United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *108th* CONGRESS, FIRST SESSION

Vol. 149 WASHINGTON, THURSDAY, NOVEMBER 6, 2003 *No. 160*

Senate

The Senate met at 9:31 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Sovereign God, You have shown us that Your name and Your commands are supreme. You answer when we call and strengthen us for life's trials. The leaders of our world depend upon Your providence. Our Senators reach for Your wisdom. You sustain us and Your promises are certain.

Lord, complete the work You have started in us. Each day, let more people see a clearer image of You in us. Keep us from deviating from the path of strict integrity, and help us to learn to count our many blessings. Free us from the chains of debilitating habits, as we rejoice in Your unfailing love.

And, Lord, place Your armor upon our military men and women and never leave or forsake them.

We pray this in Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today the Senate will begin 60 minutes of morning business. Following that 60-minute period, the Senate will proceed to executive session for the consideration of Executive Calendar No. 310, the nomination of William Pryor to be a United States Circuit Judge for the Eleventh Circuit.

At the conclusion of that debate time, the Senate will proceed to a vote on the motion to invoke cloture on that nomination. I do hope cloture will be invoked and that this qualified nomination could then receive an up-or-down vote of the Senate.

If cloture is not invoked, the Senate will resume consideration of the Agriculture appropriations bill. We made good progress on that bill yesterday, and I hope we can complete that appropriations bill at an early hour today. We will have rollcall votes throughout the day.

A number of Members have inquired about scheduling. I made it clear that it will be important, for us to achieve a departure day of November 21, for us to work 5 days a week, and we will be voting on Mondays and Fridays as we go forward.

It is likely that once we complete Agriculture, we will go to the Internet tax bill, and then I hope we can complete that in a reasonable period of time and we will follow that with the appropriations bills and will continue to address the VA–HUD bill at some point and Commerce-Justice-State. I am working very hard to try to get these appropriations brought across the floor, debated, and completed in a reasonable time.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the Senator from Texas or her designee.

Who yields time?

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

MEDICARE CONFERENCE

Mr. REED. Mr. President, I would like to take a moment to express concern about the current discussion on Medicare, particularly the prescription drug bill. The first point I would make is that the process has been, I think, subverted because all the conferees are not invited to participate in conference meetings. Many of my colleagues in the Democratic caucus who have voted for the bill and are named as conferees have not been given access to all of the deliberations and discussions.

I know Senator BAUCUS and Senator BREAUX have been there and are doing an admirable job representing the viewpoints of the Democratic caucus, but this is not the way procedurally to conduct deliberations on such important measures as Medicare reform and prescription drug benefit for seniors. But those are procedural issues.

The substance also troubles me, particularly the discussion of cost containment, premium support, income relating—all of these are euphemisms but have extremely important consequences in the lives of seniors and, indeed, in the lives of everybody throughout the country.

The conference is examining these proposals and exploring ideas that are not just about prescription drug benefits for seniors. In fact, the conference discussions have taken on a rather controversial cast because we are talking seriously now about Medicare reform. But we are not just talking about Medicare reform; I would argue we are talking about proposals that would perhaps lead to the end of the Medicare program, eventually, as we know it.

Back in 1995, Newt Gingrich said that his approach to Medicare was to let it ''wither on the vine,'' to undercut it, undermine it, underfund it, so that eventually it would become a remnant, not a vital part of the American fabric. That, I fear, might be taking place right now in its first steps.

Of course, as we deliberate these issues with respect to Medicare drug benefits, one major issue that concerns me is that we have allocated $400 billion. That seems like a great deal of money but, frankly, it is not. When we consider, over the 10-year period we are talking about, that seniors will spend $1.8 trillion on pharmaceuticals, $400 billion is not a lot of money. Indeed, compared to what we are spending on some efforts overseas—Iraq being the most prominent at the moment—that $400 billion over 10 years is not an astounding total.

In fact, I would argue it is insufficient to give the benefits that most seniors expect to receive and believe we are discussing at the moment.

One of the particular issues that I am disturbed about is first this notion of cost containment. My impression of cost containment is that we would somehow be able to contain the cost of prescription drugs we are buying and seniors are buying, but that is not the view of the conferees about cost containment.

Cost containment is really Medicare expenditure containment. I think that is a fallacy. If we can't control the cost of pharmaceuticals through market forces, then we will never catch up with the explosion of costs. But then to arbitrarily say we are going to cap what we will put into Medicare, to me, is a fundamentally erroneous approach to this very difficult problem. In fact, the cost containment issue the conference is discussing is not directed precisely at the pharmaceutical program. It is going to be applied across the board to all Medicare expenditures.

Ostensibly, what the conferees are talking about now is capping the general fund contribution to Medicare. There are two sources of financing for the Medicare program. First is the Medicare trust fund, then second is general revenues. The conference position today, I am told, is if our general expenditures exceed 45 percent in any two consecutive years, we arbitrarily stop funding Medicare—not just the pharmaceutical portion, but the whole program. To me, that is the wrong approach—setting arbitrary limits not based upon the health conditions of our seniors but based upon our fiscal situation here in Washington.

