

their GOP counterparts to facilitate confirmations.

Emblematic is the President's nomination of U.S. District Judge Gerard Lynch, who served with distinction on the U.S. District Court for the Southern District of New York since 2000. New York Democratic Senators Schumer and Kirsten Gillibrand expeditiously suggested the superb trial judge to Obama, who nominated Lynch on April 2. By mid-May, the panel conducted Lynch's confirmation hearing, and on June 11, the committee approved Lynch. In mid-September, the Senate confirmed Lynch on a 94-3 vote.

Senator Schumer's Sept. 9 announcement that he had recommended District Judge Denny Chin to the White House and the jurist's Oct. 6 nomination are precisely the correct approaches. The New York and Connecticut senators must continue suggesting excellent candidates for the three Second Circuit openings which remain. Obama must swiftly consider their proposals and nominate outstanding prospects. The Judiciary Committee should promptly afford hearings and votes, while the Majority Leader ought to expeditiously schedule floor debates and votes.

Judge Sotomayor's Supreme Court elevation, the assumption of senior status by Judges Calabresi, Parker and Sack and Judge Lynch's recent Senate confirmation mean there are four openings in the Second Circuit's thirteen judgeships. President Obama should cooperate with the Senate to quickly fill the vacancies with superior judges, so that the tribunal can deliver appellate justice.

Mr. LEAHY. Mr. President, I ask unanimous consent that my further remarks be charged against my time in connection with this nomination.

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

(The remarks of Mr. LEAHY are printed in today's RECORD under "Morning Business.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SESSIONS. Mr. President, I wish to briefly make a few comments about the confirmation vote we will soon be having on supporting this nominee. I saw him, as a member of the Judiciary Committee, and we made inquiry of him. I liked him. He handled himself well.

He has been a strong and ardent Democrat all his life—an active Democrat. He was educated, I believe, at the University of South Dakota and has practiced law a long time there. I think he has the ability and the commitment—he said he did and I believe him—not to allow his politics to influence his decisionmaking once he puts on that robe; that he will be objective and fair; that he will comply with the oath a judge takes to be impartial; that he will provide equal justice for the poor and the rich; and that he will serve the laws of the United States under the Constitution. So we moved

him forward, and I am glad he will be confirmed.

I will note that some nominees I will not be able to support, and I would expect some others may object as well. It is our responsibility to be careful and to be cautious in making decisions about judges because they are given a lifetime appointment. They can't be removed for bad decisionmaking. I believe the President has submitted two more nominees to the district bench. There are 74 vacancies in the Federal courts in America as of today. A few days ago, there were 9 nominations pending—this is 1 of them—and now there are 11 nominations, I understand, pending.

As the President gets his machine up and running and starts submitting nominees, I think we will have good hearings. My view is that if they are qualified, it doesn't make any difference to me if they are an active, partisan, campaigning Democrat. That is fine. The question simply is, once they put on the robe and they are required to decide cases, can they put aside their personal feelings, backgrounds, emotions, and partisanship? Most judges can.

I practiced in Alabama, where judges run on a party ticket. They run as Republicans and Democrats. Everybody knows which of them—very few—carry those biases with them.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I thank the Chair, and I urge my colleagues to support the nomination.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The question is, Will the Senate advise and consent to the nomination of Roberto A. Lange, of South Dakota, to be United States District Judge for the District of South Dakota?

Mr. SESSIONS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 324 Ex.]

YEAS—100

Akaka	Carper	Gillibrand
Alexander	Casey	Graham
Barrasso	Chambliss	Grassley
Baucus	Coburn	Gregg
Bayh	Cochran	Hagan
Begich	Collins	Harkin
Bennet	Conrad	Hatch
Bennett	Corker	Hutchinson
Bingaman	Cornyn	Inhofe
Bond	Crapo	Inouye
Boxer	DeMint	Isakson
Brown	Dodd	Johanns
Brownback	Dorgan	Johnson
Bunning	Durbin	Kaufman
Burr	Ensign	Kerry
Burr	Enzi	Kirk
Byrd	Feingold	Klobuchar
Cantwell	Feinstein	Kohl
Cardin	Franken	Kyl

Landrieu
Lautenberg
Leahy
LeMieux
Levin
Lieberman
Lincoln
Lugar
McCain
McCaskill
McConnell
Menendez
Merkley
Mikulski
Murkowski

Murray
Nelson (NE)
Nelson (FL)
Pryor
Reed
Reid
Risch
Roberts
Rockefeller
Sanders
Schumer
Sessions
Shaheen
Shelby
Snowe

Specter
Stabenow
Tester
Thune
Udall (CO)
Udall (NM)
Vitter
Voinovich
Warner
Webb
Whitehouse
Wicker
Wyden

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The Republican leader is recognized.

