

When Medicare was enacted in 1965, coverage of prescription drugs in private insurance policies was rare—and Medicare followed that standard practice. Today, 99 percent of employment-based health insurance policies provide prescription drug coverage—99 percent. But Medicare is caught in a 34-year-old time warp—and senior citizens are suffering as a result.

Too many elderly Americans today face a cruel choice between food on the table and the medicine they need to stay healthy or to treat their illnesses. Too many senior citizens often take only half the pills their doctor prescribes, or don't even fill needed prescriptions—because they can't afford the high cost of the drugs. Too often, they are paying twice as much as they should for their prescription drugs, because they are forced to pay full price when those with private insurance policies get the advantage of negotiated discounts. As a result, many senior citizens end up in the hospital—at excessive cost to Medicare—because they aren't obtaining the drugs they need or are not taking them correctly. As we enter the new century, pharmaceutical products are increasingly the source of miracle cures for many dread diseases—and senior citizens will be left even farther behind if we fail to act.

The 21st century may well be the century of life sciences. With the support of the American people, Congress is on the way to the goal of doubling the budget of the National Institutes of Health over the next five years. This investment is seed money for the additional basic research that will enable scientists to develop new therapies to improve and extend the lives of senior citizens and all citizens.

In 1998 alone, private industry spent more than \$21 billion for research on new medicines and to bring them to the public. These miracle drugs save lives—and they save dollars too, by preventing unnecessary hospitalization and expensive surgery. All patients deserve affordable access to these medications. Yet, Medicare, which is the nation's largest insurer, does not cover outpatient prescription drugs, and senior citizens and persons with disabilities pay a heavy daily price for this glaring omission.

America's senior citizens and disabled citizens deserve to benefit from new discoveries in the same way that other families do. Yet, without negotiating power, they receive the brunt of cost-shifting—with often devastating results. In the words of a recent report by Standard & Poor's, "Drugmakers have historically raised prices to private customers to compensate for the discounts they grant to managed care consumers." The so-called "private" customers referred to in this report are largely our nation's mothers, fathers, aunts, uncles, grandmothers, and grandfathers.

Up to 19 million Medicare beneficiaries are forced to fend for themselves when it comes to purchasing

these life-saving and life-improving therapies. They have no prescription drug coverage from any source. Other Medicare beneficiaries have some coverage, but too often it is inadequate, unreliable and unaffordable.

About 6 percent of senior citizens have limited coverage through a Medicare HMO. While the majority of Medicare HMO plans offer prescription drug coverage, the benefits vary widely. Some plans cap the benefit at just \$300 a year or less. Imagine that, \$300 a year or less. In addition, the current trend is for HMOs to cut back on drug coverage or, in extreme cases, leave the Medicare market altogether. We have tried to remedy this problem in Massachusetts, but clearly it is a national problem, and it requires a national solution.

An additional 12 percent of Medicare beneficiaries purchase an independent medigap policy with prescription drug coverage and coverage of other gaps in Medicare. Only three of the ten standard medigap benefit packages even include insurance for prescription drugs. These plans are difficult to obtain, because even the most generous companies refuse to cover all people who walk in the door.

They fear that only those who urgently need the coverage will sign up, so the plans contain escape clauses that exclude applicants with pre-existing conditions. Even if they decide to issue a policy, often there are no limits on what these private companies can charge. As a result, medigap plans with drug coverage are often out of reach for senior citizens. For those fortunate enough to obtain the coverage, the benefits are limited and the costs are high.

Another 10 percent are Medicare beneficiaries are eligible for coverage under Medicaid. This coverage is an important part of the safety net for our poorest elderly and disabled citizens, but it offers no help to the vast majority of senior citizens.

Finally, a third of all Medicare beneficiaries have reasonably comprehensive coverage through a retiree health plan. These plans, which are offered through their former employers, supplement Medicare, and the prescription drug benefits are often generous. But increasingly, retiree health benefits are on the chopping block as companies cut costs by reducing health spending.

Despite Medicare's lack of coverage for prescription drugs, their misuse results in preventable illnesses that cost Medicare as much as \$16 billion annually, while imposing vast misery on senior citizens. It is in our best interest, and in the best interest of Medicare, to reform it in ways that encourage proper use and minimize these abuses.

