

I think I have given enough examples to suggest that judicial activism is a two-way street.

As my Judiciary Committee colleague from Oklahoma said during the confirmation hearing for Chief Justice Roberts, "We each have our own definition of judicial activism."

So what does the "activism" charge add to the debate? I would say, very little.

Let's take a look at the charge that Judge Sotomayor is a judicial activist.

To support that claim, critics point to a single, much-publicized case involving New Haven firefighters. But this attack is not only disingenuous it is upside down.

In that case, Judge Sotomayor was part of a 3-0 decision based on settled circuit court precedent.

Her panel's decision supported the trial court judge's ruling and the decision of the local government regarding the best way to determine promotions for firefighters.

Later, a majority of the entire court of appeals ruled to let the panel's decision stand.

There is no doubt that the case addresses a difficult set of issues, and that the Supreme Court may come out the other way, though likely by a razor-thin margin.

But Judge Sotomayor's decision to defer to the democratically accountable, local New Haven government and rule along with the majority of her court not to upset settled precedent cannot meet any definition of judicial activism. In fact, the complaint seems to be that she was not activist enough.

The truth of the matter is that Judge Sotomayor, far from being an extremist, is very much in the mainstream.

Other than the firefighters case, she has decided 88 cases involving claims of race discrimination while on the court of appeals. In 78 of those cases, Judge Sotomayor and the panel rejected the claim of discrimination.

Of the 10 cases favoring claims of discrimination, 9 were unanimous, and of those 9, in 7 the unanimous panel included at least one Republican-appointed judge.

I am not so naive as to believe we can eliminate entirely the partisan exploitation of the confirmation process.

Maybe, though, we can put to rest the tired and un-illuminating charge of judicial activism.

After all, that charge is rarely meant as a genuine claim about the exercise of judicial power. Instead, it is generally just an established part of an elaborate and tired script, a claim that we can expect no matter who the nominee may be.

So let's focus on substance rather than empty code words. Let's debate the quality and merits of Judge Sotomayor's judicial philosophy and approach rather than hurl epithets or engage in demagoguery.

Next month, the Judiciary Committee will hold a confirmation hearing, at which Senators from both sides

of the aisle will be able to question Judge Sotomayor directly and publicly.

Because Supreme Court Justices are not elected but rather appointed for life, the qualifications of every nominee should be carefully examined, not only by Senators but also by the public at large.

This is the time when the public should be and will be paying close attention. We do not do ourselves, or the public, any favors if we rely on meaningless labels left over from the culture wars.

Mr. President, I urge my colleagues to reconsider what the charge of "judicial activism" brings to our debate.

Judge Sotomayor deserves our careful consideration, but I hope that my colleagues here in the Senate will continue to abstain from the culture wars and name calling that too often have characterized our judicial nominations over recent years.

#### HEALTH CARE REFORM

Mr. KAUFMAN. Mr. President, I wish to speak today about reforming our health care system. As I said last week, most Americans are satisfied with the health care they receive, but if we want to maintain and improve the quality of affordable health care, we need to act now. We must get health care costs under control while preserving choice. We must reform health care to make it more affordable for businesses and patients and less cumbersome for providers. Health care reform has been delayed for too long, and it cannot wait any longer.

If anyone needs reasons as to why health care reform is necessary, all they have to do is read some of the studies that have been released recently that show the dire consequences for our health care system and our economy if we refuse to act. For example, if we allow the status quo to persist, the White House Council of Economic Advisers has estimated that the sheer gross domestic product devoted to health care will rise from 18 percent in 2009 to 28 percent in 2030 and 34 percent in 2040. This trajectory is simply unsustainable.

Businesses in America have to compete against companies from other countries. Many of these foreign companies pay nothing for health care for their workers or retirees. Others pay far less than what many of our larger corporations pay. This puts many of our businesses at a disadvantage in the global marketplace.

