

The chairman has actually suggested that he really has no choice, that some intemperate criticism by a few people has somehow forced his hand. He cannot be serious about this. This nominee has the full force and weight of no less than the entire administration of a currently popular President, a compliant media, and the largest partisan congressional majority in decades to come to her defense. Interest groups are mobilizing, lobbying campaigns are in full swing, Web sites are already in operation. With all of that, are we to believe a few ill-considered remarks by a few people outside this body are enough to cut the confirmation process off at the knees? Are we to believe this is all it takes to set aside fairness, to undercut the ability of the Senate to do its confirmation duty, and to inject this degree of partisanship and rancor into the process? Give me a break.

This is choice, plain and simple, and it is the wrong choice. The distinguished Senator from New York, Mr. SCHUMER, has said that Senators on our side of the aisle oppose this nominee at their peril, as if there is any peril in fairly applying basic principles and standards to this as well as to other nominees. But the distinguished majority leader has apparently said the same thing to Senators on this side of the aisle, literally daring any of them to vote against this nominee. That is a strange tactic, indeed, especially so publicly and so early on in the process. It makes me wonder whether there are concerns, even on the majority side, that the leadership simply cannot allow to be expressed.

I urge my friends on the other side to reconsider and not be intimidated and not be pushed around. There is more than enough time to do the confirmation job right, to have a fair and thorough process that can have a confirmed Justice in place when the Supreme Court begins its term in October. There is no need gratuitously to further politicize the confirmation process. Injecting such partisanship at the beginning easily can result in greater conflict and division further down the confirmation road, and that is not good for Judge Sotomayor or anybody else in this body. That is not in the best tradition of the Senate, it is not how the Supreme Court nominations have been considered in the past, and it is not the way we should do this today.

I have been informed there have been some 4,000 decisions. My gosh, it is going to take some time to go through those decisions.

I believe we ought to be fair in this body, and fairness means giving enough time to be able to do the job properly and to get it done within a reasonable period of time and not be pushed in ways that really don't make sense.

#### HEALTH CARE REFORM

Mr. HATCH. Mr. President, I wish to take a few minutes now to talk about the perils of creating a government

plan on American families and health care.

I am very disappointed that the President and my friends on the other side of the aisle have chosen to pursue the creation of a new government-run plan—one of the most divisive issues in health care reform—rather than focusing on broad areas of compromise that can lead us toward bipartisan reform in health care legislation.

Yesterday, I spearheaded a letter with my Republican Finance Committee colleagues urging the President to strike a more conciliatory tone on health care reform. Having played a profound role in almost every major health care legislation for the last three decades and having worked repetitively in a bipartisan manner with everyone from Senators KENNEDY and DODD to Congressman WAXMAN, I know something about getting things done for our families in a thoughtful manner. You advance legislation by focusing on areas of compromise, not strife.

First and foremost, let me make this point again, even though I am starting to sound like a broken record: Reforming our health care system to ensure that every American has access to quality, affordable, and portable health care is not a Republican or Democratic issue; it is an American issue. When we are dealing with one-sixth of our economy, it is absolutely imperative that we address this challenge in a bipartisan manner. Anything less would be a huge disservice to our families and our Nation.

Clearly, health care spending continues to grow too fast. This year will mark the biggest ever 1-year jump in health care's share of our GDP—a full percentage point to 17.6 percent. You can think of this as a horse race between costs and resources to cover these costs. The sad reality is that costs win year after year.

Growing health care costs translate directly into higher coverage costs. Since the last decade, the cost of health coverage has increased by 120 percent—three times the growth of inflation and four times the growth of wages. It is not the only problem, but cost is one part of the reason more than 45 million Americans do not have health insurance.

I believe we need to do more to ensure we achieve universal and affordable access to quality health care for every American. We can do this by reforming and improving the current system. However, the creation of a government plan is nothing more than a backdoor approach to a Washington-run health care system.

At a time when major government programs such as Medicare and Medicaid are already on a path to fiscal insolvency, creating a brand new government program will not only worsen our long-term financial outlook but also negatively impact American families who enjoy the private coverage of their choice.

