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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Our Father in Heaven, You know all the roads by which each of us has come to serve in our government's legislative branch. You know the pathway our feet now are treading and what the future holds, for You are the architect of our destinies.

Give our Senators strength sufficient for this day. Remind them that their times are in Your hands. Infuse them with the blessed assurance that You are the love that never forgets, the light that never fails, and the life that never ends. Keep them close to You and open to each other as they do the tasks that preserve our freedoms. We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 3, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Madam President, following leader remarks, the Senate will resume consideration of H.R. 3590, the health reform legislation. There will be up to 10 minutes, equally divided, between the managers of the bill. The remaining time until 11:45 a.m. will be divided and controlled equally between Senator MIKULSKI and the minority leader or their designees.

At 11:45 a.m., this morning, the Senate will proceed to a series of two roll-call votes. The first vote will be in relation to the Mikulski amendment, No. 2791, as modified, to be followed by a vote on the Murkowski amendment, No. 2836.

Following those votes, the time until 2:45 p.m. will be equally divided and controlled between Senators BAUCUS and MCCAIN or their designees. At 2:45 p.m., the Senate will proceed to vote in relation to the Bennet of Colorado amendment, No. 2826, to be followed by a vote in relation to the McCain motion to commit.

All four votes today will be subject to a 60-vote affirmative threshold for adoption.

Mr. McCONNELL. Would my friend yield for a question before making his opening remarks?

Mr. REID. I would be happy to yield.

Mr. McCONNELL. I would say to my friend, since it is Thursday, my Mem-

bers are prepared to be here Saturday and Sunday, but many would like to know whether there will be an opportunity to go to church Sunday morning.

Mr. REID. Of course. I think it very likely we wouldn't come in until noon, or somewhere around noon on Sunday.

I would indicate to my friend it appears that the next opportunity for amendment will be when we complete this. It is my understanding Senator BEN NELSON is ready, he has an amendment, and I think we have given it to your staff. This may be one where it is sponsored by people on your side also, and then we will wait to see what your next amendment will be.

Mr. McCONNELL. I would say to my friend, obviously, I assume we are going to continue to proceed with your side offering one and my side offering one.

Mr. REID. We will show those to each other before that happens.

Mr. McCONNELL. All right.

HEALTH CARE REFORM

Mr. REID. Madam President, we in this Chamber, a lot of times, talk as if no one is listening to what we are saying, as though we are talking to ourselves. But that is not true. The American people are listening and they are watching. That is good. But this morning I have good news and I have some bad news. The good news is, Senate Republicans finally—finally, at long last—have put a detailed plan down on paper. The bad news is, it is not as we had hoped—a plan to make health insurance more affordable, it is not one that makes health insurance companies more accountable, and it is certainly not a plan to reverse rapidly rising health care costs and draw down our deficit, such as the plan that has been submitted to the Senate and is now before the Senate by the Democrats.

Again, the plan we had hoped to receive from the Republicans would be to

• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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make insurance more affordable, it would be one to make health insurance companies more accountable, and it would be a plan to reverse the rapidly rising health care costs and draw down our deficit. But, no, the Republican plan we have waited weeks and months to see doesn't do any of those things. In fact, it is not even about health care at all, even though it is on the health care bill, this plan they have outlined. The first and only plan Senate Republicans bothered to draft is an instructional manual on how to bring the Senate to a screeching halt. We knew that was happening anyway, but they had the audacity to put it in writing.

Madam President, I ask unanimous consent to have printed in the RECORD the letter I will be referring to.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. REID. Madam President, here are some of the highlights of the Republican plan laid out in the letter I referred to:

Tips on how to force the full reading of all amendments—long amendments, short amendments.

I have no objection to transparency. That is important. Every Senator should know what he or she is voting on, but let's be truly transparent. We all know that those who would ask for such readings have no intention of sitting in this Chamber, listening to the Senate clerks. Any suggestion otherwise is simply disingenuous.

This document explains how to manipulate points of order. Yes, that is what I said, manipulate points of order—a complex but important part of the legislative process. Yet these Senators have no intention of examining the procedures of the Senate or any constitutional rules.