A recent report by the Robert Wood Johnson Foundation and the Urban Institute reiterates the pressure that American businesses face in supplying health care benefits to their employees. These researchers prepared analyses using a simulation model estimating how coverage and cost trends would change between now and 2019. Looking at three different scenarios, the worst case would be where there is

a slow growth in incomes and continuing high growth rates for health care costs; an intermediate case where there would be some faster growth in incomes but a lower growth rate for health care costs; and the best case would be where there is full employment, faster income growth, and even slower growth in health care costs.

Under all three scenarios, the report showed a tremendous strain on business owners and their employees over the next decade if no reform is enacted. If health care reform is not enacted, the report projects that within 10 years, the cost of health care of a business can double from approximately \$430 billion for employee premiums in 2009 to \$885 billion in 2019. Even in the best case scenario, employer spending on health insurance premiums would rise by 72 percent.

This would most likely result in fewer Americans being offered employer-sponsored insurance, with a likely drop from 56 percent of employees getting coverage through their employer in 2009 to as few as 49 percent by 2019.

If no changes are made, and the number of people with employer sponsored insurance continues to decrease, that also means the ranks of the uninsured will increase. And the projections are not pretty.

Under the same scenarios, the number of uninsured will reach just over 53 million under the best case and as high as 66 million under the worst case.

Unfortunately, when those without insurance do receive care—most likely in an emergency room—the costs for treating them are passed on to those of us who are fortunate enough to have health insurance.

Providers and hospitals charge insurers more for the services provided to patients who do have health insurance to make up for the cost of treating the uninsured.

These cost shifts result in a "hidden tax" of higher premiums for patients and businesses.

Right now, this hidden tax results in an increase of about \$1,000 for premiums for family coverage.

It is time for reform.

Over the last decade, Americans have watched their health insurance premiums double at a growth rate six times faster than their wages, threatening their financial stability.

If we do not reform health care, if health care premiums continue to rise at 4 percent per year, in 2025 premiums for family coverage will cost more than \$25,000 per year.

Can you imagine how that dollar amount will affect American families?

On top of this, a recent study published in the American Journal of Medicine showed that bankruptcies involving medical bills now account for more than 60 percent of U.S. personal bankruptcies, an increase of 50 percent in just 6 years. And it is not the uninsured that is driving this increase.

In fact, more than 75 percent of families needing to enter bankruptcy because of health care costs actually

have health insurance. Most are middle class, well educated, and own their homes.

They just cannot keep up with the alarming rise in out-of-pocket costs associated with medical care.

It is time for reform.

Our current health care system is rampant with bureaucracy, inefficiency and waste.

An example of this is the amount of time physicians must spend filling out various forms required by insurance plans.

A national survey of physician practices found that, on average, doctors are spending 3 hours per week—the equivalent of 3 workweeks per year just on administrative tasks required by health plans.

The study showed that the cost of interacting with insurance plans amounts to \$31 billion annually and approximately 7 percent of all U.S. expenditures for physician and clinical services.

More importantly, on a personal level, this is 3 weeks less time annually that physicians have to spend with their patients discussing their treatment options, explaining the pros and cons of various procedures, learning the fears and anxieties of their patients, furthering the patient-doctor relationship.

It is time for reform.

We have attempted to reform our health care system several times in the past to no avail. But this year it is different.

This time, the call for reform is coming from people and organizations that previously opposed reform.

This time, because of the reasons I have mentioned, businesses, along with unions that represent their workers, are asking for reform.

This time, patient advocacy organizations and provider groups are calling for health reform.

Make no mistake, reforming health care is not an easy task, and it is one that will require true compromise from everyone across the ideological spectrum.

But it is a task that must be done.

Our country, and the health of its citizens as well as the economy, cannot afford to maintain the status quo.

Next week, the members of the Senate Health, Education, Labor and Pensions Committee and the Senate Finance Committee will begin deliberations on legislation to reform health care.