To put this in perspective, as of this year, Medicare has a liability of almost

\$39 trillion, which in turn translates into a financial burden of more than \$300,000 per American family.

In our current fiscal environment, where the government will have to borrow nearly 50 cents of every dollar it spends this year, exploding our deficit by almost \$1.8 trillion, let's think hard about what we are doing to our country and our future generations.

The impact of a new government-run program on families who currently have private insurance of their choice is also alarming. A recent Milliman study estimated that cost-shifting from government payers, specifically Medicare and Medicaid, already costs families with private insurance nearly \$1,800 more each year. Creating another government-run plan will further increase these costs on our families in Utah and across the country.

Let me make a very important point. A new government plan is nothing more than a Trojan horse for a single-payer system, a one-size-fits-all government-mandated system, where we are going to put bureaucrats between you and your doctors. Washington-run programs undermine market-based competition through their ability to impose price controls and shift costs to other purchasers.

The nonpartisan Lewin Group has concluded that a government plan open to all, and offering Medicare-level reimbursement rates, would result in 119.1 million Americans losing their private coverage. This is almost three times the size of the entire Medicare Program, which is already in trouble. More important, this would run contrary to the President's own pledge to the American families about allowing them to keep the coverage of their choice. So far as I know, no one has disputed the Lewin Group. They are well known as one of the most nonpartisan groups in the country.

Proponents of this government plan seem to count on the efficiency of the Federal Government in delivering care for American families, since it is already doing such a great job with our banking and automobile industry.

Medicare is a perfect example. It is on a path to fiscal meltdown, with Part A already facing bankruptcy within the next decade, and we all know it. It underpays doctors by 20 percent and hospitals by 30 percent, compared to the private sector, forcing increasing numbers of providers to simply stop seeing our Nation's seniors. According to the June 2008 MedPAC report, 9 out of 10 Medicare beneficiaries have to get additional benefits beyond their Medicare coverage—9 out of 10.

We have a broken doctor payment system in Medicare that has to be fixed every year, so seniors can continue to get care. This year alone, this broken formula calls for a more than 20-percent cut. I can keep going, but the point is simple: Washington and a government-run plan is not the answer.

Talk about creating problems. The supporters of the government plan

know these facts. So they are trying a different approach by claiming that the government plan is simply competing with the private sector on a so-called level playing field. Give me a break.

History has shown us that forcing free market plans to compete with these government-run programs always creates an unlevel playing field and dooms true competition.

The Medicare Program, once again, provides an important lesson. As a political compromise, Medicare was set up in 1965 to pay doctors and hospitals the same rates as the private sector. Faced with rising budget pressures, Congress quickly abandoned this level-playing-field approach and enacted price limits for doctors and hospitals. Today, as I have said, Medicare payments are 20 percent less for doctors and 30 percent less for hospitals compared to the private sector. I have been told by doctors from Utah and across the country that if this continues, they will simply stop seeing patients altogether. A number of them are ready to quit the profession. I cannot tell you the problems that will arise if we go to a government-run program—a Trojan horse to lead us to a government-mandated, government-run, one-size-fits-all massive program.

In his March, 2009, testimony before the House Energy and Commerce Committee, Doug Elmendorf, the Director of the nonpartisan Congressional Budget Office, testified that it would be “extremely difficult” to create “a system where a public plan [government plan, if you will] could compete on a level playing field” against private coverage. The end result would be a Federal Government takeover of our health care system, taking decisions out of the hands of our doctors and our patients, placing them in the hands of a Washington bureaucracy, and inserting that bureaucracy right between them.

Here is the bottom line: We are walking down a path where stories such as Jack Tagg’s could become increasingly common in our great country. In 2006, Jack Tagg, a former World War II pilot, suffered from a severe case of macular degeneration. The regional government bureaucrats rejected his request for treatment, citing high costs, unless the disease hit his other eye also. It took 3 years to overturn that decision—3 years, while he had to suffer, when we could have done this in a better way.

Let’s remember that a family member with cancer in an intensive care unit would probably neither have the time nor the resources to appeal such an egregious bureaucratic decision. We need to remember the real implications of these policies—not simply in terms of political spin and special interests but in terms of its impact on real people, who are mothers, fathers, husbands, wives, brothers, sisters, and children.