MEDICARE PHYSICIAN PAYMENTS

Mr. McCONNELL. Mr. President, I am going to take a moment of my leader time. Americans are increasingly alarmed by the expansion of our national debt and this spending binge we are putting on the national credit card. They are asking us to do what they have been doing. They want us to take out our scissors and cut the credit card. They want us to live within our means so their children and their grandchildren do not wake up in the morning to find the American dream buried under an avalanche of debt.

Our fiscal situation has simply spiraled out of control. Yet the proponents of this measure want to put another quarter of a trillion dollars on the Federal credit card. Republicans offered a series of fiscally responsible ways to prevent pay cuts to our physicians. That was not agreed to.

Let me remind everybody, we are in very dangerous territory. I am going to vote against this deficit-expanding bill because enough is enough. I hope, on a bipartisan basis, we will send a message to the American people that we do not intend to charge from \$¼ trillion to \$300 billion on the nation's credit card by approving this measure.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, we have been aware of the fact that because of activities and actions of the Republican-dominated Washington for a number of years, that the doctors who take Medicare patients have been hammered so hard that not all doctors take Medicare patients.

We want senior citizens, Medicare recipients, to be able to go a doctor. We do not want all of those folks going to Medicare Advantage. We want Medicare to survive as a program.

Because people who ran this town for a number of years did not like Social Security, tried to privatize that, did

everything they could to minimize and denigrate Medicare, we are now at a point where we have, in the bill that has been reported out of the Finance Committee, a 1-year fix for the senior citizens, so that physicians will not be dropping Medicare patients. Then all of the physicians should know that we march to this position we are in now.

We were told by the American Medical Association and others that we would get help from the Republicans to take care of senior citizens so that they would have doctors to take care of them. It is very interesting. One of the sponsors of this legislation, one of the Republican leaders, is not supporting the legislation. How do you like that? This is another effort of Republicans to slow down, divert, and stop what we are trying to do with health care and based on everything else.

I just finished a meeting over here with my chairmen. We lamented the fact of how things have changed in this town, how in this new administration we have had to file cloture on a significant number of occasions to get people who have jobs in this administration approved in the Senate. During the Bush first year, during this same period of time, not a single nomination he requested had to be clotured; that is, to end a filibuster. We have numerous people to get approved.

We have essential legislation, such as legislation that deals with giving people who are out of work unemployment benefits. It is not a gift. They pay into that fund or they thought it wasn't a gift.

I want everyone to know we are going to take care of Medicare. If the Republicans in the Senate don't want to do it the way we have done it in the past by doing the doctors fix, then when we finish the health care legislation, we will come back and take care of a multiple-year fix for the doctors and senior citizens.

I want everyone within the sound of my voice to understand that Washington is being driven by a small number of people on this side of the aisle who are preventing us from doing things that help the American people. We are not trying to run over people with the 60 votes we have. We want to work with people. We want to get along. I think it is really too bad that suddenly they have got religion. They never worried in the past about all the tax cuts being paid for. They never worried about drug manufacturers getting all the free stuff they got. They never worried about any of this. They now are suddenly being very frugal when they find it is a way they can slow down what we do here.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, if I might just add to what our distinguished leader has said and thank him for bringing this vote to us. This is about strengthening and protecting Medicare.

The distinguished Republican leader is right: Enough is enough—enough of

running physicians up to the brink every year, not knowing what is going to happen; enough for seniors not knowing whether they will be able to continue to see their doctors. Seven different times we have brought them up to the brink and then not made the cut and have many times not paid for it. This legislation will wipe the slate clean and will for the first time bring honest budgeting to Medicare.

Mr. LEAHY. Mr. President, I am proud to be a cosponsor of the bill we are considering today, the Medicare Physician Fairness Act, introduced by Senator STABENOW. This bill would permanently end the scheduled reductions in Medicare and TRICARE payments that physicians face each year. This legislation is long overdue and an important step in making sure doctors will continue to serve Medicare patients and veterans in the years to come.

This year marks the 8th year in a row that Congress will be forced to prevent scheduled physician payment cuts under the Medicare Program. The scheduled cuts are based on a flawed formula, which cuts physician payments in the future if physician spending exceeds a target based on the growth of the economy. Because the scheduled cuts are cumulative, next year we could expect to see a 21-percent reduction in physician payments and a cumulative 40-percent cut scheduled by 2016. It is no wonder Congress has consistently acted to prevent these cuts and experts have called for a repeal of this broken formula.

