

on our convictions. Let's do this for the American people. Let's make a public option a reality.

I yield back my time to the distinguished Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I thank Senator BURRIS for pointing out that we need health care reform to get competition in our health care industry.

I yield 6 minutes to the Senator from North Carolina, Mrs. HAGAN.

Mrs. HAGAN. Mr. President, I am joining my colleagues on the floor today to discuss the need for health care reform and what it means for Americans with preexisting conditions.

Millions of Americans live today with what insurance companies describe as preexisting conditions. They range from something as common as asthma or diabetes to diseases such as cancer or MS. Some insurance companies, believe it or not, even consider a C-section to be a preexisting condition.

Under our current system, if you are shopping for insurance on the individual market and you have a preexisting condition, you are faced with one of three frightening choices: One, you could be denied coverage altogether; two, you could be charged an exorbitant premium; three, you could be granted insurance with a rider that stipulates your insurance company is not required to cover your preexisting condition.

Recently, I received an e-mail from a family in Mooresville, NC, that truly underscores why millions of Americans living with preexisting conditions simply can no longer afford inaction on this issue.

Seven years ago, Tim became disabled and lost his job. Because he lost his job, his wife Marilyn also lost her coverage under his employer-provided plan. Tim's health care, which requires his wife Marilyn to provide constant home care, is covered by Medicare. But Marilyn has Osler's disease, which is a blood disease considered to be a preexisting condition by her insurance company. Marilyn is only able to purchase a high-cost, high-deductible plan. Compared to Tim's illness, her condition is relatively minor. But over the last 7 years, they have racked up more than \$72,000 in debt for her health care. And this past year, her health insurance premiums cost more than the mortgage on their home.

Unfortunately, there are millions of Americans all across our country such as Tim and Marilyn who are literally one medical emergency away from bankruptcy. This couple is sick and stuck.

Over the last 10 years, medical premiums in North Carolina have skyrocketed, increasing 98 percent, while wages, on the other hand, have increased only 18 percent.

The Health, Education, Labor, and Pensions Committee, of which I am a member, crafted a bill that ensures a preexisting condition never again prevents anyone from obtaining health in-

surance. It also provides security and stability for people with insurance, expands access to health insurance for people without it, and it will stop draining the finances of American families and the Treasury. The Finance Committee's bill also includes these critical elements.

My goal is to send the President a bill that gives people the peace of mind that if they change or lose their job, as Tim did, they will no longer have to fear losing their health insurance too.

Every single day I hear from North Carolinians who are looking for an opportunity to purchase quality affordable health insurance and protect their families. Hard-working Americans, such as Tim and Marilyn, simply cannot afford to wait any longer.

I yield back my time.

Mrs. SHAHEEN. Mr. President, I thank Senator HAGAN for yet another reason why health care reform is going to make a difference for Americans.

This morning, the freshman Senators have again talked about why we must pass health care reform. We have heard nine very important reasons why health care can make a difference for American families.

We heard from Senator WARNER that health care reform is going to be critical to States as they look at the rising costs of Medicaid in their budgets and how to get those health care costs under control.

We heard from Senator MERKLEY why health care reform is critical to help small businesses as they are trying to cover their employees and deal with the costs as they get out of this recession.

We heard from Senator BEGICH about why health care reform is critical as we are looking at economic recovery. Health care costs are 18 percent of this economy, one-sixth of this economy, and we cannot allow those costs to continue to grow at this rate and expect we are going to be able to recover robustly from this recession.

We heard from you, Mr. President, about why health care reform is going to improve prevention and wellness. The goal is to make us a healthier population, and health care reform can help spur that.

We heard from Senator BENNET about why health care reform is going to help people who already have health insurance, to make that health insurance better provide for families who need it.

We heard from Senator BURRIS about why health care reform is going to be critical to making health insurance companies compete for business and, therefore, better accommodate the health issues families have.

We heard from Senator UDALL about why health care reform is going to make a difference for rural areas, places such as the north country of New Hampshire where we have too many people who have to spend too much and go too far for their health care.

We heard from Senator HAGAN about the importance of health insurance re-

form and health care reform to address things such as preexisting conditions.

I talked about the fact that health care reform can both lower costs and improve quality for Americans.

Those are nine critical reasons why health care reform is going to be important to help American families, American businesses, the American economy.

The time to act is now. Hopefully, we can act in a bipartisan way. But we must act to make a difference for this country and for families.

Mr. President, I yield back the remaining time in morning business. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF ROBERTO A. LANGE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH DAKOTA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The bill clerk read the nomination of Roberto A. Lange, of South Dakota, to be U.S. District Judge for the District of South Dakota.

The PRESIDING OFFICER. Under the previous order, there will be 2 hours of debate equally divided and controlled between the Senator from Vermont, Mr. LEAHY, and the Senator from Alabama, Mr. SESSIONS, or their designees.

The Senator from South Dakota.

Mr. JOHNSON. Mr. President, a few weeks ago I stood here on the floor and offered my support for Jeff Viken to be a District Judge for South Dakota. That nomination passed with a vote of 99 to 0. Today, I am here to encourage my colleagues to offer the same support for Roberto Lange, also a nominee to be a District Judge for South Dakota. I spoke at that time of the importance of Federal judgeships and the lifetime tenure of these appointments. The lifetime appointment of a Federal judge is a very serious decision; one that has a lasting impact on our democracy.

When I last spoke on the floor nearly a month ago, only two judges had been confirmed—including now-Justice

Sotomayor. That day, we confirmed a third judge. That confirmation was Jeff Viken to fill a vacancy in my home State of South Dakota. Since that time no other judges have been confirmed by the Senate. I am proud to have both the third and the fourth judges confirmed by the Senate this Congress to be for the District of South Dakota. However, it is my understanding that there are currently ten other judicial nominations pending on the Executive Calendar. We are lucky in South Dakota to have our vacancies filled so quickly, but I encourage my colleagues to act swiftly to fill these other vacancies.

Mr. Lange has an impressive background. He has over 20 years of experience practicing law in South Dakota. Before that, he clerked for the very same docket that he has been nominated for. He attended Northwestern University School of Law on a full tuition scholarship where he was on the dean's list every semester. Prior to that, he completed his undergraduate degree at the University of South Dakota, my law school alma mater. In addition, Bob has received a well-qualified rating from the American Bar Association.

I am proud to have put Bob's name forward for this post. It is a great honor that President Obama has placed on Bob with this nomination. South Dakota will be well served by this selection. I congratulate Bob and his family on this accomplishment.

It is with great confidence in his abilities that I will cast my vote today for the confirmation of Roberto Lange to be the next U.S. Federal District Judge for South Dakota. I urge my colleagues to support this very qualified nominee.

Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time under the quorum call be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BOND. Mr. President, I ask unanimous consent to speak up to 15 minutes as in morning business.

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

AFGHANISTAN/PAKISTAN STRATEGY

Mr. BOND. Mr. President, I rise today to renew my call for President Obama to give full support to his top military commander in Afghanistan, GEN Stanley McChrystal.

Several weeks ago, I stood in this Chamber and made the case for our Congress and the American people to hear directly, and as soon as possible, from General McChrystal to ensure that political motivations here in Washington do not override the vital

needs of our commanders and troops on the ground. I was concerned then, as I am now, that continued wavering by the administration and others in Washington could unravel the hard work by our military and intelligence professionals on the battlefields of Afghanistan.

As the "friendly" death toll continues to rise in Afghanistan, political indecision here in Washington persists. We have heard no firm commitment from the administration to the fully resourced counterinsurgency strategy the President forcefully outlined last spring. I came to the floor and I supported the President's counterinsurgency strategy fully; and with General McChrystal's recent report to implement that strategy to deal with the situation in Afghanistan, I fully supported President Obama's statements in March.

But instead of commitment, the past few weeks have brought a flurry of internal debate in the administration and in the media about the basic tenets of the strategy and assessment—counterinsurgency versus counterterrorism; clear, build and hold, or fire and fall back; more troops versus fewer strategy; crafting a strategy or crafting a strategic message. In what must be a historic first, it appears I am more supportive of the President's own strategy than the President is.

Amidst this indecision, our Afghan people, our NATO, ISAF, regional allies, and our own troops wait. The Afghans wait to hear if the United States will continue to stand beside them in spite of the growing threats of the insurgent violence of the resurgent Taliban control. Our allies wait to see if they were wrong to put trust and confidence in the U.S. leadership in the region. Our military forces and brave civilians who serve in Afghanistan under constant stress and mortal danger wait to see if their sacrifices and those of their fallen comrades will have been in vain.