Savings can be achieved when physicians and pharmacists are better educated on the needs of senior citizens and the potential problems they face in obtaining and using their medications.

Savings can also be achieved when senior citizens are assisted in learning

how to follow the instructions that are dispensed with their medications. Too often, patients shortchange themselves. They take half doses or try to stretch out their prescription to make it last longer. This is wrong, and it doesn't have to happen. If elderly patients know that the drugs they need will be affordable, compliance will improve, and so will their quality of life.

President Clinton has correctly identified prescription drug coverage as one of the very highest priorities for Medicare reform. I hope we can reach a broad bipartisan consensus in the coming weeks that any Medicare reform worth the name will include coverage of prescription drugs. The health and financial security of millions of senior citizens depend on it, and we owe it to them to act as soon as possible.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### IMPEACHMENT AND THE CONSTITUTION

Mr. DORGAN. Mr. President, I wanted to call the attention of my colleagues to a piece that was written by our distinguished Senator from West Virginia, our colleague, Senator BYRD, that appeared in today's Washington Post entitled "Don't Tinker With Impeachment."

The reason I want to do that is there are discussions occurring now, according to some of my colleagues and accounts in the newspaper and on television, about trying to create a mechanism to require a vote in the Senate during the impeachment trial on the findings of fact prior to a vote on the articles of impeachment themselves.

I was just looking at the Constitution in our Senate manual, and, of course, article III in the Constitution establishes the basis for impeachment, and it is simple, direct and provides nothing of the sort that would lead Senators to believe that they can bifurcate the vote in the Senate in an impeachment trial first to findings of fact and have a majority vote on findings of fact and then to move toward a vote on the two articles of impeachment that are currently in front of the Senate.

But I think the article written by our colleague, Senator BYRD, provides the best description of the difficulty with these findings of fact. Let me read just a few comments, and I ask unanimous consent to have the article printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. DORGAN. Mr. President, the article, in part, by Senator BYRD says:

The notion of trumping the articles of impeachment with even a "broad" findings of fact flies in the face of what the Framers of the Constitution intended. They deliberately set the bar high when it came to the vote on articles of impeachment, first by requiring a supermajority of two-thirds of the Senate to convict, and second, by fusing the penalty—[that is] removal from office [being the penalty]—into the question of guilt.

In voting on articles of impeachment [he goes on to say] senators must answer not one but two questions: Is the president guilty or not guilty of committing high crimes and misdemeanors, and, if he is guilty, do his actions warrant removal from office?

Continuing to quote from Senator BYRD's article:

This was not a casual coupling on the part of the Framers. Their intent was to force senators to set aside their own passions and prejudices and focus instead on the best interests of the nation. To lift this burden from the shoulders of senators by offering them a way to convict the president without having to accept responsibility for removing him from office would, in effect, bastardize the impeachment process.

Moreover [he says] the aftershocks would be felt long after this impeachment has faded into history. No longer would senators be confined to the articles of impeachment formulated by the House of Representatives. No longer would senators need a two-thirds majority vote to pronounce a president guilty. From this time forward, they could cite the precedent set by the Senate in the 106th Congress as giving them carte blanche to write, and approve by a simple majority, ersatz articles of impeachment cloaked as "findings of fact."

Senator BYRD, as always, finds the bull's-eye in this debate. This is not some ordinary debate; this is a debate about constitutional requirements and responsibilities and what the provisions of the Constitution mean with respect to impeachment.

The impeachment article provisions of the Constitution require, when impeachment articles are voted by the U.S. House of Representatives and sent to the Senate, that a trial must commence, and the vote on the articles of impeachment would be conducted by the Senate; and two-thirds of the Senate would have to vote guilty on those articles of impeachment in order to remove a President from office.

But it doesn't bifurcate the vote, doesn't call for extra procedures, doesn't call for findings of fact, doesn't allow some Senators to say, "Yes, that's what the Constitution says but we're going to create a new, or pretend there's a new, provision in the Constitution without having the difficulty of debating Madison and Mason and Hamilton and Franklin over our proposal. We'll just pretend it's in the Constitution. And we'll have separate votes on findings of fact. And in fact, doing that, we can have our own little vote and create our own little result with only 51 Members of the Senate voting in favor of our resolution."

