

State we have honest farmers who work very hard to make a living.

I believe, with the restitution study language, and with the adoption of the Tester-Hagan amendment, this food safety bill strikes the right balance between protecting the public health from foodborne illnesses while ensuring our Nation's farmers can continue to feed Americans.

# RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 3 p.m.

Thereupon, the Senate, at 12:33 p.m., recessed until 3 p.m. and reassembled when called to order by the Presiding Officer (Mr. FRANKEN).

## FDA FOOD SAFETY MODERNIZATION ACT—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Oklahoma.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. The Senate is not in a quorum call right now.

Mr. COBURN. Oh, very good. Then I withdraw my request and ask that I might be recognized.

The PRESIDING OFFICER. The Senator is recognized.

Mr. COBURN. Thank you, Mr. President. I wish to spend a few minutes discussing the bill that is before us. Having been a manufacturing manager for 10 years, producing products that came through the medical device industry, and having dealt with the FDA as a manufacturer and then having dealt with the FDA and the consequences of the FDA as a physician over the last 25 years and then looking at this bill that is on the floor today, I think it addresses three things I have talked about, especially in Oklahoma over the last year.

Everybody recognizes this Nation is at a critical point—fiscally, internationally. From the standpoint of foreign policy, it has been impacted by our fiscal problems. But there are three structural reasons why I think we are there, and I think we need to learn from them. This bill provides us a great example.

The first is, as a physician—and I knew it as a business manager—you have to fix real problems. If you fix the symptoms that have been created or the circumstances that have been created by the real problems, you will make things better for a while, but you actually will not solve the underlying problem. What happens when you do not solve the underlying problem and fix the symptoms is, you delay the time and you also increase the consequences of not fixing the real problems.

Second, if you only think short term, you do not have the planning strategy with which to do the best, right thing

in the long term. We consistently do that in Washington. Consequently, the CBO put out the unfunded liabilities for Medicare, Medicaid, and Social Security yesterday. It is now \$88.9 trillion. It was \$77 trillion last year. It was \$63 trillion the year before. So we are up \$26 trillion in unfunded liabilities that we are going to pass on to our kids in 3 years because we continue to think short term instead of long term.

Then, the fourth thing is to have the courage to stand and say: No, we should not do things that address the symptoms; we should address the underlying problems. No, we should not think short term or parochially; we should think long term and address that issue.

As to the food safety bill, all my colleagues are very well intended in terms of what they are trying to accomplish with it. But there are some facts we ought to be realistic about. We could spend \$100 billion additionally every year and not make food absolutely safe. There are diminishing returns to the dollars we spend. But if you look at what the case is: In 1996, for every 100,000 people in this country, we had 51.2 cases of foodborne illness—the best in the world, by far. Nobody comes close to us in terms of the safety of our food. But, in 2009, we only had 34.8 cases—three times better than anybody else in the world. So the question has to be asked: Why are we doing this now when, in fact, we are on a trendline to markedly decrease it? The second question that should be asked is: No matter how much money we spend, is there a diminishing return?

There are a lot of things in this bill that I agree with—a lot. I think foreign food ought to be inspected before it comes into this country and I think those who want to sell products in this country ought to have to demonstrate the quality of it and I think the cost of that ought to be on the person selling the food, not on the American taxpayer. But ultimately that cost will be added to the cost of the food.

I think the recognition of peanut allergy is a realistic one, and I understand the purpose for wanting a grant for that. But as I read the Constitution, that is a State function. That is not our function. The other thing that bothers me about the grant proposals—I walked out of the deficit commission to come over here. I have spent 8 months in that commission looking at the problems in front of this country. We cannot afford another grant program. We do not have the money.

So we can say we are going to authorize it in this bill, but, do you know what, it is not going to get funded next year because we do not have the money. When the interest rates skyrocket in less than a year from now because of our misplaced spending over the past 20 years and our continued short-term decisionmaking instead of long-term decisionmaking, our situation is going to grow even darker. So this bill provides a wonderful example

of how we ought to fix the real problems instead of the symptoms of the problems.

The other thing that truly is not addressed is the long-term criticisms the GAO has continually made on our food safety. Senator HARKIN has the best idea of all, but he could not get everybody to do it; that is, an independent food safety agency, to where we are not relying on the CDC, we are not relying on the FDA, we are not relying on the Department of Agriculture, that we put them all into one and say: You are responsible for food safety. But he could not sell that.

Ask yourself the question: If you had three different agencies stepping all over each other with different sets of rules with agreements between themselves that they will do certain things, and then they do not do them—that, by the way, is why we had the salmonella problem; they did not follow their own protocols to notify the FDA of the problem—most commonsense thinking people would say: Well, maybe you ought to put all those things into one agency, with one boss and one line of accountability and responsibility.

So Senator HARKIN is absolutely right in where he wants to go. We are going to spend \$1.5 billion over the next 5 years on this bill that does not accomplish what we need to accomplish, which is what Senator HARKIN wants to do—and he is right—and we are not going to fix the criticisms that have been leveled against the agencies by the GAO for 8 years, in spite of the fact, as I stand here and am critical of different agencies, they actually have done a very good job. That is known by the fact that our incidence of foodborne illness is now less than 34 per 100,000 people. Think about that. Think about all the sources of food we get in this country and the diverse places they come from. Yet only 34 people get a staph poisoning or a nontoxigenic *E. coli* poisoning or a salmonella poisoning or a Yersinia poisoning or a Shigella poisoning in a year. So that is the incidence of illness.

The question is, How do we stop the 10 or 20 deaths a year from foodborne illness? Can we do that? Well, as a physician trained in epidemiology, we could do it. But I will posit we do not have the money to do that because it would take billions upon billions upon billions of additional dollars to ever get there. So we find ourselves in a dilemma.

I commend to my colleagues the reports GAO-09-523, GAO-09-873, and GAO-05-213.

The GAO does a wonderful job telling us where we are failing, and we ought to address everything they raised in these reports.

Even further than that, Dr. Hamburg, around the time we were having the salmonella with the eggs problem, released an egg standard. The bureaucracy took 11 years to develop that standard. That falls on the shoulders of President Bush's administration as

well as this one. I am proud of her that she got it out. But the fact is, 11 years to do what you are responsible for, to get an egg standard so we do not have significant salmonella poisoning coming from eggs? Then, lo and behold, after the egg standard is out, the FDA inspectors on farms in Iowa are violating their own protocols, cross-contaminating egg farms, as documented in the press.

It is not a matter that we do not have enough rules and regulations. That is borne out by the fact that we are continually seeing a decline in foodborne illness. That is not the real problem. The problem is effectively carrying out the regulations that are there today. So we have a bill on the floor that has 150 to 170 pages—I cannot recall exactly how many it is—here it is. It is 266 pages of new regulations, new rules, new requirements.

Let me tell you something else I learned about dealing with the FDA. The FDA overall in this country does a fantastic job. They do. They are very professional. They are very slow sometimes, but they are very professional, and they are very cautious. In this bill is a mandate to require recalls. Not once in our history have we had to force anybody to do a recall. It has always been voluntary, and you can check with the FDA on that. They do not need that authority. Why don't they need that authority? Because if you have a problem with your product in the food system in this country, you are going to get sued. You are going to get fined if you do not recall that product.

What is wrong with a potential mandatory recall? What is wrong is it is going to markedly raise the cost of foods. Let me explain why. It is called Coburn's bureaucratic principle: Do what is safe first in the bureaucracy rather than what is best.

Here is what I imagine happening with a mandatory recall. Because we have a problem, we are going to recall something and we are going to force a mandatory recall. Even though they may recall it voluntarily, somebody is going to pull the trigger earlier, because they don't want any criticism. There is a great example for that. How many people remember the toxigenic *E. coli* jalapeno pepper episode? Voluntary recall for tomatoes, because we said it had to be in the tomatoes, so they did that. That cost \$100 million to the tomato farmers in this country and didn't save one life, because they got it wrong. They discovered about 10 days after that, it wasn't the tomatoes, but the damage was already done. I can remember I ordered my hamburger in my special place in Muskogee, My Place BBQ, and I couldn't get a tomato on it. The reason we couldn't get a tomato—there wasn't anything wrong with tomatoes in this country; it was because a recall had been suggested by the FDA and the tomato growers responded.

So what we are going to see is a heavy hand rather than a working, co-

ordinated foundation upon which we do recalls, as we do now. We have not had one instance ever when a food needed to be recalled that wasn't voluntarily recalled.

What I worry about is the fact that we will have recalls that are mandated much too soon on the wrong products at the wrong time. We don't have a track record that says the government needs additional power. As a matter of fact, the FDA doesn't say they need additional power.

So let's summarize for a minute. Where is the crisis in food safety, when the science demonstrates that we have the safest food in the world and we are on a trendline to have it even safer? Where is the cost-benefit analysis in terms of what we are going to get from spending another \$1.5 billion in terms of lowering that number? There is nothing in this bill to show that. What is in this bill are tremendous new sets of regulations and authorities on top of the authorities that both the CDC, FDA, and Department of Agriculture already have, that I don't believe—and I agree I am in the minority on that, but I am trained in the area of medicine, science, and epidemiology—I don't believe we are going to get a significant cost-benefit from it.

We are going to feel better because we did something. But, again, that goes back to the first three principles. If we don't treat the underlying problem—in other words, have the oversight hearings to make sure the agencies are actually carrying out their functions every day on a thorough basis that can be vetted and making sure we are doing the right things to create the opportunities to have safe food—we are not accomplishing anything, but we are going to feel better. But do we know who is going to feel worse? Our kids. Because they are going to pay—if we appropriate this money, and I highly doubt a good portion of it will be appropriated—they are going to pay for it. If you followed last week in international finance, the scare over Ireland's ability to repay its debt, and the pressure it had—and we got good news on the economic front today—good news, and it is welcome news by all of us. But the fact is, what is happening in Ireland and in Greece and Spain and Portugal is getting ready to happen to us. And this is a small example of why—very good-intentioned, well-intentioned people trying to do the right thing, fixing the symptoms instead of the underlying problem.

Our answer is more regulation has to be the answer. That is what we did in the financial regulation bill. That is what we did to the SEC after Bernie Madoff. Everybody knows the SEC was alerted several times, but they didn't do their job. Consequently, we put all of these new rules and regulations to not let another Bernie Madoff scandal happen when we should have been holding people accountable for not doing their jobs.

I am not against regulation, but I think it ought to be smart, targeted,

and focused to real problems, not the symptoms of the problems. It is my personal belief—that we are targeting symptoms and not the real problems with this bill.

Senator HARKIN has bent over backward to work with me. He is an honorable man. He is interested in food safety and the welfare of this Nation. Nobody should ever say otherwise. But my experience leads me to believe it isn't going to accomplish the very purpose he wants to accomplish, and my recommendation is to go back and work in the new Congress to develop a true food safety center organization within the Federal Government that combines all the factors.

Do my colleagues realize right now when we buy a pizza at the grocery store, if you buy a cheese pizza it comes through the FDA, but if you buy a pepperoni pizza, it gets approved by the U.S. Department of Agriculture? How many people in America think that makes sense?

The other thing with this bill—and I will finish with this and then yield the floor—is this bill wants more inspections. That is great. There is no question that inspections will help; the question is what is the return on the dollars we spend for it. But if we are going to use more inspections, there is not nearly enough money in this bill to do it effectively. That is what we are going to trust.

Let me tell my colleagues why I think we have the safest food in the world: because we have the best legal system in the world. That is why we have the safest food, because the market forces applied on somebody selling food into our commerce are so great and the consequences legally are so negative that it is only in their best interests to bring a safe product to the market. When we have food scares, most of the time it is not an intentional act that created the problem, it is an unintentional act. It is a failure of someone in carrying out a protocol that should be established.

Under this bill, anybody who sells more than \$500,000 worth of food—that is almost every Amish farmer in America—a co-op of Amish at every farm—will have to have a detailed, laid-out plan, written down, double checked, cross checked and everything else. What do my colleagues think that is going to do to the cost of food? Do my colleagues think as we implement new regulations, those costs aren't going to be passed on? So as we grow the government, if, in fact, we are treating symptoms and not underlying problems—and I don't have any problems with regulations that address real problems—all we are doing is raising the costs and making ourselves less competitive, decreasing the number of jobs that are available in this country, and not truly ensuring an increased level of safety with our food supply.

It is hard to dispute the facts about our incidence of foodborne illness. One case is too many. But we don't have

the resources to make it where there is not one case, even. It is the same question on homeland security. Can we ever spend enough money to 100 percent guarantee that we won't have another terrorist attack? Anybody who looks at it says no, we can't do that. It is the same with food. For every additional dollar expended, what is the return to the American consumer for that?

If it were an achievable goal to eliminate all foodborne illness, I would be right there with you. It is not achievable. It is going to happen. The question is: Can we continue on a slope to continue to decrease the frequency where we have the least amount for the dollars we spend? There is a balance, and we need to be there. I will take the criticism of my colleagues that they think we need to spend this additional \$1.5 billion to get it further down the road. But I still raise the question of how we cut it in half over the last 9 years—or 5 years—and didn't spend anything. So we are on a good trend.

We are, unfortunately, going to have complications with our food supply, but we have a great legal system where we have bad actors such as the peanut butter factory in Georgia which is now shut down, in bankruptcy, and people are going to jail, because they intentionally violated the rules we have today. But how did they intentionally do it? Because we didn't have effective carrying out of the regulations we have today.

I appreciate the great manner in which Senator ENZI and Senator HARKIN have worked with me. I have another amendment I wish to offer on this bill. Everybody knows what it is. It is an earmark amendment. I understand the disdain for having to vote on that and I understand the procedural moves that will be made for that, but we are going to vote on it. We are going to suspend the rules to get the first vote, but I can assure you in the next Congress we are going to get an up-or-down vote on it, and it is going to pass in this body because the American people expect it to pass. It is something we ought to put away until we get out of the problems we are in nationally.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. 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. KLOBUCHAR. Mr. President, I ask unanimous consent to speak for up to 10 minutes.

