

seemingly so little appetite on the part of this Senate and others to do something meaningful for the long term.

I wish I were part of a Congress I could say has been an enormously productive Congress for the country. We are not. We need to get busy and find a way to solve this. This President, this Congress, chart the agenda. They describe what is going to come to the Senate floor. We need to begin zeroing in on things that are important.

First, we need to win this war in Iraq in a way that satisfies our objectives. We need to fight the war on terrorism in a manner that allows us to prevail. Incidentally, this issue of cutting and running, we are going to leave Iraq at some point. That is not the issue. This country is going to leave Iraq. Our military is going to be withdrawn. The question is, When? When and under what conditions? It is appropriate to say at some point to the Iraqi people, this is your country, not ours. This country belongs to you, not to us. Saddam Hussein was found in a rat hole. He is on trial. He is not part of the government. Iraqis have their own government. And the question for those in Iraq is, do you want your country back? If so, you have to provide for your security. We are attempting to train and provide security at this point, but we are not going to provide security forever in the country of Iraq. We cannot do that. We must expect the Iraqi people to decide to take back their country, at which point we will be able to bring the American troops home. That, I hope, is sooner rather than later.

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

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

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BINGAMAN. Mr. President, I ask unanimous consent I be allowed to speak for 20 minutes.

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

#### HOMELAND SECURITY AND HEALTH CARE

Mr. BINGAMAN. Mr. President, I want to speak on three issues this morning. First, I will talk about two amendments I have filed to the Secure Fence Act which is the legislation the Senate is debating once we get through morning business. I will talk about the merits of those amendments and the reasons I believe Senators should support those amendments, that we should be allowed an opportunity to offer those amendments. There is some question as to whether we will be allowed that opportunity. After that, I will say

a few words about health care and health care issues in this 109th Congress.

First, as to the Secure Fence Act, H.R. 6061, I represent, as all of my colleagues know, a border State. I understand the frustration communities are facing due to the inability of the Federal Government to secure our Nation's borders. Illegal immigration is a serious problem, and we do need to do a much better job in addressing this problem. The Senate has passed a comprehensive immigration bill. It is not a perfect bill by any means, but it is aimed at improving security along our borders and at also reforming our immigration laws. I believe that the bill passed through the Senate was a step in the right direction. I was disappointed that the leadership of the House of Representatives refused to appoint conferees to meet with Senate conferees and instead decided to hold hearings around the country to concentrate on differences of opinion and to stir up discontent rather than to seek some common solutions to our substantial immigration problems. The Senate has passed a bipartisan bill. The House passed what I would characterize as a different bill. We should have convened a conference committee. We should have tried to work out differences between those bills. The failure to at least have made a good faith effort in that regard I think is very unfortunate.

Mr. President, with regard to the specifics of this Secure Fence Act—and the Secure Fence Act is a piece of the House-passed immigration bill from about a year ago—I do believe there are locations along our border where fencing makes sense and additional fencing is required. However, we need to be smart about our security. Walls may make good sound bites in political ads, but the reality is that individuals charged with securing our borders have consistently stated that walls and fences are only part of the solution and that there are better and more cost-effective ways to provide for greater border security.

Ralph Basham, who is the Commissioner of Customs and Border Protection, stated earlier this year in response to a question about the proposal to build 700 miles of double-layered fencing:

It doesn't make sense, it's not practical.

He went on to say that what we need is an appropriate mix of technology and infrastructure and additional personnel.

Let me take a moment to also read some remarks delivered by Secretary Chertoff, the Secretary of Homeland Security. These were delivered on March 20 of this year in a speech he gave at the Heritage Foundation. In describing the Secure Border Initiative, also known as SBInet, Secretary Chertoff stated:

We are going to build ourselves what I call a virtual fence, not a fence of barbed wire and bricks and mortar, which I will tell you

simply doesn't work, because people can go over that kind of fence but rather a smart fence, a fence that makes use of physical tools but also tools about information sharing and information management that let us identify people coming across the border and let us plan the interception and apprehension in a way that serves our purposes and maximizes our resources thereby giving our border patrol the best leverage they can have in order to make sure that they are apprehending the most people.

This week, the Department of Homeland Security selected Boeing as its contractor for this Secure Border Initiative. Under Boeing's proposal, it will build a network of approximately 1,800 towers along the southern border. It is unclear how mandating 700 miles of fencing as is proposed in this pending bill will fit into the proposal which Boeing has made and which has been selected by the Department of Homeland Security and whether the two together make sense. Unfortunately, the bill as currently drafted does not provide the Department of Homeland Security with the discretion that Department needs in order to determine the most appropriate means to secure the border. It also ties their hands with regard to the use and the placement of fencing. I do not think we should be mandating over 700 miles of fencing at specific locations. I do not think this Senate and those of us here in the Congress have enough detailed knowledge of the various areas along the border to be making the decision as to the specific areas where fencing needs to be built.

It is also clear that the cost per mile is something we do not have a good handle on at this time in our debate. According to the Department of Homeland Security, it costs approximately \$4.4 million for a single layer of fencing per mile. The bill we are debating today mandates double-layer fencing, which would add up to about \$6.6 billion for the 730 miles of fencing required under this bill.

In discussions with local law enforcement, local, State, and Federal law enforcement along the border in the southern part of New Mexico, we have meetings with what we call the Southwest New Mexico Border Security Task Force, and at some of those meetings I have attended the point has been raised by local security officials that the location of the proposed double-layer fencing in this bill is, in their view, at least, at the wrong place.

The bill also mandates fencing in some areas where we just spent millions of dollars per mile to build vehicle barriers rather than fencing because it was the judgment of the Border Patrol that vehicle barriers were more appropriate in those areas.

If we are going to spend billions of dollars to place a fence along over one-third of our southern border, we should at least ensure that it is in the right location and that the Department of Homeland Security can make necessary adjustments in the interest of securing our borders. To this end, I

hope to offer an amendment that would ensure that the Secretary of Homeland Security has the ability to modify the placement and the use of fencing that is mandated in this bill; that is, he has that discretion to make those modifications if the Secretary determines that such use or placement of the fencing is not the best way to achieve and to maintain operational control of the border. I believe this is a reasonable amendment. I believe it will help ensure that DHS has the flexibility it needs to alter this proposal if the proposal is determined not to advance our overall security strategy.

I hope that the majority party will allow a vote on this important measure and that they will support this important measure. Let me be clear. I believe we need to do whatever it takes to secure our borders. You cannot have a nation without secure borders. I have consistently worked to secure increased funding for vehicle barriers, for surveillance equipment, and for additional Border Patrol agents, but I also believe we need to pursue that secure border in the most effective way both from a security standpoint and in terms of the overall cost of the security.

Mr. President, that is my description of the first amendment I do hope to offer. Let me also speak briefly about an amendment I hope to offer to this legislation. This is regarding the Border Law Enforcement Relief Act of 2006. This is an amendment which is cosponsored by Senator DOMENICI of my State. It will provide local law enforcement in border communities with much needed assistance in combating border-related criminal activity.

During our debate on the immigration bill, this legislation was adopted by a vote of 84 to 6. It was also adopted by unanimous consent as part of the Senate's Homeland Security appropriations bill.

For far too long, law enforcement agencies operating along the border have had to incur significant costs due to the inability of the Federal Government to provide adequate security of the border. It is time that the Federal Government recognize that border communities should not have to bear that burden alone. This amendment would establish a competitive grant program within the Department of Homeland Security. These grants would help local law enforcement situated along the border to cover some of the costs they incur as a result of dealing with illegal immigration, with drug trafficking, with stolen vehicles, and with other border-related crimes.

The amendment authorizes \$50 million a year to enable law enforcement within 100 miles of the border to hire additional personnel, to obtain necessary equipment, to cover the cost of overtime, and to cover additional transportation costs. Law enforcement outside of this 100-mile geographical limit would be eligible if the Secretary of Homeland Security certified that

they are located in what we call a high-impact area.

The United States shares 5,525 miles of border with Canada and 1,989 miles of border with Mexico. Many of the local law enforcement agencies that are located along the border are small rural departments charged with patrolling very large areas of land with very few officers and with very limited resources. According to a 2001 study by the United States-Mexico Border Counties Coalition, criminal justice costs associated with illegal immigration exceeded \$89 million in each and every year. Counties along the southwest border are some of the poorest in our country, and they are not in a good position to cover these initial costs. The States of Arizona and New Mexico have declared states of emergency in order to provide local law enforcement with immediate assistance in addressing criminal activity along the border, and it is time that the Federal Government step up and share some of this burden.

I urge my colleagues to support this amendment again as they have in the past. Let me make it clear to my colleagues I am offering this because, although it was adopted as part of the immigration bill, we need to once again adopt this amendment and attach it to this bill if this bill in fact winds up going to the President for signature.