We have heard excuse after excuse, constant attempts to justify delay. Over the past week, another red herring was floated by some officials—we have to wait until the dispute surrounding the Afghan elections are resolved. This red herring—and those people peddling it as an excuse—has missed a truth even more applicable to the mountains and villages, and our towns and cities here in America—all politics is local, and so is the security that the Afghan people need.

While we would all like to see a pristine election in Afghanistan—something we still haven't accomplished 100 percent in our own Nation—the Taliban is not waiting for election results as they continue to kill our troops and attack the people of Afghanistan and gain momentum. Security in Afghanistan will not come from Kabul. It will have to be built village by village and valley by valley. That is what the counterinsurgency strategy is designed to do.

Even if the naysayers continue to ignore this important truth about security in Afghanistan, yesterday's announcement that a run-off election will now be held on November 7 has made that red herring of an excuse gone and useless. In light of this electoral process in Afghanistan and the progress that has been made, what are we hearing from the White House? As though this decision seemed something to be applauded, the administration continues to proclaim its indecision. Today, the White House press secretary said, "It's possible," but there are no guarantees that a decision may be made before the election—17 days from now. More people killed, more progress for the Taliban, more wondering and hesitancy by the Afghans we are trying to serve.

It is a simple question: Will we support President Obama's commanding general, Stan McChrystal, or not?

I have heard some pundits opine that delaying a few more weeks won't make any difference because it will take some time for troops to get there anyway. Using that logic, no decisions need to be made for months. But it is pretty clear postponing any decision simply postpones the date of actual engagement. And even the right strategy won't work if it is not implemented on time. We are losing time, and it can never be recovered. It certainly won't work if it is never acknowledged as our strategy.

Defense Secretary Gates waved a red flag recently, noting that the United States cannot wait for questions surrounding the legitimacy of the Afghan Government to be resolved before a decision on General McChrystal's troop request is made. He understands what I believe is a simple truth: The longer we wait, the stronger and more determined the enemy gets.

Read the papers. Violence is up this season over last. Violence is up this year over the last. The Taliban continues to gain influence in parts of Afghanistan. We keep fighting with what we have, but the insurgents keep getting stronger. We cannot and must not wait any longer for a decision.

It comes down to this: Delay leads to defeat, not victory. Our commanders in the field—the real experts who see firsthand what is required for victory—have asked for more boots on the ground, and there is no reason not to give them those troops now. While politicians and pundits debate here, the enemy is building strength and establishing even greater control over Afghanistan, the Afghan people, and future generations of potential terrorists. While we talk here, American heroes and our ISAF and Afghan allies are dying in increasing numbers in the barren regions of Afghanistan.

In a war where winning hearts and minds is critical, delay in Washington is a public diplomacy disaster in Afghanistan and abroad. It advertises our lack of resolve to our allies and the people of Afghanistan. The Afghan people have been disappointed by the

United States before. Now they need to know with certainty that the United States will not abandon them again in this fight against terrorism. Our allies, who are at this very moment being urged by the Secretary of Defense to contribute to the Afghan campaign, need to know that we will remain by their sides to defeat this enemy together. Instead, the message we are sending is one of absurdity.

Imagine this diplomatic sales job: We send a diplomat out and say: "Friends in Afghanistan, we would like to keep fighting the good fight against the terrorists and insurgents, but we haven't yet decided how strong our commitment is." I would like to see that message sell. And to our allies around the world: "We would really like for you to contribute more troops and resources for this fight, but we need a few more weeks to decide what our contributions will be." That message isn't going to work either.

I strongly doubt this new brand of public diplomacy will sell for much in the streets of Kabul or the villages of Nangarhar. What this message does tell the people of Afghanistan and the key Shura leaders across the country is: Don't trust the Americans, and instead look to the Taliban as the most likely force for the future in Afghanistan. A disaster.

Perhaps even more troubling is the message this wavering sends to our terrorist enemies. If they simply wait us out, we will go home in defeat. While the administration dithers, the terrorists have honed their own message of hatred and extremism. Radical Islamic terrorists have staged suicide attacks for maximum publicity, propagandized their message on the Internet, and convinced their fellow terrorists-at-arms that they will defeat the international community.

In the years leading up to the 9/11 attacks, al-Qaida—operating under the Taliban control in Afghanistan—was emboldened by our lukewarm response to their attacks and provocations. Failing to commit to victory now will only embolden these enemies of freedom that much more to stage more attacks.

Let there be no doubt, from all that I have read and all that I have learned in my travels to the region, and heard here, if we fail now, if the Taliban returns to power in Afghanistan, the price we pay in the future will be far greater than any price General McChrystal is asking us to pay now. We have to decide which price we are going to pay.

The stakes are high. General McChrystal's strategic assessment makes clear the situation in Afghanistan is deteriorating and the Taliban is gaining momentum. The causes of this deterioration have been debated by my colleagues countless times over the past several years. Pointing fingers for past judgments or even past mistakes, however, does nothing to solve the problems of today in Afghanistan. For

this reason, I was disappointed to learn yesterday of the House majority leader's criticism of Members of Congress who are calling on President Obama to make a decision now. Well, I am one of them.

The majority leader, in trying to justify the administration's wavering, accused Republicans of abandoning their focus for the past 7 years. I don't happen to think that is true. But whatever your opinion on the matter is, it is simply no longer relevant. The actions of one administration do not justify handing victory to terrorists through the indecisiveness of another administration. The battle before us in the Afghan/Pakistan region is today. General McChrystal has laid out an implementation of the winning strategy for Afghanistan, which the President set out, and the President's decision is simple: Do we implement it or not?

The answer should be simple. By announcing publicly his unequivocal support for General McChrystal's request, agreeing to send the troops that are needed, the President can send a message of firm resolve to our enemies and to our allies. He can give our commanders on the ground—the same military experts he chose for this mission—the resources they have requested. He can create a strategic communications plan that tells our enemies, our allies, and the American people of our intentions for the region.

The last point is particularly important. We are at a crossroads in Pakistan. We can take the road of expedience and continue to listen to Pakistani officials, who claim they have no control over the Taliban, have no idea where Mullah Omar is, and have only limited capability to decrease terrorist safe havens in their country or we can take the better path and encourage our Pakistani allies to reclaim their national sovereignty in the tribal areas and provide the stability and security that is the right of a people to expect from their government. I believe I speak for many of my colleagues when I say we should expect more from our allies to whom we give so much. But they need to hear that we are serious about our mission there as well. Pakistan has the right to be concerned when the United States appears to be faltering in its determination to remain in the fight. We failed in this region in the past, so we should not be surprised if our continued wavering instills heightened insecurity. I have spoken in this Chamber before about the importance of including Pakistan in our efforts to defeat terrorism in the region. Afghanistan and Pakistan are inextricably linked. More aggressive action may become a good thing in Pakistan, but such action should be in addition to, not as a substitute for, giving our troops in Afghanistan all the resources they need.

While denying al-Qaida and Taliban militants sanctuary in the border regions of Pakistan is critical, a fire-and-fall-back-only approach focusing on

one part of this regional conflict will ultimately hand victory to the world's most violent and feared terrorists—the same terrorists whom our Nation witnessed firsthand attack so brutally, violently, and with such deadly force on September 11.

We have seen polls that signal wavering support among the American people for this war in Afghanistan. But I have faith in the American people. They are resilient, they are proud of their country, and they understand the price of doing nothing. They are determined the sacrifices of their sons and daughters, husbands, wives, and children serving in Afghanistan will not be in vain. We owe them no less.

I call on President Obama to end this indecision and to show the American people and our allies the same resolve and determination I heard in his words of last spring. It is time for him to speak out, to make the decision, explain why it is important, and to carry that message not just to Americans but to allies and enemies throughout the world. Last spring he said:

Our spirit is stronger and cannot be broken; you cannot outlast us, and we will defeat you.

General McChrystal has said we must act quickly to defeat the terrorists and insurgents. Now is the time for President Obama to support his commanders on the ground and silence the pessimistic political winds whispering defeat in Washington.

Mr. President, I yield the floor.

I suggest the absence of a quorum, and I ask unanimous consent that the time during the quorum be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CARDIN. Mr. President, I ask unanimous consent that during debate on the nominees, all time during quorum call and recess be charged equally to the majority and minority sides.