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

Ms. KLOBUCHAR. Mr. President, I am here today to highlight the urgency of passing the legislation to overhaul

our Nation's food safety system. The last time the FDA's law related to food was changed in any substantial way was 1938. Think of how things have changed since that time: food coming in from all over the world. We think about all of the new producers and the new processing plants and the new kinds of food we have that weren't available in 1938. An overhaul of the food safety system is long overdue, and so is the passage of the Food Safety Modernization Act. Food safety reform should have passed Congress and should have been signed into law months ago. I have stood in this Chamber many times saying the same thing. Each time, each month, something new comes up where people get hurt or people die. Whether it is jalapeno peppers or peanut butter or more recently eggs, these outbreaks of foodborne illness and nationwide recalls of contaminated food highlight the need to better protect our Nation's food supply. We need to fix it.

The good news is we know how we can do it and we have legislation sitting right here on the table that could go a long way toward helping families at their own kitchen tables. The bad news is this legislation has been stalled in the Senate since last November.

This legislation is, first of all, comprehensive. It covers everything from ensuring a safe food supply at the front end to ensuring a rapid response if tainted food gets into the supply chain.

I wish to respond to a few points my colleague from Oklahoma raised. First he noted that somehow the FDA didn't need the authority to recall. In fact, right after the last outbreak, the egg issue, the eggs in Iowa, the FDA Commissioner came out and said she needed additional authority to do a recall. So let's set the record straight on that. That was wrong.

Secondly, I would point out that this legislation is bipartisan. It has both Democratic and Republican sponsors and it passed through the committee, the committee on which the Presiding Officer serves, last November with bipartisan support. Food safety is not a partisan issue and it shouldn't be. It is a national issue of public health and public safety. Do my colleagues know what else? It is a business issue. So when I heard my colleague from Oklahoma talk about how somehow it was going to hurt the bottom line, I wish to know why the grocery stores of America support this bill. Does anyone think they are not worried about their bottom line?

I would like to know why companies such as General Mills support this bill, and why companies such as Schwan's in Marshall, MN, one of the biggest frozen producers in the country—the No. 1 issue they raised with me was passing this bill. Do you think Schwan's is a company that doesn't care about the bottom line?

You haven't met their business executive, I say to my friend from Oklahoma. Their focus is on jobs, making money, and producing a good product.

So why do these businesses that are so clearly concerned about their bottom line care about passing this bill? Guess what. These bad actors—whether it is the peanut butter factory in Georgia or whether it is the egg place that had rats in it—these bad actors hurt all the good actors out there, the good food producers and good farmers and all of the companies that put in safety measures. That is why the companies, the grocery stores, SuperValue, and these kinds of companies want to get this bill passed. They think having bad food out there is not only bad for consumers when they get sick or die, but it is bad for their bottom line. That is why there is industry support for the bill.

Finally, this legislation addresses a very serious issue—and this was the most difficult thing to hear from my friend from Oklahoma. You all know in our State about the case of Shirley Ahlmer, a grandmother. She fought cancer and survived it. She was ready to go home for Christmas, and she ate a little piece of peanut butter toast. That grandmother died because of that peanut butter toast.

I don't want to hear about how it is not worth it for the people of America, that it is going to cost the people of America, until you talk to Shirley's son Jeff and find out what it cost his family because there wasn't an adequate food inspection system in this country. That is what this is about.

One other thing that was not true was when my colleague from Oklahoma talked about the tomato recall. That was true, and it was misdiagnosed. They said the wrong thing. It was actually jalapeno peppers. They said it was tomatoes.

Why should we keep the same food system in place now if people are out there calling the wrong card and saying tomatoes caused this and tomato prices go down and people who produce them get hurt and instead it is jalapeno peppers? Meanwhile people are getting sick across the country. Why would the answer be that we have a great system and let's not change it? The answer is we have to change the system.

The other thing is, both the peanut butter contamination and the jalapeno peppers, do you know who called it right? The State of Minnesota. It was the University of Minnesota and the Minnesota Health Department. None of it got identified until people got sick in the State of Minnesota. That makes us proud of our State. But we would have rather not lost three people in the peanut butter crisis and said: Guess what, we got it right.

What we can do is take the system we have in Minnesota, which is common sense, and instead of just having this problem sit on a county nurse's desk, we have graduate students who can work together and make calls and figure out what caused this when people got sick, and ask: What did you eat yesterday? It is that simple.

The part of the bill which Senator CHAMBLISS and I sponsored is to use that model—not make every State do it but say, let's look at the best practices in four regions of the country and see if we can improve the system so we can catch these illnesses quicker and respond better and have less people die or get sick.

When I look at all of the issues raised by my colleague, the bottom line for businesses is this: Businesses in this industry support this bill. When I look at the issue of consumer safety, all you have to do is go and look at what happened to Shirley Ahlmer.

When I look at the issue of what is better for the consumers of this country, I don't think anybody wants to get sick from eggs that have Salmonella. It is unacceptable, Mr. President.

I hope anybody who was listening to my colleague from Oklahoma has also listened to this because it is very easy to make these claims. Let me tell you, one, the people who do this work say they need more authority to do recalls and to do it right. The businesses that are affected by the food safety outbreaks need a better system. They don't want to get stuck in one from back in 1938. The people hurt by this, or family members killed by this, say we need improvement. That is why this bill has bipartisan support and why three-fourths of the Senate supported moving forward on the debate.

I hope this delay will end and that we will get this done so that when families sit down for Thanksgiving dinner, they will at least know there is hope in the future that we are not set back in the inspection system that we had in 1938.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized as in morning business for such time as I shall consume.

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

#### GLOBAL WARMING

Mr. INHOFE. Mr. President, as Mark Twain might have characterized where we were a short while ago, reports of the death of cap and trade have been greatly exaggerated.

It is true we defeated all the bills. This was after the Kyoto Treaty, which failed to even get recognized for discussion, let alone ratified. We had all the bills—the McCain-Lieberman bill, the Lieberman-Warner bill, the Waxman-Markey bill, and all of the others, and they were all killed.

I can remember way back 8 years ago when I was the only bad guy, the one everybody hated. That is when I made an honest statement at the time that perhaps what they were trying to do with the global warming was the "greatest hoax ever perpetrated on the American people."

As time went by, more and more people agreed. A lot of things have happened. Just in the past year, we have had the revelation of Climategate, the

failure in Copenhagen, the admission of the futility of unilateral climate action, the year of the skeptic, and the vindication at the ballot box that took place November 2.

With all this, one might be tempted to declare victory, and I have to admit that for a short while I did. It was a year ago today that I gave a speech right here on the Senate floor, at this same podium, noting that the tide turned decisively against global warming alarmism. The year of the skeptic took place.

Just 2 days later, Climategate exploded into view as thousands of e-mails were released that showed, at a minimum, the very scientific spokesmen for alarmism were scheming to block open and honest assessments of their work. Behind the veil of e-mail, they showed their true colors: They weren't acting as scientists but as political hacks. They were scientists defending a political agenda. The agenda would virtually shut down America.

A lot of people realize and recognize that fossil fuels are necessary to run this machine called America. Right now, 53 percent of our energy is generated from coal. Coal is necessary. We have clean coal technology, and the releases are much less than they used to be. Oil and gas are both fossil fuels. It is necessary. You cannot run this machine called America without them.

The damage has been done in terms of what was going on at Copenhagen. I think the chapter on the climate science wars has closed. Climategate scientists and the allies want to keep fighting. They are particularly begging us to bring them before committees to question their work. But we will not because they are now irrelevant. The time to talk about this science is over.

I will say this: Five years before Climategate, I gave a speech in the Senate and talked about what they were trying to do to cook the science. Instead of talking about science, we are talking about the economics of what is happening now. We are talking about jobs, about competitiveness, and manufacturing and small businesses and real people who have to pay more for electricity, food, and gasoline. What do I mean? Even with all of the progress we have made—and while cap and trade is dead, bureaucratic cap and trade is alive and well—what is happening in this country is that we have an administration with a majority in Congress who tried to pass this legislatively, tried to pass cap and trade. The cost of cap and trade, we were finally able to convince the American people—if you look at it not from what Senator JIM INHOFE says but what the economists say, what they said at MIT and what they said at Wharton, if you pass any of these cap-and-trade schemes, the cost to the American people will be in the range of \$300 billion to \$400 billion a year. That is what they decided they were able to do legislatively. They thought we will do this—because we control EPA, we will do it through the regulations.

What Senator REID said may be true for the massive 1,000-page bills filled with mandates, taxes, regulations, bureaucracy, and not much else. But it is not true for the more subtle strain of cap and trade now moving through the EPA.

That is right; this backdoor cap and trade hidden behind an administrative curtain. I can hear already what my friend, the EPA Administrator, Lisa Jackson, would say: Senator INHOFE, you know we are regulating in broad daylight, and we are inviting public comment and we are providing guidance. It is all aboveboard and out in the open.

That may be true, and I trust that Administrator Jackson wants the EPA to be transparent. Unfortunately, this bureaucracy has gotten to the point where transparency is virtually impossible.

The reality is that backdoor cap and trade is hidden behind acronyms such as PSD, BACT, SIPs, FIPs, BAMB, GHGRP, and the like and arcane legal provisions in the Clean Air Act. It is all a great muddle for bureaucrats and lawyers, but it is a profound disaster for jobs and small businesses in America.

Make no mistake, the intent and ultimately the effect is no different than Waxman-Markey, which is to eliminate fossil fuels and impose centralized bureaucratic control over America's industrial manufacturing base. Unless we stop them, that is what they will achieve.

Of course, President Obama would say we could have avoided all this if we passed cap and trade. That is true. If we had done that, we also know it would not have preempted what EPA would be doing.

That is wrong on two counts. First, what kind of a deal involves accepting a bad bill in place of bad EPA regulations? That is no deal at all. Secondly, the supposed deal wasn't an either/or proposition. Waxman-Markey didn't fully eliminate EPA's ability to regulate under the Clean Air Act. President Obama and cap-and-trade supporters wanted both options—cap and trade including regulation under the Clean Air Act.

Keep in mind we are talking about something that is very massive—the largest single tax increase on the American people. When you talk about \$300 billion or \$400 billion a year, you have to bring that down and say: What does that mean to me?

To the taxpayers in Oklahoma, it would mean over \$3,000 a year. What do they get for it? Nothing. One thing I like about Administrator Lisa Jackson, the Administrator of the EPA, is she is honest in her answers. I asked her the question: If we were to pass something like this, pass Waxman-Markey and do something legislatively, how would it affect worldwide emissions of CO<sub>2</sub>? She said it wouldn't have much of an effect at all. The reason is we can't do that in the United

States: This isn't where the problem is. It is in China, India, Mexico, and other places around the world. As we tighten our availability of power, they have to go someplace—our manufacturing base—to find power. Well, now they would be going into areas where we have less controls. So that could very well have—by banning it here, it would have an increase in the effect of CO<sub>2</sub> emissions. Most people understand and agree with that.

We have a long, difficult fight ahead. It goes back to December of 2009 when EPA promulgated the endangerment finding that CO<sub>2</sub> endangers public health and welfare. We know that finding is wrong and based on flawed science.

Before I went to Copenhagen last December—first of all, what Copenhagen is, that is the annual big party that the U.N. puts together—and they have done it for 15 years now—and they always have it at exotic places. Next month it will be in Cancun. Last year, before I went there, I asked Administrator Jackson the very question: What does your endangerment finding—the way it happened, I say to you, was that we had a hearing, a public hearing, live on TV, and Administrator Jackson was in our hearing room.

I said: I am getting ready to be the one-man truth squad in Copenhagen. I have a feeling when I leave, you are going to have an endangerment finding. What would that be based on? The IPCC.

To make sure everybody understands, that is the U.N. That is what started this thing way back in the 1980s. And so now that is established and we know the science on which an endangerment finding is based, we go to Copenhagen. It was almost the next day that climategate broke. Oddly enough, the timing couldn't have been better—I had nothing to do with it; I was as surprised as anyone—because they came out and talked about the flawed science that was there and the fact they were cooking the science.

I have to say this. Five years ago this week, in 2005, I gave a speech on the Senate floor talking about how they were cooking the science at the United Nations—the IPCC—to make people believe that greenhouse gases—anthropogenic gases, CO<sub>2</sub>, methane—were causing catastrophic global warming. That was their mission. They started with that conclusion and they tried to get science to support it. Well, all that was exposed.

The list of IPCC errors is so long I won't repeat it here, because I did so in my speeches before. We know the claim that the Himalayan glaciers would melt by 2035 was off by about 300 years. What is important now is that the endangerment finding triggered regulations that will eventually reach out into every corner of the American economy. This will be the greatest bureaucratic intrusion into American life we have ever seen.

Let us put some specifics on that. We are talking 6.1 million sources subject

to EPA control and regulations. With regard to EPA control and regulations, I don't think I have to tell you how onerous that would be, what that would be doing to all these institutions that would be affected. The U.S. Chamber of Commerce has put together a list as to who would be affected by these new regulations and that thousands and thousands and thousands of new bureaucrats would be crawling all over in America. The list includes 260,000 office buildings, 150,000 warehouses, 92,000 health care facilities—that is hospitals and so forth—71,000 hotels and motels, 51,000 food service facilities, 37,000 churches and other places of worship, and 17,000 farms.

The EPA understands the political peril of regulating all these sources so they decided to change the law without congressional authorization to exempt many of the sources I have mentioned, but that is a front. It sounds good, and they will stand up and say, no, we are not talking about 250 tons of CO<sub>2</sub>. But the Clean Air Act specifically says that the major sources are those that have the potential to emit 250 tons or more of given pollutants. All the farms, all the churches, as I mentioned, are going to be in that category.

Two hundred fifty tons of, say, sulfur dioxide or nitrogen oxide is a good deal of pollution. But when it comes to CO<sub>2</sub>, it is not. Lots of facilities emit that amount and more. We are talking schools, nursing homes, restaurants, even individual residential sources, mind you, that were never contemplated to be regulated when Congress passed the Clean Air Act.

So what did EPA do? Well, they promulgated something called the tailoring rule. This gets in the weeds here, but it is something they created to say, well, no, we are not going to use 250 tons of emissions, we are going to use 75,000 tons. That means we are talking only the giants—the refineries and some of these groups. Well, the problem with that is that is not what the Clean Air Act says.

