COMMITTEE ON FINANCE
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Floor Statement of Senator Max Baucus (D-Mont.)
Regarding American Jobs and Closing Tax Loopholes Act

Mr. President, George Santayana wrote:

"Those who cannot remember the past are condemned to repeat it."

Today, we must remember the past. We must learn from past mistakes. And we must avoid repeating them.

In its response to the Great Depression of the 1930s, the Federal Government made a serious mistake.

It's important that we remember this past. So that we are not condemned to repeat it.

The stock market crashed in 1929. By 1933, the unemployment rate reached a high of 25 percent.

In 1937, the economy was rebounding. The unemployment rate had fallen to 14 percent. GDP was growing at an average rate of nine percent a year. And the stock market had more than doubled over the past four years.

The economy was on the road to recovery.

This exceptional economic growth did not just happen. It resulted from strong actions by the Federal Government.

From 1933 to 1937, the U.S. dramatically increased the money supply. Lower interest rates and greater credit availability helped to stimulate spending and economic growth.

New Deal programs also helped. Spending was modest compared to the magnitude of the Great Depression. But the fiscal response provided a noticeable boost to the economy. And it helped instill confidence in the Federal Government's ability to tackle the Depression.

But in 1937, after four years of growth, the Government made a mistake.

Concerned about short-term deficits, it began to cut spending. And it began to raise taxes.

A bonus for World War I veterans, which provided a boost in consumer spending, was allowed to expire in 1937. Social Security taxes were collected for the first time in 1937. And marginal tax rates increased dramatically.

This premature attempt to reduce deficits pushed the economy back over the edge.

The jobless rate shot back up to 19 percent. In 1938, GDP fell by three percent.

Short-sighted policy decisions caused a "double dip." The mistaken desire to balance the budget too quickly effectively lengthened the Great Depression by two more years.

I understand the desire today to reduce deficits. I share that desire. We do need to put in place deficit reduction that will take effect after the recovery has kicked in.

But we must learn from the 1937 history. We must not repeat the mistake that led to the double-dip downturn of the late 1930s.

If we were dramatically to cut spending or increase taxes to reduce the deficit in the short run, it would run the risk of causing a double dip in this Great Recession.

Today, the economy remains too fragile to begin cutting back.

Unemployment stands at 9.7 percent. The May jobs report was disappointing. The private sector created only 41,000 new jobs. In total, 15 million Americans still remain out of work. And half of those unemployed workers have been unemployed for more than six months.

GDP grew three percent in the first quarter of 2010. But this was down from 5.6 percent in the fourth quarter of 2009.

Just as in 1937, we are in a recovery period. And just as in 1937, it's a recovery that shows signs of weakness.

If we act recklessly today, we risk a double-dip recession. If we adopt a constrictive fiscal policy in the short run, we risk prolonging the Great Recession for years to come. We cannot act without regard to the consequences of our actions.

Make no mistake: We must tackle our long-term deficits.

That's why one of the goals of the President's Commission on Fiscal Responsibility and Reform is to "achieve fiscal sustainability over the long run."

We do need to act aggressively to reduce our long-term deficits as the economy enters a phase of expansion.

But first we must pull ourselves out of the Great Recession.

One of the best things that we can do to facilitate the delicate recovery is to pass the American Jobs and Closing Tax Loopholes Act before us today.

This bill extends tax cuts for families and businesses that will help them in these difficult economic times. And this bill sustains vital social safety-net programs that will also help foster economic growth.

We have made the mistake of cutting back too soon once before. We must not make it again.

The Thune amendment would move in the wrong direction. Instead of helping to create economic demand, the Thune amendment would curtail aggregate demand by more than $50 billion. Instead of continuing the good that the Recovery Act has done, the Thune amendment would chop it off.

The Thune amendment would, among other things, cancel unspent and unallocated mandatory spending in the Recovery Act.

The Recovery Act is working. The Federal Reserve and many independent economists have credited the Recovery Act with playing an important role in stabilizing the economy.

This is what the nonpartisan Congressional Budget Office said in its most recent report:

"CBO estimates that in the first quarter of calendar year 2010, [the Recovery Act's] policies:
"Raised the level of real . . . gross domestic product . . . by between 1.7 percent and 4.2 percent,
"Lowered the unemployment rate by between 0.7 percentage points and 1.5 percentage points,
"Increased the number of people employed by between 1.2 million and 2.8 million, and
"Increased the number of full-time-equivalent jobs by 1.8 million to 4.1 million compared with what those amounts would have been otherwise."

The Congressional Budget Office projects that the Recovery Act will continue to create jobs. CBO projects that the Recovery Act will create the peak number of jobs in the third quarter of this year. And then it will begin to taper off.

But we do not want to abruptly cut that job creation off. In this fragile economy, the last thing that we should want to do is to cut back this proven job creator.

We passed the Recovery Act to give a needed boost to our economy. The bill was designed to work over two years. We have successfully started down the road to recovery. But if we were to withdraw these critical funds, we would risk causing further damage to a fragile economy. Revoking Recovery Act funds now would send exactly the wrong signal to the American economy and to unemployed Americans.

The Thune amendment would also cut other valuable spending programs. The Thune amendment's spending cuts are arbitrary and restrictive.

For example, one provision in the Thune substitute amendment would freeze the salaries of all Federal employees, except for members of the armed forces.

But what about civilian defense workers? What about law enforcement? What about border protection?

Another provision would cap the total number of Federal employees at current levels. If an agency needed to hire a new employee, it would first need to find an existing employee to fire. This would dramatically reduce the flexibility of agencies to make hiring decisions.