The document says it in plain language. The whole purpose of the document, dated the day before yesterday—December 1—a “Dear Republican colleague” letter, is to set forth how to slow things down, as if they needed more help to slow things down. Ninety-one times this year they have already done that. But on this bill—this bill that affects every person in America—to put in writing that they are going to do everything they can to stop this, to delay this, is beyond something that I think the American people can comprehend.

The document says in plain language that is their intention. It even condones using this tactic “without cause.” Do this without any reason. Just do it. The rules allow it, so go ahead and do it. It stalls things. This letter admits, in no uncertain terms, that the goal of this tactic is to delay. I didn't make up the word. It is in here. It is as clear as day.

But there is more in this plan. It also advises Senators on how to “extend consideration of a measure,” which motions “may be filibustered,” and when Senators might “offer an unlimited number of motions.”

Well, as we see in the press, today, anyway, this has caused outrage. It is a catalogue of obstructions—a catalogue of instructions to obstruct. But what disappoints me most about this is what isn't here. Nowhere in this Republican plan is a strategy to lower premiums; not a single word about how to make sure more of our citizens can afford to stay healthy; can't even find one idea for stopping insurance companies from denying health care to the sick. You see, my Republican friends have been so busy coming up with games and gambits, with ways to distort and delay, with scare tactics and stalling tactics, that they haven't left time to come up with solutions to one of the most profound crises in the history of our country. The Senate might be interested to learn that the architect behind this blueprint is none other than the former chair of the Budget Committee, the senior Senator from New Hampshire. It is worth noting that this Senator—who, more than any other, often speaks publicly about how to properly use citizens' tax dollars—has now signed his name to a plan with the explicit goal of wasting the taxpayers' time and money.

Less than 2 weeks ago, the author of this document, along with every single one of his fellow Republicans—every one—voted against even letting the Senate debate this bill. He didn't even want to give the American people the opportunity to watch this debate take place—to discuss and defend his position. Now he expects us to believe his only motive is making sure the minority party's voice can be heard.

No one believes that because it couldn't be any further from what the Founders had in mind. They didn't write this esteemed body's rules so we could stare at the hands of the clock—which are right up here—as they rotate around each other without end. So let's not pretend the Republican strategy is anything different than what it is. After all, Republicans certainly aren't trying to hide it.

When I see these kinds of political games, I think of many cases in Nevada and around the country, but, in particular, I think of a woman from Las Vegas named Alysia. She wrote me a letter when the health care debate was getting underway. She is in her early twenties. I don't know if she is a Democrat, an Independent, or a Republican. It doesn't matter. She was born with a kidney disease, a bad kidney disease. She has suffered with it every day of her life, and these days she desperately needs surgery. But she is not going to get surgery.

Similar to so many in Nevada and across the Nation, Alysia recently lost her job. With her job lost, she lost her insurance and her health care. So Alysia went out and tried to buy a new plan to help her afford her care. No one will give her insurance. She can't find a job to get group insurance.

What did the insurance companies tell her—plural? That her kidney dis-

order is a preexisting condition, and because of that policy of the insurance industry, which is reprehensible, they refuse to cover her. They refuse to cover this young woman at the exact moment she needs it the most. She then tried to go get some help from Medicaid. What did she hear in response? She doesn't qualify because she isn't pregnant, she doesn't have children, and they say she doesn't have a disability.

So how can you take a woman such as Alysia out of your mind? I think she is probably following this debate. It means a lot more to her, this debate, than a legislative exercise or a political objective. She will pick up the newspaper this morning, turn on the news, or go online to read about what is happening in the Senate. Why? Because it affects her health—her pain and suffering. She probably remembers her grade school textbook teaching her that this is the world's greatest deliberative body and she is eager to find out about how those deliberations are going. She is eager to learn what we are going to do with a system that makes it impossible for her to get health care.

Who knows, she might even be watching C-SPAN as we speak. Can you imagine being Alysia and going through all that she has gone through, counting on your leaders to right the wrongs that we know exist, and this is what she finds—a Senator writing a letter on how to guide avoiding the tough decisions that will affect her life and maybe even save her life.

It is not hard to imagine. We all know you don't have to have a bad health history, such as Alysia's, to tell a similar story of your own. You may have had an accident in your early days. You may have diabetes. It doesn't matter. You don't need kidney disease for insurance companies to take away your health insurance. As it stands now, they can deny you coverage because of high cholesterol, because you have allergies or maybe you have had minor surgery or maybe because you are a woman. Maybe your mom had breast cancer. These are all reasons they use to deny coverage.