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

Mr. CARDIN. Mr. President, I take this time to bring to the attention of my colleagues the effect these holds—in most cases anonymous holds that are being placed by Senators on judicial appointments—are having on the lives of judicial officials and on the effectiveness of the judicial branch of government.

So far, President Obama has nominated four circuit court judges who are awaiting confirmation. One of those is Andre Davis to the Fourth Circuit of Maryland. I mention his name because he was appointed by President Obama early this year. The Judiciary Committee held a hearing in April of this

year. In June, the Judiciary Committee recommended his confirmation by a strong bipartisan vote of 16 to 3.

When we finally get a chance to vote on Judge Davis' confirmation to the court of appeals for the circuit court, I am confident it is going to be a lopsided vote among the Members of the Senate. Yet we have been denied the opportunity to confirm his appointment because some Senators put on a hold. Every time we tried to get a time agreement, which everybody says is reasonable, there was an objection. I do not believe it is aimed at Judge Davis; I believe it is a strategy by my Republican colleagues to slow down the confirmation process of judges. I don't know why. I really do not understand. When we have a judge who is qualified, who is not controversial, why would we deny the judicial branch of government the judge it needs in order to carry out its responsibility? Why would we put people through this process of waiting for the Senate to confirm when it is clear the overwhelming majority is in support of the confirmation? I think Judge Davis presents an example. Let me try to put a face on it. You hear the numbers, you hear the statistics, but each one of those holds represents another person being denied the opportunity to serve as a judge.

Judge Davis has an extremely long and distinguished career in the Maryland legal community. He graduated from the University of Pennsylvania cum laude and with a JD degree from the University of Maryland School of Law, where he still teaches classes as a faculty member. He has been a judge on the District Court of Maryland since 1995 when he was confirmed by the Senate. He has had a long career—22 years—as a district court judge. He has presided over literally thousands of cases. Many of these have gone to verdict and judgment. His record is one which lawyers and his colleagues on the bench praise as being well balanced, as that of a judge who understands the responsibilities of the judicial branch of government. He tries to call the cases as the law dictates, and there is absolutely no blemish on his record as a trial court judge. He has been praised by lawyers in Maryland as smart, evenhanded, fair, and open-minded. He has received a “well qualified” rating from the American Bar Association Standing Committee on the Federal Judiciary. He will add diversity to the Fourth Circuit. When confirmed, he will be the third African-American judge to serve in the Fourth Circuit.

I bring to your attention and to the attention of my colleagues Judge Davis because we have to bring an end to these holds where a judge is being held not because he is controversial, not because there is a problem, not because you want additional information, but just to slow down the process. That is wrong. That is an abuse of the responsibilities of each one of us, of the power each Senator has. I think it is impor-

tant that we all speak out, whether Democrats or Republicans. It is just wrong. It is time to move these nominations to the floor of the Senate and to have votes up or down on these nominees.

I urge my colleagues to let us get on with the business we were elected to do, to advise and consent to the President's appointments. If we have a problem with an appointment, let's speak out against it and let's have that type of debate. But delay for delay's sake is not befitting the Senate. I urge my colleagues to allow these appointments to go forward with up-or-down votes on the floor of the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CARDIN. Mr. President, I ask unanimous consent that the final 30 minutes prior to the 2 p.m. vote be reserved for the chair and ranking member of the Judiciary Committee or their designees, with Senator LEAHY controlling the final 15 minutes.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Ms. STABENOW. Mr. President, I ask consent to speak as in morning business.

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

MEDICARE PHYSICIAN FAIRNESS ACT

Ms. STABENOW. Mr. President, I rise today to speak about a motion we will be voting on after the nomination that is currently before the Senate, and that is the motion to proceed to a very important bill for seniors on Medicare coverage, for the disabled, for those who are in our military and their families. It relates to the way we reimburse physicians under Medicare and under TRICARE. It is called the Medicare Physician Fairness Act.

This is an effort to eliminate what has become a very flawed formula for determining the payments for physicians under Medicare.

We, in fact, know it is flawed because in the last 7 years, the last seven times that proposals have come forward from this formula to cut physician pay under Medicare and TRICARE, this Congress has chosen to reject that recommendation, that cut.

We want to make sure seniors can have access to their doctors, that Medi-

care is a quality system that allows the kind of reimbursements so we can continue to have the quality of providers, physicians, and others we have today.

This bill, S. 1776, would allow us to do away with what has become a very flawed process. Every year we postpone the cuts that have been proposed because we know they are flawed. We know this time of year, if we do not take action, there would be a 21-percent cut in Medicare for physicians who serve our seniors and people with disabilities. Because Medicare and TRICARE are tied together, that cut would also affect our military men and women and their families and retirees from the military. So, of course, we do not want that to happen. We are not going to allow that to happen. But rather than every year—every year, every year—deciding at the last minute we are going to stop these devastating cuts, putting physicians in the situation where they are not sure how to plan, worrying our seniors, worrying those in our military and retired military personnel, now is the time to change the formula to stop it.

By doing that, by passing this legislation, we then set the stage for health care reform where, in fact, under health care reform, we have a different set of incentives. We focus on strengthening Medicare in a way that improves quality access for seniors. We focus on incentivizing prevention. We focus on incentivizing primary care doctors with a different system that will provide bonuses and payments for our primary care doctors.

So we have a new system. We have a new vision for strengthening Medicare, strengthening our health care system. But right at the moment, we also have this failed system in place that we are kind of stuck with unless we can say: We are done. We are going to start again. We are going to start from a different budget baseline, and then move forward on health care reform.

That is exactly what I have been wanting to do with this legislation. That is why I am so appreciative of the fact that our majority leader, Senator REID, understands and is committed to making this change. His commitment to Medicare, his commitment to our seniors, our military personnel, and to our physicians is the reason we are here today. So I am so grateful to him for all of his commitment and all of his work. But this needs to be changed right now.

As I indicated, we have a system that supports our Medicare system, covers seniors, the disabled. We also tie it to our military health care system, members of the U.S. military, surviving spouses, families, military retirees, and their families. All of them are extremely supportive. In fact, it is not an exaggeration to say this is a top priority, if not the top priority, of the AARP and those who advocate for seniors right now to give seniors the peace of mind to know they are going to be

able to have access to their doctors and that their doctors are going to have the resources they need to be able to treat them.

This bill would make sure that happened by rejecting what has been a failed system. We can go right on down the list. We not only have strong support from the American Medical Association and other physician groups but those who represent our military. Military officers and their families and retirees are extremely supportive.

I am very proud of the work that over 20,000 physicians in Michigan do every day providing to more than 1.4 million seniors and people with disabilities in Michigan the quality care they need and deserve.

We have over 90,000 TRICARE beneficiaries, men and women in our military, retirees who are receiving high-quality medical services in conjunction with the Medicare system. We are very proud of that, and we want to make sure we are maintaining that as well.

Let me go through again what we are trying to make sure we can fix. One, this legislation would repeal the current broken system. It would stop a 21-percent cut to our physicians under Medicare and TRICARE, which would be devastating. It would stop what is a Band-aid approach every year. We know we are going to fix it. We fix it every year individually for that year, always at the last minute.

It is time to change that process. I believe this is honest budgeting because we know we are not going to allow these cuts to take place. So we should do away with this process that even proposes these cuts every year and lay the foundation for real physician payment reform, which is in the legislation.

Let me share with you a letter from a medical clinic in southwest Michigan where physicians wrote to me.

Every year we have to wait to the last minute to see if the rates will get cut or fixed. This makes it impossible to budget and project for the next year. Especially for practices like ours, with nearly 50 percent of our patients are Medicare patients. With the uncertainty and the increases that we do get not keeping up with the cost of living, we have to err on the side of caution, which leads us to job cuts. Though we need the staff to provide the best patient care between Medicare and Medicaid we can't afford to keep them and stay in business. If the uncertainty continues we will be forced to re-evaluate our patient population as well, leaving the Medicare patients with no choices for the care that they need.

This is really the bottom line. We want to make sure physicians are fully participating in caring for our senior citizens, for people with disabilities in this country. We want to make sure Medicare is strong. We want to make sure we are protecting it going forward. In order to do that, we have to start from the premise that we will not be allowing these cuts or the possibility of these cuts to go forward year after year after year.

The vote we are going to have in front of us is a vote to proceed to the

bill. I know there are those with amendments they would like to offer. I would hope that we would see a strong bipartisan vote to simply go to this bill. I think the seniors of this country deserve that.

I think all of those who care about health care for our senior citizens and the disabled, our families, our military personnel deserve that; to have the opportunity to go to this bill, to be able to work on it together, and to be able to pass this bill and permanently solve this problem.