That is a terrible idea and, in my judgment, stands this Constitution, and the article of impeachment provisions in this Constitution, on its head. But Senator BYRD says it much better than I do. I will, as I indicated, include

his article at the conclusion of my remarks.

This Constitution, written in a room in Philadelphia over 200 years ago, is quite a remarkable document. It established the separation of powers. It established the framework for a new kind of Government that has worked remarkably well. If those who watch these proceedings and become interested in the Constitution would go to that room in Philadelphia, they would see that that room still exists. It is called the Assembly Room in Constitution Hall.

That room, which is smaller than the Senate Chamber, has a chair in the front of the room where George Washington sat as he presided over that Chamber. The same chair sits there today. And you will see where Mason sat, Madison, Franklin, and others who wrote this Constitution. They wrote it on a hot Philadelphia summer with the curtains drawn to keep the heat out of that room, and they created this remarkable document that is printed here in the Senate Manual. And that is the document by which we in the Senate are now conducting an impeachment trial.

I come to the floor today only to say that I think there is great danger in believing there are things written in this Constitution that don't exist in the Constitution. There is danger, in my judgment, in suggesting ways or mechanisms by which some can vote and create majority votes on some extraordinary findings of fact that are not provided for in this Constitution.

In this impeachment trial, there is one of two results, and that is a vote on the two articles of impeachment that have been sent to the U.S. Senate by the House of Representatives. That vote will be a vote cast by each and every Member of this Senate, and the vote will be either a vote to convict or a vote to acquit—guilty or not guilty on the two articles of impeachment. And my hope is that when the Senate reconvenes in the impeachment trial, all Senators will have read this rather remarkable article by the preeminent constitutional scholar in this Chamber and the historian of this U.S. Senate, the esteemed Senator BYRD.

#### EXHIBIT 1

[From the Washington Post, February 3, 1999]

#### DON'T TINKER WITH IMPEACHMENT

(By Robert C. Byrd)

While the lawyers are busy deposing witnesses in the Senate impeachment trial of the president, a number of senators are continuing to work quietly behind the scenes to chart a course that will end the trial with a minimum of political carnage. One route currently being investigated is a so-called "findings of fact," an extravagant novelty by which a simple majority of the Senate could condemn the president's behavior within the framework of the impeachment process without being forced to remove him from office.

This convict-but-don't-evict strategy appeals to some senators who have no appetite for prolonging a trial whose outcome is all but certain. At the same time, they are

squeamish about the likelihood of an all-but-inevitable acquittal without having some vehicle to first register their condemnation of the president's actions. No doubt their motives are sincere, and I applaud their ingenuity, but this findings-of-fact proposal is not the answer. While the Senate sits in the impeachment trial, it is not in legislative session. The insertion of such a legislative mutant into the impeachment proceedings would subject the process to some very experimental genetic engineering.

The notion of trumping the articles of impeachment with even a "broad" findings of fact flies in the face of what the Framers of the Constitution intended. They deliberately set the bar high when it came to the vote on articles of impeachment, first by requiring a supermajority of two-thirds of the Senate to convict, and second, by fusing the penalty—removal from office—into the question of guilt.

In voting on articles of impeachment, senators must answer not one but two questions: Is the president guilty or not guilty of committing high crimes and misdemeanors, and, if he is guilty, do his actions warrant removal from office?

This was not a casual coupling on the part of the Framers. Their intent was to force senators to set aside their own passions and prejudices and focus instead on the best interests of the nation. To lift this burden from the shoulders of senators by offering them a way to convict the president without having to accept responsibility for removing him from office would, in effect, bastardize the impeachment process.

Moreover, the aftershocks would be felt long after this impeachment has faded into history. No longer would senators be confined to the articles of impeachment formulated by the House of Representatives. No longer would senators need a two thirds majority vote to pronounce a president guilty. From this time forward, they could cite the precedent set by the Senate in the 106th Congress as giving them carte blanche to write, and approve by a simple majority, ersatz articles of impeachment cloaked as "findings of fact."