We all know that, much like our Republican colleagues, insurance companies will use any excuse in the book to just say no.

For many good people in Nevada and throughout the Nation, it is a painful, terrible reality. That is one of the many problems our good bill fixes.

The American people see transparent tricks like this—it is a shameful scheme—for what they are. The American people could not be impressed. They are not impressed. I can't decide which should disappoint the American citizens more, that the Senate Republicans are happily wasting time or that they are so eager to admit it. But here is one thing I do know, this is no way to govern, no way to legislate, this is no way to lead, and especially no way to lead our country, our constituents,

back to health. The bill before the Senate saves lives, saves money, and saves Medicare.

EXHIBIT 1

U.S. SENATE,

Washington, DC, December 1, 2009.

DEAR REPUBLICAN COLLEAGUE: As we embark on Senate debate of Majority Leader Reid's massive \$2.5 trillion health care reform legislation, it is critical that Republican senators have a solid understanding of the minority's rights in the Senate.

I think that we can all agree that the Democrats' bill is the wrong choice for our nation. It will impact one-sixth of our economy, vastly grow the government, and pile tremendous debt on future generations. We are at an important crossroads both for the economy and for the health care system. Therefore, it is imperative that our voices are heard during this debate.

We, the minority party, must use the tools we have under Senate rules to insist on a full, complete and fully informed debate on the health care legislation—as well as all legislation—coming before the Senate. As laid out in the attached document, we have certain rights before measures are considered on the floor as well as certain rights during the actual consideration of measures. Every Republican senator should be familiar with the scope of these rights, which serve to protect our ability to speak on behalf of the millions of Americans who depend on us to be their voice during this historic debate.

I hope you find the attached information helpful. If you have any questions, please contact my communications office.

Sincerely,

JUDD GREGG.

FOUNDATION FOR THE MINORITY PARTY'S
RIGHTS IN THE SENATE (FALL 2009)

The Senate rules are designed to give a minority of Senators the right to insist on a full, complete, and fully informed debate on all measures and issues coming before the Senate. This cornerstone of protection can only be abrogated if 60 or more Senators vote to take these rights away from the minority.

I. Rights Available to Minority Before Measures are Considered on Floor (These rights are normally waived by Unanimous Consent (UC) when time is short, but any Senator can object to the waiver.)

New Legislative Day—An adjournment of the Senate, as opposed to a recess, is required to trigger a new legislative day. A new legislative day starts with the morning hour, a 2-hour period with a number of required procedures. During part of the "morning hour" any Senator may make non-debatable motions to proceed to items on the Senate calendar.

One Day and Two Day Rules—The 1-day rule requires that measures must lie over one "legislative day" before they can be considered. All bills have to lie over one day, whether they were introduced by an individual Senator (rule XIV) or reported by a committee (rule XVII). The 2-day rule requires that IF a committee chooses to file a written report, that committee report MUST contain a CBO cost estimate, a regulatory impact statement, and detail what changes the measure makes to current law (or provide a statement why any of these cannot be done), and that report must be available at least 2 calendar days before a bill can be considered on the Senate floor. Senators may block a measure's consideration by raising a point of order if it does not meet one of these requirements.

"Hard" Quorum Calls—Senate operates on a presumptive quorum of 51 senators and quorum calls are routinely dispensed with by

unanimous consent. If UC is not granted to dispose of a routine quorum call, then the roll must continue to be called. If a quorum is not present, the only motions the leadership may make are to adjourn, to recess under a previous order, or time-consuming motions to establish a quorum that include requesting, requiring, and then arresting Senators to compel their presence in the Senate chamber.

II. Rights Available to Minority During Consideration of Measures in Senate (Many of these rights are regularly waived by Unanimous Consent.)

Motions to Proceed to Measures—with the exception of Conference Reports and Budget Resolutions, most such motions are fully debatable and 60 votes for cloture is needed to cut off extended debate.

Reading of Amendments and Conference Reports in Entirety—In most circumstances, the reading of the full text of amendments may only be dispensed with by unanimous consent. Any Senator may object to dispensing with the reading. If, as is often the case when the Senate begins consideration of a House-passed vehicle, the Majority Leader offers a full-text substitute amendment, the reading of that full-text substitute amendment can only be waived by unanimous consent. A member may only request the reading of a conference report if it is not available in printed form (100 copies available in the Senate chamber).

