

one of those few remaining industries. In the markets for health insurance and medical malpractice insurance, patients and doctors are paying the price, as costs continue to increase at an alarming rate, while patients and small businesses suffer. This is wrong, and this amendment fixes this problem.

The Health Insurance Industry Antitrust Enforcement Act is supported by a cross-section of groups interested in promoting competition, including the Consumer Federation of America, Health Care for American Now, and the American Hospital Association. I also received a letter from a coalition of 10 State attorneys general who voiced their specific need for this legislation.

The top law enforcement officers in those States argue that "Repeal of the McCarran-Ferguson exemption would enhance competition in health and medical malpractice insurance by giving state enforcers, as well as federal enforcers, additional tools to combat harmful anti-competitive conduct." The letter goes on to state that "The McCarran-Ferguson exemption serves no plausible public interest."

This amendment will prohibit the most egregious anticompetitive conduct—price fixing, bid rigging and market allocations—conduct that harms consumers, raises health care costs, and for which there is no justification. Subjecting health and medical malpractice insurance providers to the antitrust laws will enable customers to feel confident that the price they are being quoted is the product of a fair marketplace.

The lack of affordable health insurance plagues families throughout our country, and this amendment is a first step towards ensuring that health insurers and medical malpractice insurers are subject to fair competition. I hope all Senators will join me in support of this important amendment.

Madam President, I note my amendment removes the outdated, antiquated, unnecessary antitrust protection given to our insurance companies, a protection which, instead of allowing them to thrive and give us lower premiums, has perversely acted in such a way that our premiums continue to rise 15 percent in the last year alone. This will help change that.

EXECUTIVE SESSION

NOMINATION OF JACQUELINE H. NGUYEN TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to report the following nomination.

The bill clerk read the nomination of Jacqueline H. Nguyen, of California, to be United States District Judge for the Central District of California.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I understand the Senator from California desires some time. I yield her 5 minutes, beginning now.

Mrs. FEINSTEIN. Madam President, I rise to speak in support of the nomination of California Superior Court Judge Jacqueline Nguyen to be a Federal District Court Judge from the Central District of California. I urge her confirmation.

Judge Nguyen is a tested judge with a track record of success as both a judge and a Federal prosecutor. She will be the first Vietnamese American on the Federal bench. Her nomination comes about this way.

I have had, for a long time, a bipartisan judicial selection committee in California to advise me in recommending judicial nominees to the President. The committee gave Judge Nguyen its unanimous recommendation. Then I recommended her to the President for his nomination to the Federal district court. I believe she is going to be an excellent Federal district court judge in the Central District.

Judge Nguyen was born in South Vietnam. She immigrated to this country with her family at the age of 10 during the final days of the Vietnam war. The Nguyens spent several months living in a refugee camp in Camp Pendleton, San Diego, before moving to the La Crescenta neighborhood of Los Angeles. She was naturalized in 1984.

Judge Nguyen's parents worked two and three jobs at a time in Los Angeles, and Judge Nguyen and her siblings worked side by side with them, cleaning a dental office, peeling and cutting apples for a pie company, and finally managing the doughnut shop that their parents bought and owned.

In her application to my selection committee, she explained that looking back on these experiences she realizes now that they were difficult. She wrote:

But I nevertheless feel incredibly fortunate because those early years gave me invaluable life lessons that have shaped who I am today.

She went on to graduate from Occidental College in 1987 and from UCLA Law School in 1991. She was in the Moot Court Honors Program.

For the first 4 years of her career, she practiced commercial law as a litigation associate at the private law firm of Musick, Peeler and Garrett, where her caseload included complex contract disputes and intellectual property cases. In 1995 she left the firm to become an assistant U.S. attorney in the U.S. Attorney's Office in Los Angeles, and a very good one.

As an assistant U.S. attorney in the criminal division, she prosecuted a wide variety of crimes, including violent crimes, narcotics trafficking, organized crime, gun cases, and all kinds of fraud. She spent 6 months in the organized crime strike force section, handling a title III wiretap investigation

of a Russian organized crime group responsible for smuggling sex slaves into the United States from the Ukraine. In 2000, she received a special commendation from FBI Director Louis Freeh for obtaining the first conviction ever in the United States against a defendant for providing material support to a designated terrorist organization.

The Justice Department recognized her with three additional rewards for superior performance as an assistant U.S. attorney, and in 2000 she was promoted to deputy chief of the general crimes section.

In 2002, Judge Nguyen left the U.S. attorney's office when Governor Gray Davis appointed her to the Superior Court in Los Angeles, and she has been on that bench for more than 7 years and has presided over more than 65 jury trials.