I am very grateful for the fact that the President of the United States not only supports this effort, his administration's budget, the budget he gave us at the beginning of this year, his very first budget, he put forward a budget that did not include going forward with the cuts in this flawed formula.

His budget baseline started from a premise that we would not be making these cuts going forward. I believe that is where we should be. We should be making sure we stop the Band-aid approach. Stop this effort that has gone on year after year and create an honest budgeting process so that we can make sure our seniors have confidence in the future; that they are going to be able to see their doctor under Medicare, and that physicians have the confidence of knowing they are supported by a strengthened Medicare system.

So I am very hopeful we will see a strong bipartisan vote to allow us to move to this very important measure to strengthen and protect Medicare of the future.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to declare to my colleagues that I intend to vote against cloture to proceed on the motion to proceed to this measure regarding the sustainable growth rate.

I want to explain why. I thank Senator STABENOW for her leadership, and to say this is one of those moments where substantially I agree with just about everything she had to say about the inadequacies of the sustainable growth rate formula which was put in in the late 1970s as part of what turned out to be a very effective attempt to bring fiscal responsibility, budget balancing, even a surplus.

Believe it or not, at the end of the Clinton administration, historians may note, perhaps people will forget, we actually had a Federal Government surplus. But it turned out that this sustainable growth rate formula for the reimbursement of doctors was not workable and unfair and has resulted in the refusal of a lot of doctors to treat patients under Medicare.

So why would I not vote for cloture to proceed to take up this matter, and then vote for it? It is because there are larger questions involved. In some sense, I think this is a precautionary tale, the vote on this matter. It is a precautionary tale of what we will face

in succeeding votes in the Senate and most immediately in the health care reform debate we will soon take up on the Senate floor.

We did not get into this terrible situation with our Federal deficit and debt because there were people in the House or in the White House over the last several years who had bad motives or bad values. In fact, in most of the cases, such as this, when money has been allocated, appropriated for programs, it has been done with the best of intentions. But the ultimate effect has been bad for our country and our future because it has put us into a position of national debt that is unsustainable, that threatens to cripple our economic recovery and burden our children and grandchildren and beyond so that they do not live in a country with the kind of economic dynamism and opportunity in which we were blessed to be raised.

In some sense, if I would be allowed to paraphrase, I would say the road to an unsustainable, damaging, American national debt is paved with good intentions, with votes for good programs. It just is time for us together, across party lines, to sound the alarm, blow the whistle, and make choices regarding priorities.

We cannot have, no matter how good or worthwhile, programs for which we are not prepared to pay. The numbers are stunning. I am privileged to be serving my 21st year in the Senate. The numbers of our Federal indebtedness today are so shockingly high that if you told me that 21 years ago or 10 years ago or even 5 years ago, I simply would not have believed it.

The fiscal year that ended on September 30, fiscal year 2009, we now know, learned about a week ago, America ran a deficit of \$1.4-plus trillion. We know America now has an accumulated long-term debt of \$12 trillion.

We know the Congressional Budget Office has projected that over the next 10 years, we will run deficits that will add \$9 trillion to the long-term debt. So \$12 trillion now, add \$9 trillion, and that is \$21 trillion of debt. It is unbelievable. We say it is unsustainable. That is a big word. What does "unsustainable" mean? It means that at some point this size debt is going to cripple the economic recovery that is just beginning. It is going to create hyperinflation because at some point people are going to stop buying our debt and we will have to raise interest to get more people to do so. At some point, if we don't fix this, the government is going to be left with no alternative but to print more money. That is the road to inflation, to lost jobs, and to a lower quality of life.

All these things we have done, which seemed necessary at the time, which are good, we have to pay for them or else this will not be the country we want it to be for succeeding generations. We are going to reach a point where we will not have the money to

do the first thing the Federal Government is supposed to do, which is to defend the security of the country, to provide for the common defense in what is, obviously, a dangerous world.

This is a precautionary tale, a precautionary vote. We are coming to a big debate on health care reform. I am for health care reform, but it is not the only thing I am for. In fact, at this moment in our history, it seems there are two things that matter more to our country than health care reform, although I wish we could do them all. One is to sustain the recovery from the deepest recession this country has had since the Great Depression of the 1930s. We are just beginning to crawl our way out of it. Gains in gross domestic product look as though they are coming, but it is fragile. It is not robust. Of course, almost 10 percent of the American people are out of work. In fact, it is higher than 10 percent. To me, the top priority we all should have—and I speak for myself—is to sustain the economic recovery to get people back to work, to keep our economy strong.

The second—and it is related to the first—is to begin to deal with the terrible imbalances in our Federal books that will compromise the economic recovery and cripple our economic future and the opportunity our children and grandchildren will have in the future. It means we have to make choices. In the coming health care debate, we have to make sure, as the President said, that there is not one dime added to the deficit as a result. We have to make sure that what we do within the context of health care reform not only doesn't increase the deficit and the long-term debt but doesn't add cost and increase premiums, for instance, on working people, middle-class families to pay for their health insurance and on businesses for which we need to provide every incentive to add workers, to grow, to sustain the recovery as it exists now.

Those are the standards I will apply to my own action on the health care reform proposal. I want to be for health care reform. I am for health care reform. I know the system needs to be changed. But this is a precautionary vote coming up because while the Medicare Physicians Fairness Act, which would repeal the sustainable growth rate formula, is substantively just, it is not paid for. It adds almost \$250 billion to the debt for the coming years. I don't think we can do that anymore.

I am relieved to know, in terms of the immediate impact of my vote against cloture on this matter, that if cloture is not obtained, the health care reform bill that came out of the Senate Finance Committee does take care of the problem with the sustainable growth rate for another year. That gives everybody—doctors and, most important, Medicare recipients—breathing room. We can't go on spending without paying for what we are spending, no matter how good or right it is,

because there is a greater harm being done to our country.

The speed with which this Medicare Physician Fairness Act has come to the floor and taking it out of health care reform where it certainly belongs is also a precautionary tale.

I have said I am against the public option for health care insurance, essentially a government-owned health insurance plan, one, because we believe in a market economy and a regulatory government. We believe a market economy is the best way to create economic growth and wealth. It serves the American people very well. We also know that a market economy of itself doesn't, as somebody long ago said, have a conscience. So the government sets rules. We have oversight. We have regulatory rules. We have antitrust laws, for instance. That is the way we maintain fairness in the economy, in the marketplace. I don't remember another case where our answer to a concern about fairness in the marketplace—in this case, whether there is real competition in the health insurance business, whether the health insurance companies are being fair in their rates, et cetera, which are all reasonable questions—I don't remember another case where the answer was to create a government-owned corporation to compete with the private sector.

I spent 6 great years serving as attorney general of Connecticut. We sued a lot of businesses for unfair trade practices, for bid rigging, for price fixing. We appeared before regulatory commissions on behalf of the people of the United States, all sorts of businesses. But nobody ever had the idea that instead of us doing that, we should create a government oil company, a government car company, a government company to sell automobiles, a government company to take care of roof contracting. I could go on and on. One of the reasons is, particularly now, I don't have confidence that we can discipline ourselves from making it into another cause of the skyrocketing Federal deficit.

This bill is evidence of that. Here is a good cause, a group we all respect, the doctors, saying: We need this 10-year fix to the problem. And we just did it. This really ought to be done as part of overall Medicare reform. We have to have a commission. We have to have some system to deal with the great threats to our economic future. Medicare is going to run out of money in 2017, 8 years from now. Social Security is already dipping into the trust funds, taking more out than we are getting in. It may change in a year or two, but that is the way it is.

With respect to the sponsors of this proposal, the Medicare Physician Fairness Act, the doctors' associations that I know would like us to vote for it, I think 1 year is enough; 1 year paid for is enough. To do more than that now is wrong and irresponsible, and therefore I will vote against the cloture motion

on the motion to proceed to the Medicare Physician Fairness Act.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I will vote against the motion to proceed. Before Senator LIEBERMAN leaves the floor, I want to say again, of all the people I have met in the Senate, he constantly amazes me, because there is no doubt he is doing this because he believes passionately that America is at a crossroads and this is making the problem worse, not better. I am on a bill with him—there are seven Republicans and seven Democrats—that is a comprehensive solution to our health care needs. It is the Wyden-Bennett bill. It mandates coverage, but we do it through the private sector.

