

law profession. On this measure, Mr. Estrada fails to convince us that he would contribute under-represented perspectives to the U.S. Court of Appeals for the District of Columbia Circuit.

As stated by Mr. Estrada during his meeting with us, he has never provided any pro bono legal expertise to the Latino community or organizations. Nor has he ever joined, supported, volunteered for or participated in events of any organization dedicated to serving and advancing the Latino community. As an attorney working in government and the private sector, he has never made efforts to open doors of opportunity to Latino law students or junior lawyers through internships, mentoring or other means. While he has not been in the position to create internships or recruit new staff, he never appealed to his superiors about the importance of making such efforts on behalf of Latinos. Furthermore, Mr. Estrada declined to commit that he would be engaged in Hispanic community activities once appointed to the bench or that he would pro-actively seek to promote increased access to positions where Latinos have been traditionally under-represented, such as clerkships.

Mr. Estrada shared with us that he believes being Hispanic would be irrelevant in his day-to-day duties on the court, which leads us to conclude that he does not see himself as being capable of bringing new perspectives to the bench. This is deeply troubling since the CHC's primary objective in increasing ethnic diversity of the courts is to increase the presence of under-represented perspectives.

Mr. Estrada's limited record makes it difficult to determine whether he would be a forceful voice on the bench for advancing civil rights and other protections for minorities. He has never served as a judge and has not written any substantive articles or publications. However, we did note that in responding to inquiries about case law, Mr. Estrada did not demonstrate a sense of inherent "unfairness" or "justice" in cases that have had a great impact on the Hispanic community.

The appointment of a Latino to reflect diversity is rendered meaningless unless the nominee can demonstrate an understanding of the historical role courts have played in the lives of minorities in extending equal protections and rights; has some involvement in the Latino community that provides insight into the values and mores of the Latino culture in order to understand the unique legal challenges facing Latinos; and recognizes both the role model responsibilities he or she assumes as well as having an appreciation for protecting and promoting the legal rights of minorities who historically have been the victims of discrimination.

Based on the totality of the nominee's available record and our meeting with him, Miguel Estrada fails to meet the CHC's criteria for endorsing a judicial nominee. In our opinion, his lack of judicial experience coupled with a failure to recognize or display an interest in the needs of the Hispanic community do not support an appointment to the federal judiciary. We respectfully urge you to take this into account as you consider his nomination to the U.S. Court of Appeals.

Sincerely,

SILVESTRE REYES,  
*Chair, Congressional  
Hispanic Caucus.*

CHARLES A. GONZALEZ,  
*Chair, CHC Civil  
Rights Task Force.*

Mr. REID. And I say that the final two sentences of this letter be read:

In our opinion, his lack of judicial experience coupled with a failure to recognize or

display an interest in the needs of the Hispanic community do not support an appointment to the federal judiciary.

The Hispanic caucus unanimously opposed the nomination.

Mr. HATCH. I cannot let that go. If they are saying because he lacks judicial experience he should not be on the court—which is what it appears to me they are saying—they are just condemning almost every nonjudge Hispanic to never have a chance to be a Federal district or circuit court of appeals judge. That is ridiculous. Every Democrat President I have served with—President Carter and President Clinton—have appointed a wide variety of people who never served on the bench but who are highly qualified and are doing a good job as judges now.

It may be helpful to have some judicial experience, but not having judicial experience does not mean you cannot serve. If that were the case, some of the greatest judges in the history of the world would never have had a chance.

But if you interpret what they say, that means that any Hispanic who has not had judicial experience really should not be supported. That is ridiculous. That is caving in to the liberal special interest groups in this town with which they continually spend time, and is to the detriment of the Hispanic community. I say that as a chairman of the Republican senatorial Hispanic task force who has worked for the last 13 years to try to solve these problems.

I don't take second seat to anyone with regard to my love for the Hispanic community or my work on their behalf.

#### LEGISLATIVE SESSION

Mr. HATCH. We have had enough debate. I ask unanimous consent that the Senate return to legislative session.

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

#### MORNING BUSINESS

Mr. HATCH. I ask unanimous consent that the Senate proceed to a period of morning business.

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

#### TRIBUTE TO DANNY PELHAM

Mr. DASCHLE. Mr. President, on Monday, I had the chance to visit with Danny Pelham. He came to my office, and we reflected on his nearly 35 years of service to the Senate.

As he walked out, I heard a member of my staff say: "There goes the wisest man I know." I couldn't agree more.

Danny arrived in the Senate on March 25, 1968. In his time here, he has seen the making of Senate history, and American history, and he has seen 237 Senators come and go.

Through it all, Daniel Pehlham conducted himself with utter fairness,

thoroughness, and discretion. It makes sense that—in his off hours—he is a basketball official.