Sources emitting above those amounts have to get permits that require so-called best available control technology to reduce CO<sub>2</sub>. Of course, we don't know what that is. It has never been defined. The EPA issued draft guidance on what they call the BACT—best available control technology—last week, but it provided no help, just more confusion and uncertainty on what the requirements would be.

Of course, they talk about the EPA has a law in front of it that says clearly the major sources are those that have the potential to emit 250 tons or more. Yet it says the new number is 75,000 tons or more. So now the EPA can conveniently say that schools, hospitals, and the like won't be regulated, at least not until 2016, when the agency says it will consider whether to regulate such sources.

There is the catch. This supposed exemption through the tailoring rule only lasts for a few years, not to men-

tion the fact that it blatantly violates the Clean Air Act, which subjects it to litigation. On that last point, the tailoring rule, along with the endangerment finding and other greenhouse gas rules, is being litigated, so we will know eventually whether the tailoring rule survives. I think it will be thrown out, but the fact it can be thrown out should be enough for us to be honest with the American people and say we are going to regulate everything that falls within the 250 tons—all the residences, the churches, and the farms I mentioned before.

Again, I want everyone to understand: The regulation of global warming by EPA, backdoor cap and trade, begins on January 2. It is here, a month away. I am not the only one concerned about it. On February 19, Senator ROCKEFELLER, joined by seven of his other Democratic colleagues, wrote Administrator Jackson. Keep in mind, this is coming from the Democrats here in this Chamber. He wrote:

We write with serious economic and energy security concerns relating to the potential regulation of greenhouse gases from stationary sources under the Clean Air Act. We remain concerned about the possible impacts on American workers and businesses in a number of industrial sectors, along with the farmers, miners and small business owners who could be affected as your agency moves beyond regulations for vehicle greenhouse gas emissions.

We need to address this, because employers and small businesses are afraid to hire and expand right now, in large part because of the EPA's global warming regulations. They do not know what to expect. They are looking at the Clean Air Act, that has a very small threshold. Yet statements are being made that this is going to affect everyone and they don't know what to do.

I want my colleagues and the American people in general to know that EPA is moving in all directions, beyond just implementing job-killing global warming regulations. EPA is threatening jobs on a host of fronts. A few months ago, I released an oversight report examining the thousands of jobs at risk. And by the way, this is a good report. It talks about four major areas of concern, and they are all on my Web site at [inchofe.senate.gov](http://inchofe.senate.gov). Read them over, if you want to be scared. But here is what I found:

The new standards for commercial industrial boilers, for example, put up to 798,000 jobs at risk. The revised National Ambient Air Quality Standard for ozone puts severe restrictions on job creation and business expansion in hundreds of counties nationwide. New standards for Portland cement plants put up to 18 cement plants at risk of shutting down, threatening nearly 1,800 direct jobs and 9,000 indirect jobs.

I think we should be concerned enough about the unemployment rate that we have right now without exacerbating that problem, which is what we do with these rules. I think everyone knows that. Where are these rules

going to hurt the most? In the heartland. By that I mean Pennsylvania, Ohio, Michigan, Indiana, Illinois, Missouri, Wisconsin, Nebraska, Minnesota, and Montana. Of course, my own State of Oklahoma is feeling the brunt, and others will as well.

Here is the bottom line. Backdoor cap and trade is alive and well. It is moving forward. The fight over the future of America's industrial base is under way. I want to put the administration on friendly notice that I will investigate these rules vigorously in my capacity as the ranking member of the Environment and Public Works Committee. I do this to expose their impact on jobs, energy prices, competitiveness, small businesses, energy security, and the true extent of their environmental benefits.

It is my sincere hope the EPA will pull back, revise, reform, and balance its regulatory agenda to protect jobs as well as the environment. If the EPA persists on moving down a more extreme path, then our 9.6 unemployment rate will be even worse in 2012.

In an attempt to stem the impending economic harm facing thousands of small businesses, the EPA has developed its so-called tailoring rule. I don't want to elaborate on this. I will only say that the tailoring rule is to make people think we are only going to be regulating those entities that emit 75,000 tons or more, when the law clearly says 250 tons or more.

In some cases, these rules will have no meaningful environmental benefits. Consider EPA's rules to regulate greenhouse gases. They would reduce global temperatures by 15 one-hundredths of 1 degree by 2100. That same figure goes all the way back to the consideration of Kyoto. This is back in the 1990s. I remember at that time it was Vice President Al Gore's own scientist—Tom Prigley, I believe his name was—who came out and the question was if all of the developed nations were to comply with Kyoto's emission requirements, how much would it reduce the temperatures in 50 years. The answer was 7 one-hundredths of 1 degree Celsius. So you can talk about all the sacrifice we are making and nothing good can come from it.

I want to conclude, because there are a lot of people here wanting to speak, saying that the Administrator of the EPA, Lisa Jackson, talks about the fact that what we do unilaterally, here in the United States, is not going to have a major impact on emissions nationwide, yet we know what it is going to cost. I want to say we are going to quit talking about the science. We understand how the science is not on their side; that the things we said on the floor of the Senate 5 years ago were verified with climategate. They have been cooking the science, and it is very convenient.

Lastly, I went to Copenhagen, as I mentioned earlier. That is the big U.N. party each year. That was probably the most productive 2½ hours of my life,

the 2½ hours I was on the ground in Copenhagen. I was preceded by Senator KERRY, Hillary Clinton, President Obama, and several others—NANCY PELOSI—and they were all assuring the other 191 countries present that we were going to do something about cap and trade. I went there to make sure they knew we were not. I will always remember that, because we had 400 people and the 120 cameras were zeroing in on me. I say to my good friend from Virginia, they all had one thing in common: They all hated me.

That is behind us now and we have to now look at the regulators. This regulation would put America out of business.

With that, I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Virginia.

Mr. WARNER. Before I get to my remarks, Madam President, I want to commend my friend, the Senator from Oklahoma, for his comments. I don't always agree with him, but I have had the opportunity to sit in the Presiding Officer chair and listen to his views over the last 2 years, and let me make sure I make clear that his characterization of some of those folks with those cameras, I would not fall into that category.

I also want to wish the Senator a very happy birthday. I understand it was yesterday, and I wish him all the best. Our offices are next to each other and we are good neighbors.

#### TRIBUTE TO FEDERAL EMPLOYEES

Madam President, I rise today to continue a recent tradition of the Senate—the tradition of honoring exemplary Federal employees—my friend Senator Ted Kaufman began last year. Senator Kaufman believes, as I do, that our Federal employees deserve recognition for their admirable patriotism which drives them in their daily work as civil servants.

Senator Kaufman highlighted 100 Federal employees in his close to 2 years of service—100 Federal employees with significant accomplishments in the fields of medicine, science, technology, diplomacy, and defense. Today I will start to continue that tradition. I am very proud that the first Federal employee I am going to have a chance to honor is currently a resident of Virginia who combined his engineering expertise with his past experiences in the Navy to help save 33 Chilean miners after they had been trapped 2000 feet underground for 69 days. This was an incident that captured the attention of the world, as we all watched the rescue of those miners. Again, I will only take a couple of moments to describe this employee and how he contributed to that remarkable worldwide success story.

Clint Cragg served in the Navy for 26 years. He, as I mentioned, is currently a resident of Virginia. His lifetime of service to our country led him to many exciting opportunities, including serving as the Chief of Current Operations, U.S. European Command. While in Eu-

rope, he participated in a number of operations, including the wars in Kosovo, Afghanistan, and Iraq. Today, Cragg is principal engineer for NASA's Engineering and Safety Center, a center which NASA established after the 2003 *Columbia* Space Shuttle tragedy. Clint has given a lifetime of service to his country since his graduation from the Naval Academy in 1978, and his service was never more important than it was when he took part in the worldwide effort to save the Chilean miners.

Clint and his colleagues were asked by the Chilean Government to assist in rescuing their 33 countrymen trapped underground in a collapsed copper and gold mine. Clint rose to the challenge and flew to Chile with three fellow NASA employees to examine the scene. Using his experience as a commanding officer of a submarine in the Navy, Clint provided valuable insight to the miners on how to cope with the underground existence they were in for a sustained period of time. Clint and his team also met with Chilean officials to discuss the development of a rescue squad capsule that at that time was a completely untested idea.

Upon his arrival home, Clint received a message from the Chilean Health Minister in which the Minister asked for NASA's help in thinking of specific features that would make the rescue capsule idea a reality. Clint assembled a team of 20 engineers, 10 from NASA Langley and 10 from around the country. They commenced brainstorming innovative ideas for a capsule design. This was thinking whole cloth. The only information the team had available was the capsule's maximum length and the diameter of the rescue shaft through which the capsule was required to fit. Seventy-two hours later, the team had a written, comprehensive report that included 75 proposals for the rescue capsule. The paper concluded that the rescue capsule should include a harness inside the capsule that can hold a miner in case the miner fell unconscious during ascent.

I think we all remember those images on CNN as they kind of drew up the capsule. I didn't know, but that capsule was designed by a Federal employee and his team we honor today.

As the 33 men rose from beneath the Earth, Clint could take pride in his work for NASA and in the knowledge that he and his colleagues had made the reunion between these men and their families possible.

I was privileged to meet Clint Cragg and his family and other members of the rescue team during a visit to NASA Langley last week and present them with a framed American flag that had flown at the U.S. Capitol in honor of their contributions. The successful rescue of the miners was a testament to the American spirit of cooperation and ingenuity, a spirit exemplified by the NASA team.

I hope my colleagues will join me in honoring Clint for his service and his leadership team at NASA as this



week's example of a great Federal employee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I ask unanimous consent that immediately following my and Senator GRASSLEY's colloquy, the distinguished Senator from North Dakota be recognized for 30 minutes.

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

#### MAJOR TAX ISSUES

Mr. HATCH. Madam President, my colleague, Senator GRASSLEY, and I come to the floor to discuss very urgent business for the American people that has been put off for far too long. I am talking about the outstanding tax issues this Congress has so far failed to address. As I count them, there are five major tax issues that collectively represent a looming crisis for the economy. These are, first, the set of tax provisions that expired almost a year ago on December 31, 2009, and have yet to be extended. Second is another set of important tax provisions due to expire at the end of this year, which is only 44 days from now. The third item is the need to once again address the threshold of the alternative minimum tax so that about 25 million more American families are not caught in its clutches for the tax year about to end. Fourth is the estate tax issue which has been haunting us and the American people all year long. I submit it is way past the crisis stage and is about to enter into even a worse stage. Finally, and certainly not least, is the looming expiration of the tax relief provisions we passed in 2001 and 2003 which are swinging over the future of our economy like a hangman's noose. It is this situation that I particularly would like to address the bulk of my remarks to, but before doing so, let me turn to my colleague for his initial comments, the ranking member on the Finance Committee and a great friend, Senator GRASSLEY.

Mr. GRASSLEY. Madam President, Senator HATCH has long been a leader on a lot of these tax provisions, particularly in research and development. I thank him for his leadership.

I think Senator HATCH has clearly outlined the gravity of the economic consequences of a continuing failure to finish time-sensitive legislative tax business.

There is a chart I will put up that shows where we are on these categories of expiring tax provisions. Said another way, here are the categories of tax hikes that congressional inaction will put in place. I have used this chart before, so I think Members will be familiar. In fact, several months ago, I used it. The congressional Democratic leadership paid no attention to the seriousness of these issues then. Unfortunately, the to-do list is exactly the same today as it was several months ago.

If we go down through the chart, Members can see that we have had par-

tisan votes on extender packages negotiated between the bicameral Democratic leadership but no effort to reach out to the Republican side to find bipartisan common ground.

On this year's alternative minimum tax patch, as Senator HATCH noted, inaction on the AMT will force a "gotcha" tax hike on millions of middle-income families when they start to file their tax returns 6 weeks from now.

On death tax reform, the House passed a permanent reform almost 1 year ago, but it has languished in the Senate during that period. On our side, we would like to improve that bill to protect more small businesses and farm families from the death tax.

On the 2001-2003 tax relief packages, there is no bill from the other side that would serve as a starting point on preventing this massive tax hike. On our side, if the Democratic leadership permitted us, we would like to start with Senator McCONNELL's bill. Senator HATCH and I are cosponsors of that legislation.

Mr. HATCH. Senator GRASSLEY has been the ranking Republican or chairman of the Finance Committee for a long time now. We have seen times when the expiring tax provisions have been dealt with in as timely a manner as they should have been, but have we ever seen a state of affairs like we have now with the extenders? What has this meant for job creation and economic growth?

Mr. GRASSLEY. First of all, my colleagues probably know that my friend from Utah is going to advance as the incoming ranking member of the Senate Finance Committee, and I congratulate him on that. I know he is going to do a very good job.

One needs only to look to the nonpartisan Congressional Budget Office to assess the harm that could be done to the economy if we don't get this tax legislation passed. According to the Congressional Budget Office, not addressing these very time-sensitive tax issues will reduce economic growth by as much as 1.7 percent on average for the years 2011 and 2012. If Members didn't hear that, it is not some political leader saying that economic growth will be harmed by 1.7 percent; it is the nonpartisan experts in the Congressional Budget Office saying that if we don't pass these tax bills, economic growth is going to get hit 1.7 percent. Some private forecasters put that hit even higher—at 2 percent. When we consider that the last report has the economy growing at an annualized rate of 2 percent, then it is quite obvious.

We can see that this single failure to prevent these great big tax increases could wipe out what little economic growth is currently occurring. I don't know how policymakers can sleep at night, let alone be so casual when we haven't dealt with these time-sensitive tax issues at a time when coming back here we heard nothing from our constituents other than concern about the

economy, about jobs, and about the legacy of debt we are leaving.

Mr. HATCH. We ought to listen to Senator GRASSLEY. He is one of the leaders in this body and somebody we all look up to as totally honest and sensitive on these issues. He has done a wonderful job on the Finance Committee.

According to the Commissioner of Internal Revenue, perhaps the most time-sensitive problem waiting for congressional action is the so-called patch for the alternative minimum tax. I understand that if we do not take care of this very soon, we could see major delays in the tax filing season that will start on January 1. Is that the understanding of Senator GRASSLEY?

Mr. GRASSLEY. Absolutely. We have a track record on that. Just a few years ago, it didn't get done on time, and people had to wait for their tax refunds. That is the biggest thing. But it also created a terrible bureaucratic problem for IRS to get the forms out.

