

Stevens from Alaska. In the many years they were both on the Senate Appropriations Committee, they were towers of strength. I have been amazed at the strength, the endurance, the intelligence, and the absolute kindness and decency Senator BYRD has shown as he has evolved as a Senator from those early days when not many people knew him, to today when all of us are honoring him.

What an achievement, to be the longest-serving Member in the history of the Congress. This is a very important day to Senator BYRD and to all of us. I can truthfully say that I love and respect him. We have had our share of differences over the years, but they have always been cordial. I look forward to serving here in the Senate with Senator BYRD for many more years.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Mr. President, I say to my good friend from West Virginia, I spoke this morning on his remarkable record of achievement.

We are all proud of your service to your State and to our country. I sent you a note including my remarks from this morning about this remarkable record you have now achieved. Of course, you broke the record of a Senator from Arizona. One of his successors is here on the floor and would like to address that matter as well.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I prematurely congratulated Senator BYRD yesterday for breaking the record of Carl Hayden, who has up to now held the record and was in the House of Representatives the day Arizona became a State. He served all the way up until I believe 1968.

Senator BYRD reminded me: No, it is not until tomorrow, at whatever hour it was.

I said: Well, I think you will probably make it.

Of course, his response was: The Lord willing.

That has been a motto of Senator BYRD throughout his career: The Lord willing. We hope the Lord is willing for many more days so the record will be even harder to break.

We congratulate you.

---

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. DORGAN. Mr. President, at the request of the majority leader, I ask unanimous consent that the Senate recess subject to the call of the Chair.

There being no objection, the Senate, at 5:18 p.m., recessed subject to the call of the Chair and reassembled at 6:28 p.m. when called to order by the Presiding Officer (Ms. CANTWELL).

The PRESIDING OFFICER. The Senator from Kansas is recognized.

---

ORDER OF PROCEDURE

Mr. ROBERTS. Madam President, it is my understanding that I am going to

be recognized for approximately 15 minutes, and I seek unanimous consent that Senator GRASSLEY follow me for 15 minutes, so we would take approximately 30 minutes of the Senate's time at this point. I think I should probably ask unanimous consent to proceed as in morning business.

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

HEALTH CARE REFORM

Mr. ROBERTS. Madam President, I come to the floor today to join my good friend from Iowa, Senator GRASSLEY, who is our ranking member on the Senate Finance Committee, to raise concerns about a too-little-discussed aspect of the health care bill the Senate will soon debate. While much of the health reform debate to date has focused on the health care side of the bill and the \$500 billion in higher taxes, fees, and fines that will be required to pay for it, very little attention has been paid to how these taxes and fines will be implemented and administered and, most importantly, enforced. I think that is a very critical discussion. We need to have that discussion, and it is one the American people fully need to understand as this debate gets underway. This is important stuff.

Senator GRASSLEY has already sounded the alarm about how the Senate Finance Committee bill expands the size and reach of the Internal Revenue Service, the IRS, further into the lives of every American. But listen up: All the health care bills we have seen so far call for reforms to be carried out to a great extent by the Internal Revenue Service—that is right, the IRS, the Nation's tax collector.

This isn't CMS, the Department of Health and Human Services; this is the IRS. So the Nation's tax collector will be in charge of implementing, administering, and enforcing a significant portion of this bill.

Under the various bills, the IRS is given unprecedented authority to obtain information about your family's health care decisions. The IRS is authorized to collect new information—information that is unrelated to an individual or a family's tax liability—in order to carry out health care reform.

This information will be used to implement, administer, and enforce several controversial provisions. For example, the IRS—again, not the Department of Health and Human Services—is the government agency that will determine whether everyone has insurance and will assess a tax penalty on anyone without insurance. The IRS will have to collect additional information from individuals and families in order to make this determination. We don't know how this information will be collected or how it may be used.

The IRS would assess taxes on employers who do not provide affordable coverage for their employees. Since affordability would be determined on an individual's total income, an employer would have to collect income information from all of his or her employees.

This will require employers to provide additional information about their employees to the IRS—information I am sure that an employer would just as soon not ask about. We don't know how an employer would use this information or how it would be protected.

In addition, the IRS will have to work with the new health care exchanges to verify whether an individual is eligible for a subsidy and will have to share information about taxpayers with those exchanges. However, we still don't know if the exchange will be a State agency or a private entity, so we don't know how the IRS will collect and safeguard taxpayer information.

