vote to confirm despite Judge Roberts's long history of public service.

In one memo, for example, Judge Roberts argued that Congress has the power to deny the Supreme Court the right to hear appeals from lower courts of constitutional claims involving flag burning, abortion, and other matters. He wrote that the United States would be far better off with 50 different interpretations on the right to choose than with what he called the ''judicial excesses embodied in Roe v. Wade.'' The idea that the Supreme Court could be denied the right to rule on constitutional claims had been so long decided that even the most conservative of Judge Roberts's Justice Department colleagues strongly disagreed with him.

When questioned about his legal memoranda, Judge Roberts claimed they did not necessarily reflect his views and that he was merely making the best possible case for his clients or responding to a superior's request that he make a particular argument. But he did not clearly disavow the strong and clear views he expressed, but only shrouded them in further mystery. Was he just being an advocate for a client or was he using his position to advocate for positions he believed in? The record is unclear.

It is hard to believe he has no opinion on so many critical issues after years as a Justice Department and White House lawyer, appellate advocate and judge. His supporters remind us that Chief Justice Rehnquist supported the constitutionality of legal segregation before his elevation to the high court but never sought to bring it back while serving the court system as its Chief Justice. But I would also remind them of Justice Thomas's assertion in his confirmation hearing that he had never even discussed Roe v. Wade, much less formed an opinion on it. Shortly after he ascended to the Court, Justice Thomas made it clear that he wanted to repeal Roe.

Adding to testimony that clouded more than clarified is that we in the Senate have been denied the full record of Judge Roberts's writings despite our repeated requests. Combined, these two events have left a question mark on what Judge Roberts's views are and how he might rule on critical questions of the day. It is telling that President Bush has said the Justices he most admires are the two most conservative Justices, Justices Thomas and Scalia. It is not unreasonable to believe that the President has picked someone in Judge Roberts whom he believes holds a similarly conservative philosophy, and that voting as a bloc they could further limit the power of the Congress, expand the purview of the Executive, and overturn key rulings like Roe v. Wade.

Since I expect Judge Roberts to be confirmed, I hope that my concerns are unfounded and that he will be the kind of judge he said he would be during his confirmation hearing. If so, I will be the first to acknowledge it. However, because I think he is far more likely to vote the views he expressed in his legal writings, I cannot give my consent to his confirmation and will, therefore, vote against his confirmation. My desire to maintain the already fragile Supreme Court majority for civil rights, voting rights and women's rights outweigh the respect I have for Judge Roberts's intellect, character, and legal skills.

Mr. MCCAIN. Mr. President, this Thursday the Senate will have the opportunity to vote on the nomination of Judge John Roberts to be Chief Justice of the United States. Few decisions made by this body are as consequential as this one. If Judge Roberts is confirmed by the Senate—and I believe he will be confirmed—he will be the youngest Chief Justice in more than 200 years. With the blessing of a long tenure on the Court, his influence as Chief Justice will not just affect us and our children but also several generations to come.

In nominating Judge Roberts, the President clearly was mindful of the serious and lasting nature of the vote before us. He respected the Senate's advice and consent role and engaged in a thorough, deliberate, and fair nomination process. The President and his staff consulted with more than 70 Members of the Senate, and the President reviewed the credentials of many well-qualified candidates. The President also met personally with a number of potential nominees. I believe that this is the process envisioned by the so-called Gang of 14, and that it resulted in an excellent nominee.

Judge Roberts has impeccable legal credentials and a strong reputation and record as a fair- and sharp-minded lawyer and jurist. The American Bar Association and many others of all political stripes agree that his distinguished career as a lawyer and a jurist makes him very well qualified for the position of Chief Justice. Indeed, some observers have pointed out that if one were to imagine the perfect training to be a Supreme Court Justice, Judge Roberts's career would be the model. I could not agree more.

As an appellate judge, Judge Roberts has built a record of measure, control, and fair-mindedness—all crucial characteristics for a member of our Nation's highest court.

Prior to his tenure as a Federal judge, John Roberts was a widely respected appellate lawyer. The Washington Post recently characterized him as ''among the country's best-regarded appellate lawyers, both in private practice and as deputy solicitor general during the administration of George H.W. Bush.''

The Senate Judiciary Committee has engaged in an extensive review of Judge Roberts' record. During his nomination hearings, the judge acquitted himself with dignity and honesty, answering directly questions that he believed he could address without hindering his ability to carry out his functions on the Supreme Court or in his current position on the DC Court of Appeals. The editorial board of the San Francisco Chronicle wrote some days ago that Judge Roberts ''passed the key tests before the Senate Judiciary Committee. His command of the law is impressive. He carries no trace of ethical taint. His ability to stay calm and on point in the face of exhaustive questioning from a panel of highly inquisitive—and occasionally posturing—U.S. senators was indicative of judicial temperament.''