My friend from Utah is correct. Fortunately, the chairs and ranking members of the tax writing committees wrote to the Commissioner of IRS last week indicating our intention to pass an AMT patch. The letter specified what the AMT patch would look like. But as helpful as the letter was, we still need to change the law. As a matter of fact, the filing season could become very complicated if we don't act. During our years in the majority, we never let the AMT patch legislation slip past May of any tax year that it applied to. That only happened once.

The death tax is another overdue tax legislative item that has been referred to. Maybe the Senator from Utah could bring up the issue of the estate tax.

Mr. HATCH. That is the third item on the to-do list. If we do not act, 6 weeks from now the reach of the death tax will greatly expand. According to the nonpartisan Joint Committee on Taxation, 10 times the number of estates will be taxable versus the number that would be taxable in the bipartisan Lincoln-Kyl compromise. In the case of farm-heavy estates, 13 times the number of those farm families would be hit by the death tax. That would be unfair because the families would have to either borrow the money or sell the farm in order to pay the death taxes. That is just crazy.

The issue of extending the expiring tax relief provisions enacted in 2001 and 2003 has been a central question all this year, but we are just now beginning to discuss this in earnest. This lack of action on this vital topic has been a major factor in the low performance of our economy.

The outcome of this debate is exceptionally important to the future of this Nation. Its implications go well beyond what many on the other side of this issue might want Americans to believe. This is not merely a question of how well the rich in our society will live if we raise their taxes.

Rather, this debate goes to the heart of the burning questions facing American families of all income levels today: Will I keep my job? How and when can I get a new or better job? Will the economy grow enough to allow my family to pay its bills and make progress toward our dreams? Can we afford to educate our children? Will America continue to prosper in the years ahead, or are we in a permanent decline?

The President and most of my colleagues on the other side of the aisle have decided that the answer to the question of fully extending the tax relief provisions that are set to expire in just about 44 days is no. While they are willing to extend them for those Americans earning less than \$200,000 per year if a single individual or \$250,000 per year if a family, their position is that anyone above these thresholds should get a tax increase.

However, the right answer for our country's future is that all the tax relief provisions should be extended.

The reasons the President and his allies give for their position largely boil down to the general supposition that the well-off among us can afford to see their taxes go up, and that the Nation cannot afford to forego the revenue lost to the Treasury from these taxpayers continuing to have their taxes as low as they are.

Ironically, this second point implies that we can afford the revenue loss from extending the tax relief to those making under the \$200,000 and \$250,000 thresholds, even though this loss is upwards of 80 percent of the total amount of lost revenue from extending the tax relief for everyone.

In other words, the President and his congressional supporters would have us believe that this debate is solely about whether the so-called wealthy among us deserve continued tax relief. They either fail to see an economic connection between the finances of those at the top of the income scale and the rest of us, or they refuse to admit that such a link exists.

This may sound somewhat counter-intuitive, but it is, nonetheless, true. The essential element to this conundrum is that good permanent jobs, which are the heart and soul of the American dream, are inextricably linked to those in our economy who have wealth. When the income of the wealthy is taxed, particularly in a way that reduces the incentives for saving, investment, and entrepreneurship, that tax is not just paid by those who write the check to the government. Indeed, even those Americans who pay no income tax at all, which is now upwards of half of all adults, can be badly hurt by tax increases on the so-called rich. This is through the loss of opportunities, the lack of jobs or better jobs, and slow or nonexistent economic growth.

One vital fact that many citizens do not realize is that a high percentage of this Nation's business enterprises pay their taxes through the tax returns of

their individual owners. Taxes on sole proprietorships, partnerships, S corporations, and limited liability companies are all passed through these entities and assessed on their individual owners. Higher taxes on these entities results in less money for investment and expansion, which translates into fewer jobs created and fewer opportunities for those who want to move up the economic ladder.

Tragically, especially in this time of economic stress and high unemployment, the real cost of taxation is paid by a group of unintended victims. These are the men and women and their families who do not get a chance to have a job or a higher paying job because the tax destroys the economic growth that might have provided for such an opportunity.

A study recently released by the non-partisan Heritage Center for Data Analysis highlights these facts. This study, which utilizes an economic model owned by the leading economic forecasting firm in the country, concludes that the President's tax plan to allow the tax relief provisions to expire for the so-called well-off would have very serious consequences for millions earning far less than those targeted.

Here are just a few of the highlights of these conclusions. First, the President's tax plan would reduce economic growth for at least the next 10 years. Over the 10-year period, our gross domestic product would fall by a total of \$1.1 trillion compared to where it would be otherwise if all the tax provisions were extended.

This slower economic growth would directly translate into fewer jobs created. In fact, the study projects that 238,000 fewer jobs would be created next year and as many as 876,000 lost jobs in 2016. For the 10-year period, the average would be 693,000 jobs each year that would not be created had we extended the tax relief for everyone. This projection alone should be enough to give anyone pause. In this critical time of job shortage, do we want to purposefully choose a course that would lead to even fewer jobs for Americans?

Other economic indicators would also turn negative compared to extending the tax rates as they currently stand. Business investment, personal savings, disposable income, and consumer spending would all be lower. This is exactly the wrong direction we need as the U.S. struggles to recover from this nasty recession.

My home State of Utah will not be spared, despite the fact that the downturn has been less pronounced there than in many other States. The Beehive State would lose an average of 6,200 jobs each year, and household disposable income would drop by \$2,200. For a relatively small population State, this is nothing but bad news.

Another recent study highlights the effect on the economy of increases to the capital gains tax rate as is called for under the President's tax plan. This one was prepared by the respected

economist Allen Sinai. In this study, Dr. Sinai concludes that increasing the capital gains tax rates to 20 percent from the current 15 percent, as is called for in the President's plan, would cut the number of jobs available by 231,000 per year. Again, this is exactly the wrong direction for a Congress that is supposed to be focused on job creation.

If we were really serious about creating jobs, we should be doing just the opposite; that is, lowering the capital gains tax rate. The Sinai study concludes that a reduction from the current 15-percent tax rate on capital gains to a 5-percent rate would increase the number of jobs by 711,000 per year. That is the kind of job growth we need right now. By lowering the rate down to zero percent, Dr. Sinai says we could turbocharge this rate of job growth to 1.3 million new jobs per year.

Of course, this capital gains tax reduction would not be free since the Treasury would lose some revenue. The Sinai study indicates that this loss would be about \$23 billion per year after the effects of stronger economic growth are taken into account. While this is not an insignificant number, it works out to a cost of about \$18,000 per job. I call this a bargain, particularly when it is compared with the cost per job from the so-called stimulus bill we passed last year. The Congressional Budget Office projected last year that the cost of each job saved or created from the stimulus bill would be between \$414,000 and \$1.3 million. And most or all of these jobs are temporary, not permanent. Last year, the CBO also projected that the net increase in the number of jobs from the stimulus bill by 2015 would be zero. In other words, we would get no permanent job increase from this gargantuan stimulus bill. I do not believe the contrast between the two approaches to job creation and economic growth could be any more striking.

Let me refer back to Senator GRASSLEY.

Mr. GRASSLEY. Well, I say to Senator HATCH, the only thing I would add to the good work you put out there is maybe to say a little bit more about the estate tax; that is, if we do not do anything—as you see from this chart, you can see the House passed death tax reform but not the Senate. Obviously, we do not have a final bill. If we do not get a final bill by the end of this year, instead of having no estate tax like this year or a \$3.5 million exemption like last year, we are going to have only a million-dollar exemption and a 55-percent tax rate. That is going to be catastrophic on small business. It is going to be catastrophic in the rural areas. So I hope that emphasizes the importance of getting something done on the estate tax ahead of time.

The only other thing I would add, because the Senator did such a good job of saying what the economic consequences are, if we let the biggest tax increase in the history of the country happen by sunset December 31, and



then that means you go back to the tax rates and tax policy of the year 2000, it is going to be very destructive on job creation for small businesses and very destructive as far as bringing the certainty that businesses, particularly small businesses, need if they are going to hire people.

I had a news conference last month in my State, and I brought in some small businesspeople. One of the small businesspeople testifying for me said to the media of Iowa that they would like to hire five or six people, but as long as there is all this uncertainty about what the tax policy is, they are not going to move forward.

So what we have to do—and I say to Senator HATCH, I think you have said it several times—and particularly for small business, we have to bring certainty to the Tax Code. You cannot have this uncertainty of what is going to happen after December 31, particularly when you are certain you are going to have the biggest tax increase in the history of the country without even a vote of Congress.

So I compliment Senator HATCH. I will not have anything more to say on this subject until we get one of these pieces of legislation before the Senate. But I thank the Senator very much for his leadership.

Mr. HATCH. Madam President, I thank my leader on the Finance Committee on the Republican side. I appreciate all the work he has done to try to keep this economy going, and we ought to listen to him.

Let me just say that the President and congressional Democrats and Republicans agree that small business is the key to a job-based recovery. As the President himself says, small business creates about 70 percent of all of our new jobs.

If we fail to prevent the marginal rate hikes, small businesses will be especially hard hit. The Joint Committee on Taxation concluded that half of the flowthrough small business income would be hit by the reimposition of the top two brackets. Ironically, this is what all the resistance from the other side is about. They insist on raising the top marginal rates on small businesses by up to 17 to 24 percent—all of this during a time when we ought to be going the other way and assuring small businesses that they should take steps to grow without paying a tax penalty.

There is a bipartisan group that recognizes the merits of preventing these tax hikes on small businesses. But I think the President and the Democratic leadership need to see the light. We are talking about somewhere between 750,000 and 800,000 small businesses, where 70 percent of the jobs are created. If we do not handle this right, we are going to have a pretty long time of an economic system that really does not work in this country. So it is important that we get going here in this lameduck session and resolve this issue.

There are people all over the map on this issue, but I think the smartest

thing to do would be to keep the tax relief the way it is. I would move it at least 2 years and hopefully 3 years. I would like to make it permanent for everybody in our society because we are a high-taxed society under the current circumstances, but apparently we do not have the votes to make it permanent. But we should have the votes to be able to put it over at least until we can get out of the rough politics of a lameduck session, and hopefully we will be able to resolve these problems in the future in a way that both sides can feel good.

Having said all this, let me just say that I have really appreciated serving under the distinguished Senator from Iowa. He is a hard-nosed, practical leader in this body. Everybody knows he is totally honest and totally effective in so many ways. He is a dear friend of mine. I want him to know how much I appreciated serving next to him on the Finance Committee. And we will be serving next to each other on the Judiciary Committee in this upcoming year. I look forward to seeing him, as a nonlawyer, take over the controls from the Republican standpoint on the Judiciary Committee because even though the distinguished Senator from Iowa is a nonlawyer, he brings a practical balance to the Judiciary Committee—and to the Finance Committee up until now—that is sorely needed. He is one of the most respected people, by me, in this whole body of very, very strong minds and people. So I am grateful to him. I am grateful he is my friend, and I am grateful we can work together side by side in both of these committees.

I thank the Senator for all the hard work he has done in the Finance Committee all these years. I have watched him, I have sat beside him, and I have seen the products he has done, and the Senator has worked in good faith with both sides, and certainly with total honesty, and that is a high accolade right there.

Madam President, these are important issues. I know that not just the distinguished Senator from Iowa and myself feel deeply about them, but I hope we can get our colleagues together on both sides, and the President, who has indicated he is willing to compromise on this issue, and get this put over. If we could do that, I think the President will be better off, jobs will be better off, and in the end, our country—which is the ultimate goal—there is no doubt in my mind would be much better off.

With that, I thank my distinguished friend from North Dakota and yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

#### TAXES

Mr. DORGAN. Madam President, I decided some long while ago that I was going to leave the Congress after serving 30 years. So at the end of this year, I will conclude my work here in the U.S. Congress. But I was thinking—sit-

ting in the Chamber, listening to my two colleagues, for whom I have great respect and profound disagreements with—I was thinking about how interesting it is that people of good faith—and they are two Senators of good faith—can feel very strongly about an issue. I feel differently about some of the issues they just described, and I sat here and resisted the urge to jump up every 5 or 10 minutes and engage in that discussion.

It is not a difference of opinion about whether we would like the American people to pay the lowest rate of taxes possible; it is, rather, in my judgment, about the rearview mirror of history, when historians gather 50 and 100 years from now and look back at this moment and say: All right, where was America then?

Well, America had a \$13 trillion debt, a \$1.3 trillion deficit. We are sending men and women off to war by the hundreds of thousands, strapping on body armor in the morning, getting shot at in the afternoon. About 20 million people are either unemployed or not working up to their potential because they could not find the job that fits them. There are record numbers of people on food stamps. So that is where America was then. And what was the debate on the floor of the Congress? How can you further cut revenue? How can you borrow money from the Chinese in order to give those who make \$1 million a year a \$100,000 a year tax cut? They are going to say: Are you kidding me? That is what the discussion was? Wasn't there discussion about whether it was wise to borrow \$4 trillion more to extend tax cuts that came in 2001 because the President—then-President George W. Bush—felt we were going to have surpluses forever? The first surplus was the year before he took office, the last year of Bill Clinton, the first budget surplus in 30 years. Then they said: OK, we predict we are going to have surpluses for the next 10. President Bush said: Well, let's give them back, with very big tax cuts, the bulk of which go to upper income folks. I didn't vote for that. I thought: Why don't we be a little conservative? What if something happens? Well, it did—a terrorist attack, a recession, wars in Iraq and Afghanistan, debt as far as the eye can see, soldiers at war—and the discussion is how to further cut taxes, especially for upper income Americans. I am telling my colleagues, it is going to confound and confuse some future economists, how on Earth that could have been the major debate of the day in the Congress at this moment.

There is no preordained destiny for this country that this country will always be the dominant world power. That is not preordained. That will happen if this country begins again to make good decisions and tough decisions. People think times are tough now. They have been tougher in this country. Our parents and grandparents and those who came before them, those who homesteaded in sod huts, those

who traveled and populated this country out of wagon trains under the Homestead Act to go and buy a place and build a farm and raise a family, they had it tough, but they built communities and built a country and they did the right things. They made tough decisions. It is not a tough decision for us to say all 100 of us want tax cuts—well, I would like it if nobody paid taxes, if nobody had to pay taxes. But who is going to pay for the cost of things we do together, such as build schools to educate kids, build roads to travel, pay for defense so we can protect this country and on and on and on?