For 35 years, he has walked the halls of power, but he never let it distort his perspective, or his sense of what is truly important. If you have ever seen him with his grandson Corey, or heard him talk about his wife Phyllis, you begin to understand that.

Ralph Waldo Emerson wrote: "we put our love where we have put our labor." For 35 years, Danny labored for—and loved—the Senate. It is fitting that we adopt this resolution expressing our appreciation—and love—for Danny Pelham.

#### MEDICAID REFORM

Mr. BINGAMAN. Mr. President, I want to speak for just a few minutes on the Senate floor about the proposal made last Friday by the Bush administration regarding Medicaid. The proposal was a disturbing one, in my view. It was to reform the Medicaid program by shifting to a block grant to the States. That is a recycled proposal, one we have seen before. It was touted, when described last Friday, as giving the States flexibility. It would give them flexibility.

It would give them flexibility to drop benefits to low-income children, to drop benefits to pregnant women, to people with disabilities, and to the elderly. And it would give them flexibility to dramatically increase the cost sharing for those vulnerable populations. With over 41 million Americans who are currently uninsured, in my view, we should be trying to find ways to expand health coverage rather than finding new ways to reduce it.

Unfortunately, the proposal allows States to continue Medicaid as it is or to convert the program into a block grant. This was tried in 1981 and again in 1996. The administration would encourage States to take the latter option; that is, to move to receipt of a block grant by encouragement of being temporarily offered increased dollars. That would be coupled with this offer of added flexibility to be able to reduce the benefits for their Medicaid beneficiaries and increase the costs being charged to those low-income and vulnerable populations. Secretary Thompson notes the proposal would clearly save the States money. This would only happen if the States decided to do what would almost certainly occur; that is, to cut benefits and increase cost sharing.

Also, this proposal takes the Federal Government off the hook for helping States address their uninsured problems because under the proposal there would be no additional Federal money available to States if they attempted to expand coverage in the future. In order to expand coverage, the only option States would have would be to essentially rob Peter to pay Paul. In

short, they could cut benefits or increase cost sharing for certain populations if they wanted to expand coverage to any others.

The proposal is ostensibly based on the success of the State Children's Health Insurance Program, the S-CHIP Program. Secretary Thompson said in his press conference that the proposal works by "taking the principles of S-CHIP and applying them to Medicaid."

It is ironic that the proposal actually eliminates CHIP by wrapping it into this block grant with Medicaid and with the Disproportionate Share Hospital Program, the DSH Program. It is surprising and disappointing to me that the administration is proposing to radically transform the identity and the nature of the Children's Health Insurance Program while also praising that program. It is a program that just about everyone lauds as having been quite successful at reducing the number of uninsured children in our country.

So this new proposal by the administration has strong elements of the old bait-and-switch ploy that all of us see from time to time. It advertises that there will be more money available to States—the exact amount is \$12.7 billion during the first 7 years—but then, after that first 7 years, it yanks away all that money, starting in the year 2011.

Secretary Thompson noted at the press conference that he is not planning to be around at the time the \$12.7 billion in reductions occurs 8 years from now. And the plan, I would say, clearly also counts on the fact that most of our current group of Governors who would be asked to make these changes will not be around either. However, that is exactly the time, 2011, when our Nation's baby boomers hit retirement age in much larger numbers. The long-term care costs within Medicaid will increase significantly during that period. Therefore, the Federal Government, under this proposal, would be dramatically stepping away from its commitment to help States and to help with the Nation's health safety net at a time when the demand for those services will obviously be increasing.

The proposal is counting on the fact that the Governors will jump at the \$12.7 billion that is being offered during these initial years and will let future Governors deal with the problem later on. It is my hope and my belief that the Nation's Governors will see this nonoffer for what it is; and that is, a very shortsighted effort to limit the Federal Government's role in Medicaid that will lead to cuts in access to care for those most in need of that care.

In fact, under the proposal, States are left with nothing less than a Hobson's choice of alternatives. Both of the choices they would have would substantially weaken health insurance for low-income Medicaid beneficiaries. Under the first option that States would have, they would be allowed to

continue to operate Medicaid without any financial relief from the Federal Government to help them get through the current fiscal crisis. States would have no option but to make deep cuts in their Medicaid Program during the next few years, if they choose that option.

Under the second option, the States would get a fixed amount of Federal money for the millions of people who States have voluntarily decided to cover under Medicaid, and, as a result, Federal funding would be limited and not responsive to those items that it is now responsive to, such as economic recessions, epidemics, terrorist attacks, population growth, changes in the State's health care environment, or the growth in our Nation's elderly that we expect in the next decade. Nor would it be available to States wishing to expand coverage, as I indicated before, States wishing to reduce the uninsured rate.