I want colleagues to know that Senator LIEBERMAN has been constructive in trying to find a bipartisan compromise that will allow us to deal with health care inflation, which is a problem in the private sector. He practices what he preaches, trying to solve problems. As he explained it, the Senator from Mississippi and I were sitting here talking. There is not much of that around here in politics now, where one would come out and take on an issue that is being pushed by leaders of the Democratic Party. He is an independent Democrat, but he articulated the reason in a way most Americans really appreciate.

Doctors have a problem. In 1997, we tried to balance the budget with President Clinton, the Balanced Budget Act of 1997. When we looked at how we could sustain a balanced budget, we had to go to where the growth was in the budget. The big programs were Medicaid and Medicare, the entitlements. Eventually, those two programs will cost the equivalent of the entire Federal budget today in 20 or 30 years. If we want to balance the budget, we have to slow down entitlement growth.

Medicare is one of those programs that have grown dramatically. When it first came about, it was a \$4 billion safety net. They projected that Medicare would cost \$37 billion in 1990. It was like \$90-something billion. It is \$400 billion today. Those who designed the Medicare Program as a safety net for senior citizens without health care did a good thing, but from then until now, it has become a \$400 billion item that is eating up the entire budget.

In 1997, we recalculated the growth rates to be paid to doctors and hospitals. Since then, doctors and hospitals have been saying that we cut reimbursements to the point that they can't take Medicare and Medicaid patients and it is hurting their ability to stay in business. About 60 percent of their income comes from the Federal Government. I don't doubt that is true. What we did is just nickel and dime doctors and hospitals and never reform Medicare.

So Senator LIEBERMAN is right. To help doctors and hospitals and the

country achieve a balanced budget, we will have to fundamentally reform Medicare, and the doctor fix should be part of that effort.

What we are doing here is making a promise we can't afford to pay. We are going to tell the doctors: Don't worry ever again about Medicare reimbursements being cut because for a 10-year period, we are going to hold you harmless.

That is beyond cynical. We need to look at the doctor fix in terms of comprehensive Medicare reform. It is a \$245 billion item designed to get the medical community to support the leadership version of health care. It is transparent. It is wrong. It is bad politics. It is bad policy. I hope my colleagues will reject it.

The bill coming out of the Finance Committee—and I congratulate Senators who are trying to fix health care because it needs to be fixed—is about an \$800 billion expenditure, a little bit more. It is revenue neutral over a 10-year period because it is going to be paid for. Four hundred billion in Medicare cuts are part of the payoff, the pay-fors.

How do we take \$800 billion of expense and make it revenue neutral? We offset it. One of the offsets is a \$400 billion-plus reduction in Medicare spending over a 10-year window. I argue that not only is that not going to happen because the Congress hasn't reduced Medicare spending anywhere near that, it is just politically not going to happen. Two years ago, we tried to slow down the growth of Medicare to \$33.8 billion over a 4- or 5-year period and got 24 votes. If colleagues think this Congress is going to have the political will and courage to reduce Medicare by \$400 billion over 10 years, show me in the past where we have had any desire to do that.

The doctors fix is the best evidence yet of what will come in the future. We are contemplating doing away with the reduction in physician payments that was part of the balanced budget agreement because our medical community has been hit hard and is complaining. Look at the \$400 billion. Do we think if people are going to be on the receiving and of a \$400 billion cut over a period of time, they are going to accept it happily? Do you think they are not going to complain? What do you think we are going to do when one group of the medical community or the insurance community says, "You are putting me out of business."

These \$400 billion cuts are never going to happen because, you see, with the doctors fix, where every year we relieve the doctors from the imposition of that agreement in 1997—and in many ways we should because the 1997 agreement was not comprehensive—but to those who believe we are going to cut \$400 billion in Medicare, have the courage to tell the doctors we are going to do to them what we said we would do back in 1997. Nobody wants to do that, and I am sympathetic as to why we do

not want to do that because we are asking too much of doctors and hospitals and we did not reform the system as a whole.

Mr. President, \$245 billion added to the debt is no small thing. What I hope will happen is we can find a bipartisan pathway forward on health care reform that deals with inflation, deals with better access to preventive medicine, has some medical liability reform, is truly comprehensive, with give-and-take, and mandates coverage. I am willing to do that as a Republican. But if we go down the road our leadership has set for us here and basically tell the doctors "Don't worry anymore, you are going to be held harmless for the next 10 years," then what group will follow who will want the same deal and to whom will we begin to say no? I do not know. I do not know to whom we will have the ability to say no if we do this. And if you say no to them, what the heck do you tell them—"You are not a doctor, so it does not matter what we do to your business."

If we do this, we have lost the ability, in my view, to provide the necessary solutions to the hard problems facing the country. We will have given in to the most cynical nature of politics. We will have destroyed our ability to engage with the public at large in a credible way to fix hard problems. And when it comes time to ask people to sacrifice, they are going to look at us and say: What do you mean "sacrifice?" Aren't you the people who just basically wiped out what the doctors had to do because you were afraid of them?

I am not afraid of doctors. God bless them. I am glad we have them. What we have done in the name of reform has been unfair because we picked on them and not the system as a whole. So to the doctors out there, LINDSEY GRAHAM gets it, that your reimbursement rates as they exist today under Medicare make it very difficult for you to do business. But I hope you will understand that my obligation is beyond just to the doctors in South Carolina; it is to what Senator LIEBERMAN said: the next generation as well as to the here and now.

Every politician has a problem: How do you affect the here and now, people who can vote for you, and how can you secure the future? Well, you just have to ask the people who are here and now to be willing to make some changes for the benefit of the country long term. I am confident that if we ask and we do it in a smart way, people will join with us. I want to give the doctors better reimbursement rates, and the only way we can achieve that is to reform Medicare from top to bottom and make it more efficient.

One of the things I am willing to do is ask a person like myself to pay more. As a Senator, I make about \$170,000 a year. I am not saying we are worth it, but that is what we pay ourselves. I would like to think we earn our money because it is not an easy

job, but there are a lot of jobs harder than being a Senator, I can assure you. But right now, the system we have to fund Medicare, the trust fund, will run out of money in about 4 years. But basically I am paying the same amount for Part B premiums that cover doctors and hospital payments out of Medicare as my aunt and uncle who worked in the textile mill and made \$25,000 a year. I am willing for people like myself to have to pay more to keep Medicare solvent.

We are making some changes but not nearly enough. Mr. President, \$3 out of \$4 of Medicare spending comes from the General Treasury, the taxpayers. One-fourth of the money to cover Medicare expenses comes from the patient population being served. There are plenty of Americans who are paying about \$100 a month once they get into retirement who can afford to pay \$450 a month for the Medicare services they receive. Nobody is asking them to do it. I am willing to ask, and I am willing to do it myself. It is those types of changes that will lead this country to a brighter future and will correct the imbalance we have.

Finally, Medicare is \$34 trillion underfunded. If you had \$34 trillion sitting in an account today, it would earn interest over 75 years. You would need all the money—the \$34 trillion plus the interest—to make the payments we have promised people in the future.

When I was born in 1955, there were 16 workers for every retiree. Today there are three, and in 20 years there will be two. There will be two workers paying into the Social Security and Medicare trust funds where there used to be 16 when I was born. There are more baby boomers retiring every day than anyone ever anticipated. We are living far beyond 65.

The question for the country is, Will people in my business go to you, the public, and say change is required? We cannot run the system assuming things that do not exist. We have to come to grips with the fact that we have an aging population, we live longer, there are more retirees than ever, and there are fewer workers. Once we come to grips with that dynamic and ask those who can afford to give, to give—hold those harmless who cannot afford to give—America's best days are ahead.

If we do not reform these systems and we continue to do what is being proposed today—try to buy a constituency off: Doctors, we will fix your problem if you will support our bill; the \$254 billion it will cost to get you onboard, do not worry about it.

To the doctors who may be listening, you better worry about it. You need to worry about not only the viability of your medical practice but the ability of your government to make payments it has promised to the next generation, the ability of your government to be able to continue to operate, the ability of our country to pass on to the next generation a sound and secure America.

We are about to borrow ourselves into oblivion. There is a theory out there, long held, that democracies are doomed to fail because democracies over time will lose the ability to say no to themselves; that we in the government will continue to grow the government based on the needs of the next election cycle and make promises that make sense for our political future but really over time are unsustainable. We have reached that point, and we are about to go over the edge.

The only way America can self-correct is to make sure our political leadership is rewarded when we ask for change we can believe in. This is not change we can believe in. This is the old way of doing business. This is buying off a constituency that is important for the here-and-now debate of health care and not giving a damn about the consequences to the country down the road. This is how we got in this mess.