So I didn't come to talk about that, but I couldn't resist at least the urge to say our requirement for this country is to look well ahead and to ask: How do we retain the capability in this country so we will still remain a world economic power? This country needs jobs. This country needs the resurrection of a manufacturing base. We will not long remain as a country, a world economic power, if we don't have world-class manufacturing capability—making stuff—making things that say “Made in America.” That ought to be the discussion: how to put America back to work. There is no social program as important as a good job that pays well, and too many Americans are out of work at this point with a sick economy. The solution is not a tax cut for everybody. That is akin to going to a quack doctor who has only one recipe. He has a jug of thick brown liquid, and no matter what you have—the hiccups, gout, liver trouble—he ladles out some thick brown liquid, and he says: There it is. Take that and it will make you better.

We have people who have that vision here. Any urge, any itch, give them a tax cut. How about the Federal budget deficit? How about controlling spending? Yes, we have to control some spending and cut the deficit. Let's cut some spending and let's ask people who should be paying taxes and aren't now to pay their fair share of taxes. That is what we ought to do.

All right. I have that at least a little bit out of my system today.

#### ENERGY

I came to talk about something else. I came to talk about unfinished business toward the end of this year. There is still the ability to reclaim some success in an area that I think is very important. It is true, as I have just described, that jobs are very important in this country. It is also true that the economy, fiscal policy, debt, and deficits are very important and we need to get a hold on them and deal with them and respond to them and fix this country's economy. But it is also important that we need to address the subject of energy, and we have tried; we have tried so hard. We can decide it doesn't matter much. We can act as though it is irrelevant. But then tomorrow morning, just for a moment, what if all the American people couldn't turn on or off

the alarm clock or turn on the light or turn on the hot water heater to take a hot shower or turn on the toaster or the coffee maker? What if they couldn't turn on the ignition to get to work? What if they didn't have lights at work? We use energy 100 ways before we start work and never, ever think about it. What if the switch didn't work? What if the tank wasn't full?

Let me describe the danger because this is not irrelevant. It is not an idle issue that this country could very well find itself belly side up with an economy that couldn't work because we couldn't find the energy we need. About 60 percent of the oil we need and use in this country comes from other countries. I have described hundreds of times on the floor that we stick little straws in the Earth and we suck out oil. About 85 million barrels a day is sucked out of this planet. On this little spot called the United States of America, we need to use one-fourth of it. One-fourth of everything we suck out of this Earth has to come to the U.S.A. We are prodigious users of oil. Much of that oil comes from areas of the world that are very troubled. There are some that don't like us very much. We send them over \$1 billion, in some cases \$1.5 billion a day, every single day to buy their oil. My colleagues know and I know that in some parts of the world enough money spills from that oil barrel to help fund terrorism. We know it. If we are that vulnerable, if our economy is in that much need of oil from others, particularly troubled parts of the world, if tomorrow that supply were interrupted or shut off and if that meant that this country's economy would be belly up just like that, do we then decide to do nothing about it or do we do something about it to address it in the context of national security?

We have armies. We commit armies to trouble spots around the world to protect our interests. Those armies can only operate if they have food and fuel. They need both. Energy security is the same as national security, and we have ignored for so long this issue of vulnerability that exists with respect to our energy future.

I wish to talk about what we need to do, and I wish to talk about my disappointment that we come now to November, almost December, 3 weeks left perhaps in December, and last June a year ago we passed an energy bill out of the Energy Committee that was bipartisan. It did a lot to address our energy security. Yet we will likely end this year with unfinished business, leaving behind that progress.

I wish to talk a little about the unbelievable progress in this country. In 1830, it took 3 weeks to travel from Chicago to New York—3 weeks from Chicago to New York City. Twenty-five years later, you could do it in 3 days: the transcontinental railroad. The transcontinental railroad changed everything. Then the automobile, the automobile came along, first with an electric engine and then the internal

combustion engine and then it needed a substantial amount of oil. Then our government said: We understand that, so anybody who is going to look for oil or gas, we want to give you a big, permanent tax benefit. It was in the public interest to do that. So for a century we have said to people: Go find oil and gas because we need it. We have incentivized that drilling here in this country.

If we think of what has happened over this period I have described in travel and technology, including the automobile, the light bulb—I mean, think of the impact both those innovations have had in our lives; pretty unbelievable.

One day on a Saturday I was in Grand Forks, ND, and I met with our oldest resident, Mary Schumacher, 111 years old. She was spry—I shouldn't say “spry” because she wasn't moving very well, but she had a very keen mind and we were able to have a very good visit—111 years old. She talked to me about her memories of when she was 6 and watched the barn burn. She has a great memory. We talked about how things have changed in 100 years of her lifetime. By the way, I stopped at that nursing home to see Mary because I wasn't able to be there some months before when I was invited to go to her birthday party, and I was invited by her niece who showed up when I showed up that Saturday to visit Mary. Her niece put on the birthday party and her niece was 103 years old, in even better shape than Mary, moving around and fussing and making sure this visit with Mary was going well.

So we talked about the big changes in her life. I thought after I left there: Here is a person who has now lived over a century and she has seen everything. So let me think about her life.

In 1909—and she would have been nearly 10 years old then—in 1909, President Howard Taft, 5 foot 11 inches tall and 300 pounds, decided to get rid of the horse and buggy at the White House as the mode of transportation. He was the first President to decide he was going to buy an automobile. He bought a Baker electric car. President Taft might not have fit into a Mini Cooper had there been one back then, but he bought a Baker electric car, which goes to show batteries have a lot of power. There has been a lot of discussion about that these days. But isn't it interesting that an electric car for the White House in 1909—that is 100 years ago—that electric car, now a century later, 100 years later, is the subject of legislation I have on the floor of the Senate, along with Senator LAMAR ALEXANDER of Tennessee and Senator MERKLEY of Oregon; the Electric Vehicle Deployment Act, 100 years later. It is the new new thing. It is what we knew 100 years ago worked.

I wish to talk a little about these things and all the changes we have seen and why this issue is critical and why I feel so disappointed if we don't, in the final 3 weeks, at least take a

portion of that which we know needs to be done and do it because there is bipartisan agreement on a couple of these issues.

Let me mention them quickly. One, a renewable electricity standard so we try to induce more renewable energy production in this country. That is bipartisan. We have cosponsors in the Senate, including Senator BROWNBACK, who is a very strong supporter of that, a renewable electric standard. The Electric Vehicle Deployment Act, which I have described, Senator ALEXANDER and I and others, bipartisan; and the natural gas provision that Senator REID and Senator MENENDEZ have sponsored, that is also bipartisan. Those are things we can do and should do at the end of the year that is bipartisan that will advance our interests.

Why is it that energy is important? Well, one, the vulnerability to our economy if we were to see the supply of energy that is necessary shut off to this country at any point. So it is national security. No. 1, national security. No. 2, it is the issue of the domestic energy use and the conversion as a part of this national and energy security to conservation, No. 1, and the production of different kinds of energy, No. 2, and then, finally, the issue of environmental benefits of some of the changes that are necessary. We are coming to an intersection for the first time when we debate energy in which energy production and national security resulting from that comes to the same intersection as the issue of climate change. So everything is going to change. The question isn't whether, it is how. So I wish to talk just a bit about some of the things we can do, it seems to me, to address these matters.

Let me talk about electricity. We produce a lot of electricity from different sources, including coal and natural gas, and so on. Coal is our most abundant resource. Fifty percent of the electricity in this country comes from coal, but we have to use it differently because when we burn coal, we throw carbon into the air and we understand we can't continue to do that. So we need to find innovative ways to extract the carbon from coal to continue to use that resource. We can and we will, in my judgment. I chair the appropriations subcommittee that funds carbon capture technology. There are all kinds of people around this country doing innovative, wonderful, breathtaking things to find a way to decarbonize coal. It is going to happen, if we decide to make the investment in order to allow it to happen.

So electricity that comes from coal or natural gas and electric plants, one of the problems we have dealing with the electricity is the delivery from where it is produced to where it is needed. Back in the early days of moving electricity around, we would build a plant to produce the electricity and then a spiderweb network of transmission wires in a circle largely around the planet and that became the service

area and they were not connected one to another. That is the way it was. Then, finally, we decided we needed to move electricity from one area to another, so we connected the grids, barely, but we never did go back and build a modern transmission system. The result is we have a system now that is not very reliable and can't effectively move power from where it is produced to where it is needed, particularly in the area of renewable power, where the wind blows and the Sun shines. Where you can produce wind energy and solar energy, we can't at this point have full effective capability to where you can move it to where you can produce it and where you need it.

So we need to build an interstate transmission system. We can't do that now. We need legislation to do that. We can't do it now as demonstrated by the fact that in the last 9 years, we have built 11,000 miles of natural gas pipeline to move natural gas around this country, and we have been able to build only 668 miles of interstate high-voltage transmission lines. Why? Because we have all kinds of jurisdictions that can say no and will say no, so you can't build transmission. So the legislation we passed out of the Energy Committee a year and a half ago now solved that problem, put us on the path to be able to build an interstate transmission system, a modern, rich system. We shouldn't lose that. We should proceed to get that opportunity in that legislation.

Let me talk a bit about oil and gas. We are actually producing more oil, for the first time—it has been a long while since we have been on the decline in production. Part of it is from my State. The Bakken formation is the largest formation of oil ever assessed in the history of the lower 48 States. There are up to 4.3 billion barrels of recoverable oil, according to the U.S. Geological Survey. With that, plus the role shale plays in much of the country, we are beginning to produce a bit more oil and gas at this point. That will stop quickly if we can't continue what is called hydraulic fracturing. We have to deal with that big problem. Most of us in this Senate, who come from areas where we produce fossil energy, believe this has been done for 50 years without a problem, and now it is under some siege. If we can't do hydraulic fracturing, that promise of natural gas supplies and new oil will evaporate. We need to continue—and we will—with the production of oil and natural gas in this country.

I also am a supporter of the production of ethanol and the biofuels. I think it makes sense to extend our energy supply, if we can do it every single year, using biomass, corn-based ethanol. That makes a lot of sense to me. The other issue I mentioned is coal. We are going to have to find a way to use coal by extracting the carbon. I believe we can do that. We need to make a much greater effort. We have tried to do that in legislation in the last year or two.

Then we have nuclear energy. We will build some nuclear plants. We are going to do that. I believe we ought to do everything, and do it well, including wind, solar, geothermal. All of the renewables have great promise. I understand that in this country, for a long while, it was that real men dig and drill, and if you are somebody who supports wind or solar energy, go smoke your pipe, read a few books, and have a leather patch on your jacket. Real men dig and drill, and the rest of you are a bunch of nuisances. That was the thought that existed for a long time. It is not true anymore. We are going to dig and drill and do it differently and protect this country's environment. We are also going to incentivize and see the production of substantial amounts of additional energy from the wind and the Sun. It makes sense to do that, in order to expand our energy supply, protect our environment, produce additional jobs. All of these issues I have talked about are very job creating.

Yet, in many ways, the legislation we have worked on languishes because we are told we don't have time. This is urgent. It is about the vulnerability of our economy, about our national security, and it is about jobs. We ought to get about the business of deciding this is a priority.

If I can describe, in summary, here is how we address energy issues: Produce more, yes, in every area. Produce more wind and solar energy, incentivize it. Produce more oil—and we are doing that—and natural gas. Expand ethanol capabilities and geothermal. We can do all of these things. We are building nuclear plants now. We will see some new ones come online. As a country, we ought to do what the French are doing with respect to reprocessing and recycling and reduce that 100-percent body of waste down to 5 percent. That is what they have been doing for some while. We ought to do that—the renewables are so important—and then move toward the electric vehicle deployment, so we can take advantage of all of this. I mentioned to you that we produce about 85 million barrels a day of oil—about 21 million barrels here in the United States, about one-fourth of the oil, and 77 percent of the oil we use in this country is used in vehicles.

If you are going to reduce the use of oil and reduce our vulnerability from too many exports of oil, then you have to do something about transportation. That is why this electric vehicle issue is so very important. It is the same with respect to natural gas vehicles and long-haul trucking across a network in this country. Electric vehicles are important. I have always been a fan, as well, of hydrogen and fuel cells. I think it is probably just beyond electric vehicles. Also, a fuel cell vehicle runs on electricity. It is interesting to get in and drive a hydrogen fuel cell vehicle and find that you can put your nose right down at the exhaust pipe, because it is just water vapor. It doesn't have a sound. It puts water

vapor out the back and has twice the power at the wheel. I think that is what our grandchildren and great-grandchildren are going to drive. All of these issues are so important to this country's future.

Again, I end as I started, by saying how profoundly disappointing it is that at the end of the session we understand how important this issue is and how little has been able to be done. There is still time. We could pass legislation called the Electric Vehicle Deployment Act. We could do that. We could pass legislation calling for a renewable energy standard, renewable electricity standard. This isn't rocket science. These are not complex issues that people can't understand. They understand them. Both political parties have strong supporters for these things. As we turn to December, it seems to me that as we contemplate probably 3 weeks in December on the floor of the Senate, we ought to at least consider what portion of an energy system and energy future can we embrace that came out of the Energy Committee in the Senate. The Electric Vehicle Deployment Act is the legislation that came out most recently and passed 19 to 3 by the Energy Committee—strongly bipartisan. Why wouldn't we take that up? Why would we not complete work on that and advance this country's future?

The other day I talked about the two dune-buggy-size vehicles on the surface of Mars. I did it because I was talking to some people in North Dakota, who said nothing is going right, everything is going to hell in a hand basket, and nothing the government touches works for sure. They were down. I told them the story about the two dune-buggy-size vehicles we are driving on the surface of Mars. Five years ago, 1 week apart, we ignited rockets, and they lifted off on the west coast of the United States, and they were on their journey to Mars—1 week apart. The first rocket transported its payload to the surface of Mars, which landed on Mars with a thump and a bounce. It was in a shroud. When it stopped bouncing and stayed still, the shroud opened, and out of the shroud drove a dune-buggy-size vehicle on the surface of Mars. One week later, the second payload was deposited on the surface of Mars. The shroud bounced, opened, and the second vehicle drove off to the surface of Mars. That was 5 years ago. One's name is Spirit and one is Opportunity—two little vehicles, Spirit and Opportunity. They were supposed to last 90 days on the surface of Mars, giving us information about what we could learn about this strange planet.