Senate Points of Order—A Senator may make a point of order at any point he or she believes that a Senate procedure is being violated, with or without cause. After the presiding officer rules, any Senator who disagrees with such ruling may appeal the ruling of the chair—that appeal is fully debatable. Some points of order, such as those raised on Constitutional grounds, are not ruled on by the presiding officer and the question is put to the Senate, then the point of order itself is fully debatable. The Senate may dispose of a point of order or an appeal by tabling it; however, delay is created by the two roll call votes in connection with each tabling motion (motion to table and motion to reconsider that vote).

Budget Points of Order—Many legislative proposals (bills, amendments, and conference reports) are subject to a point of order under the Budget Act or budget resolution, most of which can only be waived by 60 votes. If budget points of order lie against a measure, any Senator may raise them, and a measure cannot be passed or disposed of unless the points of order that are raised are waived. (See <http://budget.senate.gov/republican/pressarchive/PointsofOrder.pdf>)

AMENDMENT PROCESS

Amendment Tree Process and/or Filibuster by Amendment—until cloture is invoked, Senators may offer an unlimited number of amendments—germane or non-germane—on any subject. This is the fullest expression of a "full, complete, and informed" debate on a measure. It has been necessary under past Democrat majorities to use the rules governing the amendment process aggressively to ensure that minority Senators get votes on their amendment as originally written (unchanged by the Majority Democrats.)

Substitute Amendments—UC is routinely requested to treat substitute amendments as original text for purposes of further amendment, which makes it easier for the majority to offer 2nd degree amendments to gut 1st degree amendments by the minority. The minority could protect their amendments by objecting to such UC's.

Divisible Amendments—amendments are divisible upon demand by any Senator if they contain two or more parts that can stand independently of one another. This can

be used to fight efforts to block the minority from offering all of their amendments, because a single amendment could be drafted, offered at a point when such an amendment is in order, and then divided into multiple component parts for separate consideration and votes. Demanding division of amendments can also be used to extend consideration of a measure. Amendments to strike and insert text cannot be divided.

Motions to Recommit Bills to Committee With or Without Instructions—A Senator may make a motion to recommit a bill to the committee with or without instructions to the Committee to report it back to the Senate with certain changes or additions. Such instructions are amendable.

AFTER PASSAGE GOING TO CONFERENCE, MOTIONS TO INSTRUCT CONFEREES, MATTERS OUT OF SCOPE OF CONFERENCE

Going to Conference—The Senate must pass 3 separate motions to go to conference: (1) a motion to insist on its amendments or disagree with the House amendments; (2) a motion to request/agree to a conference; and (3) a motion to authorize the Chair to appoint conferees. The Senate routinely does this by UC, but if a Senator objects the Senate must debate each step and all 3 motions may be filibustered (requiring a cloture vote to end debate).

Motion to Instruct Conferees—Once the Senate adopts the first two motions, Senators may offer an unlimited number of motions to instruct the Senate's conferees. The motions to instruct are amendable—and divisible upon demand—by Senators if they contain more than one separate and distinct instruction.

Conference Reports, Out of Scope Motions—In addition to demanding a copy of the conference report to be on every Senator's desk and raising Budget points of order against it, Senators may also raise a point of order that it contains matter not related to the matters originally submitted to the conference by either chamber. If the Chair sustains the point or order, the provision(s) is stricken from the conference agreement, and the House would then have to approve the measure absent the stricken provision (even if the House had already acted on the conference report). The scope point of order can be waived by 60 Senators.

Availability of Conference Report Language. The conference report must be publicly available on a website 48 hours in advance prior to the vote on passage.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

HEALTH CARE REFORM

Mr. McCONNELL. Madam President, this measure was in the majority leader's office for 6 weeks. It has only been on the floor of the Senate for 3 days. I think it is clearly not the case that the Republicans want to delay a process that we have only now gotten an opportunity to participate in, since this has been a strictly partisan venture from the beginning. But we will have an opportunity over a number of weeks to offer amendments. We will have four votes today and hopefully we can proceed at a more rapid pace than we got off to in the first couple of days. Of