Similar to the ill-conceived stimulus legislation and flawed auto bailout

plan, health care reform has the potential of simply becoming another example of the Democrats justifying the current economic turmoil to further expand the Federal Government.

To enact true health care reform, we have to come together as one to write a reasonable and responsible bill for the American families who are faced with rising unemployment and out-of-control health care costs.

I do look forward to working together to transform our sick-care system into a true health care system. I continue to hold deep in my heart that we will move beyond these beltway games and work together in a bipartisan way to fix Main Street. The time is now and I am ready.

I am absolutely positive the way to go is not with a government-run, government-mandated health care program, which will bring the lowest common denominator in health care to everybody. I think you are going to find that the costs are so astronomical, the way it is being formed in the HELP Committee, in particular, that we are leaving a burden on our kids and grandkids and great grandkids that is going to be insurmountable.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Oregon is recognized.

Mr. WYDEN. Before the Senator leaves the floor, I wish to tell the Senator from Utah how much I am looking forward, on a personal level, to working with him in this 5-month sprint to figure out a way to fix American health care in a bipartisan fashion. Some of the moments I am proudest of have been those when the two of us have been able to team up on health reform. Without getting into it this afternoon, let me say that millions of poor young people who use community health centers are getting services there at no extra cost to our taxpayers, because Senator HATCH was willing to work with this Senator and a group of others, including public interest groups and a wide variety of health care advocates, in order to change malpractice rules. This was done to make sure not only that those who had a legitimate claim got served but also that the bulk of the money went to patients in need. Thousands of low-income Americans get care because Senator HATCH was willing to take a stand for low-income folks. I wish to tell him I am very much looking forward to working with him and our colleagues on a bipartisan basis over the next 5 months to get this job done.

Mr. HATCH. If the Senator will yield, I am very appreciative of the Senator’s remarks. I have spent 33 years working on virtually every health care bill that has come up. We have always done it in a bipartisan way. I certainly enjoy working with the distinguished Senator from Oregon. He is one of the more thoughtful people in health care on the Finance Committee and in this whole body. I am grateful to him for

wanting to work together and in a bipartisan manner. We need to do that. You cannot work on a partisan basis on issues regarding the American economy. There are some in the White House and on the Democratic side who want to do that. I am grateful the Senator from Oregon is not one of them. I, personally, will do everything in my power to try to put together a bipartisan approach to this that would work and would put the best of the private sector in with the best of the government sector and work for our folks in this country. When you are talking about one-sixth of the American economy, if we do that, it will be for the betterment of the country and for everybody. If we go in a partisan, one-size-fits-all way—especially, in my opinion, with a government-run plan—we are going to be anything but good as far as health care is concerned. I am grateful for the Senator’s kind remarks.

Mr. WYDEN. Mr. President, I share the Senator’s interests. There are a lot of Senators of good will on both sides of the aisle who want to get this done right.

Mr. HATCH. I thank the Senator.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak in morning business for up to 20 minutes.

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

Mr. WYDEN. When I was a young man, I got involved working with senior citizens as codirector of the Oregon Gray Panthers. Every day back then, we got up and said we are going to make a difference. We are going to help people and, particularly, for senior citizens we are going to make it possible for them to have a better quality of life.

The distinguished occupant of the chair is, I think, close to my age. We can both recall that in those days if a town had a lunch program for senior citizens, that was considered a big deal. There weren’t a whole lot of discount programs. People didn’t even talk about home and community-based health care services. In most of the country, back then, if a town had a lunch program for senior citizens, that was considered a full-fledged program for older people.