Five years later, Spirit and Opportunity are still moving. It takes us 9 minutes to communicate with Spirit or Opportunity, to send them a message. At one point, Spirit fell dead asleep, and we communicated with a satellite orbiting Mars and had the satellite communicate with Spirit, and Spirit woke up. Spirit, they say, has an arm

that was used to sample the soil of Mars. That arm has become just like old men become, rheumatoid and arthritic, and now hangs at a strange angle because of that machine arthritis it has, apparently. Also a wheel broke, among the five wheels, but it didn't fall off; it is hanging. As Spirit traverses the surface of Mars, it drags one wheel that digs a slightly deeper 2-inch hole in the surface of Mars, and the arthritic arm reaches back and tells us what is happening on Mars.

How is all of this happening? First of all, it is unbelievable engineering, right? Can you imagine the people who put this together, to send dune buggies we could drive on the surface of Mars, and then they last 5 years when they were supposed to last 90 days? How are they powered? Do they have a Briggs and Stratton engine and somebody pulls it and gets them started? No. They are powered by the Sun. They have solar cells that allow us to have the power to drive dune buggies on the surface of Mars. Is it beyond our reach to believe that if we can power dune buggies with solar cells on Mars, we can fix a few of these things here on planet Earth? Of course that is not beyond our reach. Of course we can do that. In fact, the very names of these dune buggies—Spirit and Opportunity—ought to be the names on these desks in this Chamber: Spirit and Opportunity.

I started by saying there is no pre-ordained destiny for this country to do well. It always has done well. When I grew up, I knew we were the biggest, the strongest, the best, and had the most. We could beat anybody with one hand tied behind our back. That will not always be the case. We will not remain a world economic power, unless we make smart decisions. Our parents and grandparents did. Every parent in this country has sacrificed for their kids. I don't know what is in second, third, or fourth place to most people, but first place is their kids. The question is whether it is on fiscal policy or energy policy. The question is, what are we willing to do for our kids? What kind of future do we want to leave our kids? Do we want to leave them deep in debt or vulnerable on energy production, which may leave us in the dark one day? I don't think so. This country can do much better than that.

Neither party has been much of a political bargain recently. Both parties need to do better. I have strong feelings about which has better ideas at the moment, and I will not be partisan on the floor, except to say that this country deserves more. It is not just coming out here talking about how can we cut taxes for everybody; it is how do we tighten our belts and ask those who are supposed to pay taxes to pay them, getting deficits under control, and getting people back on payrolls, and incentivizing businesses to create jobs.

How do we address energy issues? It is time for this country to be serious—this Congress—about doing things that

are necessary, which may require sacrifice from all of us. If young men and women are willing to leave their homes to go to Afghanistan today for a year because their country asks them to, we can do no less than make sacrifices that are thoughtful on behalf of our future, so they won't come home and find a bigger deficit and more unemployment, but instead that we made the tough decisions to fix these things. We are going to fix this because it is important for the country's future.

As I said when I started, this issue of energy is so very important and is unfinished business. In my judgment, we ought not to include at the end of this year an energy bill, or components of one, that I think could be very important to this country's future, to jobs, and to our national security.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Madam President, in a very short while here—literally, in about 40 minutes—the time will be expired and we will be voting on the motion to proceed to the Food Safety Modernization Act. The Food Safety Modernization Act. One can wonder why did we have to go through a closure motion and a vote on that the other day. We got 74 votes on it. But it looks as though now we are going to have to have another vote on the motion to proceed after we have had 74 votes.

A lot of effort has gone into this bill by a lot of people—Republicans and Democrats—and, Lord knows, our staff. This bill has been germinating and being put together over the course of at least the last 3 or 4 years anyway, and probably a little before that when we started. I know Senator DURBIN has been working on this for several years, as have Senator GREGG, Senator DODD, and others. So this has all been put together over a period of several years. But I would say over the last 4 years, diligent work has gone into this bill, and certainly again in the last year.

It was 1 year ago, November 18—1 year ago today—that this bill was reported out of our HELP Committee, which I chair. It was reported out without one dissenting vote. It is a bill that is supported by so many different groups and so many different people. Here is a list of the people supporting this bill. We worked hard to get a broad base of support from both industry and consumers. As I have said, this may be one of the only bills I have seen around here that has the support not only of the Food Marketing Institute and the Grocery Manufacturers Institute and the Center for Science in the Public Interest. So we have both consumer groups and the business groups

supporting this—the U.S. Chamber of Commerce and the U.S. Public Interest Research Group. When have those two ever been together on a bill? And the Snack Food Association and the Pew Charitable Trusts. I mean, we have wide support for this.

The industry wants this. They want it because they know our food safety laws have not been upgraded in seven decades—since 1938, before I was born. Think about how our food has changed in our society and how we produce it and how we process it and how we ship it, not to mention the amount of foreign foods coming into this country. Consumers want it because we know a lot of people are getting sick.

I will hasten to add that we do have one of the safest food supplies in the world. But that is not good enough, because we know how many people get ill every year. Thousands of people are contaminated by food poisoning every year—E. coli, salmonella. I have met with families here from Safe Tables Our Priority. I have met with families of kids who are damaged for life because they happened to eat the wrong thing—they ate some spinach or a tomato or fish, shellfish, or something such as that. These kids are maimed for life.

We have worked very hard to put this bill together. As I said, 1 year ago it came out of our committee without one dissenting vote. But there were still some problems out there, and so we worked very hard since last November to try to reach an agreement on this bill. And we have a broad agreement. As I said, we had 74 votes on the floor of the Senate the other day.

One of my colleagues has raised a lot of issues on this bill. My good friend from Oklahoma, Senator COBURN, is on our committee, and he has raised a lot of concerns about this bill. I have met with him several times and we have had good discussions. I know he said some nice things about me on the floor earlier, and I appreciate that, and I would repay those in kind; that Senator COBURN is a very thoughtful person and he focuses on these things. He reads these bills and he gets involved. This is not something off the seat of his pants. He has focused on this. Some of the suggestions he made I thought were valid. We looked through them and we incorporated a lot of the suggestions made by my friend from Oklahoma into this bill.

We were also willing to go to the consumers and say, look, this is okay. None of us—not any one Senator around here—has infinite wisdom. Only one person has infinite wisdom. No Senators have infinite wisdom. I can't say I have ever written a bill in its entirety that got through here without having anything changed, because we don't know everything. So we rely upon one another in good faith to suggest changes, to point out things maybe we didn't see due to our blinders. We help each other put together bills that have broad support and broad

consensus so that we move ahead as a society. To me, that is the way I think we ought to operate.

So when other people were making suggestions—and I didn't mean to single out Senator COBURN, because others too had made suggestions—we tried to work with them to incorporate certain provisions in the bill. Senator TESTER, for example, on our side had suggestions about exempting certain small producers. That raised the consternation of many on the consumer side. It also raised the consternation of many on the business side. A lot of the bigger businesses said: Well, if we have to do this, you can get just as sick from eating things from small producers too. So we had to work through that. But we did work through it. It took us several months but we worked through and we got an agreement.

Quite frankly, we had good input from the Republican side—from Senator GREGG, Senator ENZI, and Senator BURR. I mention those individuals because they have been very integral to this process on our committee. We have worked through that and we got an amendment that satisfies the small producers and the consumers and the business community and the large producers. Not easy. Not easy. But compromises a lot of times aren't very easy. It is a compromise that we worked through. We worked through Senator TESTER's amendment too. That took a long time.

We were not able to reach an agreement on Senator FEINSTEIN's amendment. We agreed not to incorporate it because we could not reach an agreement on it—on the BPA amendment, even though it is very important to her and very important to a lot of people.

We have tried to get something together that would have this broad consensus and yet move us forward in making our food safer, and I believe this bill does that. This bill does this in four ways:

It improves the prevention of food safety problems. That is key. For many years, I served as chair or ranking member on the Agriculture Committee—35 years, both here and in the House. Many years ago, we came up with a program of prevention. Rather than solving the problem later, the question was: How do we prevent pathogens from entering the meat supply? We came up with this proposal of finding the access points. Where are the points in the process where contaminants and pathogens can come in? Let us have the industry come up with plans on how to prevent that on their own. That has worked. Does it work 100 percent every single time? No. But nothing is ever perfect.

I would hasten to add that even if we pass this bill, will it prevent every single foodborne illness forever and ever? Probably not. Probably not. But it is going to be a lot better than what we have right now, a lot better, because we are going to look at prevention—preventing the pathogens from en-

trance in the first place. So that is one way we do it.

Secondly, it improves the response to detection of foodborne illness outbreaks when they do occur. In other words, we will be able to detect it earlier and respond earlier than we have been able to do in the past.

It enhances our Nation's food defense capabilities. Every year, 76 million Americans get sick from foodborne illnesses—76 million. So the stakes are too high not to act.

These are the critical ways in which we have moved the ball forward. Again, I know my friend from Oklahoma has said to me many times that it will not solve all your problems. I understand that. It is not perfect. But there is an old saying: Don't let the perfect be the enemy of the good. This is a good bill. It is going to help keep our people from getting sick. Everyone? No. I would never stand here and say this is going to solve every single foodborne illness problem in America. But it is sure going to do a lot more than we have been doing.

Again, I want to make it clear that if anyone says we are trampling on the rights of the minority, I ask you to consider all we have done. We have a bipartisan team in place, we have modified the bill dozens of times to get the right balance, we have all made tremendous compromises—Democrats and Republicans, consumers and business. As I said, we agreed to compromises just lately. The mandatory inspection schedule, which is so important to the public health community, has been reduced tenfold—tenfold—since that bill was reported out of our committee unanimously 1 year ago. We accepted language, as I said, which exempted the small facilities from these new requirements—the Tester amendment. We agreed to changes in the section on traceback, which limits the application of the new rule to farms and restaurants. There is no registration fee to help pay for the bill. The routine access to records the FDA wanted, we don't do that either.

That is a short list. I can go on and on. I think one of my friends on the other side said we have bent over backward, and we have. We wanted to reach a point where we could move ahead with the bill, even offering to let some amendments be offered and we would vote on those amendments. But what has happened now, I understand, is that the Senator from Oklahoma, my friend, has now said he wanted to offer an amendment dealing with earmarks.

Look, earmarks is an issue. It is an issue that the next Congress, I would say—probably the next Congress—is going to have to address. But it should be done in the spirit of debate. It should be done in the spirit so committees that have relevant jurisdiction can look at this, make recommendations. We should not do it in the heat of passion, right now. We just came off of a very heated election. There have been a lot of changes made. I understand that.

We live with that. That is fine. But now is not the time to start throwing up red-hot issues that were in the campaign. Let's let things cool down a little bit and approach an issue such as earmarks thoughtfully, with due diligence and with due debate.

This bill that is going to protect our people from getting sick and our kids from being injured for lifetimes because they eat contaminated peanut butter—this is not the bill to deal with something dealing with earmarks. I hope my friend from Oklahoma will relent. There will be plenty of time and plenty of opportunities when we come back in January with a new Congress, I say to my colleague from Oklahoma, to bring up the matter of earmarks and have it debated fully and have some kind of resolution by both the Senate and the House on that issue—but not right now. This is not the time to do it, not in the heat of coming off the campaign.

Let's keep our eye on the ball. This is a food safety bill. We have come so close. We have an agreement from the House that what we pass here, the bill we have put together, that we reached all these compromises on—we have an agreement from the House, if we pass it and we do get significant—we get bipartisan support, that the House would take it and pass it and send it right to the President. What more could you ask for than that? We get to decide what the President actually signs into law.

Without going into every little thing we have done here, let me just mention a few.

Senator COBURN was concerned about the authorization level, so we offered in good faith to reduce it by 50 percent. That is kind of a compromise—we just reduced the authorization by 50 percent on the grants. We offered to modify the sections on performance standards and surveillance. It is completely done. We completely struck section 510. We called for increasing the hiring of FDA staff. In our bill, we called for increasing staff to conduct certain inspections. My friend objected to that. In the spirit of compromise, we struck it. We said no, we are not going to call for increasing hiring of field staff. Mr. COBURN had some concerns—rightfully so, by the way—about improving coordination between FDA and USDA, so we offered to add his language that would force them to get together and not duplicate efforts, and on the customs side, too, so we would eliminate any kind of duplication of inspections. We put that in the bill.

We offered to do all this and to put it in the bill, and we did, and that will be in our amendment that we offer. We will in good faith put those things in our bill. But then I am told that now we are probably going to have to file cloture, fill the tree, and do all that stuff which I was hoping we would not have to do. That is not the way to do business here. I don't like doing it that way. That is why we worked so hard to

try to reach these agreements. But I guess we are going to be forced to do that. I hope that is not so.

I also heard that maybe someone might want to read the bill. That is 4 hours of reading the bill. That bill has been out here for a year. If anybody wanted to read it, they could have read it by now. But that is just another delaying tactic we really do not need.

Again, on this issue of saying we cannot vote on this bill unless we will vote on earmarks, I say earmarks is an important issue. I am happy to have the debate and to have a vote on that but not now. This is a food safety bill. We have it ready to go. We have all our compromises in place. This is not the time and this is not the bill on which to debate the whole issue of earmarks.

You might say, why are we so willing to compromise, why am I so passionate on this bill? Because people are dying. We have Thanksgiving coming up. People will be gathered around with their families—except for all those people in homeless shelters. Mr. President, 950,000 children in America who go to elementary, middle, and high school will not have a home to go to this Thanksgiving because they are living in homeless shelters. Think about that. They are living in cars and homeless shelters. They are being shunted around—950,000. Am I going to stand here and say that if we pass this bill and get it to the President, that is going to keep any one of them from getting sick on what they might eat on Thanksgiving Day? I am not here to say that. But what this bill will do is send a strong signal that we are going to take the steps necessary in the coming months and years to upgrade our food safety system so that the chance, the likelihood of them ever getting sick from eating contaminated food is going to be greatly decreased. Surely we can at least send that hopeful message out to our families before Thanksgiving. Surely we could do that and not get bollixed up around here in politics and political debate.

