

The PRESIDING OFFICER (Mr. KAUFMAN). The clerk will call the roll. The bill clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MCCONNELL. Mr. President, I am going to proceed on my leader time which I did not use earlier this morning.

#### HEALTH CARE WEEK IV, DAY III

Mr. President, when it comes to reforming health care, Republicans believe that both political parties should work together to make it less expensive and easier to obtain, while preserving what people like about our current system.

That is why Republicans have put forward ideas that should be easy for everyone to support, such as reforming medical malpractice laws to get rid of junk lawsuits; encouraging wellness and prevention programs that have already been shown to cut costs; and addressing the needs of small businesses without imposing taxes that will kill jobs.

Unfortunately, Democrats on Capitol Hill have opted against many of these commonsense proposals, moving instead in the direction of a government-run system that denies, delays, and rations care.

So it is my hope that the President uses his prime time question and answer session at the White House tonight to clearly express where he himself comes down on a number of crucial questions.

One question relates to whether Americans would be able to keep the care they have if the Democrat plan is enacted. The President and Democrats in Congress have repeatedly promised Americans they could keep their health insurance. Yet the independent Congressional Budget Office says that just one section of the Democrat bill being rushed through Congress at the moment would cause 10 million people with employer-based insurance to lose the coverage they have.

Another independent study of a full proposal that includes a government-run plan estimates that 119 million Americans, or approximately 70 percent of those covered under private health insurance, could lose the health insurance they have as a consequence of a government plan. America's doctors have also warned that a government plan threatens to drive private insurers out of business. And yesterday, the President himself acknowledged that under a government plan, some people might be shifted off of their current insurance.

So the first question is this: Will the President veto any legislation that causes Americans to lose their private insurance?

The President also said that health care reform cannot add to the already staggering national debt. Yet once

again, the Congressional Budget Office has said that just one section of the Democrats' HELP bill would spend \$1.3 trillion, while others estimate the whole thing could end up spending more than \$2 trillion. And here is how the CBO put it: "the substantial costs of many current proposals to expand Federal subsidies for health insurance would be much more likely to worsen the long-run budget outlook than to improve it."

Let me repeat that, Mr. President. The Congressional Budget Office says that some of the proposals in the Democrats' bill would be much more likely to worsen the long-run budget outlook than to improve it.

So the second question is this: Will the President veto a bill that adds to the Nation's already staggering deficit?

The President has said that no middle-class Americans would see their taxes raised a penny. Yet Democrats on Capitol Hill are considering proposals, such as a plan to limit tax deductions for medical costs, that would not only raise taxes on middle class families, but that would hit these families the hardest.

So the third question is this: Will the President veto any legislation that raises taxes on the middle class?

The President has said he supports wellness and prevention programs that have proven to cut costs and improve care by encouraging people to make healthy choices, like quitting smoking and fighting obesity. One such program is the so-called Safeway plan, which has dramatically cut that company's costs and employee premiums. Yet the bill Democrats are rushing through the Senate would actually ban the key provisions of the Safeway program from being implemented by other companies.

So the fourth question is this: Does the President support the HELP Committee bill, which bans providing incentives for healthy behavior, and will he veto legislation that bans these kinds of programs?

Finally, the President has said that government should not dictate the kind of care Americans receive. On this issue, the President has no stronger supporters than Republicans. But Democrats on the HELP Committee rejected a Republican amendment that would have prohibited a Democrat-proposed government board from rationing care or denying lifesaving treatments because they are too expensive.

So the fifth question is this: Does the President support the Republican amendment to prohibit the rationing of care, and will he veto legislation that allows the government to deny, delay, and ration care?

Five questions: Will the President use his veto pen to make sure Americans are not kicked off their current health plans? Will he oppose any legislation that increases the nation's deficit? Will he oppose any bill that raises taxes on middle-class families? Will he reject any bill that excludes common-

sense wellness and prevention programs that have been proven to cut costs and improve care? And will he disavow legislation that denies, delays, and rations care?

The American people want Republicans and Democrats to work together to enact health care reform, but they want the right kind of reform not a massive government takeover that forces them off of their current insurance and denies, delays, and rations care. Americans are right to be concerned about what they are hearing from Democrats. It's my hope that the President addresses those concerns tonight once and for all.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. KYL. Mr. President, the nomination of Harold Koh concerns me for a number of reasons. Primarily, his view that international law should guide U.S. law and his criticism of our first amendment right to freedom of speech and his opposition to the Solomon amendment, which conditions Federal funding to educational institutions on allowing military recruiting on campus.