In those early days with the Oregon Gray Panthers I started thinking about the importance of good-quality, affordable health care. I spent hours and hours back then watching what happened when seniors and their families got exploited in the health care system. The first issue I was involved with concerning senior citizens was a real tragedy. At that time, there were a lot of older people who needed insurance to supplement their Medicare. It was very common for senior citizens then, every time some fast-talking salesman came through, to buy another policy. When I was running the legal aid office for senior citizens I would go to visit older people in their homes, and very often they could take out a shoe box full of

health insurance policies—15 or 20 policies. A lot of them weren't worth the paper they were written on. In fact, they had what were known as subrogation clauses, so that if you had another policy, the first one would not pay off. It was tragic to watch senior citizens walking on an economic tightrope every week, balancing food against fuel and fuel against medical bills, and getting sold all this junk health insurance, and as I said earlier, most of it wasn't worth a lot more than the paper it was written on. I started saying to people, I want to do something about this. In a few years, I got elected to the House of Representatives, and I had a chance to work with both Democrats and Republicans, a number of them in the Senate today. Chairman BAUCUS was very involved in the effort.

In the early nineties, we finally drained that swamp of paper. Today it is possible for a senior to have just one of these policies, not 15 or 20, and have the extra money to spend on other essentials. The coverage is standardized so you don't need to be some kind of Houdini in order to figure it out.

That effort resulted in the only tough law on the books today that really has teeth in it to regulate and stop some of these private insurance ripoffs. I am very proud to have taken a role along with some of my colleagues in the Senate in changing it.

Democrats and Republicans, as part of health reform, are going to have to fix the insurance market for the non-elderly population. The insurance market today for those who are not in Medicare or in the veterans system, but who instead have private coverage, is inhumane. It is all about cherry-picking. It is about trying to find healthy people and send sick people over to government programs more fragile than they are. That is today's insurance market.

Fortunately, a big group of Democratic Senators and Republican Senators are now on record saying they want to change that. They want to make sure, for example, that people cannot be discriminated against if they have a preexisting condition. These Senators want to make sure, for example, that instead of being sent off to the individual insurance market, where people don't really have any clout or any bargaining power, people will be able to be part of a bigger group so they get more value for their health care dollar. In this larger group market, insurance companies pay out a bigger portion of the premium dollar in terms of benefits.

Democrats and Republicans are prepared to, in effect, turn the current system of private insurance around completely and say: Instead of basing it on cherry-picking, which is what it is about today, in the future, private insurers should have to take all comers. They should not discriminate. People should pool into large groups, and the companies should compete on price, benefits, and quality. There will

have to be prevention and wellness so it is not just sick care, as Senator HATCH touched on very eloquently.

That is something Democrats and Republicans already are on record as coming together to support. Fixing the private insurance marketplace is a fundamental part of health reform.

There are other areas where Democrats and Republicans can join forces. One that I care most about is making health care coverage portable so that you do not lose your coverage when either you leave your job or your job leaves you.

This is an especially serious problem for the millions of folks who are laid off today. They go to a program called COBRA, which, I might note, is the only Federal program named after a poisonous snake. Colleagues have improved it, certainly, in the stimulus to try to provide additional assistance. But it is still part of a dysfunctional system that has not changed a whole lot since the 1940s. Much of the rules with respect to coverage—and certainly, in my opinion, that have led to the lack of portability—were made in the 1940s, when there were wage and price controls, and when big decisions got made that affect health care today.

Back in the 1940s, the rules made some sense for those times. People would usually go to work somewhere and pretty much stay put for 20 or 25 years until you gave them a gold watch and a 20,000-calorie retirement dinner. That is not what the workforce is about today.

Today the typical worker changes their job 11 times by the time they are 40. So what workers need is portable health care coverage, coverage they can take from place to place. People do not need to find that when they lose their jobs, they go out and face discrimination in the insurance marketplace where they are not able to afford insurance, even with the COBRA subsidies which, of course, run out often before they get their next position.

The current system is also anti-entrepreneur because very often somebody who works for a business has a good idea and they would like to go into the marketplace and try it out, but if they have an illness, they cannot leave their job because they are not going to be able to get coverage at their next job.

Once again, Democrats and Republicans in the Senate are on record as being willing to make a fundamental change in the way the system works today. They are on record in favor of portability and guaranteeing to Americans who lose their job or want to go somewhere else the ability to take their coverage with them. This system would be administered in a seamless kind of way so you wouldn't have to go out and reapply and have physicals and incur excessive costs.

Which leads me to my next point where Democrats and Republicans are in agreement, and that is lowering the crushing costs of health care adminis-

tration. This Senate has begun to move in the right direction, with the leadership of the Obama administration, to promote electronic medical records. As far as I am concerned, we ought to send these paper medical records off to the Museum of American History and put them next to the typewriter and telegraph.

The Obama administration has made good progress in moving in that direction. But much more needs to be done to lower administrative costs in health care.

Once again, Democrats and Republicans have teamed up. They've said, let's use the withholding system. We already do that for administering much of the human services benefits on which our people rely. We will make sure people sign up once so they don't have to go through it again and again. We will pool people into these larger groups so they don't have to experience the excessive administrative costs that are associated with smaller groups, and they will have portable coverage so our people do not have to apply time and again, every time they change their job.

For each one of these issues—insurance reform, portability, lower administrative costs—already there exists a significant group of Democrats and Republicans in the Senate willing to join forces.

My own view is these are not partisan issues, and I think there are other areas that can also be tackled together by Democrats and Republicans.

One of the most contentious of those upcoming issues involves the tax rules for American health care. The reason these are so important is, of course, they are vital to Americans who are trying to pay for their health care and other essentials. These tax rules, which are upwards of \$250 billion a year, amount to the biggest federal health care program.

Prominent Democrats and prominent Republicans, just in the last few weeks, have said these rules do not make sense. Let me give some examples for colleagues on our side of the aisle of some of the progressives who have called for reforms just in the last couple of weeks. Robert Reich, the former Secretary of Labor, certainly one of the leading progressive thinkers in our country, has talked about the regressivity of these rules, how they disproportionately favor the most affluent. Bob Greenstein, the head of the Center on Budget and Policy Priorities, is on record with the same views. Both of those reflect the comments of individuals who are progressive.

Suffice it to say, a number of conservatives have spoken out against these rules as well. Milton Friedman, going back to a legendary conservative, began to speak out against these rules some time ago.

We ought to deal with these issues on a bipartisan basis. I know of no Senator—not a single one—who is going to support taxes on middle-class people on

their health care. It is off the table. It is not going to happen. There are 100 of us. Not a single one of us is going to support taxing those individuals. But I do think Democrats and Republicans, just like Robert Reich and Bob Greenstein on the Democratic side and conservatives going back to Milton Friedman on the Republican side, have said we can come together and find a way to make sure in the future these rules do not subsidize inefficiency and also disproportionately favor the most affluent.

What is tragic in the State of Delaware, the State of Oregon, the State of Georgia, is, if somebody does not have health care coverage and works in a furniture store outside Atlanta, they, in effect, have their Federal tax dollar subsidize somebody who is particularly well off who decides they want to get a designer smile in their health care plan.

Can we not all say in the interest of protecting taxpayers and fairness that we want that person who is interested in their designer smile to be able to buy as many of them as they want; but can we not agree, Democrats and Republicans, that if they are going to get a designer smile, they are going to pay for it with their own money rather than with subsidized dollars?

In each of these areas I mentioned there is an opportunity for Democrats and Republicans to come together. What each of the areas I have touched on deals with is making health care more affordable—more affordable for individuals, more affordable for families, and more affordable for taxpayers who are getting pretty darned worried about the debts that are being incurred and the prospect that their kids and their grandkids are going to have to pick up some of these bills.

I believe one of the keys to making health care more affordable is to make it possible for the individual, largely as part of a group where they can have some clout, to be rewarded for making a financially sound decision for herself and her family and to have a choice to go to the kind of program that makes sense for her and her family.

The current statistics show 85 percent of our people who are lucky enough to have employer coverage get no choice. Let me repeat that. Eighty-five percent of those who are lucky enough to have employer coverage get no choice.

Every one of us is going to require that a final bill protect somebody's right to keep the coverage they have. Mr. President, 100 Senators are going to vote for the requirement that you can keep the coverage you have. But can we not agree, as Democrats and Republicans, that we are also going to say you ought to have some other choices? I would like those choices to be in the private sector. If you can find a plan that is financially in your interest, you can keep the difference between what your health care costs today and what this new health pack-

age you buy costs. You can keep the difference. We will have a functioning market. If you save \$600, \$800 on the health care you buy, you have \$800 to go fishing in Oregon, and I suspect the Senators from Delaware and Georgia may have some other ideas for where people can use their savings.