I know of no politics on this bill. I know of no politics. I mean Democrat, Republican, left, right, liberal, conservative—I don't know of anything like that. There is not. I do know that this issue of earmarks, regardless of the substantive issue, is a political issue too. They may have substantive reasons, but there is also a lot of politics hanging around that.

Let's take the bill that has no politics, knows neither left nor right, conservative, liberal, Democrat, or Republican. It has nothing to do with earmarks or what we ever do with earmarks or anything else. It has to do with the safety and welfare of our American families, of our kids. I am just asking people to be reasonable.

There is a time and place for political debate, even here on the Senate floor. We may say it does not happen, but we know it does. There is a time and place for that. That will happen—not now, not on this bill. We have come

too far. We are too close. We have too many compromises that we made that are so widely supported. I am afraid that if we lose this, all the good work that has gone in in the last year, the last 2 years, the last 4 years putting this together, it is going to be very hard to put it back together again. So people will continue to roll the dice when they buy food. Maybe it is safe and maybe it is not.

We will continue to see more things happen like what happened to Kayla Boner, Monroe, IA, age 14. On October 22, 2007, she turned 14 and passed her learner's permit. The next day, she stayed home. She had a foodborne illness due to E. coli contamination. She was admitted to the Paella, IA, Community Hospital. Her symptoms worsened. She didn't respond to antibiotics, and within a week her kidneys began to fail. Kayla was transferred to Blank Children's Hospital for dialysis, but her condition continued to deteriorate. She suffered a seizure and began to have heart problems. A few days later, Kayla's brain activity stopped, and her parents made the painful decision to take their beautiful daughter off life support.

For Kyle Allgood—spinach. His family is going to have an empty seat at their Thanksgiving table this year. Kyle, a playful 2-year-old, fell ill after eating bagged spinach contaminated by a deadly strain of E. coli. They thought it was flu. He began to cry from excruciating abdominal pain. He was flown all the way to a Salt Lake City hospital. His kidneys failed, he had a heart attack, and he died—from eating bagged spinach.

Stephanie Bartilucci's family is also going to have an empty seat at their Thanksgiving table this year—killed by listeria, eating lettuce. She was 30 weeks pregnant, Stephanie was. She felt that something was wrong. When she went for an ultrasound, it showed that the baby was not moving. She had contractions, and eventually her heart began to beat dangerously fast and she had to undergo an emergency C-section. When she awoke, she found that her baby boy had bleeding in his brain and couldn't breathe on his own. He was intubated and brain dead. Stephanie soon discovered she had been suffering from a bacterial infection from eating contaminated lettuce. The bacteria was so deadly that she became septic and almost lost her own life. Her newborn baby, Michael, died in her arms that night.

There are also families who have had loved ones survive foodborne illnesses, but their lives will never be the same, such as Rylee Gustafson and her family. On Rylee's ninth birthday, she began to complain of stomach pain after eating E. coli-contaminated spinach. Within 72 hours, she had been admitted to UCSF Children's Hospital. Her kidneys began to fail, and dialysis treatments were started. In addition to kidney failure, she experienced hallucinations and temporary loss of vision,



developed high blood pressure and diabetes, and had fluid buildup in her lungs and around her heart. On the 10th day of hospitalization, Rylee's condition had deteriorated to the point where the doctors believed it necessary to prepare her family that she might not pull through. Rylee spent 35 days in the hospital and will have to endure the memories of that traumatic time for the rest of her life. The long-term effects of her illness are currently unknown.

How many Americans will have to die, how many of these kids will become sick before we fulfill our responsibility to modernize our woefully outdated food safety system?

How many families will have to endure a tragic loss before we pass this legislation? One more tragedy is one too many. I urge my colleagues, as they think about their holiday plans and their preparations, to take a moment to think about families who have had their holidays disrupted by contaminated food. Five thousand people die every year in this country because of contaminated food. Among them are many children. As they spend the day with their loved ones preparing Thanksgiving banquets, the last thing people want is to be jeopardized by the threat of food contamination. Yet many families are haunted by this. It is unacceptable. It is past time we do something. We have come too far. We have reached compromises. We have the support of many sectors of society.

Again, if we pass this bill, will it ensure that no kid like Rylee will ever get sick again? I can't make that promise. Or that no one will ever die? I can't make that promise. But I can promise this: With the passage of this bill, putting it into law, the chances there will be another Rylee Gustafson will be diminished greatly.

Let's not get this caught up in politics. Let's get the politics out of this. Let's vote on the bill. Let's get it through. Let's go home. Let Senators go home for Thanksgiving grateful that we have done a good thing, that we have done something good for our country, and that we didn't let it get all boxed up in politics. Isn't that the least we can do for the country on this Thanksgiving week?

I yield the floor.

Mr. SPECTER. Madam President, I have sought recognition to speak in favor of my amendment No. 4693 to the FDA Food Safety Modernization Act S.510 to permit emergency scheduling of designer anabolic steroids.

Anabolic steroids—masquerading as body building dietary supplements—are sold to millions of Americans in shopping malls and over the Internet even though these products put at grave risk the health and safety of Americans who use them. The harm from these steroid-tainted supplements is real. In its July 28, 2009, public health advisory, the FDA described the health risk of these types of products to include serious liver injury, stroke, kid-

ney failure and pulmonary embolism. The FDA also warned:

[A]nabolic steroids may cause other serious long-term adverse health consequences in men, women, and children. These include shrinkage of the testes and male infertility, masculinization of women, breast enlargement in males, short stature in children, adverse effects on blood lipid levels, and increased risk of heart attack and stroke.

New anabolic steroids—often called designer steroids—are coming on the market every day, and FDA and DEA are unable to keep pace and effectively stop these products from reaching consumers.

At the Senate Judiciary Subcommittee on Crime and Drugs hearing I chaired on September 29, 2009, representatives from FDA and DEA, as well as the U.S. Anti-Doping Agency, testified that there is a cat and mouse game going on between unscrupulous supplement makers and law enforcement—with the bad actors engineering more and more new anabolic steroids by taking the known chemical formulas of anabolic steroids listed as controlled substances in schedule III and then changing the chemical composition just slightly, perhaps by a molecule or two. These products are rapidly put on the market—in stores and over the Internet—without testing and proving the safety and efficacy of these new products. There is no prenotification to, or premarket approval by, Federal agencies occurring here. These bad actors are able to sell and make millions in profits from their designer steroids because while it takes them only weeks to design a new steroid by tweaking a formula for a banned anabolic steroid, it takes literally years for DEA to have the new anabolic steroid classified as a controlled substance so DEA can police it.

The FDA witness at the hearing, Mike Levy, Director of the Division of New Drugs and Labeling Compliance, acknowledged that this is a “challenging area” for FDA. He testified that for FDA it is “difficult to find the violative products and difficult to act on these problems.” The DEA witness, Joseph T. Rannazzisi, Deputy Assistant Administrator for DEA, was even blunter. When I questioned him at the hearing, Mr. Rannazzisi admitted that “at the present time I don't think we are being effective at controlling these drugs.” He described the process as “extremely frustrating” because “by the time we get something to the point where it will be administratively scheduled [as a controlled substance], there's two to three [new] substances out there.”

The failure of enforcement is caused by the complexity of the regulations, statutes and science. Either the Food Drug and Cosmetic Act, which provides jurisdiction for FDA, or the Controlled Substances Act, which provides jurisdiction for DEA, or both, can be applicable depending on the ingredients of the substance. Under a 1994 amendment to the Food Drug and Cosmetic Act,

called the Dietary Supplement Health and Education Act, DSHEA, dietary supplements, unlike new drug applications, are not closely scrutinized and do not require premarket approval by the FDA before the products can be sold. Premarket notification for dietary supplements is required only if the product contains new dietary ingredients, meaning products that were not on the U.S. market before DSHEA passed in 1994.

If the FDA determines that a dietary supplement is a steroid, it has several enforcement measures available to use. FDA may treat the product as an unapproved new drug or as an adulterated dietary supplement under the Food Drug and Cosmetic Act. Misdemeanor violations of the Food Drug and Cosmetic Act may apply, unless there is evidence of intent to defraud or mislead, a requirement for a felony charge. However, given the large number of dietary supplement products on the market, it is far beyond the manpower of the FDA to inspect every product to find, and take action against, those that violate the law—as the FDA itself has acknowledged.

The better enforcement route is a criminal prosecution under the Controlled Substances Act. However, the process to classify a new anabolic steroid as a controlled substance under schedule III is difficult, costly and time consuming, requiring years to complete. Current law requires that to classify a substance as an anabolic steroid, DEA must demonstrate that the substance is both chemically and pharmacologically related to testosterone. The chemical analysis is the more straightforward procedure, as it requires the agency to conduct an analysis to determine the chemical structure of the new substance to see if it is related to testosterone. The pharmacological analysis, which must be outsourced, is more costly, difficult, and can take years to complete. It requires both in vitro and in vivo analyses—the latter is an animal study. DEA must then perform a comprehensive review of existing peer-reviewed literature.

Even after DEA has completed the multiyear scientific evaluation process, the agency must embark on a lengthy regulatory review and public-comment process, which typically delays by another year or two the time it takes to bring a newly emerged anabolic steroid under control. As part of this latter process, DEA must conduct interagency reviews, which means sending the studies and reports to the Department of Justice, DOJ, the Office of Management and Budget, OMB, and the Department of Health and Human Services, HHS—provide public notification of the proposed rule, allow for a period of public comment, review and comment on all public comments, write a final rule explaining why the agency agreed or did not agree with the public comments, send the final rule and agency comments back to DOJ,

OMB and HHS, and then publish the final rule, all in accordance with the Administrative Procedures Act. To date, under these cumbersome procedures, DEA has only been able to classify three new anabolic steroids as controlled substances and that process—completed only after the September 29, 2010, Senate Judiciary subcommittee hearing—took more than 5 years to finish.

It is clear that the current complex and cumbersome regulatory system has failed to protect consumers from underground chemists who easily and rapidly produce designer anabolic steroids by slightly changing the chemical composition of the anabolic steroids already included on schedule III as controlled substances. The story of Jareem Gunter, a young college athlete who testified at the hearing, illustrates the system's failure. To improve his athletic performance 4 years ago, Jareem purchased in a nutrition store a dietary supplement called Superdrol, a product he researched extensively on the Internet and believed was safe. Unfortunately it was not. Superdrol contained an anabolic steroid which to this day is still not included in the list of controlled substances. After using Superdrol for just several weeks, Jareem came close to dying because this product—which he thought would make him stronger and healthier—seriously and permanently injured his liver. He spent 4 weeks in the hospital and has never been able to return to complete his college education.

To close the loopholes in the present laws that allow the creation and easy distribution of deadly new anabolic steroids masquerading as dietary supplements, I filed amendment No. 4693 to the FDA Food Safety Modernization Act S.510 to permit emergency scheduling of designer anabolic steroids. The amendment simplifies the definition of anabolic steroid to more effectively target designer anabolic steroids, and permits the Attorney General to issue faster temporary and permanent orders adding recently emerged anabolic steroids to the list of anabolic steroids in schedule III of the Controlled Substances Act.

Under the amendment, if a substance is not listed in schedule III of the Controlled Substances Act but has a chemical structure substantially similar to one of the already listed and banned anabolic steroids, the new substance will be considered to be an anabolic steroid if it was intended to affect the structure or function of the body like the banned anabolic steroids do. In other words, DEA will not have to perform the complex and time consuming pharmacological analysis to determine how the substance will affect the structure and function of the body, as long as the agency can demonstrate that the new steroid was created or manufactured for the purpose of promoting muscle growth or causing the same pharmacological effects as testosterone.

Utilizing the same criteria, the amendment permits the Attorney General to issue a permanent order adding such substances to the list of anabolic steroids in schedule III of the Controlled Substances Act.

The amendment also includes new criminal and civil penalties for falsely labeling substances that are actually anabolic steroids. The penalties arise where a supplement maker fails to truthfully indicate on the label—using internationally accepted and understandable terminology—that the product contains an anabolic steroid. These penalties are intended to be substantial enough to take away the financial incentive of unscrupulous manufacturers, distributors, and retailers who might otherwise be willing to package these products in a way that hides the true contents from law enforcement and consumers.

Finally, the amendment adds to schedule III 33 new anabolic steroids that have emerged in the marketplace in the 6 years since Congress passed the Anabolic Steroid Control Act of 2004. It also instructs the U.S. Sentencing Commission to review and revise the Federal sentencing guidelines to ensure that where an anabolic steroid product is illegally manufactured or distributed, and that product is in a tablet, capsule, liquid or other form that makes it difficult to determine the actual amount of anabolic steroid in the product, the sentence will be based on the total weight of the product.

Amendment No. 4693 simplifies and expedites the process for scheduling anabolic steroids as controlled substances. By making this simple procedural change, we can protect the health and lives of countless Americans and provide an effective enforcement mechanism to hold accountable those individuals and their companies which purposefully exploit the current regulatory system for their selfish gain. I urge my colleagues to pass amendment No. 4693 to the FDA Food Safety Modernization Act S. 510.

Mr. CONRAD. Madam President, section 311(c) of S. Con. Res. 13, the 2010 budget resolution, permits the chairman of the Senate Budget Committee to adjust the allocations of a committee or committees, aggregates, and other appropriate levels and limits in the resolution for legislation that would improve the safety of the food supply in the United States. This adjustment to S. Con. Res. 13 is contingent on the legislation not increasing the deficit over either the period of the total of fiscal years 2009 through 2014 or the period of the total of fiscal years 2009 through 2019.

I find that S. 510, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply, fulfills the conditions of the deficit-neutral reserve fund for food safety. Therefore, pursuant to section 311(c), I am adjusting the aggregates in the 2010 budget resolution, as well as

the allocation to the Senate Health, Labor, Education, and Pensions Committee.

I ask unanimous consent that the following revisions to S. Con. Res. 13 be printed in the RECORD.