Yet even as the health care bill creates new responsibilities for the IRS, consider that the IRS is having a lot of trouble doing its No. 1 job—tax administration—efficiently and effectively. Two reports were issued recently that I think raise questions about the IRS's ability to carry out its new responsibilities in this bill, let alone its original responsibilities.

Last week, the Government Accountability Office, or GAO, released its annual audit of the IRS's financial statements for 2008 and 2009.

In the report, the GAO found that while the IRS has made progress in addressing internal control deficiencies, the report also states that deficiencies remain with regard to the IRS's internal control over unpaid tax assessments and over information security. The report states that "the serious challenges IRS faces as a result of these remaining deficiencies adversely affect the IRS's ability to . . . obtain current, complete, and accurate information it needs to make well-informed decisions."

Then, on Monday, the Treasury Inspector General for Tax Administration found that because of the way the Making Work Pay credit—the credit created in this year's stimulus bill to provide workers with a one-time tax credit of up to \$400—has been implemented and administered by the IRS, more than 15 million taxpayers may actually end up having to pay back some of their credit to the IRS.

Similar administrative problems with the home buyer tax credit have led to waste and abuse of taxpayer dollars.

The IG's audit of the IRS's administration of the credit found that the IRS may have allowed thousands of taxpayers to claim millions of dollars in credits to which they were not entitled to despite recommendations made a year ago by the IG that the IRS take steps to verify eligibility for the credit.

In its audit, the inspector general found that more than 19,000 taxpayers claimed \$139.4 million in credits for homes they had not yet purchased but would allegedly purchase. In addition, over 70,000 taxpayers claimed more than \$479 million in credits despite indications that they were not first-time home buyers. The IG also identified 582

taxpayers under 18 years of age who claimed almost \$4 million worth of credits. By the way, the youngest taxpayers receiving the credit were 4 years old.

Mr. President, the problems the IRS has encountered in administering these credits and the issues raised by the GAO about the security of taxpayer information—I will repeat that: the security of taxpayer information, your taxes—raise serious questions about whether the IRS is up to the task of implementing and enforcing the far-reaching tax proposals that are called for in the health care bill.

Wait, there is more. We know the IRS will need additional funding and employees—employees with expertise and training—if they are to implement, administer, and enforce the dozen or so new tax provisions called for in the health care bill.

How much will that cost? That is a good question. Nobody knows. These costs are not included in estimates provided by either the Congressional Budget Office or the Joint Committee on Taxation.

The bill as passed by the Senate Finance Committee—I don't know what is in the bill that will be considered, just announced by my friends across the aisle. They are doing that behind closed doors. But the bill as passed by the Finance Committee doesn't include any funding for the IRS for any administrative or personnel costs associated with this bill. We will see if the leader's bill that will be announced sometime tomorrow, which is being talked about in the hallways, contains such estimates.

Estimates of a more narrow bill by an independent group found that the IRS administration alone would cost several billion dollars—never mind the costs for the Department of Health and Human Services or CMS or other new Federal offices that will be created. We can only assume the cost to administer and enforce the taxes, fees, and fines in this bill will be significantly higher.

Americans need to understand what health care reform means for their health care, but they also need to know what the IRS's significant and intrusive new role would be in implementing and enforcing such health care reform.

All the proposals we have seen so far expand the reach of the IRS even further into the lives of ordinary Americans, allowing them to collect more information than ever before about you and your health care choices in order to tax you based on those choices.

Do Americans want the IRS to collect even more information about them and their families than it already does? I don't think so. Do they want the IRS having access to information about their health care decisions? Again, I doubt it.

Furthermore, would the IRS be able to do the job? Will they get it right? Recent reports by the IRS's own IG and the GAO cast doubt on the agency's ability to effectively administer the

wide-reaching provisions in the health care bill.

Americans should be very concerned about putting the IRS in charge of administering more than \$500 billion in new taxes, fees, and fines in this bill and expanding its reach further into Americans' lives.

Americans should be concerned about this path that the Senate leadership and the White House is taking us down, placing this very complex health care bill in the hands of the IRS, especially when they have not provided the resources the IRS will need to get the job done—not to the funding.

Madam President, the bottom line is that Americans need to know, need to understand, and need to question whether they want the Internal Revenue Service more involved in their daily lives and their health care decisions. Under the proposals we have seen, that is the case.

Sit up, America, and take notice. I think if we took a poll or had yet another townhall meeting, most Americans would say no to any further IRS involvement in their lives and no to IRS intrusion into their health care.