As she has said in her own words:

I am deeply passionate about the privileges that we enjoy as Americans and am committed to spending my life in public service. If I am given the honor to serve as a United States District Judge, I believe my experiences, work ethic, maturity and judgment will serve me well.

I could not agree more. I think Judge Nguyen will be a truly outstanding judge of the Federal district court and I urge my colleagues to support her nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I absolutely concur with the comments of the distinguished senior Senator from California in support of the nomination of Judge Jacqueline Nguyen to serve on the Federal Court in the Central District of California. I supported Judge Nguyen in the committee and I am glad we are able to act on her nomination today.

Judge Nguyen participated in a confirmation hearing before the Judiciary Committee on September 23. Hers was a historic hearing at which, for the first time, three Asian Pacific American judicial nominees appeared together—Judge Nguyen, Dolly Gee and Judge Edward Chen. Indeed, three Asian Pacific American judicial nominees have never been confirmed in the same year. Of the 876 active judges serving on our Federal courts, only 8 are Asian Pacific American.

We also held a November hearing for Judge Denny Chin, a well-respected judge on the Southern District of New York, whom President Obama has nominated for elevation to the Second Circuit Court of Appeals. Judge Chin was the first Asian Pacific American appointed as a Federal district court judge outside the Ninth Circuit. If confirmed to the Second Circuit, he will be the only active Asian Pacific American judge to serve on a Federal appellate court anywhere in the country. It is unbelievable that with 179 Federal appellate court judgeships in our country, none are currently held by an Asian Pacific American. More than 14

years have passed since an Asian Pacific American was nominated to a Federal appellate court. This progress is long overdue.

I commend President Obama for following his commitment to nominate men and women to the Federal bench who reflect the diversity of America. Diversity on the bench helps ensure that the words “equal justice under law,” inscribed in Vermont marble over the entrance to the Supreme Court are a reality, and that justice is rendered fairly and impartially.

Judge Jacqueline Nguyen will be the first Vietnamese American to serve as a Federal district court judge in the United States, and the first Asian Pacific American woman to serve as a Federal district court judge in the State of California. Today is an important milestone not only for Judge Nguyen, the Vietnamese American community and the Asian Pacific American community, but for all Americans.

Judge Nguyen, Ms. Gee, and Judge Chen were reported favorably to the Senate on October 15, more than 6 weeks ago. I am glad we are proceeding with Judge Nguyen but urge Senate Republicans to allow the other nominations to proceed to Senate debate and votes, as well. When she is confirmed, Ms. Gee will be the first female Chinese American Federal district court judge in the Nation. When he is confirmed, Judge Chen will be the first Asian Pacific American Federal district court judge in the history of the Northern District of California. Judge Chen is already the first Asian Pacific American to serve in that district as a magistrate judge. The American Bar Association's Standing Committee on the Federal Judiciary has rated the three of them unanimously as “well qualified,” their highest rating.

I thank the committee's ranking member, Senator SESSIONS, for his co-operation in securing the recent confirmations of Judge Christina Reiss of Vermont and Judge Abdul Kallon of Alabama before the Thanksgiving recess. They were confirmed 17 days after their hearing. That prompt action by the Senate demonstrates what we can do when we work in good faith. It should not take weeks for the Judiciary Committee to report nominations and additional weeks and months before Senate Republicans allow nominations to be considered by the Senate. We have shown what we can do.

Following the model we have established for Judges Reiss and Kallon, the Senate should be able to consider and confirm all eight of the judicial nominations currently on the Executive Calendar awaiting final action by the Senate, the additional five judicial nominees included at confirmation hearings in November, and Justice Thompson of Rhode Island, who had her hearing this morning. Acting on these nominations, we can reach a total of 23 Federal circuit and district court confirmations this year. That is

well short of the total of 28 a Democratic Senate majority worked to confirm in President Bush's first year in office, 2001, but better than the 9 confirmations achieved in the first 11 months of this year.

This year we have witnessed unprecedented delays in the consideration of qualified and noncontroversial nominations. We have had to waste weeks seeking time agreements in order to consider nominations that were then confirmed unanimously. We have seen nominees strongly supported by their home state Senators, both Republican and Democratic, delayed for months and unsuccessfully filibustered. I have been concerned that these actions by the Republican leadership signal their return to their practices in the 1990s, which resulted in more than doubling circuit court vacancies and led to the pocket filibuster of more than 60 of President Clinton's nominees. The crisis they created eventually led to public criticism of their actions by Chief Justice Rehnquist during those years.

I hope that instead of withholding consent and threatening filibusters of President Obama's judicial nominees, Senate Republicans will treat the nominees of President Obama fairly. I made sure that we treated President Bush's nominees more fairly than President Clinton's nominees had been treated. In the 17 months that I served as chairman of this Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominations. We should continue that progress, but need Republican cooperation to do so. I urge them to turn away from their partisanship and begin to work with the President and the Senate majority leader.