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

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 311(c) DEFICIT-NEUTRAL RESERVE FUND FOR FOOD SAFETY

[In billions of dollars]

Section 101

(1)(A) Federal Revenues:	
FY 2009 .....	1,532.579
FY 2010 .....	1,612.278
FY 2011 .....	1,939.131
FY 2012 .....	2,142.415
FY 2013 .....	2,325.527
FY 2014 .....	2,575.718
(1)(B) Change in Federal Revenues:	
FY 2009 .....	0.008
FY 2010 .....	-53.708
FY 2011 .....	-149.500
FY 2012 .....	-217.978
FY 2013 .....	-189.810
FY 2014 .....	-57.940
(2) New Budget Authority:	
FY 2009 .....	3,675.736
FY 2010 .....	2,907.837
FY 2011 .....	2,858.866
FY 2012 .....	2,831.668
FY 2013 .....	2,991.128
FY 2014 .....	3,204.977
(3) Budget Outlays:	
FY 2009 .....	3,358.952
FY 2010 .....	3,015.541
FY 2011 .....	2,976.251
FY 2012 .....	2,878.305
FY 2013 .....	2,992.352
FY 2014 .....	3,181.417

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 311(c) DEFICIT-NEUTRAL RESERVE FUND FOR FOOD SAFETY

[In millions of dollars]

Current Allocation to Senate Health, Education, Labor, and Pensions Committee:	
FY 2009 Budget Authority .....	-22,612
FY 2009 Outlays .....	-19,258
FY 2010 Budget Authority .....	4,159
FY 2010 Outlays .....	1,295
FY 2010-2014 Budget Authority .....	43,782
FY 2010-2014 Outlays .....	43,026
Adjustments:*	
FY 2009 Budget Authority .....	0
FY 2009 Outlays .....	0
FY 2010 Budget Authority .....	0
FY 2010 Outlays .....	0
FY 2010-2014 Budget Authority .....	0
FY 2010-2014 Outlays .....	0
Revised Allocation to Senate Health, Education, Labor, and Pensions Committee:	
FY 2009 Budget Authority .....	-22,612
FY 2009 Outlays .....	-19,258
FY 2010 Budget Authority .....	4,159
FY 2010 Outlays .....	1,295
FY 2010-2014 Budget Authority .....	43,782
FY 2010-2014 Outlays .....	43,026

\*\*According to CBO, the amendment in a nature of a substitute would increase revenues from civil and criminal penalties and related spending by less than \$500,000. The reserve fund adjustment accommodates this negligible increase in revenues and spending.

Ms. MIKULSKI. Madam President, I rise to address one of the most important issues facing our Nation, the safety of America's food supply. I support the FDA Food Safety Modernization Act that will help reduce the rash of contaminated foods that have recently entered our food supply. Every person should have confidence that their food is fit to eat.

While the FDA has always been the gold standard in maintaining the safety and efficacy of our food and drugs, the salmonella outbreak in eggs over the summer made it painfully clear that we need to do more—and that the law needs updating. The outbreak resulted in as many as 79,000 illnesses, 30 deaths, and the recall of roughly one half billion eggs. Beyond that, the Centers for Disease Control informs us that 76 million people get sick, and 5,000 die, each year from foodborne illnesses. Just last week the FDA warned Marylanders about a potential outbreak of E. coli in apple cider sold in the State.

I applaud the quick action by the FDA in responding to these food outbreaks, but we can do better. FDA Commissioner Margaret Hamburg has told us that she needs more resources and more authority to oversee the way our food is produced and monitored. That is why, as a committed advocate of food safety nationwide, I support the FDA Food Safety Modernization Act.

This bipartisan bill would give the FDA authority to order mandatory food recalls for unsafe foods if companies don't do it themselves. It sets FDA safety standards for produce, creates stronger FDA regulations for sanitary food transportation from our producers to our grocery stores, and establishes FDA pilot projects to better track where fruits and vegetables come from.

This bill also emphasizes prevention and taking action to prevent food outbreaks from occurring in the first place. It ensures that facilities have food safety plans in place to identify, evaluate, and address food safety hazards. With the growing amount of food that is imported globally, this bill ensures imported food meets the same safety standards as domestic food by requiring importers to verify the safety of foreign suppliers and imported food. This bill would grant the FDA the authority it needs to protect the health of our families.

It is time we get serious about the safety of our Nation's food. The health of Americans is not something to take a chance with. It is important that we make food safety a top priority. We must pass the FDA Food Safety Modernization Act and empower the FDA to set safety standards and hold food producers accountable.

Mr. DURBIN. Madam President, I would like to say a few words on this legislation because it is something I have worked on for many years. I can't thank Senator HARKIN and Senator ENZI and others enough for their hard work in bringing this issue to this mo-

ment in time. Several things have been stated during the course of the debate which I would like to address. Most of them were stated by my friend from Oklahoma, Senator COBURN. At this point he is the only Senator holding up this bill from consideration, one Senator.

At this point 89 percent of the American people support food safety reform to make our food safer and to have more inspections of imported food so our children and family members don't get sick; 89 percent support it. The bill has substantial bipartisan support. Twenty Republican and Democratic Senators are committed to this bill. Seventy-four Senators, almost three-fourths of the Senate, voted to move forward on this bill, a strong bipartisan roll call. The House passed a companion bill with the support of 54 Republicans. We know it is a bipartisan issue. This should not be a partisan fight.

Senator COBURN objected to giving the Federal Government the authority to recall a dangerous food product. Most people believe if there is a dangerous food product in stores across America, the Federal Government sends out a notice, and it is brought in. That is not the case. The Federal Government does not have the legal authority to recall any food products. All it can do is publicize that the products are dangerous and hope that grocers and retailers and manufacturers will take them off the shelves. That is it. That is the existing state of law. We give the government that authority.

Senator COBURN said it is not necessary. He claims not one company has ever refused to recall contaminated food. He is just wrong. There are many instances of companies that just flatout refuse to recall their food or delay a recall, and many people get sick and die. That is a fact.

Last year Westco Fruit and Nut Company flatout refused FDA's request to recall contaminated peanut products. A few years ago, GAO released a report entitled "Actions Needed by FDA to Ensure Companies Carry Out Recalls" which highlighted six other companies that flatout refused to recall contaminated food when they were told it was dangerous. Even the Bush administration realized how important this was and formally requested mandatory recall authority in the 2007 food protection plan.

Senator COBURN has his facts wrong when he claims the FDA does not need the mandatory recall authority.

Senator COBURN also claims our bill does not address the real problem in our Nation's food safety system.

Once again, he is mistaken. The National Academy of Sciences disagrees. In June, the National Academy released a report entitled "Enhancing Food Safety, the Role of the FDA." The report contained seven critical recommendations for improving food safety. This is not a partisan group. Every single one of the key rec-

ommendations from that group is addressed in our bill, including increasing inspections and making them risk related, giving FDA mandatory recall authority, improving registration of food facilities, and giving the FDA the authority to ban contaminated imports. Our bill fills all of the critical gaps in the FDA's food safety authority that have been identified by the National Academy of Sciences.

For Senator COBURN to say it is unnecessary is to ignore science and fact and, I guess, the reality that if we are going to make food safer, we need to do our job better. That is why all the key consumer protection and public health groups support this bill—all of them.

He thinks this bill is not good for business. He says it hurts their profits and their productivity. He is just wrong. The number and diversity of the industry and business groups that support the bill speaks for itself. Listen to the groups that support the food safety bill and tell me they are acting against their best business interests: the Grocery Manufacturers Association, the U.S. Chamber of Commerce, the American Beverage Association, the American Frozen Food Institute, the Food Marketing Institute, the International Dairy Foods Association, National Restaurant Association, Snack Food Association, National Coffee Association, National Milk Producers Federation, National Confectioners Association, Organic Trade Association, the American Feed Industry Association.

If Senator COBURN is right, every one of these associations' leadership should be removed tomorrow because, under his analysis, they have decided to support a bill that hurts their business. They know better. Safe food is good business. Think about what it costs these companies when they have to recall a product, when it damages their reputation and all the things they will go through to try to clean up their act.

Senator COBURN says there are 10 or 20 deaths per year caused by foodborne illness. The Senator is just wrong. He uses this number to support his assertion that there are not enough victims to justify a bill. Here are the facts. According to the Center for Disease Control, there are not 10 or 20 deaths per year, there are 5,000 deaths in America every single year caused by foodborne illness—5,000. Senator REID can tell some stories about his State which was hit particularly hard by food illness.

Moreover, every year 76 million Americans contract a foodborne illness; 325,000 are hospitalized. A few weeks ago I told you about one of the victims, a young man named Richard Chatfield from Owasso, OK. At age 15, he was on a camping trip and was diagnosed with E. coli. For 8 years, he suffered pain, migraine headaches, dry heaves, and high blood pressure, and after going on dialysis, kidney failure. When we were last debating this bill, Richard was lying in the hospital and his mother Christine had rushed to be by his side. That hospital turned out to be the scene of Richard's death.

On Monday, October 18, while we were still holding up the food safety bill, Richard Chatfield died from foodborne illness. The complications from an E. coli infection he got 8 years ago proved to be too much for him.

When I hear Senator COBURN on the Senate floor saying there are not enough people dying for us to go to work here, he is just plain wrong. Richard Chatfield of his State is dramatic evidence of that fact.

As we stand here today, one Senator is blocking a bill to protect millions of Americans. Moms and dads across America making dinner tonight, if they happen to have missed the channel they were looking for and ended up on C-SPAN and are following this debate, we are talking about an issue that goes right into their refrigerator and stove and kitchen as to whether the food they are putting on the table is safe for their kids. One Senator from Oklahoma says it is not a big enough problem. It is. It is a problem that is a life-and-death issue.

I thank the Senator from Iowa for his leadership on this issue and Senator REID for bringing this up. If we save one life, it is worth the effort.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I thank my friend and colleague from Illinois, Senator DURBIN. He has been the leader on this issue for several years. We have been working on this bill for a number of years. It is Senator DURBIN who has led the charge on this going back literally several years. We have come so close. We have made all the compromises. We have consumer groups, the Chamber of Commerce, U.S. PIRG. We never get those people to agree on anything, and they all agree on this bill.

I thank Senator DURBIN for all his great leadership. Hope springs eternal, and I still hope we will get the votes to pass this and keep the politics out of it.

I wish to correct something I said earlier. Earlier today I had met with Senator COBURN, and we had a number of things he wanted that I said I would try to put in the amendment on which we will be voting. In good faith, I said I would do that. But then, of course, we had to send it out to various offices to get Senators to sign off on it. We couldn't get Republican Senators to sign off on it. So I wish to correct the record.

The changes I had mentioned earlier that I was willing to put in the bill for Senator COBURN were not objected to by anybody on our side. It was objected to by Republicans and not Democrats. It is not in the bill. These were changes I was willing to make to accommodate the Senator from Oklahoma.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, is the 30 hours postcloture gone?

The PRESIDING OFFICER. It is.

Mrs. BOXER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. MENENDEZ), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from Virginia (Mr. WEBB) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Kentucky (Mr. BUNNING), the Senator from South Carolina (Mr. DEMINT), the Senator from Nevada (Mr. ENSIGN), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mrs. HUTCHISON), the Senator from Nebraska (Mr. JOHANNES), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Idaho (Mr. RISCH), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted "nay" and the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

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

The result was announced—yeas 57, nays 27, as follows:

[Rollcall Vote No. 251 Leg.]

#### YEAS—57

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Begich	Franken	Nelson (NE)
Bennet	Gillibrand	Nelson (FL)
Bingaman	Hagan	Pryor
Boxer	Harkin	Reed
Brown (MA)	Inouye	Reid
Brown (OH)	Johnson	Sanders
Burr	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Snowe
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Collins	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Coons	Lincoln	Voinovich
Dodd	Manchin	Warner
Dorgan	McCaskill	Whitehouse
Durbin	Merkley	Wyden

#### NAYS—27

Barrasso	Cornyn	LeMieux
Bennett	Crapo	Lugar
Bond	Enzi	McCain
Brownback	Graham	McConnell
Burr	Grassley	Roberts
Chambliss	Hatch	Sessions
Coburn	Inhofe	Shelby
Cochran	Isakson	Thune
Corker	Kyl	Wicker

#### NOT VOTING—16

Alexander	Hutchison	Rockefeller
Bayh	Johannes	Specter
Bunning	Kerry	Vitter
DeMint	Menendez	Webb
Ensign	Murkowski	
Gregg	Risch	

The motion was agreed to.

#### FDA FOOD SAFETY MODERNIZATION ACT

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 510) to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

The Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the "FDA Food Safety Modernization Act".

(b) *REFERENCES.*—Except as otherwise specified, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(c) *TABLE OF CONTENTS.*—The table of contents for this Act is as follows:

Sec. 1. Short title; references; table of contents.

#### TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS

Sec. 101. Inspections of records.

Sec. 102. Registration of food facilities.

Sec. 103. Hazard analysis and risk-based preventive controls.

Sec. 104. Performance standards.

Sec. 105. Standards for produce safety.

Sec. 106. Protection against intentional adulteration.

Sec. 107. Authority to collect fees.

Sec. 108. National agriculture and food defense strategy.

Sec. 109. Food and Agriculture Coordinating Councils.

Sec. 110. Building domestic capacity.

Sec. 111. Sanitary transportation of food.

Sec. 112. Food allergy and anaphylaxis management.

#### TITLE II—IMPROVING CAPACITY TO DETECT AND RESPOND TO FOOD SAFETY PROBLEMS

Sec. 201. Targeting of inspection resources for domestic facilities, foreign facilities, and ports of entry; annual report.

Sec. 202. Recognition of laboratory accreditation for analyses of foods.

Sec. 203. Integrated consortium of laboratory networks.

Sec. 204. Enhancing traceback and record-keeping.

Sec. 205. Pilot project to enhance traceback and recordkeeping with respect to processed food.

Sec. 206. Surveillance.

Sec. 207. Mandatory recall authority.

Sec. 208. Administrative detention of food.

Sec. 209. Decontamination and disposal standards and plans.

Sec. 210. Improving the training of State, local, territorial, and tribal food safety officials.

Sec. 211. Grants to enhance food safety.

#### TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD

Sec. 301. Foreign supplier verification program.

Sec. 302. Voluntary qualified importer program.

Sec. 303. Authority to require import certifications for food.

Sec. 304. Prior notice of imported food shipments.

Sec. 305. Review of a regulatory authority of a foreign country.