2008 and 2009. Actually, the FCC believes it is going to be \$28 billion. We had used \$8 billion in addition to the \$10 billion that is in the budget. That, next year, will also be estimated, and it will be used by the budget. So that money is not going to be available for these things that Senator CANTWELL's resolution will deny.

Senator CANTWELL has authored this resolution to take out of the bill all of this money that we worked so hard to find a way to justify. We took future revenues coming into the Treasury, held them in the Treasury and earmarked them for specific purposes when they would arrive. We were told to have every reason to expect that money would come in. And the House agreed with us and allowed two separate emergency things to take place. One was \$1.1 billion for border security. The other was \$2 billion for LIHEAP for those who are in States that are af-

ected by the current formula. That is primarily the Midwestern States and Maine.

But I want the Senate to know the work we did in finding this money and finding a way to hold it in the Treasury, it will not be held any more. This amendment takes out of the bill sections C and D. That means next year you will not find money on this approach for the help for the disaster areas or to deal with LIHEAP or to deal with homeland security. And \$3 billion was earmarked in that fund when the money came in. It was to go to homeland security. We earmarked it. No future budget could use it.

By taking C and D out, by voting for it—all of you—I am going to go to every one of your States, and I am going to tell them what you have done. You have taken away from homeland security the one source of revenue that was new revenue. It was money that should have been used for disaster. It should have been used for homeland security. And I am sure that the Senator from Washington will enjoy my visits to Washington because I am going to visit there often.

This was wrong. We should have kept sections C and D in this bill. This was something that we studied. We went with CBO. We talked to everyone possible. Everyone understood it in the House, what we did. The Senate refused to even look at it. I think most of you voted for it without even looking at it. California has lost its money for disasters in the future from that revenue source. It will have to find some way through the budget to compete with everybody else next year in a declining budget year. Because as the interest on the national debt goes up, there is less money to allocate for existing programs. I predict next year will be the toughest budget year in history.

But we took money from 2008, 2009, 2010, and we earmarked it. One thing you did not notice, we put in borrowing authority. In the event there is a disaster, the Secretary could go to Treasury and say: Mr. Secretary of Treasury, I exercise the borrowing authority and get that money right now. Did you know that? I bet half of you—none of you—read the bill, none of you read the bill. But I am going to explain the bill to everyone in the country—the homeland security bill, the first responders, the interoperability part of it, the part of equipment for first responders.

The total amount of this bill has been destroyed by the Cantwell amendment. And I want to make sure everyone understands it. Emergency assistance for seniors and low-income Americans: That \$2 billion was at a different theory, different formula than the existing law. We made it available to those in great need this winter. By this amendment, by voting for it, you take it away. Go ahead and vote for it. I am going to vote against it because I know what I did. I found and spent a lot of time with those who handle budget matters and particularly the CBO. Ask

them. I will show you the letters. They said I was right, that was new revenue coming into the Federal Government. Everyone expects it, and we earmarked it for those things that we all believe in now.

Next year, are you going to give it to homeland security? Are you going to give it to border security? Are you going to give them \$2 billion for LIHEAP? By the way, it did not have to be spent this year. It could carry over. It is to be used when needed, by higher prices. OK? It was not something that was total spending this year.

I do think the hurricane areas are the ones that lost most. There is a \$14 billion estimate in C and D for the hurricane area: \$7 billion for Louisiana, \$3.5 billion for Mississippi, \$1.4 billion for Texas, \$1.4 billion for Alabama, and \$1.2 billion for Florida.

Mr. President, this Senator has tried to do what is right. In the last month or 2 months, I have been pilloried by almost every newspaper in this country because of what has been said on this floor and what has been said by Members on the other side of this body. I have been called a liar. I have been told that I violated the rules. I have been told I did things in the middle of the night when no one knew it. I have been told almost everything. Even my grandchildren asked my son: Is that right?

I ask the Senate: Is that right? Should I lose the reputation I have gotten for 37 years in the Senate? No one has ever questioned my integrity before this year. Well, we had one little thing—I see an action from the Chair—about an ethics matter in my State, but that, too, was misunderstood. And I am glad to see that—I hope that has been put to rest. But in any event, no one has really questioned my actions here on the floor.