Although the administration's proposal advertises improved health, just as one would expect with a bait-and-switch proposal, it fails the test when you look at the details. I ask, How does the health of Medicaid beneficiaries improve by eliminating their entitlement to coverage and by allowing States the dramatic ability to reduce benefits and increase the costs that are shifted to those vulnerable populations? I am talking here about 85-year-old widows with incomes of just \$800 a month. I am talking about pregnant women with incomes of \$15,000 per year, or an 8-year-old boy from a family of three with an income of \$19,000 per year or less.

According to Karen Davis, Cathy Schoen, Michelle Doty, and Katie Tenney—all from the Commonwealth Fund—the two main purposes of health insurance are, first, "assuring access to needed health care services and," secondly, "preventing financial burdens from medical bills." When you propose, as this proposal last Friday does, to reduce benefits and increase cost sharing on low-income beneficiaries, clearly you fail in trying to accomplish either of these two main purposes.

Just over a week ago, it was discovered that the Bush administration was allowing States to limit the number of emergency room visits to Medicaid beneficiaries regardless of whether the care sought was an emergency. That proposal allowed States to establish arbitrary limits, such as three visits per year. There was a huge hue and cry and the administration reversed this policy shift, but it is back in full force under this proposal related to Medicaid, as benefits would decrease and cost sharing would dramatically increase for Medicaid beneficiaries.

This is not to state that our Governors are malevolent in their intent. Their goal is to do the best they can for their citizens. It is only to say that many States are facing unprecedented fiscal crises that force them into impossible choices, choices between

health care coverage and other needed services. In fact, the States already have substantial flexibility in the Medicaid Program. About 65 percent of spending in that program is for either optional populations or for optional benefits that they have chosen to pay for.

Instead, for some Governors, it may not be the flexibility they are seeking to exploit but the proposal's other aspects that eliminate the limitations on how States spend their Medicaid dollars. On several occasions in recent years, certain States worked to "game" the Federal dollars through a variety of mechanisms, such as provider taxes and donations, excessive payments to certain health providers that would be returned to the State via intergovernmental transfers or other mechanisms. These mechanisms to which I am referring largely benefited the budgets of the individual States and did not benefit anyone's health.

Both the first Bush administration and the Clinton administration and the current Bush administration should be applauded for working hard to deal with those problems in the Medicaid system. However, it was revealed at the press conference that those mechanisms would once again be allowed if this newly presented proposal is adopted.

Via these mechanisms, the Medicaid Program can be rapidly turned into nothing more than a giant revenuesharing program. Again, it is hard to see how such so-called innovation would improve health coverage for low-income Americans.

Instead, there is a better approach to the problem, on which I have been working with Congressman JOHN DINGELL; we are preparing legislation to introduce in the next few weeks. Our Medicaid reform proposal will be based on the knowledge that States are facing both short-term and long-term problems with their Medicaid programs, and those problems need to be addressed. As such, our initiative would have the Federal Government step up rather than shirk its commitment to the States.

In exchange, it will ask the States not to reduce their commitment to the Nation's poorest and neediest citizens. It does several things. Let me briefly outline them.

First, it will provide States with much needed short-term and long-term fiscal relief.

Secondly, it will increase Federal responsibility for Federal initiatives and for populations that are paid for by the Medicaid Program.

Third, it will protect States against economic downturns and epidemics and health care inflation and demographic changes.

Fourth, it will provide States with expanded coverage options, with real Federal fiscal support as opposed to this block grant proposal we have seen now from the administration.

And, fifth, it will increase State flexibility in ways to improve the

health of Medicaid beneficiaries rather than options to weaken their health as under the administration's proposal.

The administration's proposal will fail in each of these regards. Let me describe them in a little more detail.

First, we will propose a package that will give States both short- and long-term fiscal relief. This is in sharp contrast to the administration's block grant proposal that would leave States with no additional Federal commitment or help during economic downturns. Block grants do not adjust to problems such as downturns and epidemics and natural disasters and demographic changes, and they do not adjust for the very substantial health care inflation that we have been experiencing.

Second, our proposal takes significant steps to properly assume Federal responsibility for Federal initiatives and for populations that are paid for under the Medicaid Program. This includes assumption of 100 percent of the cost for the premiums and cost sharing that the Medicaid Program provides for low-income Medicare beneficiaries. Medicare is a Federal responsibility, and these costs should be the Federal Government's responsibility.

The same is true for a variety of other payments within Medicaid, including payments to urban Indian health organizations, to outstationed workers, to the breast and cervical cancer program, and payments to federally qualified health centers.

Third, the administration claims its proposal gives States the ability to expand coverage to more people, including the mentally ill, chronically ill, those with HIV/AIDS, and those with substance abuse problems. The difficulty is the administration's proposal gives States the ability to do that but gives them no dollars with which to do it. States are given the ability to do this by robbing Peter to pay Paul.