Without passing this bill and permanently ending the schedule of physician payment cuts, doctors will continue to struggle to budget for the future without knowing with absolute certainty that Congress will act to prevent payment reductions. The uncertainty in payment rates has already resulted in many physicians declining to accept Medicare making it hard for beneficiaries to find a doctor. In rural States like Vermont, finding a doctor is challenging enough without looming payment cuts affecting doctors every year. In addition to seniors, the more than 12,000 Vermont veterans and military personnel who participate in TRICARE will continue to feel their benefits are at risk so long as this flawed formula threatens payment reductions to their doctors.

Some have argued that we cannot afford to make such an expensive fix to our health care system. I disagree. The President already assumed Congress will fix the payment cuts over the next 10 years in his budget proposal. We all know that without a permanent fix Congress will continue to act to prevent these debilitating cuts in payment rates to doctors. The administration's budget gives a realistic estimate of projected Medicare spending. Passing a permanent fix will allow us to have accurate estimates of Medicare spending, a first step toward truly reforming the physician payment system to one that

is based on quality and performance and not on arbitrary formulas.

This legislation is an important step toward making changes in the Medicare and TRICARE physician payment structure that will help our entire health care system. I regret that some misplaced partisan point-scoring threatens to prevent us from considering a bill we should have passed long ago. I hope we can proceed to this bill and pass it swiftly so we can begin our work toward improving our overall health care system.

Mr. BAUCUS. Mr. President, an old Chinese proverb says:

"If you do not pay the doctor who cured you, beware of falling ill again."

We are here today because we need to fix the way that we pay the doctors who cure us.

The way that we pay for health care today contributes to spiraling health care costs. It contributes to quality-of-care that is not as good as it should be.

Today's payment system rewards providers for the quantity, not the quality, of the services that they provide.

Commonsense health reform must restructure the way that we pay for health care.

Because of its size and purchasing power, Medicare can lead the way. But payment reforms won't be effective unless they're built upon a solid payment foundation.

Unfortunately, the current Medicare payment system for doctors is fundamentally flawed. It does not provide stability and predictability for our doctors. It is not a solid foundation for the future.

That is so, because in 1997, Congress created the Medicare physician payment system that we have today. Congress created a thing called "the sustainable growth rate," or "SGR." It was meant to control what Medicare spends on doctors.

But the SGR is not working. It never really has.

Had Congress not intervened, the SGR would have produced steep cuts in physician payments every year since 2002. And if Congress does not intervene now, the SGR will continue to produce steep cuts for the foreseeable future.

Without action, next year, physician payments will be reduced by 21 percent. And the cuts will continue for the foreseeable future. The total cut over the next decade will approach 40 percent.

Every year since 2003, Congress has intervened. Congress regularly acts to avert these cuts. And given the magnitude of the impending reductions, Congress will continue to intervene. The stakes are just too high.

Allowing these draconian cuts to go into effect would jeopardize access to doctors for 40 million seniors—including 160,000 Montanans—who rely on Medicare for their health coverage. That is why AARP unequivocally supports the repeal of the flawed SGR formula.

But the damage would not end there. Because TRICARE—the health care system for active military personnel—bases its reimbursements on Medicare rules, 9 million members of the armed services and their families could also be left without physician care.

The SGR must be repealed.

But don't just take my word for it. The Medicare Payment Advisory Commission—or MedPAC—reported to Congress in 2007 that the SGR should be replaced with a more stable, predictable system. MedPAC recommended a system that rewards doctors based on the quality and efficiency of the care that they deliver.

The Medicare Physician Fairness Act is the first step toward a 21st century physician payment system in Medicare.

The Medicare Physician Fairness Act repeals the flawed SGR formula that has done nothing to promote more appropriate, evidence-based physician care.

Repealing SGR will lay a solid foundation. And on that foundation, we can build delivery system reforms that fundamentally restructure the Medicare payment system. We can change it from one that focuses on the volume of services delivered to one that rewards doctors for the value of care that they deliver to patients.

The bill that the Finance Committee reported last week includes these reforms. Our bill includes better feedback reports to doctors, so that they know how their utilization trends compare to those of their peers. Our bill includes incentives for physicians to work together with other health care providers in accountable care organizations that will share in savings they achieve for Medicare. And ultimately, our bill includes a payment system that rewards every doctor based on the relative quality and costs of care they provide to their patients.

But first, we need to repeal the SGR, so that we can enact these meaningful reforms.

Now, any honest discussion about repealing the current SGR system must also address the elephant in the room: the CBO budget baseline. The law requires CBO's budget baseline to assume that Congress will not suspend the SGR.

The reality of the situation, however, is at odds with the CBO baseline. Future congressional action on the SGR is certain. Seven consecutive cuts have, for good reason, been averted.