I yield the floor. I see the distinguished ranking member of the committee, a distinguished Senator who has been an expert on the IRS and basically bringing reform almost on an individual basis to that agency.

I yield to Senator GRASSLEY.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. I thank my friend, the Senator from Kansas, for his kind remarks. I am very happy to join him in sounding an alarm about the role of the Internal Revenue Service in America's health care choices.

The various health care bills being considered before Congress would task the IRS with administering several new and very controversial provisions. This would include things such as the individual mandate—or another way to say that is a government-run insurance mandate, a government-required insurance mandate. It would also affect the employer free rider penalty. The IRS would be involved with the premium subsidy for low-income individuals. It would be involved with the small business tax credit. The IRS would be involved in working with exchanges to verify income information, and it would be involved in figuring out how to calculate and collect several new fees, which are in fact excise taxes.

Senator ROBERTS has just explained some of this. Also, during debate in the Finance Committee—when the Senate Finance Committee bill was up in that committee, some people joked that CMS stands for “it's a mess.” The same

could be said of the IRS. As many of us know all too well, the tax gap is a very serious problem. The hundreds of billions of dollars owed that the IRS isn't collecting suggests that the IRS isn't effective at executing its primary mission: the enforcement of our revenue laws.

The IRS is just now starting to increase its enforcement efforts, which had declined significantly after the restructuring of that agency a decade ago. But just like many other Federal agencies, it is facing a human resource crisis because more than 50 percent of its workforce is expected to retire in the near future. So it doesn't have the resources it needs to do its presently described job, never mind a whole new one, such as administering health care reform—or at least helping administer health care reform.

One independent report after another highlights IRS's enforcement problems. Senator ROBERTS mentioned the recent reports on the Making Work Pay credit, home buyer tax credit, and the IRS's financial statements. In addition to those, we have problems with the earned-income tax credit and the health coverage tax credit.

In February, the Treasury Inspector General for Tax Administration issued a report on fraud in the earned-income tax credit. Then today, the administration reports that waste of taxpayer dollars from improper payments has increased from \$72 billion in 2008 to \$98 billion in 2009. Over \$12 billion—almost 12 percent—of the \$98 billion in improper payments was because of the earned-income tax credit.

In another tax inspector general report from earlier this month on the health coverage tax credit, that inspector general reviewed a valid sample of individuals who claimed this credit on their 2006 Federal tax return. The tax inspector general found that 72 percent did not have the required documentation to get that credit. In addition, the inspector general states that the IRS does not effectively identify or prevent individuals from erroneously claiming the health credit on their Federal tax return.

The inspector general identified over 1,200 individuals who appeared to have wrongly claimed \$1.8 million of these credits on their Federal tax returns. This report is particularly relative since the premium subsidy in the Finance Committee health reform bill is modeled after this credit.

The earned-income tax credit, the health coverage tax credit, and the making work pay tax credit are all examples of social welfare programs that presently are being administered by the Internal Revenue Service, and this despite the fact that we have a whole separate agency—the Department of Health and Human Services—that is supposed to be concerned with social welfare.

In a recent interview with tax analysts about current health reform proposals, a former IRS Assistant Commissioner had this to say about IRS' role in the health reform issue:

These kinds of programs require social welfare expertise. IRS agents are not recruited or trained to do that. . . . The IRS record is mixed and sometimes abysmal with regard to effectively administering these kinds of programs.

I couldn't have said it better myself. Aside from the costs and the problems with enforcing these types of credits, there are opportunity costs associated with requiring the IRS to administer programs outside its expertise. The Government Accountability Office and the tax inspector general issued reports discussing the IRS' poor performance in providing telephone customer service during the 2009 filing season because of stimulus legislation. That was passed in February of this year. The reports state that customer service declined significantly, despite the fact that collection employees were assigned to staff the phones.

So honest and diligent taxpayers do not get the help they need when they need it, and tax cheats and tax evaders increasingly get away with not paying their fair share, and the tax gap widens.

From a tax administration perspective, the provisions in the various health reform bills will create infinite new problems for the Internal Revenue Service. The Internal Revenue Service is likely to be tasked with implementing provisions for which it actually must go out and collect new data—data that is unrelated to the taxpayer's tax liability.

In addition to the provisions Senator ROBERTS highlighted, the Internal Revenue Service would have to develop new processes and procedures for insurance companies and employers to challenge and appeal the calculations of the high-cost premiums tax and the employer free rider excise tax, both new provisions in the Senate Finance Committee bill. Both these taxes are calculated by a third party, other than the IRS or the individual taxpayer. The IRS would have to develop a method for calculating the new excise taxes on medical devices and pharmaceuticals, also a new provision in that bill, the basis for which is unprecedented.