In sharp contrast, our proposal will give States new options to expand coverage and benefits in Medicare and CHIP, and States choosing to do so will have the Federal Government's commitment to participate with a financial commitment for more than half of those costs, as opposed to no commitment to participate under the administration's proposal.

A fourth aspect of what we are going to propose is that we will grant States the flexibility they have been seeking to provide more efficient and improved health services for these low-income Medicaid beneficiaries. This includes allowing States to simplify eligibility, to emphasize home and community-based care rather than institutional care, and a number of other options. Our proposal specifically chooses not to take the course that the administration is pursuing in several areas.

Unlike the administration, we do not grant States additional flexibility to cut benefits and eliminate quality protections and increase cost sharing on our Nation's most vulnerable popu-

lations. We do not propose to eliminate fiscal integrity standards such as those intended to ensure that Medicaid dollars are spent on health care and not on other purposes.

And we do not, as the administration's proposal does, allow for the elimination of the CHIP program, the Children's Health Insurance Program, or the Disproportionate Share Hospital Program, the DSHP program.

Finally, unlike the administration's efforts, our plan does not lock in interstate inequities and disparities on a permanent basis. In fact, the administration's proposal, as I understand it, as it was presented Friday, is particularly devastating to a State such as New Mexico. Our State currently has the highest rate of uninsured in the Nation. It is one of the fastest growing States in the country as well. It has per capita Medicaid expenditures that are well below the national average. The administration's proposal would therefore be a lose/lose/lose proposition for our State.

First, it would prevent us from seeking additional Federal assistance for proposed expansions of coverage including the recently approved Federal waiver by the Federal Government to New Mexico that is so highly touted by the administration.

Second, the block grant often fails to take into account differences in population growth, and we have a rapidly growing population.

Finally, we would be forever locked in at an expenditure level way below the national average under this block grant proposal.

During his State of the Union address this last week, the President said, "Medicare is the binding commitment of a caring society." That is a noble concept. But I would suggest that just as Medicare is the binding commitment of a caring society, Medicaid is as well. For this reason, the Federal Government should not step away from it or abandon its commitment to States or to the 43 million vulnerable citizens currently served by the Medicaid Program.

Particularly, the Federal Government should not do this at a time of growing numbers of uninsured and just before the Nation's baby boomers begin to retire in large numbers.

In the name of increasing personal responsibility of our Nation's neediest and sickest citizens, the administration is proposing that we at the Federal level shirk our responsibility. Rather than abandoning the poor at this critical time, we should be reconsidering the proposed tax breaks that we have been sent intending to help our wealthiest citizens.

We need to be sure our priorities are in line with the priorities of the American people. The proposal we have received from the administration to block grant Medicaid clearly does not reflect the priorities the American people have.

## RULES OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Ms. COLLINS. Mr. President, pursuant to the requirements of Rule XXVI, Sec. 2, of the Standing Rules of the Senate, I ask unanimous consent to have printed in the RECORD the rules of the Committee on Governmental Affairs for the 108th Congress adopted by the Committee on February 5, 2003.

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

### RULES OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

#### RULE 1. MEETINGS AND MEETING PROCEDURES OTHER THAN HEARINGS

A. Meeting dates. The Committee shall hold its regular meetings on the first Thursday of each month, when the Congress is in session, or at such other times as the chairman shall determine. Additional meetings may be called by the chairman as he deems necessary to expedite Committee business. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

B. Calling special Committee meetings. If at least three members of the Committee desire the chairman to call a special meeting, they may file in the offices of the Committee a written request therefor, addressed to the chairman. Immediately thereafter, the clerk of the committee shall notify the chairman of such request. If, within 3 calendar days after the filing of such request, the chairman fails to call the requested special meeting, which is to be held within 7 calendar days after the filing of such request, a majority of the committee members may file in the offices of the committee their written notice that a special Committee meeting will be held, specifying the date and hour thereof, and the Committee shall meet on that date and hour.

Immediately upon the filing of such notice, the Committee clerk shall notify all Committee members that such special meeting will be held and inform them of its date and hour. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

C. Meeting notices and agenda. Written notices of Committee meetings, accompanied by an agenda, enumerating the items of business to be considered, shall be sent to all Committee members at least 3 days in advance of such meetings, excluding Saturdays, Sundays, and legal holidays in which the Senate is not in session. The written notices required by this Rule may be provided by electronic mail. In the event that unforeseen requirements or Committee business prevent a 3-day notice of either the meeting or agenda, the Committee staff shall communicate such notice and agenda, or any revisions to the agenda, as soon as practicable by telephone or otherwise to members or appropriate staff assistants in their offices.

D. Open business meetings. Meetings for the transaction of Committee or Subcommittee business shall be conducted in open session, except that a meeting or series of meetings on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;