Rather than continuing to enact short-term fixes that produce steeper cuts in the future, the Medicare Physician Fairness Act adopts the Obama administration's more realistic budget baseline. It does not increase spending over recent trends or future action. It preserves spending at current levels.

Adjusting the SGR baseline without an offset is not something I endorse without hesitation. I believe in fiscal responsibility. And I am proud that the Finance Committee health reform legislation will reduce the budget deficit

in the first 10 years and dramatically bend the cost curve in the long run.

But by overturning each of the last seven SGR cuts, Congress has made clear that the current baseline is broken. And temporary band-aids have only increased the size of future cuts and the cost of future interventions.

Eliminating the SGR now will avert devastating payment cuts. And eliminating the SGR now will create a more honest picture of our future budgetary commitments.

And so, let us avoid merely putting another band-aid on the broken physician payment system. Let us truly reform the way that we pay the doctors who cure us. And let us enact the Medicare Physician Fairness Act.

Mr. FEINGOLD. Mr. President, our Nation faces great challenges that require collective persistence and collective sacrifice to overcome. Two of these challenges that I hear the most about from my constituents are the need to reduce the national debt and enact health care reform. Their concerns come from a basic sense of responsibility and decency—and are true to Wisconsin's progressive tradition. They believe, as I believe, that the government should be required to balance their budget just as Wisconsinites balance their checkbook. They believe, as I believe, that every American—regardless of wealth, race, gender, or age—deserves good, affordable health care. These basic principles of fiscal and social responsibility have guided me throughout my 17 years in the Senate. And it is these principles that lead me to conclude that I cannot support S. 1776, the Medicare Physician Fairness Act, because it will substantially add to our national deficit.

I believe that the Medicare sustainable growth rate is a broken policy and must be fixed. I also believe that requiring Congress to pay for enacting new policies is critical to our long-term financial stability and strength as a nation. Waiving paygo requirements for this legislation simply puts a different name on the same \$247 billion problem. It passes the buck, and that is not good enough for me.

Just this week, I introduced the Control Spending Now Act. This bill consists of dozens of different initiatives that would collectively reduce the deficit by over \$½ trillion over 10 years. Redirecting just a portion of the savings in my legislation would more than pay for the Medicare Physician Fairness Act. We do not have a lack of funding options; we have a lack of political will to make those tough decisions. And lack of political will is not a good reason to add to the national deficit.

For years, I have called for significant reform of the Medicare sustainable growth rate formula. I have heard from countless Wisconsin physicians about how damaging these potential cuts are to their ability to provide health care. And I am seriously concerned that without a comprehensive

change, Medicare beneficiaries' access to the health care they need will be limited. The Medicare SGR formula is a real and growing problem that deserves thoughtful and fiscally responsible reform.

Mr. BYRD. Mr. President, while it is important that health professionals in my State of West Virginia receive the compensation they deserve, I will, however, vote against this measure. We are on the eve of one of the most historic debates surrounding health care since the inception of Medicare in 1965. To follow the many weeks of laborious debate and amendments in the Finance and Health, Education, Labor, and Pensions Committees, with this legislation is unwise. It sends the wrong signal. The health committees have not reviewed it. It addresses only a single problem, to the benefit of one group of health care providers, completely outside the context of broader reform. I believe piecemeal action on health care reform could be its undoing.

In the coming weeks, I look forward to voting on the motion to proceed to a comprehensive health care reform bill. Reforming our health care system for the betterment of all of our citizens is necessary and vitally important. But we need to make certain there is a national consensus behind any health care bill. In order to pass a meaningful measure that will provide essential health care coverage for those in dire need, the Senate must be entirely forthright in both debate and intention. Mr. President, \$247 billion is not an insignificant amount of money, and the Senate should be up front about the true costs of health care reform.

Mr. DORGAN. Mr. President, my vote against cloture on the motion to proceed to legislation that would cancel the scheduled physician payment cuts in the Medicare Program should not be read as opposition to the idea of canceling those cuts.

I support canceling the payment cuts for physicians. However, I think that action should be paid for. As it stands, that legislation would have increased the Federal deficit by \$245 billion over 10 years. I cannot support that.

Congress has acted to prevent scheduled cuts for 6 of the last 7 years, creating a very large debt burden that becomes harder and harder to eliminate each time a temporary fix is enacted.

Each year physicians face uncertainty as a result of not knowing whether or not their reimbursement will be cut. I support developing a new model that provides stability in Medicare payments.

I am working with my colleagues to find ways to address the Medicare physician payment formula, and pay for the cost of doing so.

MEDICARE PHYSICIAN FAIRNESS ACT OF 2009—MOTION TO PROCEED

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired.