the laws, and the judges, rather than rewriting those laws, should interpret those laws in a fair and commonsense way, without imposing their own views on what the law should be.

Most Americans think that when judges impose their own views on a case, when they substitute their own political preferences for those of the people and their elected representatives, then they undermine Democratic self-government and they become judicial activists.

Professors Resnick and Minow have very different ideas than I think the mainstream American thinks on what a judge's job should be. Their views may not be controversial in the ivory tower of academia. Academics often encourage each other to engage in provocative theories so they can write about them and get published and get tenure.

But the American people generally do not want judges to experiment with new legal theories when it comes to judging. They have a more commonsense view that judges should follow the law and not the other way around.

So where does Judge Sotomayor stand on some of these academic legal theories, which I think are far out of the mainstream of American thought? I am not sure. But in her 2002 remarks she said this:

> I accept the proposition that as [Professor] Resnick describes it, ''to judge is an exercise of power.''

And:

> as . . . Professor Minow . . . states ''there is no objective stance but only a series of perspectives—no neutrality, no escape from choice in judging.''

If I understand her quotes correctly, and those are some things I want to ask her about during the hearing, that is not the kind of thing I think most Americans would agree with. They do not want judges who believe that there is no such thing as neutrality in judging because neutrality is an essential component of fairness. If you know you are going to walk into a courtroom only to have a judge predisposed to deciding against you because of some legal theory, then that is not a fair hearing. And we want our judges to be neutral and as fair as possible when deciding legal disputes.

The American people, I do not think, want judges who believe they have been endowed with some power to impose their views for what is otherwise the law. Americans believe in the separation of powers, the separation between Executive, legislative and judicial power and that judges should, by definition, show self-restraint and respect for our branches of government.

I hope Judge Sotomayor will address these academic legal theories during her confirmation hearing. I hope she will clarify what she sees in the writings of Professors Resnick, Minow, and others whom she finds so admirable.

I hope she will demonstrate that she will respect the Constitution more than those new-fangled legal theories and that she will respect the will of the people as represented by the laws passed by their elected representatives and not by life-tenured Federal judges who are not accountable to the people.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, will the Chair please let me know when I have consumed 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator will be so notified.

## HEALTH CARE

Mr. ALEXANDER. Mr. President, this morning one of our bipartisan breakfasts occurred which we have here every so often. Senator LIEBERMAN and I and other Senators organized it. 16 Senators there attending this morning's breakfast. The Presiding Officer is often a participant in those meetings. At this morning's breakfast we discussed health care. As we listened to the chairman, ranking member, and other senior members of the Finance Committee one of the things we said is that we agree on about 80 percent of what needs to be done.

But one of the areas where we do not agree is cost. Another area is whether a so-called government-run insurance option will lead to a Washington takeover of health care. A lot of us are feeling like we have had about enough Washington takeovers: our banks, our insurance companies, our student loans, our car companies, even our farm ponds, and now health care.

Government-run insurance is not the best way to extend coverage to low-income Americans who need it. The chairman of the Finance Committee indicated that his bill would be paid for. But on the Health, Education, Labor, and Pensions Committee, on which I serve, that is not the case. The bill is not even finished yet, and already, as the Senator from New Hampshire has pointed out, in the 5th through the 14th year, 10 years, it would cost 2.3 trillion new dollars, raising the Federal debt to even further unimaginable levels.

Let me mention an aspect of cost which is often overlooked. Federal debt is certainly a problem, but as a former Governor, I care about the State debt and State taxes. The States do not have printing presses, they have to balance their budgets. So when we do something up here that puts a cost on States down there, they have to raise taxes or cut programs.

We know the programs they have to cut: education, and health care programs, both are important to people in Illinois and people in Tennessee.

The Medicaid Program in the Kennedy bill that we are considering would increase Medicaid to 150 percent of the Federal poverty level, which sounds real good until you take a look at the cost.

In Tennessee alone, if the State had to pay its share of the requirement, about one-third, that would be $600 million. It would be another $600 million if, as has been suggested, it is required that the State reimburse physicians up to 110 percent of Medicare. So that is $1.2 billion of new costs just for the State of Tennessee.

The discussion has been that the Federal Government will take that over for a few years and then will shift that back to the States. Well, my response is that every Senator who votes for such a thing ought to be sentenced to go home and serve as Governor of his or her State for 8 years and figure out how to pay for it or manage a program like that.

In our State, we talk about money. Up here, a trillion here, a trillion there. But $1.2 billion in the State of Tennessee equals to about a 10-percent income tax on what the people of Tennessee would bring in. We do not have an income tax. So that would be a new 10-percent income tax.