During the month of December in 2001, a Democratic-led Senate confirmed 10 of President Bush's judicial nominees, bringing the total number of nominations confirmed that year to 28. We will have to exceed that number this month in order to get to 20 confirmations, and a possible total of 23 this year. I fear that Senate Republican delaying tactics will, instead, yield the lowest total in modern history. If Senate Republicans continue their delaying tactics, the total could be as low as that during the 1996 session when a Republican Senate majority would only allow 17 judicial confirmations all session, including none for circuit courts.

Today, with the confirmation of Judge Nguyen, we will finally move into double digits in the confirmations of Federal circuit and district court judges—hers is our 10th this year. Although there have been nearly 110 judicial vacancies this year on our Federal circuit and district courts around the country, only 10 vacancies have been filled. That is wrong. The American people deserve better.

It has not been for lack of qualified nominees. As I have noted, there are seven more nominations awaiting Senate action on the Senate Executive

Calendar and another six who have had their confirmation hearings and can be considered once approved by the Judiciary Committee. The Senate should do better and could if Senate Republicans would remove their holds and stop the delaying tactics.

During President Bush's last year in office, we reduced judicial vacancies to as low as 34, even though it was a presidential election year. Judicial vacancies have now spiked. There are currently 98 vacancies on our Federal circuit and district courts, and 23 more have already been announced. This is approaching record levels. I know we can do better. Justice should not be delayed or denied to any American because of overburdened courts and the lack of Federal judges.

Mr. LEAHY. Madam President, have the yeas and nays been requested on this nomination?

The PRESIDING OFFICER. They have not.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is, Will the Senate advise and consent to the nomination of Jacqueline H. Nguyen, of California, to be U.S. district judge for the Central District of California?

The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH) and the Senator from West Virginia (Mr. BYRD) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alabama (Mr. SESSIONS).

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 354 Ex.]

YEAS—97

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| Akaka | Ensign | Lugar |
| Alexander | Enzi | McCain |
| Barrasso | Feingold | McCaskill |
| Baucus | Feinstein | McConnell |
| Bayh | Franken | Menendez |
| Bennet | Gillibrand | Merkley |
| Bennett | Graham | Mikulski |
| Bingaman | Grassley | Murkowski |
| Bond | Gregg | Murray |
| Boxer | Hagan | Nelson (NE) |
| Brown | Harkin | Nelson (FL) |
| Brownback | Hatch | Pryor |
| Bunning | Hutchison | Reed |
| Burr | Inhofe | Reid |
| Burris | Inouye | Risch |
| Cantwell | Isakson | Roberts |
| Cardin | Johanns | Rockefeller |
| Carper | Johnson | Sanders |
| Casey | Kaufman | Schumer |
| Chambliss | Kerry | Shaheen |
| Coburn | Kirk | Shelby |
| Cochran | Klobuchar | Snowe |
| Collins | Kohl | Specter |
| Conrad | Kyl | Stabenow |
| Corker | Landrieu | Tester |
| Cornyn | Lautenberg | Thune |
| Crapo | Leahy | Udall (CO) |
| DeMint | LeMieux | Udall (NM) |
| Dodd | Levin | Vitter |
| Dorgan | Lieberman | |
| Durbin | Lincoln | |

| | | |
|--------------|------------|----------|
| Voinovich | Webb | Wicker |
| Warner | Whitehouse | Wyden |
| NOT VOTING—3 | | |
| Bechir | Byrd | Sessions |

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.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:33 p.m., recessed and reassembled at 2:15 p.m. when called to order by the Presiding Officer (Mr. CARPER).

SERVICE MEMBERS HOME OWNER-SHIP TAX ACT OF 2009—Resumed

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, as I said yesterday when I spoke on this very same bill, the excesses of the Reid bill appear willfully ignorant of what is going on in the rest of the economy outside of health care.

I believe the reason people have objected to the health care bill so quickly after the summer was that there was a rude awakening on a lot of other things the Congress has done to put this country further into debt, and then they heard us talking about \$1.3 trillion and \$1.6 trillion for health care, and they thought Congress had gone bananas. So everything seemed to focus on health care reform at that particular time. People were concerned about the economy as a whole. I think the health care issue in and of itself was what people came out for, but health care was kind of the straw that broke the camel's back and brought attention to everything else—the debt and things that weren't working. At the same time, they saw the auto industry going into bankruptcy and, of course, being bailed out or nationalized, as it is. They have seen banks go under. Then they wondered about health care being nationalized as well.