The Thune substitute amendment would also cut discretionary spending by five percent across the board for all agencies, except for the Department of Veterans Affairs and the Department of Defense.

Apparently, this five percent cut would apply to the Department of Homeland Security. It would apply to Immigration and Customs Enforcement. Apparently, it would apply to the intelligence agencies.

The Thune amendment would also rescind $80 billion in appropriated but unspent Federal funds.

But just because funds have not been yet obligated does not mean they are superfluous. For example, when money is appropriated to build a battleship, it does not all get obligated in the first year.

But cutting funds that have not yet been obligated would adversely affect the construction of that battleship.

I support finding ways to make our government more efficient. But these cuts are arbitrary. They are inappropriately restrictive.

The Thune amendment would also make changes to the new health care law that would leave more Americans without health insurance. The Thune amendment would do this by expanding the affordability exception to the individual mandate for purchasing health insurance.

This expansion would eliminate coverage for millions of Americans. This would strike at the heart of health care reform. And CBO tells us that it would also increase premiums for everyone else.
The irony of this proposal in the Thune amendment is that it raises money for the Government because the Government would not provide as much in tax credits to Americans to help them buy insurance.

But Congress has just enacted health care reform. Congress just expressed our nation's commitment to helping all Americans to buy health insurance. We should let the new health care law take effect.

The Thune amendment would also propose changes to our medical liability system that the Senate has rejected many times over the years.

The Thune amendment would cap damages and make other changes to state laws. This is the not the solution to medical malpractice.

While the Congressional Budget Office has said these kinds of ideas would generate savings, we should ask: What is the cost of those savings?

What would be their cost to patients? What would be their cost to the states?

The same studies upon which CBO relied in calculating its cost estimate point out that certain tort reform policies may also increase the number of risky procedures performed. And these policies may lead to more patient injuries and more patient deaths.

One study upon which CBO relied said that these policies would lead to a 0.2 percent increase in mortality.

That sounds an awfully high price to pay.

Imposing national tort reform standards flies in the face of our nation's civil liability system. That system has always been forged at the state level. And national damage caps would put patient safety at risk.

The Thune amendment employs some of the offsets that it does because it drops the oil spill liability tax. Imagine that: The proponents of the Thune amendment would rather put the recover at risk by cutting back the Recovery Act, they would rather cut health insurance coverage in health reform, and they would rather expose patients to greater risk. They would rather do all these things than raise taxes on big oil, to pay for oil spills.

And the Thune amendment employs some of the offsets that it does, because it drops some of the tax loophole closers in the underlying substitute amendment. The underlying substitute amendment closes loopholes in the tax code that unfairly benefit certain individuals.

One such loophole is carried interest. The underlying substitute removes an inequity of the tax code that allows investment managers who operate through partnerships to have the income that they earn for their services taxed at half the tax rate of other working individuals.

Here's how the carried interest tax loophole works. An investment manager joins a partnership with some investors. But the investment manager does not provide any capital. The investment manager provides services.

The investment manager contracts to receive compensation not in the form of wage income, but in the form of a share of the partnership. That way, the investment manager gets to pay lower capital gains tax rates on the investment manager's income, rather than the higher wage tax rates that the rest of Americans pay.

The underlying substitute says: No longer should we allow investment managers to have a better tax rate than teachers or doctors or firefighters. Our amendment plugs this tax loophole. But the Thune amendment would strike that provision. The Thune amendment would allow that tax loophole to continue.

The underlying substitute also includes an important provision that closes another serious inequity in the tax code.

Lawyers, doctors, and other professionals who operate as partners or sole proprietors are currently subject to Social Security taxes on their service income up to $106,800. And they are subject to Medicare taxes on all their service income.

If they organize themselves as an S corporation, however, they can pay themselves an artificially low salary. That way, they can avoid paying Social Security or Medicare taxes on much of the income generated by their services. That's just not fair.
And what's more, it hurts the Social Security and Medicare trust funds.

The choice of entity should not affect an individual's tax liability for his or her services.

Unfortunately, Senator Thune's amendment does not close this loophole. The Thune amendment would strike this loophole closer in the underlying substitute.

The underlying substitute would also close several foreign tax loopholes.

The Senate Finance Committee developed these loophole closers jointly with the House Ways and Means Committee, with the assistance of the Treasury Department.

These loophole-closers would shut down highly-structured and complex transactions implemented by multinational corporations to avoid paying U.S. tax.

These tax benefits claimed by the multinational corporations were clearly not contemplated when Congress passed the tax law.

Closing these loopholes would preserve and create jobs here in America. Closing these loopholes would discourage U.S. multinational corporations from shipping American jobs overseas.

Permitting the continued exploitation of these loopholes would only encourage U.S. multinationals to invest additional capital overseas, rather than here in America. Allowing these loopholes to continue would result in the loss of American jobs.

The underlying substitute amendment tackles these loopholes. Senator Thune's amendment, on the other hand, ignores them. By not addressing them, the Thune amendment would allow this irresponsibility to continue.

And so, the Thune amendment would put the recovery at risk by curtailing the Recovery Act. It would cut the number of Americans with health insurance and raise premiums. It would nationalize medical malpractice law, putting patients at risk. And it would protect big oil and multinational corporations that ship their jobs overseas.

I urge my Colleagues to oppose the Thune amendment.

And I urge my Colleagues to support the bill before us. Let us protect and strengthen this fragile economic recovery. Let us preserve and create jobs, here in America. And let us enact the American Jobs and Closing Tax Loopholes Act.

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