If we pass this bill, not only have we destroyed this new hope from a new President of "change we can believe in," we will have reinforced the worst instincts of politics, sold the country short, and made it impossible to say no to the next group we want to sacrifice who needs to help us solve this problem.

With that, I yield back.

I 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.

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

Mr. GRASSLEY. 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.

MEDICARE PHYSICIAN PAYMENT SYSTEM REFORM

Mr. GRASSLEY. Mr. President, reforming the Medicare physician payment system is one of the most difficult issues we face in Medicare today. The name of the formula is the sustainable growth rate. Generally around here we refer to that as the SGR. It is the formula for the reimbursement of doctors under Medicare. It was designed in the first instance to control physician spending and to determine annual physician payment updates by means of a targeted growth rate system. The SGR is not the only problem with the Medicare physician payment system. Everyone who knows anything about physician payments and Medicare knows that this SGR formula is not working. It is a fee-for-service system that rewards volume instead of quality or value. This means that Medicare simply pays more and more as more and more procedures and tests and services are provided to patients. Providers who offer higher quality care at a lower cost get paid less. Somehow, it is a backward system, a perverse sys-

tem. It is one of the driving forces behind rising costs and overutilization of health care, particularly in some parts of the United States.

In addition, the sustainable growth rate formula itself is flawed. The SGR is designed to determine annual physician payment updates by comparing actual expenditures to expenditure targets.

The purpose of the SGR was to put a brake on runaway Medicare spending. The SGR was intended to reduce physician payment updates when spending exceeded growth targets. In recent years, Medicare physician spending has exceeded those SGR spending targets. That has resulted, naturally, in physician payments being cut. As the magnitude of these payment cuts has increased over time, Congress has stepped in to avert these scheduled cuts in reimbursement to doctors.

In a roundabout way, the SGR has been serving its purpose. Numerous improvements in Medicare payments in other areas have been implemented over the years to offset or to pay for the various so-called doc fixes we have had to do and generally do them on an annual basis. Presently they are done on an 18-month basis, expiring December 31 this year.

We should, in fact, be reforming physician payments. That is why I supported the SGR amendments offered by my colleague, the Senator from Texas, during the Senate Finance Committee markup that concluded 8 days ago. Those amendments would have provided a fully offset, positive physician update for the next 2 years. And if we erroneously take up a debate on this flawed Stabenow bill, I will have an alternative to offer with my good friend, the chairman of the Senate Budget Committee, Senator CONRAD. A Conrad-Grassley amendment would be a bipartisan approach to this.

Realigning incentives in the Medicare Program and paying for quality rather than quantity of services is, of course, an essential part of physician payment reform. But as fundamentally flawed as the physician payment system is, S. 1776, the bill before us, is just as fundamentally flawed. S. 1776 would add—can my colleagues believe this—a \$¼ trillion cost to the national debt. A quarter of a trillion, obviously, is \$250 billion. But worse yet, it does not fix the problems we have with the physician payment system. It simply gives a permanent freeze to those payments. The American Association of Neurological Surgeons and the Congress of Neurological Surgeons oppose the Stabenow bill for precisely that reason, and I applaud them for having the courage to say so.

My esteemed colleague, the majority leader, claims this bill has nothing to do with health reform. I think it has everything to do with health reform. He says the \$247 billion cost of this bill is just correcting, in his words, "payment discrepancy;" merely, in his words, "a budgetary problem," a prob-

lem that needs to be fixed. But I don't believe anybody is going to buy that argument, not even the Washington Post. I have here a recent editorial. They said:

\$247 billion . . . is one whopper of a discrepancy.

S. 1776 isn't being offered to fix a budget payment discrepancy, it is being offered as one whopper of a backroom deal to enlist the support of the American Medical Association for a massive health reform bill that is being written behind closed doors.

Nobody is being fooled about what is going on in this body, the most deliberative body in the world, the Senate.

When President Obama spoke to a joint session of Congress last month—the week after we came back from our summer break—he made a commitment to not add one dime to the deficit now or in the future. Those are his words, not mine. But as this Washington Post editorial notes, S. 1776 would add 2.47 trillion dimes to the deficit.

We go to chart 2 now. That would be 2.47 trillion dimes, enough to fill the Capitol Rotunda 23 times.

Now we have chart 3. I wholeheartedly agree with the editorial's conclusion. The Post editorial said:

A president who says that he is serious about dealing with the dire fiscal picture cannot credibly begin by charging this one to the national credit card . . .

This quote is highlighted out of that same editorial.

The Office of Management and Budget and the Treasury Department announced that the fiscal year 2009 deficit hit a record of \$1.4 trillion. According to the Government Accountability Office, public debt is projected by the year 2019 to surpass the record that was set in 1946, 1 year after the end of World War II. That debt was attributable to the war, which was the war to save the world for democracies because of the dictatorial governments of Italy, Germany, and Japan, as we recall from history.

There is no doubt that fixing the flawed physician payment system is something that must be addressed. But the problem—this problem—with the physician payments is one of the biggest problems in health care that needs fixing. But at a time when the budget deficit has reached an alltime high of \$1.4 trillion, this situation demands fiscal discipline.

As the Washington Post has correctly pointed out, S. 1776 is, indeed, a test of the President's pledge to pay for health care reform.

Repealing the SGR without any offsets, as S. 1776 would do, is a flagrant attempt to try and hide the true cost of comprehensive health care reform.

Let me suggest to the American people that bill, comprehensive health care reform—at least the one that came out of the Senate Finance Committee—is thick, at 1,502 pages that we all are committed to reading before it goes to the floor. That bill, of course,

will not go to the floor because now it is being merged in secrecy with the Senate HELP Committee bill, and so it may come out thicker. Who knows. We are talking about a great deal of cost connected with that and the SGR fix being connected with that as well.

We have in the Senate Finance Committee bill, that was reported out, significant payment system reform. That bill takes savings of almost $\frac{1}{2}$ trillion to fund a new entitlement program outside Medicare. The priority for Medicare savings should be fixing Medicare problems, and the physician payment issue and the SGR is the biggest payment system problem in Medicare today. It should get fixed in health care reform with those Medicare savings.

I must, therefore, object not to fixing the SGR and improving the system for physician payments—which clearly must be done—but to this very flawed bill. It is only a permanent payment freeze. It does not fix the problem. It is not paid for. It should be a part of health care reform. It adds $\frac{1}{4}$ trillion to the deficit. It is one whopper of a discrepancy. It is not credible.

I urge my colleagues to oppose cloture on this train wreck of a bill.

I yield the floor and, since I do not see any of my colleagues waiting to speak, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BEGICH). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, today, the Senate will finally consider the nomination of Roberto A. Lange to the District of South Dakota. It has been 3 weeks since Mr. Lange's nomination was unanimously reported by the Judiciary Committee to the Senate. It should not take 3 weeks to confirm a consensus nominee. I will be interested to hear from Senate Republicans who have stalled this confirmation for the last 3 weeks why they did so.

There are 10 other judicial nominations reported favorably by the Judiciary Committee to the Senate that remain pending without consent from Senate Republicans to proceed to their consideration. These are 10 other judicial nominations on the Senate Executive Calendar awaiting action and being stalled by Republican holds. All 10 were reported favorably by the Senate Judiciary Committee. Two were reported in June and have been waiting for more than 4 months for Senate consideration. These are things that we have always done by voice vote when there is no controversy.

It is not only a dark mark on the Senate for holding us up from doing our work, but it means that the nominees have their lives on hold. They have been given this nomination, and

everything has to come to a stop. They know they are going to be confirmed. They know that whenever the Republicans allow a vote, it will be virtually unanimous. It makes the Senate look foolish, and I wish my colleagues would allow these people to move quickly.

The American Bar Association's Standing Committee on the Federal Judiciary reported that its peer review of the President's nomination of Mr. Lange resulted in the highest rating possible, a unanimous rating of well qualified. His nomination has the support of both home State Senators, Senator JOHNSON, a Democrat, and Senator THUNE, a Republican, and was reported out of the Judiciary Committee by unanimous consent on October 1. I expect the vote on the President's nomination of Mr. Lange to be overwhelmingly in favor, as was the 99-0 vote for the only other district court confirmation so far this year, that of Judge Viken. I will be listening intently to hear why then Senate Republicans—despite the support of Senator THUNE, the head of the Republican Policy Committee and a member of the Senate Republican leadership—have stalled this confirmation needlessly for 3 weeks.