We have seen our Federal debt skyrocket by \$1.4 trillion since this President took office. I say "since this President took office" because I acknowledge there was a trillion-dollar debt in last year's budget. Just with the addition, it comes out to \$11,500 per household. So our Federal debt exceeds \$12 trillion for the first time in history. Already, foreign holdings of U.S. Treasuries stand at nearly \$3.5 trillion or 46 percent of the Federal debt held by the public. There doesn't appear to be light at the end of the tunnel. Don't just

take my word for it. We have the non-partisan CBO and the White House Office of Management and Budget which have intellectually honest people working there who aren't politically motivated who tell us really what is what. This is what they have to say. Both have stated that within 5 years, the Obama administration's policies will more than double the amount of debt held by the public. Both have stated that by 2019 these policies will more than triple the national debt.

In this context, you would expect Congress to be considering a bill that would create jobs and prevent the country from being burdened with a bigger and more unsustainable Federal budget. Instead of working to bring the Federal budget under control, we have in this Congress—the majority of it, by 60 being Democratic—putting forward a bill, this 2,074-page bill before us that will cost \$2.5 trillion when fully implemented. Instead of addressing the budget crisis, this bill will bend the Federal spending curve the wrong way by over \$160 billion over the next 10 years.

I remember during the summer that the Gang of 6, under the leadership of Senator BAUCUS—I was part of that bipartisan group—said there are two things we need to accomplish: We need to make sure that what we have comes out balanced, and we also need to make sure we do not have inflation of health care continuing to go up, that we would eventually bring it down. These bills don't do either. I know people say we do have the 10-year window balance. Yes, that is technically right. But when you have 10 years of income and 6 years of policy expenditure, it is easy to do almost anything you want to in that 10-year window. But you have to look beyond that 10-year window, and then you have questions about that.

So instead of addressing this budget crisis, this bill adds to the Federal burden with enormous costs from the biggest Medicaid expansion in history and unfunded liabilities from the new program. Instead of addressing this budget crisis, we are now considering this 2,074-page bill that cuts Medicare by \$½ trillion and threatens seniors' access to care.

After the bailouts of Wall Street and Detroit, a stimulus bill that has led to the highest unemployment in 26 years, and the Federal Reserve System shoveling money out the door without any accountability—they even object to having the GAO check on them—the health care reform agenda the Democratic leadership put forward is, once again, kind of the straw that broke the camel's back.

We have the Senator from Arizona offering a motion to send this bill back to the Finance Committee with instructions to report a bill without the drastic, arbitrary Medicare cuts that are in this bill. I support the Senator's motion because it is an opportunity to fix the bill and then come back to the full Senate with a better bill. Anything

that comes back to the Senate floor should not have the drastic and arbitrary Medicare cuts.

I am hearing this from seniors: I have paid into this Medicare for all these years. I am in retirement, and now Congress wants to take that money and establish a new entitlement program for somebody else other than seniors. So to a lot of seniors it just doesn't add up.

This bill, as written, now permanently cuts all annual Medicare provider payment updates in order to account for the supposed increases in productivity by health care providers. The productivity measure used to cut provider payments in this bill does not represent productivity for a specific type of provider, such as nursing homes.

You would think that if Medicare is going to reduce your payments to account for increases in productivity, it would at least measure your productivity, not an entire group of productivity or not somebody else's productivity but yours, and you would be rewarded according to that productivity or, if it wasn't productive, be harmed because of it because you are not doing the best job you can. But that is not the case. Instead, these reform bills would make the payment cuts based on measures of productivity for the entire economy. So if the productivity of the economy grows because computer chips and other products are made more efficiently, then health care providers see their payments go down. What is the relationship? These permanent cuts threaten beneficiary access to care.

The Chief Actuary at the U.S. Department of Health and Human Services recently identified this threat to beneficiary access to care. He confirmed this in an October 21 memorandum analyzing the House of Representatives' bill and again in a November 13 memorandum. Both the House bill and the Senate bill propose the same type of permanent Medicare productivity cuts.

We have a chart here. Here is what Medicare's own Chief Actuary had to say about these productivity cuts. Referring to these cuts, he wrote:

The estimated savings . . . may be unrealistic.

In their analysis of these provisions, Medicare's own Chief Actuary said:

It is doubtful that many could improve their own productivity to the degree achieved by the economy at large.

The Actuary goes on to say:

We are not aware of any empirical evidence demonstrating the medical community's ability to achieve productivity improvements equal to those of the overall economy.

So you have a \$14 trillion economy today. You have \$2.3 trillion of that, or one-sixth, related to health care, and you are going to try to do something to the health care aspect, productivity measure, harm or benefit, based upon what happens to the entire \$14 trillion economy? That doesn't make sense.