

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

course the reason we didn't have votes last night was because there were objections on that side of the aisle. But hopefully we are now into a process where we can go forward without the kind of delay that we had generated by both sides over the last couple of days.

Yesterday some of our friends on the other side were at great pains to explain one of the core pieces of their health care plan. I am referring of course to the massive cuts in Medicare they plan to make as a way of expanding government's reach even further into the lives and, more specifically, into the medical care of every American.

I have no doubt that our friends were reluctant to call for these cuts. But in the middle of a recession, and at a time when more than 1 in 10 working Americans is looking for work, it isn't easy to find \$1/2 a trillion lying around. They had to find the money somewhere. And so they set their sights on Medicare.

Republicans have been entirely consistent in this debate: Medicare is already in trouble. The program needs to be fixed, not raided to create another new government program. We have fought these senseless cuts from the outset. And we will continue to fight them.

Democrats, meanwhile, have taken a novel approach. They have apparently decided there is no way to defend these Medicare cuts, so they will just deny they are doing it. It hardly passes the smell test.

Here are the facts. According to this bill: Medicare Advantage is cut by \$120 billion; hospitals that treat Medicare patients are cut by \$135 billion; home health care is cut by more than \$42 billion; nursing homes are cut by nearly \$15 billion; hospice care is cut by \$7.6 billion.

These are the cuts that our friends on the other side claim not to be cuts. This is the plan that our friends on the other side have said will "save Medicare"—a talking point so plainly contradicted by the facts, it is almost impossible to repeat it with a straight face.

One Democrat took this strategy to a new level yesterday when he declared on the floor that it wasn't even accurate to describe cuts to Medicare Advantage as cuts because Medicare Advantage, he said, is not a Medicare program.

Well, that is apparently news to the Department of Health and Human Services, which states on its Web site, in words as plain as the alphabet that "Medicare Advantage plans . . . are part of the Medicare program." And it is news to the millions of American seniors who depend on this popular program for their care.

At the moment, Medicare Advantage has nearly 11 million enrollees looking at it another way, or nearly one-fourth of all Medicare beneficiaries are on Medicare Advantage.

In recent years, this program has proven to be particularly popular with

seniors in rural areas who would otherwise have limited access to care. Seniors have shown they want this plan. And I daresay that if you had asked seniors earlier this year what they expected health care reform would look like, it wouldn't have involved massive cuts to a program that they have shown they like and want.

Medicare Advantage has also been proven to help in a particular way low-income and minority seniors. That is one of the reasons minorities are more likely to enroll in it. So this program has given a boost to historically disadvantaged populations and helped give them a greater measure of dignity toward the end of their lives.

These cuts are bad enough. But despite what our friends have said, the Democrat plan for Medicare Advantage doesn't stop here because their bill also gives the Medicare Commission explicit new authority to cut even more from this popular program in the years ahead.

The President has repeatedly said that people who like the plans they have will be able to keep them under his plan. He has said people currently signed up for Medicare Advantage will have the same level of benefits under his plan.

Well, common sense tells us that you can't cut \$120 billion from a benefits program without affecting benefits, and the independent Congressional Budget Office confirms what common sense tells us, and they actually quantify it.

CBO says the bill we are debating will cut extra benefits that seniors receive through Medicare Advantage by more than half. The fact is, cuts to Medicare Advantage are cuts to Medicare. And if it is true of Medicare Advantage, it is true of the other Medicare cuts in this bill. Democrats can deny these cuts all they want. Seniors aren't buying it.

Later this afternoon we are going to have a Bennet amendment, Bennet of Colorado, as a side-by-side to Senator McCAIN's motion, which would send back to committee the Medicare cuts in this bill and ask the committee to report it back without them. I want to comment briefly on the Bennet amendment and we are going to have more to say on that during the course of today's debate.

This amendment is a shell game, a shell game designed to hide the \$1/2 trillion in cuts I have been talking about. The Bennet of Colorado amendment is a shell game designed to hide the \$1/2 trillion in cuts I have described. If the Bennet amendment passes, the bill will still cut \$1/2 trillion from Medicare.