This is one of the 13 judicial nominations reported favorably by the committee to the Senate since June to fill circuit and district court vacancies on Federal courts around the country. Ten of those nominations were reported without a single dissenting voice. This is unfortunately only the third of those judicial nominations to be considered all year.

It is October 21. By this date in the administration of George W. Bush, we had confirmed eight lower court judges. By this juncture in the administration of Bill Clinton, we had likewise confirmed eight circuit and district court nominations. The Senate has confirmed just three circuit and district court nominees this year less than half of those considered by this date during President Bush's tumultuous first year in office and confirmed by this date during President Clinton's first year. This is despite the fact that President Obama sent nominees with bipartisan support to the Senate two months earlier than did President Bush. Moreover, President Clinton's term also began with the need to fill a Supreme Court vacancy.

The first of these circuit and district court confirmations this year did not take place until September 17, months after the nomination of Judge Gerard Lynch had been reported out of committee with no dissent. Finally, after months of needless delay, the Senate confirmed Judge Lynch to serve on the Second Circuit by an overwhelming vote of 94 to 3. That filled just one of the five vacancies this year on the Second Circuit. The Second Circuit bench remains nearly one-quarter empty with four vacancies on its 13-member bench.

Judge Viken, the first of just two district court judges the Senate has been allowed to vote on this year, was con-

firmed on September 29, by a unanimous 99-0 vote. Today, the Senate is finally being allowed by Republicans to vote to confirm Roberto Lange, who was reported by the committee on October 1. It took 3 weeks to proceed to Mr. Lange's nomination despite the fact that he, like Judge Viken, had the support of both his home State Senators, one a respected Democratic Senator and the other a Republican Senator who is a member of the Republican Senate leadership.

South Dakota has had its two vacancies filled this year but vacancies in 35 other States remain unfilled and the Senate's constitutional responsibilities are going unfulfilled. There was—there is—no reason for the Republican minority to impose these unnecessary and needless delays to judicial confirmations. When will Senate Republicans allow the Senate to consider the nominations of Judge Hamilton to the Seventh Circuit, Judge Davis to the Fourth Circuit, Judge Martin to the Eleventh Circuit, Judge Greenaway to the Third Circuit, Judge Berger to the Southern District of West Virginia, Judge Honeywell to the Middle District of Florida, Judge Nguyen to the Central District of California, Judge Chen to the Northern District of California, Ms. Gee to the Central District of California and Judge Seeborg to the Northern District of California?

In a recent column, Professor Carl Tobias wrote:

President Obama has implemented several measures that should foster prompt appointments. First, he practiced bipartisanship to halt the detrimental cycle of accusations, countercharges and non-stop paybacks. Moreover, the White House has promoted consultation by seeking advice on designees from Democratic and GOP Senate members, especially home state senators, before official nominations. Obama has also submitted consensus nominees, who have even temperaments and are very smart, ethical, diligent and independent.

I ask unanimous consent that a copy of Professor Tobias's column be printed in the RECORD following my statement.

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

(See Exhibit 1.)

Mr. LEAHY. When I served as chairman of the Senate Judiciary Committee during President Bush's first term, I did my best to stop the downward spiral that had affected judicial confirmations. Throughout my chairmanship I made sure to treat President Bush's judicial nominees better than the Republicans had treated President Clinton's. During the 17 months I chaired the Judiciary Committee during President Bush's first term, we confirmed 100 of his judicial nominees. At the end of his Presidency, although Republicans had chaired the Judiciary Committee for more than half his tenure, more of his judicial nominees were confirmed when I was the chairman than in the more than 4 years when Republicans were in charge.

In spite of President Obama's efforts, however, Senate Republicans began

this year threatening to filibuster every judicial nominee of the new President. They have followed through by dragging out, delaying, obstructing and stalling the process. The result is that 10 months into President's Obama's first term, the Senate has confirmed only three of his nominations for circuit and district courts while judicial vacancies skyrocket around the country. The delays in considering judicial nominations pose a serious problem in light of the alarming spike in judicial vacancies on our Federal courts.

There are now 96 vacancies on Federal circuit and district courts and another 24 future vacancies already announced. These vacancies are at near record levels. Justice should not be delayed or denied to any American because of overburdened courts. We can do better. The American people deserve better.

Professor Tobias' observations about the Second Circuit hold true throughout the country and with respect to this President's efforts to work cooperatively with respect to judicial nominations. President Obama made his first judicial nomination, that of Judge David Hamilton to the Seventh Circuit, in March, but it has been stalled on the Executive calendar since early June, despite the support of the senior Republican in the Senate, Senator LUGAR. The nomination of Judge Andre Davis to the Fourth Circuit was reported by the committee on June 4 by a vote of 16 to 3, but has yet to be considered by the Senate. The nomination of Judge Beverly Baldwin Martin to the Eleventh Circuit has the support of both of Georgia's Senators, both Republicans, and was reported unanimously from the committee by voice vote on September 10 but has yet to be considered or scheduled for consideration by the Senate. The nomination of Joseph Greenaway to the Third Circuit has the support of both Pennsylvania Senators, and was reported unanimously from the committee by voice vote on October 1, but has yet to be considered or scheduled for consideration by the Senate. All of these nominees are well-respected judges. All will be confirmed, I believe, if only Republicans would consent to their consideration by the Senate. Instead, the President's good efforts are being snubbed and these nominees stalled for no good purpose.

President Obama has been criticized by some for being too solicitous of Senate Republicans. As Wade Henderson, the executive director of the Leadership Conference on Civil Rights, said to *The Washington Post* recently: "I commend the President's effort to change the tone in Washington. I recognize that he is extending an olive branch to Republicans on the Judiciary Committee and in the Senate overall. But so far, his efforts at reconciliation have been met with partisan hostility." As usual, Wade has it right. The efforts the President has made have not been reciprocated.

The Senate can and must do a better job of restoring our tradition of regularly considering qualified, non-controversial nominees to fill vacancies on the Federal bench without needless and harmful delays. This is a tradition followed with Republican Presidents and Democratic Presidents. We should not have to overcome filibusters and spend months seeking time agreements to consider consensus nominees.

In addition, four nominations to be Assistant Attorneys General at the Department of Justice remain on the Executive calendar, three of them for many months. Republican Senators have also prevented us from moving to consider the nomination of respected Federal Judge William Sessions of Vermont to be Chairman of the United States Sentencing Commission for over 5 months, even though he was twice confirmed as a member of that Commission. The majority leader has been forced to file a cloture motion in order to end the obstruction of that nomination.

Four out of a total of 11 divisions at the Department of Justice remain without Senate-confirmed Presidential nominees because of Republican holds and delays—the Office of Legal Counsel, the Tax Division, the Office of Legal Policy, and the Environment and Natural Resources Division. Earlier this month, with the hard work of Senator CARDIN, we were finally able to move forward to confirm Tom Perez to head the Civil Rights Division at the Justice Department. His nomination was stalled for 4 months, despite the fact that he was approved 17 to 2 by the Judiciary Committee. At the last minute, Senate Republicans abandoned an ill-fated effort to filibuster the nomination and asked that the cloture vote be vitiated. He was finally confirmed with more than 70 votes in the Senate.

During the 17 months I chaired the Judiciary Committee during President Bush's first term, we confirmed 100 of his judicial nominees and 185 of his executive nominees referred to the Judiciary Committee. And yet 10 months into President's Obama's first term, we have confirmed only 2 of his nominations for circuit and district courts and 40 of the executive nominees that have come through our committee.

I hope that, instead of withholding consents and filibustering President Obama's nominees, the other side of the aisle will join us in treating them fairly. We should not have to fight for months to schedule consideration of the President's judicial nominations and nomination for critical posts in the executive branch.

I look forward to congratulating Mr. Lange and his family on his confirmation today. I commend Senator JOHNSON for his steadfastness in making sure his State is well served.

EXHIBIT 1

COMMENTARY: SECOND CIRCUIT APPEALS COURT OPENINGS NEED TO BE FILLED

(By Carl Tobias)

The country's attention was recently focused on the Senate confirmation vote for U.S. Second Circuit Court of Appeals Judge Sonia Sotomayor, President Barack Obama's initial Supreme Court nominee and judicial appointment. This emphasis was proper because the tribunal is the highest court in the nation and decides appeals involving fundamental constitutional rights.