So one of my goals in the health care debate is to make sure we do not get carried away up here with good-sounding ideas and impose huge, unfunded mandates on the States, which, according to the tenth amendment to the Constitution, we are not supposed to. But we superimpose our judgment upon the Governors, the legislators, the mayors, the local politicians who are making decisions about whether to spend money to lower tuition or improve the quality of the community college or provide this form of health care or build this road or bridge. That is their decision. And if we want to require something, we should pay for it from here.

I am going to be very alert on behalf of the States and the citizens of the States to any proposal that would shift unfunded mandates on State and local governments. I hope my colleagues will as well.

My suggestion to every Governor in this country is, over the next few days, to call in your Medicaid director, ask that Medicaid director to call the Senate and say: Tell us exactly how much the Kennedy bill and the Finance Committee bill will impose in new costs on our State if the costs are shifted to the States. Then when we come back at the first of July, we can know about that cost.

The ACTING PRESIDENT pro tempore. The Senator has used 5 minutes.

Mr. ALEXANDER. I thank the Chair very much. So my interest is not just in additions to the Federal debt but not allowing unfunded mandates to the States.

I ask unanimous consent to have printed in the RECORD an article from the New York Times from June 22, 2009, showing what condition the States are in. Almost all are in a budget crisis and not in any position to accept this.

I also would like to thank the Senator from Arizona for allowing me to go ahead of him so I can go to the committee and offer an amendment.

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

[From the New York Times, June 22, 2009]

STATES TURNING TO LAST RESORTS IN BUDGET CRISIS

(By Abby Goodnough)

In Hawaii, state employees are bracing for furloughs of three days a month over the next two years, the equivalent of a 14 percent pay cut. In Idaho, lawmakers reduced aid to public schools for the first time in recent memory, forcing pay cuts for teachers.

And in California, where a $24 billion deficit for the coming fiscal year is the nation's worst, Gov. Arnold Schwarzenegger has proposed releasing thousands of prisoners early and closing more than 200 state parks.

Meanwhile, Maine is adding a tax on candy, Wisconsin on oil companies, and Kentucky on alcohol and cellphone ring tones.

With state revenues in a free fall and the economy choked by the worst recession in 60 years, governors and legislatures are approving program cuts, layoffs and, to a smaller degree, tax increases that were previously unthinkable.

All but four states must have new budgets in place less than two weeks from now—by July 1, the start of their fiscal year. But most are already predicting shortfalls as tax collections shrink, unemployment rises and the stock market remains in turmoil.

''These are some of the worst numbers we have ever seen,'' said Scott D. Pattison, executive director of the National Association of State Budget Officers, adding that the federal stimulus money that began flowing this spring was the only thing preventing widespread paralysis, particularly in the areas of education and health care. ''If we didn't have those funds, I think we'd have an incredible number of states just really unsure of how they were going to get a new budget out.''

The states where the fiscal year does not end June 30 are Alabama, Michigan, New York and Texas.

Even with the stimulus funds, political leaders in at least 19 states are still struggling to negotiate budgets, which has incited more than the usual drama and spite. Governors and legislators of the same party are finding themselves at bitter odds: in Arizona, Gov. Jan Brewer, a Republican, sued the Republican-controlled Legislature earlier this month after it refused to send her its budget plan in hopes that she would run out of time to veto it.

In Illinois, the Democratic-led legislature is fighting a plan by Gov. Patrick J. Quinn, also a Democrat, to balance the new budget by raising income taxes. And in Massachusetts, Gov. Deval Patrick, a Democrat, has threatened to veto a 25 percent increase in the state sales tax that Democratic legislative leaders say is crucial to help close a $1.5 billion deficit in the new fiscal year.

''Legislators have never dealt with a recession as precipitous and rapid as this one,'' said Susan K. Urahn, managing director of the Pew Center on the States. ''They're faced with some of the toughest decisions legislators ever have to make, for both political and economic reasons, so it's not surprising that the environment has become very tense.''

In all, states will face a $121 billion budget gap in the coming fiscal year, according to a recent report by the National Conference of State Legislatures, compared with $102.4 billion for this fiscal year.

The recession has also proved politically damaging for a number of governors, not least Jon Corzine of New Jersey, whose Republican opponent in this year's race for governor has tried to make inroads by blaming the state's economic woes on him. Mr. Schwarzenegger, who sailed into office on a wave of popularity in 2003, will leave in 2011—barred by term limits from running again—under the cloud of the nation's worst budget crisis. And the bleak economy has played a major role in the waning popularity of Gov. David A. Paterson of New York.