In light of these issues, I think it is fair to consider a couple questions.

Assuming that an individual mandate is constitutional, do we want the IRS checking up on whether everyone has health insurance?

Another question: Do we want to facilitate the dissemination of tax information to third parties, such as employers or an insurance exchange? We have always been very cautious about maintaining the privacy of individual tax returns.

Another question: Shouldn't we be providing more resources to the Department of Health and Human Services to ensure that it can receive and process the necessary data if this bill is going to be implemented instead of having the IRS do it?

My Democratic colleagues in the Congress and the administration have many ideas for new and complex ways to tax individuals and, of course, tax small businesses as well, to fund all sorts of new spending. It would seem wise to make sure the IRS can enforce the tax laws before being charged with

administering new social programs created because of health reform.

I ask my colleagues on the other side of the aisle to consider these questions as we debate the health care reform bill over the next several weeks.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BEGICH). Without objection, it is so ordered.

Ms. CANTWELL. Mr. President, as in executive session, I ask unanimous consent that on Thursday, November 19, at 2 p.m., all postclosure time be yielded back, except for 30 minutes, and that the time be equally divided and controlled by Senators LEAHY and SESSIONS or their designees; that at 2:30 p.m., the Senate proceed to vote on confirmation of the nomination of Judge Hamilton; that upon confirmation, the motion to reconsider be laid upon the table, no further motions be in order, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

Ms. CANTWELL. Mr. President, I ask unanimous consent that on Thursday, November 19, following the period of morning business, the Senate proceed to the consideration of Calendar No. 190, S. 1963, and that the bill be considered under the provisions of the order of November 17; further, that upon disposition of the Hamilton nomination and the Senate resuming legislative session, there be 2 minutes of debate prior to a vote in relation to the Coburn amendment, No. 2785; that upon the use of that time, the Senate proceed to vote in relation to the amendment; that upon disposition of the amendment, the Senate then proceed to passage as provided under the order of November 17.

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

#### MORNING BUSINESS

Ms. CANTWELL. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

#### AMERICAN UNIVERSITY OF AFGHANISTAN

Mr. INOUYE. Mr. President, I rise today to apprise my colleagues of an impressive effort in Afghanistan. I recently had the opportunity to visit with our military troops and civilian personnel serving in Afghanistan. While I was there, I had the pleasure to

meet Dr. Michael Smith, president of the American University of Afghanistan. I was embarrassed to admit that until meeting Dr. Smith, I had never heard of the university. Upon learning more about the university, I am encouraged to know that while bombs are bursting and bullets are flying, there is an ongoing and successful American mission to provide educational opportunities to the men and women of Afghanistan.

Today, the American University of Afghanistan has 450 students and will graduate their first undergraduate class next spring. The student body draws from every province and ethnic group in Afghanistan and is nineteen percent female and growing. While the majority of faculty members are American, 15 other countries are represented, including Afghanistan.

The university models itself after other strong international American universities like the American University of Cairo and the American University of Beirut. Its programs focus on business and entrepreneurship, information technology, and many other professional areas.

Since over 85 percent of the student body have been immigrants at some point in their lives and 29 percent of the students graduated high school in Pakistan, one goal of creating this university is to enable Afghans the educational opportunity to earn a degree that can be utilized for the betterment of Afghanistan.

I know many of my colleagues have plans to travel to Afghanistan to visit with our troops. I would encourage all of you to take some time to learn about this university which is one of the unsung efforts we have undertaken in Afghanistan.

I urge my colleagues to support this mission so when the military departs Afghanistan we can leave with a smile and our heads held high knowing that we have not only supported the security and stabilization of Afghanistan but have provided a sustained educational mission as well.

#### FINANCIAL REGULATORY REFORM AND DERIVATIVES

Mr. GREGG. Mr. President, the journalist H.L. Mencken once observed that, "complex problems have simple, easy to understand, wrong answers." And, though modern history has amply demonstrated the resistance of complex political and economic systems to the easy answer of centralized control, we try time and again to apply top-down solutions to our multifaceted problems. This conflict is brought into no sharper light than by Congress' current efforts at financial services reform; particularly those directed at the labyrinthine world of the multi-trillion dollar derivatives trade.

Derivatives are a vital and complex component of modern financial markets, making it imperative that reform be done right—without damage to the