Indeed, we all understand that Medicare is an extremely popular program. A Kaiser Family Foundation/Harvard School of Public Health survey found that 80 percent of seniors have a favorable impression of Medicare, and 62 percent believe the program is well run. Seventy-two percent of people age 65 and over thought seniors should be able to continue to get their health insurance coverage through Medicare over private plans.

It is an extremely popular program. It is efficiently run with very low overhead. And it is in danger of being scuttled because we are attempting to apply arbitrary limits to our contributions to Medicare.

There is another aspect that concerns me very much in this whole debate; that is, this notion of premium support. These euphemisms sound innocuous but the consequences could be quite severe to the long-term health and viability of Medicare.

Premium support is the notion that we are going to entice private health insurers to go in and take the place of the Medicare Program. If the market would allow for that, that is great. We want competition and choice. It provides for more efficient allocation of resources. But what the conferees are proposing is a $12 billion slush fund that will favor private companies over the government-run system. I think the only reason we have to do that is, in reality when you look at the Medicare system today, it is in many cases more efficient than private health insurers.

The way these private health insurers are going to be making their money is not to serve every senior, but to be very careful and very selective—to cherry-pick the senior population—and get the healthiest seniors into their plans; and in addition to that, get subsidies from the Federal Government to their bottom line by simply saying we can't make enough money to participate in this market—not that we can't serve enough seniors.

I think that is wrong. That will severely and significantly undercut the Medicare Program.

It has been estimated that a result of premium support will be that rates for seniors across the country will no longer be uniform. They will be variable based upon the region and based upon how many private plans are participating. They could vary from one area to another. Rhode Island and New England is a small area. We could have one rate in East Providence, RI, and 10 minutes away in Massachusetts the rates could be entirely different.

Today, seniors count on predictability, reliability and the certainty that the rates are stable and uniform. We could lose that. That is a major concern of mine.

There is another concern also; that is, the fact that we are on the verge of accepting this notion of means testing. The euphemism of the moment is income relating Medicare Part B premiums. They have laid out a situation where seniors who are making over $80,000 a year would gradually see their Federal subsidy reduced from a current level of 75 percent. Certainly at that level of income there is an argument to be made that seniors can afford to pay more than the majority of seniors whose incomes are much less than $80,000, and are probably closer to $15,000 to $20,000 a year.

We are fracturing the program by means-testing premiums. We are giving incentives for wealthy seniors to ask, Why should I participate at all? This is not a program that helps me. I can get my health insurance coverage in the private market, and I will do that.

The fragmentation—both in terms of geography because of premium support, and in terms of income because of this notion of means testing—will begin that slow, I am afraid, and irreversible process of withering Medicare. It makes no sense.

One of the reasons we enacted the Medicare Program in 1965 was because private health insurance companies would only insure the wealthiest and healthiest seniors, leaving the vast majority of seniors with nothing. The burden of those seniors was the burden of every family in this country.

As I grew up in the 1950s and the 1960s, it was not uncommon to have a grandmother or a grandfather living in your home because they simply could not support their health care needs. They could not support themselves. Medicare changed that more than any other program in this country.

It is widely popular, and based on the simple notion that, first, we are going to provide the benefit equally to all of our seniors. We are not going to fragment it by region or by income. We

will provide a system of care. We essentially are going to do what insurance should do—take the broadest possible risk pool of all seniors—healthy seniors, unhealthy seniors, the frail and elderly seniors, and the young and vigorous seniors. They are all going to participate. That is the efficient, fair, and sensible way to do it.

We are on the verge, I fear, of ruining that system—not just for the moment but for all time.

I hope in the next several days we can resolve these issues favorably. But I am concerned if we proceed on this course we will not really be doing anything for seniors, the prescription drug benefit might be illusory, and the long-term effect will be severe and perhaps cause fatal damage to Medicare.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Massachusetts.

NOMINATION OF WILLIAM H. PRYOR

Mr. KENNEDY. I urge my colleagues to vote against cloture on the nomination of William Pryor. Since President Bush came into office, the Senate has confirmed 168 of his nominees and has decided so far not to proceed with only 4. That is a 97.7 percent success rate for the President. It is preposterous to say that Senate Democrats are obstructing the nomination process.

The few nominees who have not received our support are too extreme for lifetime judicial appointments, and Mr. Pryor's nomination illustrates the problem. His views are at the extreme of legal thinking, and he does not deserve appointment to an appellate Federal court that decides so many cases involving basic legal rights and constitutional protections. The people of the Eleventh Circuit deserve a nominee who will follow the rule of law and not use the Federal bench to advance his own extreme ideology.

The issue is not that Mr. Pryor is conservative. We expect a conservative President from a conservative party to select conservative nominees. But Mr. Pryor has spent his career using the law to further an ideological agenda that is clearly at odds with much of the Supreme Court's most important rulings over the last four decades, especially in cases that have made our country a fairer and more inclusive nation for all Americans.

Mr. Pryor's agenda is clear. He is an aggressive supporter of rolling back the power of Congress to remedy violations of civil rights and individual rights. He has urged the repeal of Section 5 of the Voting Rights Act which helps to ensure that no one is denied the right to vote because of their race. He vigorously opposes the constitutional right to privacy and a woman's right to choose. He is an aggressive advocate for the death penalty, even for persons with mental retardation. He dismisses—with contempt—claims of racial bias in the application of the death penalty. He is a strong opponent of gay rights.

Somehow, despite the intensity with which Mr. Pryor holds thee views and the many years he has devoted to dismantling these legal rights, we are expected to believe that he will suddenly change course and ''follow the law'' of he is confirmed to the Eleventh Circuit. Repeating that mantra again and again in the face of his extreme record does not make it credible. Actions speak louder than words, and I will cast my vote based on what Mr. Pryor does, not just on what he says.

Mr. Pryor's supporters say that his views have gained acceptance by the courts, and that his views are well within the legal mainstream. But actions paint a different picture. He has consistently tried to narrow individual rights, far beyond what any court in this land has been willing to hold.

Just this past term, the Supreme Court rejected Mr. Pryor's argument that it was constitutional for Alabama prison guards to handcuff prisoners to ''hitching posts'' for hours in the summer heat. The court also rejected his argument that States could not be sued for money damages when they violate the Family and Medical Leave Act.

Mr. Pryor's position would have left workers who are fired in violation of the Family and Medical Leave Act without a remedy.

The court rejected his argument that states should be able to criminalize private sexual conduct between consenting adults.

The court rejected his far-reaching argument that counties should have the same immunity from lawsuits that States have.

The court rejected his argument that the right to counsel does not apply to defendants with suspended sentences of imprisonment.

The court rejected Mr. Pryor's view on what constitutes cruel and unusual punishment in the context of the death penalty. The court held, contrary to Mr. Pryor's argument, that subjecting mentally retarded persons to the death penalty violated the Constitution.

Just this spring, even the Eleventh Circuit, a court already dominated by conservative Republican appointees, rejected Mr. Pryor's attempt to evade the Supreme Court's decision. Mr. Pryor tried to prevent a prisoner with an IQ of 65 from raising a claim that he should not be executed, when even the prosecution agreed he was mentally retarded.

This is not a nominee even close to the legal mainstream. His actions in seeking to evade the Supreme Court's decision speak volumes about whether he will obey its decisions if confirmed to the Eleventh Circuit.

Mr. Pryor and his supporters keep saying that he is ''following the law,'' but repeatedly he attempts to make the law, using the Attorney General's office in his state to advance his own personal ideological platform.

If, as his supporters urge, we look to Mr. Pryor's words in considering his nomination, we must review more than just his words before the committee at his confirmation hearing. We have a duty to consider what Mr. Pryor has said about the Supreme Court and the rule of law in other context as well.

Mr. Pryor ridiculed the Supreme Court of the United States for granting a temporary stay of execution in a capital punishment case. Alabama is one of only two States in the Nation that uses the electric chair as its only method of execution. The Supreme Court had agreed to hear the case to decide whether use of the electric chair was cruel and unusual punishment. Mr. Pryor, however, said the court should have refused to consider this constitutional issue. He said the issue ''should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court.'' Those are his words, and they don't reflect the thoughtfulness that we want and expect in our judges. If Mr. Pryor does not have respect for the Supreme Court, how can we possibly have any confidence that he will respect that court's precedents if he is confirmed to the Court of Appeals?

Finally, Mr. Pryor's nomination does not even belong on the Senate floor at this time. His nomination was rushed through the Judiciary Committee in clear violation of our committee rules on ending debate.

An investigation into Mr. Pryor's controversial role in connection with the Republican Attorney Generals Association was interfered with and cut short by the committee majority and has never been completed. Most of our committee members agreed that the investigation raised serious questions which deserved answers in the committee, and they deserve answers now, before the Senate votes. The Senate is entitled to wonder what the nominee's supporters have to fear from the answers to these questions.

The fundamental question is why—when there are so many qualified attorneys in Alabama—the President chose such a divisive nominee? Why choose a person whose record casts so much doubt as to whether he will follow the rule of law? Why choose a person who can muster only a rating of partially unqualified from the American Bar Association? Why support a nominee who is unwilling to subject key facts in his record to the light of day?

We count on Federal judges to be open-minded and fair and to have the highest integrity. We count on them to follow the law.

Mr. Pryor has a first amendment right to pursue his agenda as a lawyer or an advocate, but he does not have the open-mindedness and fairness essential to be a Federal judge. I urge my colleagues to vote against ending debate on this nomination.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.