The State Department Legal Adviser helps formulate and implement U.S. foreign policy, advises the Justice Department on cases with international implications, influences U.S. positions on issues considered by international bodies, and represents the United States at treaty negotiations and international conferences.

In short, this position requires the utmost deference to the Constitution of the United States. Mr. Koh is a proponent of transnationalism, the belief that Americans should use foreign law and the views of international organizations to interpret our Constitution and to determine our policies.

Mr. Koh has gone so far as to refer to the United States as part of an "axis of disobedience" in reference to America's alleged violations of international law.

During his 2003 speech at the University of California at Berkeley, Mr. Koh said:

When I came to government, the first conclusion I reached was that the rule of law should be on the U.S. side.

That's a system of law—

He is speaking now of international law—

that we helped to create. So that's why we support various systems of international adjudication. That's why we support the UN system. We need these institutions, even if they cut our own sovereignty a little bit.

Mr. Koh's views on the first amendment again portray a desire to make

American law subservient to international law. In his Stanford Law Review article—the title of which was “On American Exceptionalism”—Koh stated that our first amendment gives “protections for speech and religion . . . far greater emphasis and judicial protection in America than in Europe or Asia,” and he opined that America’s “exceptional free speech tradition can cause problems abroad.” Furthermore, he stated that the way for the “Supreme Court [to] moderate these conflicts” is “by applying more consistently the transnationalist approach to judicial interpretation.”

This is breathtaking. Is it even consistent with an oath to protect and defend the Constitution? Should we now begin to dismantle a founding principle of our democracy in order to appease the so-called international community, as Mr. Koh advocates? If the Founding Fathers had followed this advice, this country would not be the leading example of freedom in the world it is today and a leader in getting others to protect free speech and assembly and other freedoms—such as are being asserted in Iran today. Conforming our views to the norm, which Mr. Koh acknowledges provides less protection than our Constitution would, therefore, would adversely affect the very international community which Mr. Koh seeks to emulate.

Let me put it another way. People in Iran today are taking to the streets to try to exercise some degree of free speech and assembly and petition their government. Mr. Koh acknowledges that in our Constitution we provide much more protection for those rights than anywhere else, or, I think as he put it, than the mainstream of international law provides. That is true.

I think that is something we should not only adhere to for our own benefit but for the benefit that it provides to others around the world as an example of what they should seek to achieve and because of the moral status it gives the United States to be able to say to the leaders of a country such as Iran: You need to provide free speech and assembly and the right to petition their government, and the fact that you are not doing it is wrong because if we believe we are all created equal, by our Creator, that means we have moral equality as individuals. Everybody in Iran, we believe, would have the same right as anyone else to exercise these God-given rights. And if that is true, it makes no sense to diminish those rights as they have been interpreted by our courts in the United States, interpreting our U.S. Constitution, in order for us to conform to an international norm.

Rather, it makes sense for us to continue to adhere to those high standards and to try to bring other countries along with us. In fact, I would postulate that because of our high standard of rights and the example that our Constitution provides, many countries of the world have actually advanced the

cause of free speech and assembly and petitioning their government more than they otherwise would have because they have the example of the United States to look at.

If I think of countries, the revolutions, the Orange Revolution, and the changes in governments in places such as Poland, back when it broke from the Soviet Union, and Ukraine and Georgia and all of the other places in the world where people finally broke free from the shackles of a government that would not permit free speech, what were they seeking to do? To exercise free speech in order to petition their government for individual freedom.

So the United States should jealously guard those rights in our Constitution rather than, as Mr. Koh says, have the United States interpret its Constitution more in line with the mainstream of thinking in the rest of the world.

If you sort of try to apply a mathematical formula, and you average what the rest of the world thinks about free speech, the right of religion, the right to assemble, the right to petition the government, the average is far below what we provide. We are pretty much at the top of the pile in terms of what we protect.