The point is, we will have created a market where there is none now. I consider the current health care system today, for all practical purposes, a money-laundering operation. What we have done largely since World War II is set it up so that third parties call the shots, and there are not any opportunities for individuals who want to make a cost-conscious choice to buy a good quality health care package. In effect, the individual has been divorced from the process completely.

I am not calling for individuals to go off into the health insurance marketplace by themselves. What I am saying is they ought to have the opportunity, as we have as Members of Congress, to be part of a large group where they can have clout, where they aren't discriminated against, where they do have power in the marketplace to make a sensible choice for themselves and their family.

So in each of these areas, Mr. President—and this is why I wanted to come to the floor of the Senate today, because I know emotions are starting to run hot on this health issue—I have outlined ways in which Democrats and Republicans can come together. The Congressional Budget Office, which is the independent arbiter of all of this, has largely scored the proposals I have outlined in the legislation that 14 Senators are in support of as being budget neutral over a 2-year phase-in period. The CBO has said that in the third year the proposals would actually start bending the cost curve downward.

I close with this—and I thank my colleague and friend from Georgia for his patience—I think we have five of our most dedicated legislators working now on a bipartisan basis in two committees to bring Democrats and Republicans together. The leaders on the Finance Committee on which I serve—Chairman BAUCUS and Senator GRASSLEY have been extremely fair and gracious. They have put untold hours into this issue. Both of them have spent an exceptional amount of time with me, and they have extended that offer to literally any Member of the Senate, to sit down and spend time with them to try to address this bill in a bipartisan way. In the HELP Committee, Senator KENNEDY, Senator DODD, and Senator ENZI who serves on both committees, are extending the same kind of goodwill. I have told the leaders of both of these committees I am going to do everything I can to bring to them the ideas I have outlined today that have strong bipartisan support and have been scored by the Congressional Budget Office as saving money and pushing the cost curve downward. I have great confidence in the leaders of those two

committees, because they are showing they want to spend the time to bring the Senate together.

I see the distinguished Senator from Maine on the floor, and I know that for a lot of us who have worked together on health care over a lot of years, this is a historic opportunity. This is the place—the Senate—and this is the time to get it done. I believe Democrats and Republicans coming together can make it happen.

Mr. President, with that I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I ask unanimous consent to speak for 15 minutes as in morning business.

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

Ms. SNOWE. Mr. President, I rise to speak about the Family Smoking Prevention and Tobacco Control Act, but before I do I want to compliment the Senator from Oregon for his passion and his eloquent statement on behalf of renovating and reforming our health care system. That certainly will be a historic occasion. I have worked with him on so many instances in the past, in a bipartisan fashion, on key issues, such as prescription drugs and adding the critical Part D benefit to the Medicare Program. That also was a historic event in the Medicare Program—the first major expansion of Medicare since its inception. I look forward to working with him in a genuine bipartisan way to build a consensus for this historic occasion that is so essential and so important to all Americans.

It is important to get it right. It is important that we work together in a concerted fashion, as we have in the past. And certainly on the Senate Finance Committee, as we begin to proceed to mark up legislation in the future, I certainly am looking forward to working with him.

Mr. REED. Madam President, would the Senator yield for a parliamentary request?

Madam President, at the conclusion of the remarks of the Senator from Maine, I ask unanimous consent to be recognized for 5 minutes, and then following me that Senator ISAKSON be recognized for 10 minutes.

The PRESIDING OFFICER (Mrs. SHAHEEN). Is there objection?

Without objection, it is so ordered.

Mr. REED. I thank the Senator and the Chair.

#### FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Ms. SNOWE. Madam President, I am proud to join my colleagues in expressing first and foremost my admiration for Senator KENNEDY, for his long-standing, vigorous leadership, which has been the impetus behind this legislation. Undeniably, Senator KENNEDY continues to serve as the strongest of champions on so many matters relating to health care, and I am certainly,