But they have been. People I have known on the other side, on a first-name basis, have come to me and talked to me about their problems—each one of you. Many of you have spoken here and said things that are not true, and you know they are not true. As I said, one Senator said something so bad, I asked for an apology. I would not accept his apology now.

Mr. President, I am going to go home, and I am going to think about this, and I am going to try to figure out what to do next year. But I know one thing, the 3 months I spent on this to try and help the people in the disaster area, with the sincere belief in the—how many of you have been to the disaster area? Did you spend a couple of days down there, as I did? Did you go and look at it? Did you see the miles and miles of homes that are gone? Did you see a great big barge, bigger than this room, on top of a schoolhouse? Did you see miles and miles of levees just laid down? Did you see the devastation as that tsunami came up that channel that man dug from New Orleans to the gulf?

Did you see that? Did you see how it devastated the land, and all the plant life is now dying because it was inundated in saltwater?

The earthquake in my State did that. I saw one town disappear. I saw a third of my city, Anchorage, disappear. You have to have had that experience to understand how I felt when I went to New Orleans.

You people didn't believe it. Many of you said I did this for political reasons, just a crass thing, pick up some money and give it away for votes. I never asked one of you for a vote. I talked to some of you about how you should vote, but I never went to you and said: You have to vote for me. You wouldn't be voting for me; it was voting for the people who would have been helped.

This has been the saddest day of my life. It is a day I don't want to remember, and I am sorry to see it come to an end. Because I am drawing the line now with a lot of people I have worked with before. I really am. I can't put in my mind the amount of time, the days I have spent with you working on your problems, and to know you said about me the things you said in the last 2 months. I say goodbye to the Senate tonight. Thank you very much.

The PRESIDING OFFICER. Who yields time?

Mr. REID. I yield back the time on this side.

Mr. FRIST. I yield back the time on our side.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution, S. Con. Res. 74.

Mr. REID. 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 bill clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from South Carolina (Mr. DEMINT), the Senator from New Hampshire (Mr. GREGG), the Senator from Arizona (Mr. MCCAIN), and the Senator from Rhode Island (Mr. CHAFEE).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted "nay."

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. DODD), and the Senator from Indiana (Mr. HARKIN) are necessarily absent.

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

The result was announced—yeas 48, nays 45, as follows:

[Rollcall Vote No. 365 Leg.]

YEAS—48

Akaka	Dayton	Leahy
Baucus	DeWine	Levin
Bayh	Dorgan	Lieberman
Biden	Durbin	Lincoln
Bingaman	Feingold	Lugar
Boxer	Feinstein	Mikulski
Byrd	Inouye	Murray
Cantwell	Jeffords	Nelson (FL)
Carper	Johnson	Nelson (NE)
Clinton	Kennedy	Obama
Coleman	Kerry	Pryor
Collins	Kohl	Reed
Conrad	Lautenberg	Reid

Rockefeller
Salazar
Sarbanes

Schumer
Smith
Snowe

Specter
Stabenow
Wyden

NAYS—45

Alexander
Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Burr
Chambliss
Coburn
Cochran
Cornyn
Craig
Crapo

Dole
Domenici
Ensign
Enzi
Frist
Graham
Grassley
Hagel
Hatch
Hutchison
Inhofe
Isakson
Kyl
Landrieu
Lott

Martinez
McConnell
Murkowski
Roberts
Santorum
Sessions
Shelby
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner

NOT VOTING—7

Chafee
Corzine
DeMint

Dodd
Gregg
Harkin

McCain

The concurrent resolution (S. Con. Res. 74) was agreed to, as follows:

S. CON. RES. 74

Resolved in the Senate (the House of Representatives Concurring), That, in the enrollment of the bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

Strike Division C, the American Energy Independence and Security Act of 2005 and Division D, the Distribution of Revenues and Disaster Assistance.

Mrs. BOXER. I move to reconsider the vote.

Mrs. FEINSTEIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOTICE

Incomplete record of Senate proceedings.

Today's Senate proceedings will be continued in the next issue of the Record.