Nonetheless, the same day that Justice Sotomayor received appointment, Second Circuit Judge Robert Sack assumed senior status, a type of semi-retirement, thereby joining his colleague, Guido Calabresi, who had previously taken senior status. Moreover, on Oct. 10, Judge Barrington Parker also assumed senior status. These developments mean that the Second Circuit will have vacancies in four of its thirteen authorized judgeships.

Operating without nearly 25 percent of the tribunal's judicial complement will frustrate expeditious, inexpensive and equitable disposition of appeals. Thus, President Obama should promptly nominate, and the Senate must swiftly confirm, outstanding judges to all four openings.

The numerous vacancies can erode the delivery of justice by the Second Circuit, which is the court of last resort for all but one percent of appeals taken from Connecticut, New York and Vermont. The tribunal resolves more critical business disputes than any of the 12 regional circuits and decides very controversial issues relating to questions, such as free speech, property rights and terrorism.

Among the appellate courts, the Second Circuit needs more time to conclude appeals than all except one, which is a useful yardstick of appellate justice. The August loss of two active judges and the October loss of a third will exacerbate the circumstances, especially by additionally slowing the resolution of cases that are essential to the country's economy.

There are several reasons why the tribunal lacks almost one quarter of its members. Judge Chester Straub took senior status in July 2008, and President George W. Bush nominated Southern District of New York Judge Loretta Preska on Sept. 9 after minimally consulting New York's Democratic Senators Charles Schumer and Hillary Clinton. September was too late in a presidential election year for an appointment, and the 110th Senate adjourned without affording the nominee a hearing.

Moreover, President Obama has nominated no one for the Calabresi or Sack opening, although both jurists announced that they intended to take senior status last March. In fairness, Judge Calabresi did not actually assume senior status until late July, while Judge Sack only took senior status and Justice Sotomayor was confirmed in August.

President Obama has implemented several measures that should foster prompt appointments. First, he practiced bipartisanship to halt the detrimental cycle of accusations, countercharges and non-stop paybacks. Moreover, the White House has promoted consultation by seeking advice on designees from Democratic and GOP Senate members, especially home state senators, before official nominations. Obama has also submitted consensus nominees, who have even temperaments and are very smart, ethical, diligent and independent. The Executive has worked closely with Senator Patrick Leahy (D-Vt.), the Judiciary Committee chair, who schedules hearings and votes, and Senator Harry Reid (D-Nev.), the Majority Leader, who arranges floor debates and votes, and

their GOP counterparts to facilitate confirmations.

Emblematic is the President's nomination of U.S. District Judge Gerard Lynch, who served with distinction on the U.S. District Court for the Southern District of New York since 2000. New York Democratic Senators Schumer and Kirsten Gillibrand expeditiously suggested the superb trial judge to Obama, who nominated Lynch on April 2. By mid-May, the panel conducted Lynch's confirmation hearing, and on June 11, the committee approved Lynch. In mid-September, the Senate confirmed Lynch on a 94-3 vote.

Senator Schumer's Sept. 9 announcement that he had recommended District Judge Denny Chin to the White House and the jurist's Oct. 6 nomination are precisely the correct approaches. The New York and Connecticut senators must continue suggesting excellent candidates for the three Second Circuit openings which remain. Obama must swiftly consider their proposals and nominate outstanding prospects. The Judiciary Committee should promptly afford hearings and votes, while the Majority Leader ought to expeditiously schedule floor debates and votes.

Judge Sotomayor's Supreme Court elevation, the assumption of senior status by Judges Calabresi, Parker and Sack and Judge Lynch's recent Senate confirmation mean there are four openings in the Second Circuit's thirteen judgeships. President Obama should cooperate with the Senate to quickly fill the vacancies with superior judges, so that the tribunal can deliver appellate justice.

Mr. LEAHY. Mr. President, I ask unanimous consent that my further remarks be charged against my time in connection with this nomination.

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

(The remarks of Mr. LEAHY are printed in today's RECORD under "Morning Business.")

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I wish to briefly make a few comments about the confirmation vote we will soon be having on supporting this nominee. I saw him, as a member of the Judiciary Committee, and we made inquiry of him. I liked him. He handled himself well.

He has been a strong and ardent Democrat all his life—an active Democrat. He was educated, I believe, at the University of South Dakota and has practiced law a long time there. I think he has the ability and the commitment—he said he did and I believe him—not to allow his politics to influence his decisionmaking once he puts on that robe; that he will be objective and fair; that he will comply with the oath a judge takes to be impartial; that he will provide equal justice for the poor and the rich; and that he will serve the laws of the United States under the Constitution. So we moved

him forward, and I am glad he will be confirmed.

I will note that some nominees I will not be able to support, and I would expect some others may object as well. It is our responsibility to be careful and to be cautious in making decisions about judges because they are given a lifetime appointment. They can't be removed for bad decisionmaking. I believe the President has submitted two more nominees to the district bench. There are 74 vacancies in the Federal courts in America as of today. A few days ago, there were 9 nominations pending—this is 1 of them—and now there are 11 nominations, I understand, pending.

As the President gets his machine up and running and starts submitting nominees, I think we will have good hearings. My view is that if they are qualified, it doesn't make any difference to me if they are an active, partisan, campaigning Democrat. That is fine. The question simply is, once they put on the robe and they are required to decide cases, can they put aside their personal feelings, backgrounds, emotions, and partisanship? Most judges can.

I practiced in Alabama, where judges run on a party ticket. They run as Republicans and Democrats. Everybody knows which of them—very few—carry those biases with them.

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

Mr. SESSIONS. I thank the Chair, and I urge my colleagues to support the nomination.

The PRESIDING OFFICER. (Mr. UDALL of New Mexico.) The question is, Will the Senate advise and consent to the nomination of Roberto A. Lange, of South Dakota, to be United States District Judge for the District of South Dakota?

Mr. SESSIONS. 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.

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

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 324 Ex.]

YEAS—100

Akaka	Carper	Gillibrand
Alexander	Casey	Graham
Barrasso	Chambliss	Grassley
Baucus	Coburn	Gregg
Bayh	Cochran	Hagan
Begich	Collins	Harkin
Bennet	Conrad	Hatch
Bennett	Corker	Hutchison
Bingaman	Cornyn	Inhofe
Bond	Crapo	Inouye
Boxer	DeMint	Isakson
Brown	Dodd	Johanns
Brownback	Dorgan	Johnson
Bunning	Durbin	Kaufman
Burr	Ensign	Kerry
Burriss	Enzi	Kirk
Byrd	Feingold	Klobuchar
Cantwell	Feinstein	Kohl
Cardin	Franken	Kyl

Landrieu	Murray	Specter
Lautenberg	Nelson (NE)	Stabenow
Leahy	Nelson (FL)	Tester
LeMieux	Pryor	Thune
Levin	Reed	Udall (CO)
Lieberman	Reid	Udall (NM)
Lincoln	Risch	Vitter
Lugar	Roberts	Voivovich
McCain	Rockefeller	Warner
McCaskill	Sanders	Webb
McConnell	Schumer	Whitehouse
Menendez	Sessions	Wicker
Merkley	Shaheen	Wyden
Mikulski	Shelby	
Murkowski	Snowe	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The Republican leader is recognized.

MEDICARE PHYSICIAN PAYMENTS

Mr. McCONNELL. Mr. President, I am going to take a moment of my leader time. Americans are increasingly alarmed by the expansion of our national debt and this spending binge we are putting on the national credit card. They are asking us to do what they have been doing. They want us to take out our scissors and cut the credit card. They want us to live within our means so their children and their grandchildren do not wake up in the morning to find the American dream buried under an avalanche of debt.

Our fiscal situation has simply spiraled out of control. Yet the proponents of this measure want to put another quarter of a trillion dollars on the Federal credit card. Republicans offered a series of fiscally responsible ways to prevent pay cuts to our physicians. That was not agreed to.

Let me remind everybody, we are in very dangerous territory. I am going to vote against this deficit-expanding bill because enough is enough. I hope, on a bipartisan basis, we will send a message to the American people that we do not intend to charge from \$¼ trillion to \$300 billion on the nation's credit card by approving this measure.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, we have been aware of the fact that because of activities and actions of the Republican-dominated Washington for a number of years, that the doctors who take Medicare patients have been hammered so hard that not all doctors take Medicare patients.

We want senior citizens, Medicare recipients, to be able to go a doctor. We do not want all of those folks going to Medicare Advantage. We want Medicare to survive as a program.

Because people who ran this town for a number of years did not like Social Security, tried to privatize that, did