As the members of these committees gather to discuss and ultimately mark up legislation, I want to take this opportunity to again voice my support for a public option in a menu of insurance options from which people may choose.

I believe a public option is imperative in providing a true choice for all Americans.

Let me stress: this would be a purely voluntary option.

If you like your current plan, you keep it.

But there are too many Americans who do not have real choices when it comes to health insurance, especially those who live in rural areas.

In addition, many large urban areas are dominated by one or two insurers that serve more than 60 percent of the market. In fact, there are seven states where one insurer has over 75 percent of the market share.

A public option can help Americans expand their choice of an insurance provider.

A public option could take various forms, and I think the committees are the proper place to determine the appropriate contours of a public option.

But I want to point out again that right now, today, there are more than 30 State governments that offer their employees a choice between traditional private insurance and a plan that is self-insured by the State. Some States have had them for more than 15 years.

In these 30 States, the market share of the self-funded plans within the market for State employees typically ranges from 25 to 40 percent. This shows a healthy competition between the public option and private insurers, not domination by either type of insurer.

And I want to point out that these arrangements do not seem to be a problem or incite ideological issues at the State level.

Why then, should it be so when discussing health reform on a national level?

A public option can go a long way in bringing more innovation to the delivery system and introducing new measures to reduce cost and improve quality.

A public option can serve as a benchmark for all insurers, setting a standard for cost, quality and access within regional or national marketplaces.

It can have low administrative costs and can have a broad choice of providers. It can give Americans a better range of choices, make the health care market more competitive, and keep insurance companies honest.

And again, the key to all this is that a public option will be just that, an option, not a requirement.

Some people will choose it; others will not. If you like the insurance plan you have now, you keep it.

If you are happy with the insurance you get with your employer, or even the individual insurance market, you stay enrolled in that insurance plan. And if you are unsatisfied with the public option, you have the option to switch back to private insurers.

Americans firmly support the ability to choose their own doctor and value their relationships with their providers. So do I. It is key to any health care plan that Americans have a right to choose their doctor.

An overriding goal of health reform is to increase a patient's access to affordable, quality health care—offering a public option can help increase Americans' choices.

Mr. President, it is time for reform that protects what works and fixes what is broken.

It is time to reform health care so that American businesses can afford to offer health care to their employees.

It is time to reform health care so that all Americans have access to quality, affordable care, regardless of pre-existing medical conditions.

It is time to reform health care so that physicians and other providers have less redtape to deal with and more time to spend with patients.

It is time to reform health care so we place a higher priority on prevention and wellness, saving lives as well as money.

It is time to reform health care so all Americans can compare the costs and benefits of different health insurance policies.

And, it is time to reform health care so Americans have more choices and can retain the right to choose their own doctors.

For all these reasons and more, it is time for health care reform.

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

The PRESIDING OFFICER (Mr. MERKLEY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent for the quorum call to be rescinded.

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

#### SMALL NUCLEAR REACTORS

Mr. ALEXANDER. Mr. President, I would like to report a tremendous historic development in the ability of our country to have clean air, an effective way to deal with climate change, and enough low-cost, reliable electricity to help keep jobs in this country. Yesterday I attended a press conference from a company, Babcock & Wilcox. Also included was the Tennessee Valley Authority. The company and TVA announced that Babcock & Wilcox will soon make an application to the Nuclear Regulatory Commission for permission to start building and selling a small nuclear reactor that can be built in a factory, shipped by railway to a site, and put together like Lego blocks at the site. The nuclear reactor is a 125-megawatt reactor. That compares with the large nuclear plants, of which we have 104 today in the United States. Those plants produce, on average, 1,000 megawatts of electricity. This would be 125. So the real prospect exists that we will be able to have, in this country, nuclear reactors for electricity that might cost as little as one-tenth as much to build, can be built in 3 years instead of 6, and will produce, as I said, 125 megawatts instead of 1,000—making it easier to integrate them into our electric grid—and can be built in a factory and shipped to a customer.