Mr. President, let me now change subjects once more and speak not about the Secure Fence Act, which is the legislation the Senate is dealing with today, but to speak about a subject that has been given very short shrift here on the Senate floor in recent weeks and months; that is, Congress's failure to enact any serious legislation with respect to the major health care problems facing our Nation. While problems such as the fact that 47 million uninsured Americans continue to be ignored by this Congress, by this administration, what is equally disappointing to me is that there are a number of Federal health programs that we are failing to reauthorize each year, and that number continues to grow. These are programs which are public, they are well-known, and I believe the failure of the Congress to reauthorize these is a major neglect of our responsibilities.

Although the Appropriations Committee continues to provide resources for a number of these expired Federal programs, Congress has increasingly failed to provide the roadmap to the executive branch for how these funds are expected to be spent. In fact, in each of the last several years, the Congress has ceded more of its legislative and its oversight roles in regard to health care to the executive branch in what one head of a national physician organization referred to as "inexcusable inaction." The result is that Congress is increasingly acting more like a trade association in trying to lobby the executive branch of Government to do things related to health care than it is

acting as a legislative branch actually considering and passing legislation on these important issues.

I find myself being asked by colleagues to cosign letters to the administration urging them to use their discretion, their administrative discretion, their administrative authority to essentially sidestep the law, ignore the law, take unilateral action to address some of these health care issues that we in the Congress seem unable or unwilling to deal with in legislation.

That is, I fear, the sad legacy of this 109th Congress on health care policy. When the question is raised: What did the 109th Congress do to improve health care for Americans, I think the answer almost certainly will be very little, if anything.

First, let's take the Medicare physician payment formula. As part of the Balanced Budget Act of 1997, Congress enacted a provision that attempted to save Medicare money, and it did so by placing physician payments on an automatically adjusting formula called the sustainable growth rate or SGR. During the economic boom of the 1990s, this SGR formula worked well for physicians, and physicians did receive positive updates year after year during that period.

Without getting into great details about the formula that we enacted back in 1997, there are four factors that have caused the formula to result in cuts in payments to physicians in recent years. Let me mention those four factors: First was the economic downturn in the first term of the Bush administration; second, the changes in the composition of managed-care enrollment; third, the addition of more preventive care services; and, fourth, the inclusion of prescription drugs in the calculation of the formula.

Congress created a mess with a poorly devised formula and, in 2001, more than two-thirds of the Members of Congress—both Democrats and Republicans—cosponsored legislation to halt the cuts and to change the manner in which this SGR formula was to be calculated. That legislation, unfortunately, died when the congressional leadership declined to schedule a vote. As a result, physician payments were cut by 5.4 percent in 2002.

In 2002, there were more than 80 percent of the Congress who signed on to cosponsor legislation to fix the physician payment formula, but some deal was brokered that year, 2002, by one of the committee chairs and one physician group to impose a freeze in the payment and backloading the cuts in a budget-neutral manner in later years.

So rather than fixing the problem, that has become the new mode in Congress: we go for year after year patchwork. Physician groups face an impending cut year after year. Congress pushes back the need to truly fix the problem, and the problem grows bigger and bigger, to a point where some would argue it is virtually unfixable at this point.

What do I mean by “virtually unfixable”? According to a new Congressional Budget Office analysis of the Medicare physician payment formula, one solution to fix the problem would cost \$200 billion over the next 10 years. The sham of these annual 1-year adjustments to the Medicare physician payment formula masks the true size of our Nation’s budget deficit, as we all know very well that the Congress is not going to allow scheduled cuts to physician payment rates of more than 40 percent in the coming years, as is provided for in the law that is now built into the Congressional Budget Office baseline projections.

So this SGR formula is clearly broken, but the hole that has been created is so deep that the problem is largely unsolvable at this point. The problem is made worse, of course, by the very fact that Congress has failed to pass a budget this year. In its next budget—hopefully, next year—Congress needs to enact, in my view, a “truth in budgeting” amendment for Medicare physician payments so that we can admit the true level of our Nation’s deficit by revising the payment formula baseline, and through that device address the problem with the SGR formula in a forthright manner.

It is, sadly, too late to hope that we can solve all of this problem this year in this 109th Congress. I urge congressional leadership and organizations that represent physicians groups to push to resolve this annual crisis in the next Congress—early in the next Congress—in what would be a far more honest and open manner that would lead to a permanent fix with respect to this physician payment formula.

Unfortunately, the Medicare physician payment formula is just one example of the much larger institutional problem facing the Congress in coming to grips with health care issues. Just a year ago Congress failed to restore more than \$1 billion in expiring funding for the State Children’s Health Insurance Program, or SCHIP. While there is not a single Member of Congress who would admit to not supporting the State Children’s Health Insurance Program, congressional leadership has failed to find a way to ensure that \$1 billion in dedicated resources to SCHIP was actually available to spend on the program.