The committee has voted to recommend that the full Senate confirm Judge Roberts as the Chief Justice of the United States. Several Democratic members of the committee joined in that recommendation, and rightly so—this nominee's exceptional credentials and temperament should place him well above the fray of partisanship.

I agree wholeheartedly with the nomination of the President and the recommendation of the Judiciary Committee. I will vote for John Roberts, a man who has proven to be an extraordinarily talented lawyer and judge who approaches the law with modesty and a deep respect for the Constitution and our Nation's laws.

EMERGENCY HEALTH CARE RELIEF ACT OF 2005

Mr. MCCAIN. Mr. President, I am in the Senate to mention that there is ongoing discussions between the Senator from Iowa, Mr. GRASSLEY, the distinguished chairman of the Committee on Finance, and a number of Members who have been concerned about S. 1716, the Emergency Health Care Relief Act of 2005. I fully support the desire of the Senator and members of the Committee on Finance to provide health care relief for the victims of Hurricane Katrina. We have noted that it has about a $9 billion price tag, and we have been in ongoing discussions which I believe will bear fruit with the Senator from Iowa.

It is important to know that the administration also objects to S. 1716, and I ask unanimous consent the letter from Secretary Leavitt be printed in the RECORD.

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

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, September 27, 2005.

Hon. WILLIAM H. FRIST,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR FRIST: I am writing to express the views of the Department of Health and Human Services (HHS) with respect to S. 1716, the ''Emergency Health Care Relief Act of 2005''.

We understand and appreciate that the intent of S. 1716 is to help provide, in the most timely manner possible, emergency health care relief to the victims of Hurricane Katrina. The Department is strongly committed to this same objective, and we have

engaged in our utmost efforts to furnish such relief directly to Katrina victims as well as to support State efforts to provide emergency health care and related services (see addendum below). We believe these ongoing efforts largely preclude the need for the activities proposed under S. 1716. Moreover, we have serious concerns with S. 1716, as enunciated below.

In addition, the bill spends significant amounts on adjustments to the Medicaid FMAP (Federal medical assistance percentage) for individuals who are not survivors of Hurricane Katrina. We think this is inadvisable and that resources should be targeted to services for these survivors.

TITLE I—EMERGENCY HEALTH CARE RELIEF

Title I of S. 1716 establishes a new Disaster Relief Medicaid (DRM) program for survivors of Hurricane Katrina. Survivors of the hurricane would be entitled to five months of Medicaid coverage, and the President is given the option to extend the program for another five months. Individuals who were previously receiving Medicaid before the hurricane are deemed eligible for this assistance. In addition DRM eligibility is also available to pregnant women and children with incomes up to 200% FPL, disabled individuals up to 300% SSI, and other individuals with incomes up to 100% FPL. As a result, a new eligibility category for childless adults is established. There are no resource or residency requirements for DRM. DRM recipients will receive the benefits package available to categorically needy beneficiaries under the Medicaid state plan. States may also provide extended mental health benefits and coordination benefits to DRM eligibles, which are not limited to conditions directly resulting from the hurricane.

The legislation requires a new Medicaid entitlement for Katrina survivors, regardless of whether that will work best for those survivors or the states. This new program is unnecessary. CMS is already acting to meet the health care needs of hurricane survivors through the establishment of a new Medicaid/State Children's Health Insurance Program (SCHIP) waiver program that builds upon existing Medicaid/SCRIP eligibility and other program rules to provide immediate, comprehensive relief without the need for congressional action. This waiver program allows individuals who otherwise would be eligible for Medicaid in their home states to receive 5 months of temporary eligibility without going through a complex and burdensome application process. Texas, Alabama, Florida, and Mississippi now have these programs in place, and more states with significant numbers of evacuees are very close to establishing similar programs. With this new waiver program, we are providing relief quickly, rather than waiting to implement an unprecedented new federal program as envisioned by S. 1716.

The bill (section 108) also establishes a massive new Federal program which would be administered by the Secretary of HHS, rather than states. The fund would provide $800 million for direct payments to Medicaid providers to offset their costs incurred as a result of Hurricane Katrina, and for payments to state insurance commissioners for health insurance premiums for individuals otherwise eligible for DRM. Again, S. 1716 is duplicating efforts which are well underway at CMS through the uncompensated care pools referenced in the new waiver program The Federal uncompensated care fund envisioned by S. 1716 would create uncertainty and delay progress being made right now. To make the system envisioned by the bill work, CMS would have to develop a brand new Federal system with new forms and applications, eligibility criteria, program requirements, criteria for reviewing applications and determining payment amounts, as well as other rules and procedures. Providers would need to learn this new system and provide new kinds of documentation. It is far more expeditious to use existing state systems.