And why stop at findings of fact? If the Senate can ignore the intent of the Framers to combine a guilty verdict with removal from office in an impeachment trial, maybe senators can find a way around the constitutional prohibition against bills of attainder, or legislative punishments.

The Senate impeachment trial takes place in a quasi-judicial setting, and findings of fact would move the Senate headlong into an area reserved for the judicial system, where the Senate, under the separation of powers principle, dares not go.

Findings of fact would become part of a quasi-judicial record that could not subsequently be amended or overturned. Could such a record of findings of fact be later used by an independent counsel before a federal grand jury in an effort to secure an indictment? If this or any president were to be indicted, could such findings be introduced as evidence in a subsequent trial in an effort to sway a jury and bring about a conviction? Who knows what monsters this rogue gene might spawn in future days?

The impeachment process, as messy and uncomfortable as it may be, is working as designed. This is neither the time nor the place for constitutional improvisation. No matter how sincere the motivation, our nation and our Constitution will not be well served by this sort of seat-of-the-pants tinkering.

A post-trial censure resolution that does not cross the line into legislative punishment is something else. It can and should be considered by the Senate after the court of

impeachment has adjourned sine die. Censure is not meaningless, it will not subvert the Constitution, and it will be indelibly seared into the ineffaceable record of history for all future generations to see and to ponder. For those who fear that it can be expunged from the record, be assured that it can never be erased from the history books. Like the mark that was set upon Cain, it will follow even beyond the grave.

Mr. DORGAN. Mr. President, I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that I may have up to 10 minutes to make a statement.

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

Mr. MURKOWSKI. I thank the Chair and wish the Presiding Officer a good day.

### ENERGY SECURITY

Mr. MURKOWSKI. Mr. President, first of all, I want to raise with my colleagues two issues that revolve around energy security. The first issue is the state of the domestic oil industry and the second issue is the Oil-for-Food Program for Iraq. I think that this marks the first departure from the debate on the impeachment, and I hope the Presiding Officer will find it refreshing.

Last week, the Energy and Natural Resources Committee, which I chair, held a hearing to review the state of the domestic petroleum industry, and to assess the threat to our economic security from our growing dependence on foreign oil. The domestic oil industry in the United States is in serious trouble. Companies are laying off workers in droves. In my State of Alaska, British Petroleum, just announced the layoff of some 600 workers, and another one of our major oil companies lost somewhere in the area of just under \$800 million in the last quarter of 1998.

Exploration and drilling budgets are way down. Drilling contractors have been cut to the bone. Marginal and stripper wells are being shut in. These are production capabilities, Mr. President, that, once lost, will unlikely be regained. These, to a large degree, represent an ongoing operating petroleum reserve—one might conclude a strategic petroleum reserve—because while they are small, they are substantial in their numbers and contribute to domestic production.

Now, to quote a recent report by the John S. Herold Company, 1998 was a "catastrophe" for the U.S. oil industry, "nothing short of murderous for investors" in that industry. We are seeing mergers and consolidations, significant implications for the Nation's energy security, and certainly U.S. jobs—30 merged companies alone last year.

This situation in the oil industry is interesting, as we look at the commod-

ities in this country. As the Presiding Officer is well aware, the agricultural industry—production, livestock, hogs, beef—the farmers can hardly raise them anymore. Many aspects of the agricultural industry are under water. This is true of the timber industry. It is true of the steel industry. It is true of the mining industry, and certainly true of the oil and gas industry.

So as we reflect on the prosperity of this country, it is interesting to note the job losses in the commodities industries of this country—and one has to wonder when it is going to catch up with itself. Of course, we enjoy low gasoline prices when we fill our car or boat, low heating oil prices when we warm our home, and low inflation due in large measure to low oil prices. Let's recognize where it is.