But if we were to follow Mr. Koh’s advice, in order to be more accepted in the world, we would draw our standards of protection of individual rights down to the leveled area of the mainstream around the world. If you look around the world today, there are so many dictatorships, totalitarian systems, autocracies—even a country such as China—which provide very little in the way of freedom for their people. If you just took the average based on the population of the world, I know what the mainstream would be. It would not be very much in the way of individual rights.

So we should jealously protect what we have in the United States, which is a constitution that at least thus far has been interpreted to protect those rights jealously, not just for our benefit—though that should be, I submit, the sole purpose of a Supreme Court Judge, for example, deciding Supreme Court cases; what does the Constitution say for the people of America?—but if one is going to consider the international implications, I think it would be exactly the opposite of what Mr. Koh is saying; namely, that we should be concerned that any diminishment of the interpretation of our rights would negatively affect other people around the world.

I do not care if the average is a lower standard. I wish those countries would bring their standards up to ours. But I certainly do not want to conform to some idea of international acceptance or international popularity by bringing ourselves down to their level. This is not what “American Exceptionalism” is all about—the title of the piece Mr. Koh wrote.

He has argued in other contexts as well that unique American constitu-

tional provisions should conform to the international view of things. I have been speaking of free speech and assembly, the right to petition your government, to practice religion. We think those are absolutely basic. But there are some other rights in our Constitution. One of them is the second amendment. It is controversial.

Other countries do not have a protection such as the second amendment to the U.S. Constitution. If we want to amend the Constitution, we can do that. But as it stands right now, the second amendment has been upheld by the Supreme Court to apply to every individual in the United States, free from Federal undue interference with respect to the ownership of guns.

But if we adopt Mr. Koh’s argument about conforming to international norms, including stricter gun control, it may bring us more in line with some other countries, but it certainly would not be in keeping with the interpretation of the U.S. Supreme Court with respect to that second amendment.

In an April 2002 speech at the Fordham University School of Law, Mr. Koh advocated a U.N.-governed regime to force the United States “to submit information about their small arms production.” He believes the United States should “establish a national firearms control system and a register of manufacturers, traders, importers and exporters” of guns to comply with international obligations. This would allow U.N. members such as Cuba and Venezuela and North Korea and Iran to have a say in what type of gun regulations are imposed on American citizens.

As the dean of Yale Law School, Mr. Koh was a leader in another effort I think is troublesome. It was an effort to deprive students of the freedom to listen to military recruiters who wanted to explain on campus the benefits of a career in our military services. We all—every one of us in this body—frequently express our gratitude to the people in the U.S. military services who protect us, who put themselves in danger in order to protect the very freedoms we are talking about. Yet as dean of the law school, he would not allow the recruiters for these military institutions to come on campus. Yet he would protect students’ freedom to listen to antiwar speakers on campus. But Yale closed its doors to military recruiters primarily because it disagreed with the military’s policies on gays, which, by the way, is a policy of the President and the Congress, not just the military.

In court, Mr. Koh and others in Yale’s administration challenged the constitutionality of the Solomon amendment. The Solomon amendment is a statute that denies Federal funds to educational institutions that block military recruiters. The Supreme Court unanimously ruled against Mr. Koh’s position.

Mr. Koh also led a lawsuit against Department of Justice lawyer John

Yoo for doing what any government lawyer is expected to do: provide his legal opinions to the people he worked for, the policymakers of the U.S. Government.

The Supreme Court has said, in no uncertain terms, that government lawyers need immunity from suit in order to avoid "the deterrence of able citizens from acceptance of public office" and the "danger that fear of being sued will dampen the ardor of . . . public officials in the unflinching discharge of their duties."

In other words, by encouraging this lawsuit, Mr. Koh was effectively deterring his students from doing precisely what Yale otherwise recommends that they do: enter public service.

Elections have consequences. I understand and generally support the prerogative of the President to nominate individuals for his administration he deems appropriate as long as they are within the spectrum of responsible views. However, because of the importance of his position in representing the United States in the international community with respect to treaties and other agreements, his own words and actions demonstrate to me he is far outside the mainstream in such a way that his appointment as State Department Legal Adviser could damage U.S. sovereignty.

So I oppose his nomination. I urge my colleagues—all of us who take an oath to support and defend the Constitution and who appreciate there are always challenges to America's sovereignty—to closely examine Mr. Koh's record and determine whether he would be a representative not only whom they could be proud of but whom they could rely upon in representing the American public interest.