Over all, personal income tax collections are down by about 6.6 percent compared with last year, according to a survey by Mr. Pattison's group and the National Governors Association. Sales tax collections are down by 3.2 percent, the survey found, and corporate income tax revenues by 15.2 percent. (Although New Jersey announced last week that a tax amnesty program had brought in an unexpected $400 million—a windfall that caused lawmakers to reconsider some of the deeper cuts in a $28.6 billion budget they were set to approve in advance of the July 1 deadline.)

As a result, governors have recommended increasing taxes and fees by some $24 billion for the coming fiscal year, the survey found. This is on top of more than $726 million they sought in new revenues this year.

The proposals include increases in personal income tax rates—Gov. Edward G. Rendell of Pennsylvania has proposed raising the state's income tax by more than 16 percent, to 3.57 percent from 3.07 percent, for three years—and tax increases on myriad consumer goods.

''They have done a fair amount of cutting and will probably do some more,'' said Ray Scheppach, executive director of the governors association. ''But as they look out over the next two or three years, they are also aware that when this federal money stops coming, there is going to be a cliff out there.''

Raising revenues is the surest way to ensure financial stability after the stimulus money disappears, Mr. Scheppach added, saying, ''You're better off to take all the heat at once and do it in one package that gets you through the next two, three or four years.''

While state general fund spending typically increases by about 6 percent a year, it is expected to decline by 2.2 percent for this fiscal year, Mr. Pattison said. The last year-to-year decline was in 1983, he said, on the heels of a national banking crisis.

The starkest crisis is playing out in California, where lawmakers are scrambling to close the $24 billion gap after voters rejected ballot measures last month that would have increased taxes, borrowed money and reapportioned state funds.

Democratic legislative leaders last week offered alternatives to Mr. Schwarzenegger's recommended cuts, including levying a 9.9 percent tax on oil extracted in the state and increasing the cigarette tax to $2.37 a pack, from 87 cents. But Mr. Schwarzenegger has vowed to veto any budget that includes new taxes, setting the stage for an ugly battle as the clock ticks toward the deadline.

''We still don't know how bad it will be,'' Ms. Urahn said. ''The story is yet to be told, because in the next couple of weeks we will see some of the states with the biggest gaps have to wrestle this thing to the ground and make the tough decisions they've all been dreading.''

In one preview, Gov. Tim Pawlenty of Minnesota, a Republican, said last week that he would unilaterally cut a total of $2.7 billion from nearly all government agencies and programs that get money from the state, after he and Democratic legislative leaders failed to agree on how to balance the budget.

In an example of the countless small but painful cuts taking place, Illinois announced last week that it would temporarily stop paying about $15 million a year for about 10,000 funerals for the poor. Oklahoma is cutting back hours at museums and historical sites, Washington is laying off thousands of teachers, and New Hampshire wants to sell 27 state parks.

Nor will the pain end this year, Ms. Urahn said, even if the recession ends, as some economists have predicted. Unemployment could keep climbing through 2010, she said, continuing to hurt tax collections and increasing the demand for Medicaid, one of states' most burdensome expenses.

''Stress on the Medicaid system tends to come later in a recession, and we have yet to see the depth of that,'' Ms. Urahn said. ''So you will see, for the next couple years at least, states really struggling with this.''

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

## HEALTH CARE

Mr. KYL. I wish to commend the Senator from Tennessee because he has been a leader in pointing out the problems that these new health care expenditures would impose upon our States. It is important to have the Governors of the States and the State legislators to begin to let Washington know what they think about these new costs that they are somehow going to have to bear.

Let me begin at the outset here, on the same subject, to make it clear that Republicans are very eager for serious health care reform, just as I think the American people are.

That is why we support new ideas that would actually cut health care costs and make all health care more affordable and accessible. Republicans want to reform our medical liability laws to curb frivolous lawsuits. We want to strengthen and expand wellness programs that encourage people to make healthy choices about smoking, diet, and exercising. All those have huge impacts on the cost of health care.

We also wish to address the needs of the unemployed, those who work for or own a small business, those with preexisting conditions, all of these we can address. And this can and must be done without imposing job-killing taxes and regulations. In short, we favor innovation, not just regulation.

Our Democratic friends would like to take a different route. Many of them would like to impose a one-size-fits-all Washington-run bureaucracy that we believe, ultimately, would lead to the kind of delay and denial of care we have heard about in Canada and Great Britain. I have spoken at length about the trouble with health care rationing, so today I would like to talk about the cost of a new Washington-run health care system.

The administration often argues that we need Washington-run health care to help the economy. Well, ''Washington bureaucracy'' and ''economic growth'' are not phrases that tend to have a positive correlation. Is it realistic to think that adding millions of people to a new government-run health insurance system will somehow save money or help the economy?