We believe states are better equipped than the Federal Government to work directly with local providers to solve the problems of uncompensated care. The state-based uncompensated care pool in the CMS waiver will pay providers more quickly through the existing state payment systems without establishing a new bureaucratic process. It will also allow for care in settings and from providers that do not usually participate in Medicaid, enabling evacuees to get the best care and the providers in the state to deliver it as effectively as possible. The waiver program also allows for new interactions with expanded community-based health care centers, mobile units for providing basic care at convenient locations for evacuees, and new referral networks. The pool will permit states to pay for additional services needed by evacuees, such as additional mental health services, that are not generally covered by Medicaid.

While we prefer the state-based uncompensated care pool referenced in the CMS waiver, we look forward to working with the committee to ensure care to evacuees and solve the problems of uncompensated care.

We believe that S. 1716 does not appropriately target spending to the true victims of Hurricane Katrina. Section 103 spends $4 billion on a 100% FMAP rate for services (and related administrative activities) provided from August 28, 2005 through December 31, 2006 under the State Medicaid or SCHIP plan to any individual residing in a major disaster parish or county, regardless of whether the individual was affected by Hurricane Katrina. Section 108 spends almost $700 million for 29 states, most of which were not affected by the hurricane, by preventing a drop in the FMAP for Medicaid that otherwise would have occurred on October 1. We believe that these provisions are inadvisable and that federal resources should be targeted to meeting the needs of those harmed by Hurricane Katrina.

In addition, S. 1716 includes several provisions that affect the timely implementation of the new Medicare Part D program. We do not support any changes to the Medicare Part D program. We note that under S. 1716, DRM dual eligibles are excluded from the low-income subsidy program. We think it would be far more advantageous to ensure that dual eligibles are timely enrolled in a Part D plan so that they receive the low-cost drug coverage available to them under the new Medicare drug benefit.

TITLE II—TANF RELIEF

Under title II, S. 1716 would also make a number of adjustments to P.L. 109–68 the ''TANF Emergency Response and Recovery Act of 2005,'' which was signed into law on September 21. For the most part, these adjustments would be unnecessary and would complicate State administration of Temporary Assistance for Needy Families (TANF) benefits in the wake of Hurricane Katrina.

HHS believes that the existing administrative authority under the TANF program under title IV–A of the Social Security Act (as extended through December 31, 2005 by P.L. 109–68 and several earlier temporary extensions), coupled with the special hurricane-related provisions of the new law, has given States the ability to be responsive to the most significant issues confronting them as a result of Hurricane Katrina. We provided early administrative guidance reminding States of their flexibility to amend their TANF plans to meet the special circumstances of the hurricane aftermath such as adjusting State plans, streamlining the eligibility process, making residency optional, and using in-kind and non-Federal cash expenditures to meet the maintenance of effort requirements.

In addition to this program flexibility, which continues under title IV–A (as so extended), P.L. 109–68 also provides special flexibility for TANF in areas such as the contingency fund, loan program, and penalty waivers.

We are especially concerned about the dual contingency fund provisions in S. 1716, under which a State may be reimbursed from the contingency fund if it qualifies as a ''needy State'' based on Hurricane Katrina-related criteria, while still remaining eligible to receive reimbursement from the fund if it meets the current law definition of a ''needy State'' (based on certain Food Stamp and unemployment-related criteria).

We are advised by the Office of Management and Budget that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

MICHAEL O. LEAVITT.

Mr. MCCAIN. I say again to my friend from Iowa, I think he does a tremendous job as chairman of our Committee on Finance. He continues to distinguish himself in that role. But I do believe—and we had, I think, a very productive meeting with the Senator from New Hampshire, Mr. SUNUNU, and Senator LOTT, who, obviously, has a very deep and abiding interest in this situation, as well as the Senator from Iowa. I hope we can work out the objections that the administration has, as well as the concerns that others of us have on this issue.

Again, I thank the Senator from Iowa for his diligent efforts in trying to get this legislation done and, at the same time, satisfy the concerns of many who are concerned about the scope of it, as well as his efforts to attempt to satisfy the concerns of the administration.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—S. 1716

Mr. BAUCUS. Mr. President, I come to the floor once again to insist that the Senate act on the emergency health care needs of Katrina victims. They need help. They need help now—not tomorrow, not the next day, now. The Senate must pass the Katrina health package that Chairman GRASSLEY and I put together. Why? Obviously, to help the victims of Katrina. That is why. They need the help now.