Now SCHIP faces a larger problem because the States are estimating a \$900 million shortfall in fiscal year 2007 in order to provide current levels of health insurance coverage for children. According to the American Academy of Pediatrics and 85 other national organizations in a letter to Congress dated September 18:

Without additional federal funding to avert these shortfalls, states may have to reduce their SCHIP enrollment, placing health care insurance coverage for over 500,000 low-income children at risk. States may also be forced to enact harmful changes to their SCHIP programs, such as curtailing benefits, increasing beneficiary cost-sharing or reducing provider payments.

Just a few years ago, Congress and the administration provided what is now estimated to be a \$700 billion Medicare prescription drug benefit to our Nation’s seniors. Yet somehow we cannot find our way to provide 1 percent of that amount for our Nation’s children to avert a shortfall in funding in order to ensure that not only prescription drugs but comprehensive health care is provided to those low-income children.

Four days before that, the Institute of Medicine issued a report noting that despite a profound epidemic confronting our Nation with respect to childhood obesity, the Federal Government, the food industry, schools, and others have made little progress in stemming this growing tide of childhood obesity.

In 2 straight years, the Senate has passed amendments to the Agriculture appropriations bill by overwhelming majorities to increase funding for programs such as TEAM Nutrition, only to see that money disappear once we got into conference with the House. What is needed, in my view, is national leadership, both by the administration and by the Congress. We have failed to deal with this extremely important issue affecting the long-term health of many of our children.

In addition to confronting expiring provisions with programs such as Medicare and SCHIP and major problems through the appropriations process in getting adequate funds to deal with childhood obesity, I also want to raise the issue of Congress’ failure to enact reauthorizations of numerous Federal programs. According to the Congressional Budget Office, in its annual report entitled “Unauthorized Appropriations and Expiring Authorizations”:

The Congress has appropriated about \$159 billion for fiscal year 2006 for programs and activities whose authorizations of appropriations have expired.

Some of the major health care programs whose authorizations have expired include the National Institutes of Health, the Ryan White CARE grant programs, the veterans’ medical care, the Indian Health Service, and the Administration on Aging.

Considering all the Congress must consider on an annual basis, it is not surprising that some programs are not reauthorized in a timely fashion. What has become disappointing is that there appears to be a lack of effort in some instances to even try or to bring these issues to closure despite the vast need.

For example, the Indian Health Care Improvement Act expired in 2001, and for 6 long years American Indians and Alaska Natives have tried repeatedly to reauthorize the programs administered by the Indian Health Service. Moreover, the U.S. Commission on Civil Rights issued a report in 2003 entitled, “A Quite Crisis: Federal Funding and Unmet Need in Indian Country,” that called for immediate passage of the Indian Health Care Improvement Act and for the Federal Government to

“act immediately to reverse this shameful and unjust treatment” that is the Indian health care system and funding levels.

And yet, here we are 3 years later and the Committee on Indian Affairs has reported a reauthorization bill to the Senate floor over 6 months ago, but this bill has not yet been bought up for debate.

Failure with respect to the Medicare physician payment formula, the State Children’s Health Insurance Program shortfalls, childhood obesity, and the Indian Health Service are just examples of a larger problem that has grown over the years.

Other programs, such as the Health Professions Act, so desperately need to be reauthorized and improved that both the administration and Appropriations Committee recognize are not working well, so they continue to get dramatically cut or even zeroed out. Meanwhile, as a Nation, there are areas in the country with terrible health profession shortages, and we are now importing 25 percent of our physician workforce from foreign nations, which is not a good result either for our Nation or for the country from which we have taken their doctors.

Mr. President, our Nation’s health care system is in a mess, and yet the Congress is not addressing rather critical and fundamental issues due to inaction, neglect, or inattention.

In the coming days and during the lameduck session, I urge the leadership of the Congress to begin the work of addressing these important health care problems facing our country.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from South Carolina.

Is the Senator seeking consent to proceed in morning business?

Mr. DEMINT. Mr. President, I ask unanimous consent to speak for 30 minutes in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### FAMILY PROSPERITY ACT

Mr. DEMINT. Mr. President, earlier this year Republicans put together one of the most important bills we have considered, and Republicans asked for a vote on that important bill we call the Family Prosperity Act. Indeed, it does deal with the prosperity, the economic well-being, the cost of living for every American family. It contains three very important measures and all enjoy majority support in the Senate. One was permanent death tax relief, another was the extension of very important expiring tax provisions, and a minimum wage increase of more than 40 percent.

The bill represents a true bipartisan compromise. Yet it met unified Democratic obstruction that prevented it from receiving an up-or-down vote. I do not think I have ever seen a vote that