Let me say that again. If the Bennet of Colorado amendment passes, the bill will still cut \$1/2 trillion from Medicare. It does not protect Medicare. There is only one way to protect Medicare and that is to support the McCain motion.

I yield the floor.

Mr. GREGG. Will the Senator yield for a question?

Mr. McCONNELL. I will be happy to yield to the Senator from New Hampshire.

Mr. GREGG. The Senator is absolutely right to point out the Bennet amendment is a shell game, charade, and a farce; that there will still be \$1/2 trillion in the first 10 years but actually \$2.5 trillion over the period 2010 to 2029 to be cut out of Medicare.

Earlier the majority leader came to the floor and talked about a memo that I sent around, which is a fairly innocuous memo to our fellow Members, which outlined the rights to fellow Members relative to floor activity, and I sent in my position as Budget ranking member, because most of these issues are tied to the budget, and the covering letter said we as a minority must use the tools we have under the Senate rules to insist on a full, complete, and fully informed debate on health care legislation as well as all legislation that comes before the Senate.

I ask the Republican leader, is it not reasonable that we should have a full, complete, and fair debate on this health care bill?

Mr. McCONNELL. I say to my friend from New Hampshire, we know this bill was produced by Democrats in committee. Then it went to the majority leader's conference room and stayed there for 6 weeks. There were no Republicans in those meetings, not a one. So after being in the majority leader's conference room for 6 weeks, it has been on the floor of the Senate for 3 days. This will be the fourth day.

To suggest that Republicans don't want to offer many amendments to this massive 2,000-page bill that seeks to restructure one-sixth of our economy is nonsense. The American people will not stand for not having a free and open amendment process during the course of this debate. This is a debate, I say to my friend from New Hampshire, the American people deserve to have for a considerable period of time. For goodness' sake, we spent 4 weeks on a farm bill in the last Congress. F

Mr. GREGG. If the Republican leader will yield further, it is ironic, is it not, that the majority leader would come to the floor and complain about an innocuous statement that outlines the rules which Members of the Senate have, a statement which I suspect he actually would pass out to his members for information were they in the minority—maybe even in the majority, because they would like to know how the rules work in the Senate—after the majority leader had completely subverted the rules of the Senate by not taking this 2074-page bill through committee so it could be amended, in the open, so it could be amended but, rather, writing it in the back room, some closet around here, with three or four Members of the Senate present? Isn't there an ironic inconsistency to his outrage on the fact that we suggested people should know the rules here while he has basically tried to go around the rules?

Mr. McCONNELL. I say to my friend from New Hampshire, nobody is going to buy outrage over a mere 40 Members out of 100 Members of the Senate having an opportunity, for the first time, to offer amendments. The majority, by the way, has the right to do this, and I don't complain about it. They are going to offer an amendment for every amendment we offer, so not only did they have the bill in their conference room in secret for 6 weeks, out here on the floor they are going to get 50 percent of the amendments we vote on. I don't think they will be able, with a straight face, to convince the American people that somehow the 40 of us who are asking for an opportunity to amend a bill that all the surveys indicate the American people don't want us to pass is somehow unfair.

Mr. GREGG. I will ask one more question because I find the irony in the situation so unique. A memo which outlines what the rights are of all Members—but Members of the minority specifically because the rules are meant to protect the minority from the majority; that is the tradition of our Government, of course, which seems to be an affront to the majority at this point—that a memo of that nature, which essentially says the minority has certain rights in order for the institution to function correctly—I am wondering, why did we create these rules in the first place? Wasn't it so we could continue the thought of Adams, of Madison, who suggested that the Senate should be the place where, when legislation comes forward which has been rushed through the House, the Senate should be the place where that legislation receives a deliberative view, where it is explored as to its unintended consequences and as to its consequences generally, and where the body has the opportunity to amend it effectively so it can be improved? Isn't that the purpose of the Senate? And isn't that what the rules of the Senate are designed to do, to accomplish the goals of our Founding Fathers to have a Senate where the legislation is adequately aired and considered versus being rushed through in a precipitous way?

Mr. McCONNELL. It was George Washington who presided over the Constitutional Convention who was asked: General, what do you think the Senate is going to be like?