But a decimated U.S. oil industry creates a risk to consumers, to the economy, to our national energy security. And we only have to look back at history. Some say we learn from history, and some say not much. Well, we recall the 1973 Arab oil embargo when we were only 36 percent dependent on foreign imported oil. That had a devastating impact on consumers and the economy. We saw oil shortages, and long lines at the gas stations. Many people have forgotten that timeframe—soaring prices, double-digit inflation, and an economy put into recession. What was the prime rate at that time? Well, the prime rate was 20.5 percent in 1980. Inflation was in the area of 11 percent—double-digit.

If it happened today, we could be hit even harder. And we are getting set up for it because we are in worse shape today than we were in 1973. Since 1973, our foreign dependence has grown by leaps and bounds. U.S. crude oil production dropped by one-third. U.S. oil imports—oil imports—soared by two-thirds.

Today, U.S. foreign oil dependence is 56 percent, compared to 36 percent back in 1973. Our excessive foreign oil dependence puts our national energy security interests at stake and hence our national security at stake. We can't forget that the United States went to war in 1991 when Iraq invaded Kuwait and threatened the world oil supplies. Part of that was our supply.

In 1995, President Clinton issued a Presidential finding that imports of oil threatened our national security, and a short time ago the U.S. bombed Iraq because Saddam continues to threaten the stability in the Persian Gulf. Well, it is fair to say, Mr. President, if we do nothing, what will happen: We know things are going to get worse.

The Department of Energy projects in the year 2010 U.S. foreign dependence will hit about 68 percent. That means we will be depending on foreign sources for 68 percent of our oil supply.

I don't think we should put our trust in foreign oil-producing nations that have their interests in mind, not ours. I plan to work closely with the small and independent producers to develop a

solution to this crisis. Already I have cosponsored Senate bill 325, a bill introduced by my colleague from Texas, Senator KAY BAILEY HUTCHISON, that would amend the Tax Code to add marginal producers. I will work as a member of the Finance Committee to consider this and see it is adopted.

I also intend, with Senators from producing States, to consider a non-tax means to assist domestic production through regulatory and land access issues.

Second, I want to talk about oil-for-food and our relations with Iraq. This deals with our energy security; that is, our U.S. policy towards Iraq, specifically, the U.N. Oil-for-Food Program. Six weeks have passed since President Clinton ordered America's Armed Forces to strike military and security targets in Iraq. What has Saddam's regime done since then? They have shot at U.S. fighter planes on almost a daily basis. They have challenged Kuwait's right to exist. They have demanded compensation for U.N. crimes against Iraq—isn't that ironic. They have demanded an end to sanctions and no-fly zones. They have reiterated that no weapons inspectors will be allowed to return. That is a pretty bold statement.

Now, what policy initiative has the Clinton administration launched to deal with Saddam's defiance? U.S. officials offered to eliminate the ceiling on the Oil-for-Food Program, a de facto ending of the sanctions on oil exports. My views on the absurdity to this proposal were included in a recent Washington Post op-ed, and I ask unanimous consent that be printed in the RECORD.

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

[From the Washington Post, Jan. 25, 1999]

#### OUR TOOTHLESS POLICY ON IRAQ

(By Frank H. Murkowski)

On the eve of Operation Desert Fox, President Clinton announced to the nation that "we are delivering a powerful message to Saddam." That message now appears to be that as long as Saddam Hussein refuses to cooperate with inspections, refuses to comply with U.N. resolutions and refuses to stop illegally smuggling out oil, he will be rewarded by the de facto ending of economic sanctions.

At least, that was the message sent by the U.S. Ambassador to the United Nations Peter Burleigh on Jan. 14 when he offered a plan to eliminate the ceiling on how much oil Iraq can sell abroad. This proposal was in reaction to a proposal (made by France and supported by Russia and China) to end the Iraq oil embargo.

Do not be fooled. The distinctions between the U.S. plan and the French plan are meaningless. This is the end of the U.N. sanctions regime. Security Council Resolution 687, passed in 1991 at the end of the Gulf War, requires that international economic sanctions, including an embargo on the sale of oil from Iraq, remain in place until Iraq discloses and destroys its weapons of mass destruction programs and capabilities and undertakes unconditionally never to resume such activities. This, we know, has not happened.

But the teeth in Resolution 687 have effectively been pulled, one by one, with the introduction and then continued expansion of