He said: I think it is going to be like the saucer under the tea cup and the tea is going to slosh out of the cup down into the saucer and cool off. That is precisely the point the Senator raises, which is the Senate is the place viewed to be a body that ought to and correctly takes its time. The House of Representatives passed this massive restructuring of one-sixth of our economy in 1 day with three amendments—1 day. That is not the way the Senate operates. I can remember when our friends on the other side were in the minority. Specifically, I can remember the now-assistant majority leader say-

ing the Senate is not the House—praised the procedures in the Senate. If ever there were a measure, if ever in the history of America there were a measure that the Americans expect us to take our time on and to get it right, it is this one, this massive 2,000-page effort to restructure one-sixth of our economy and have the government take over all of American health where we see, in all of the public opinion polls, people are saying please don't pass this—they want to try to rush it.

They want to try to rush it, try to get it through here in a heck of a hurry, back it up against Christmas. I have said to the majority leader, we are happy to be here. We are going to be here Saturday and Sunday. I did ask for an opportunity for Members to go to church Sunday morning, if they want to, and the majority leader indicated that would be permissible. But after that, we will be here and ready to vote.

Mr. GREGG. I thank the Republican leader for his response. I suspect, were the majority leader in the minority, he would be insisting on exactly what the Republican leader is insisting on—a fair and open debate which allows the minority to make its case as to the good points in this bill and as to the bad points. The way you make that case is by following the rules of the Senate; is that not correct?

Mr. McCONNELL. The American people expect and deserve no less than exactly what we have been discussing.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time home buyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Mikulski amendment No. 2791 (to amendment No. 2786), to clarify provisions relating to first-dollar coverage for preventive services for women.

McCain motion to commit the bill to the Committee on Finance, with instructions.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 10 minutes equally divided for the bill managers to speak.

The Senator from Montana.

Mr. BAUCUS. Madam President, I yield myself 2½ minutes from the time under the control of the managers.

For the benefit of all Senators I want to take a moment to lay out today's program.

The time between now and 11:45 is for debate on the amendment by the Senator from Maryland, Ms. MIKULSKI, the chairwoman of the Subcommittee on Retirement and Aging of the Health, Education, Labor and Pensions Committee.

And at the same time, we will debate the side-by-side amendment by the Senator from Alaska, Ms. MURKOWSKI.

At 11:45, the Senate will conduct two back-to-back rollcall votes on the two amendments, first on the amendment by the Senator from Maryland, and second on the amendment by the Senator from Alaska.

Thereafter, we will conduct approximately 2 hours of debate on the McCain motion to commit on Medicare and the side-by-side amendment by the Senator from Colorado, Mr. BENNET.

At 2:45, the Senate will conduct two back-to-back votes on the amendment by the Senator from Colorado, followed by a vote on the motion to commit by the Senator from Arizona.

Thereafter, we expect to turn to another Democratic first-degree amendment and another Republican first-degree amendment.

This is the fourth day on this bill, and we are only late this morning coming to our first vote. Even for the U.S. Senate, this is a slow pace.

I note that some have made plans for delaying this bill in even more extreme fashion. As the majority leader noted, on Tuesday, one Senator circulated a list of delaying tactics available under the Senate rules.

I presume all Senators know the Senate's rules already. So to send the letter leaves the impression that that Senator would like to urge Senators to use some of the delaying tactics stated in the memo.

But I urge a more cooperative course. Out of courtesy to other Senators who desire to offer amendments. I urge my colleagues to allow us to reach unanimous consent agreements to order the voting of future amendments in a more timely fashion. That is simply the only way that we can ensure that more colleagues will have the time and opportunity to offer and debate their amendments.

I thank all Senators.

The ACTING PRESIDENT pro tempore. The Senator has consumed his time.

Mr. BAUCUS. I ask unanimous consent that the order of December 2 be modified to delete all after the word "table."

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

Mr. BAUCUS. I ask unanimous consent that the debate time from 2 to 2:45 this afternoon be divided as follows in the order listed: the first 17½ minutes under the control of Senator McCANN or his designee; the next 17 minutes under the control of Senator BAUCUS or his designee; and the final 10 minutes, 5 minutes each for Senator McCANN and Senator BENNET of Colorado.