At the end of the day, our sovereignty depends upon the American people. We govern with the consent of the governed. Our government does not start with rights. We had a group of people in America who gave their government certain limited rights in order for their common good. So the American people are our bosses. They pay our salary. We need to listen to them.

When I talk to my constituents—at least in recent months—I notice a theme that is recurring, and it is troublesome to me first of all because it is the kind of thing that sometimes is influenced by people who have less character than those of us in this body and others who may disagree with each other but seriously approach these issues. It is the idea that little by little the people are losing sovereignty, and that the country of America is giving up its sovereignty to others. Who are the others?

I am not a conspiratorial person. That is why I say some of the people who promote this idea do not do so for the right reasons, and I do not like to see them paid attention to by our constituents. But every time we adhere to a U.N. resolution or sign a treaty with another country or agree to abide by

the terms of a trade agreement, or something of that sort, to some extent we are giving up a little bit of our sovereignty. As long as we do all of those things with the consent of the governed and as long as we do it through the representative process where we pass a law or we confirm a treaty, ratify a treaty, it is done in the right way. We may make a mistake, we may go too far sometimes, but that is the decision we make. We have the right to make mistakes too. But when we go outside the legal framework of the country to cede a little bit of our sovereignty, as Mr. Koh says is OK, then we have abused the confidence the American people have placed in us and we have gone beyond our legal ability as representatives of the people to give up this little degree of sovereignty.

What I am concerned about, because of his position, which is the direct link between the United States and all of these international organizations and countries which our country necessarily deals with, is that he cares less about the protection of American sovereignty than the vast majority of the American citizens. In fact, he has a point of view which regards that as less important than conforming to international norms and even being in line with popular opinion internationally. As I said before, it is nice to be liked, but at the end of the day, the United States should not be about popular opinion.

We could probably be more popular with 100 countries in the United Nations if we stopped harping on things such as clean elections and free speech and the right to assembly and so on because my guess is there are probably 50 to 100 countries in the United Nations that don't respect their citizens' rights nearly as much as we do. In fact, the number is probably larger than that. They are uncomfortable with the example of a country such as the United States which sets on such a high pedestal our American citizens' rights, that we not only protect those rights for our citizens, but we hold them out to the rest of the world as something that would be beneficial for their citizens as well. This makes them uncomfortable, and rightly so, because sometimes, as we are seeing in Iran today, people decide that it is a good thing to decide to exercise those rights and they feel the denial of that ability by their governments is wrong. They are even willing to risk their lives, as our forefathers did, to assert those rights. That is how important they are.

How odd it is, therefore, to come across such an intelligent—and he certainly is intelligent—man such as Mr. Koh who has a very different point of view about these important American rights, who believes it is more important for us to be in the mainstream of international thinking even though that mainstream represents a view of rights far less than the United States views our rights; it is far more important for us to be well viewed in the

international community than it is to strictly adhere to those rights that are embodied in our Constitution. That is extraordinarily troubling to me. Some of his views are breathtaking as they have been asserted.

I know he has met with some of our colleagues, that he is apparently, in addition to being very intelligent, very charming, and that his essential position is: Well, that is what I said in a speech, but I will recognize my obligations as a member of the administration.

I think we are all informed by our views, and if we care enough about them to speak out in a way that he has, as frequently and as forcefully as Mr. Koh has, it is difficult to believe that all of a sudden, in a moment of his confirmation, he will forget about everything he said and what he believes and conform his representation of the American people to what is a far more mainstream point of view; namely, that we should defend our Constitution to the absolute maximum extent we can, irrespective of the views of other countries around the world. That is why, at the end of the day, as I said, I hope my colleagues will review his record very carefully and will judge and eventually base their vote on his confirmation on what he has said—because he is an intelligent man who knows very well what he has said—and what, therefore, could flow from his words as actions as our representative in the State Department as its Legal Adviser.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARDIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CARDIN. Mr. President, I ask unanimous consent to speak as in morning business for up to 20 minutes, with the time counting toward the postcloture debate time.

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

#### METRO COLLISION

Mr. CARDIN. Mr. President, I rise today to offer my condolences to the families and loved ones of those who lost their lives in the tragic collision of two Metro trains this past Monday evening. This accident is the most devastating, by any measure, in Metro's history, and it has affected our entire region. My prayers are with those who lost their lives and my deepest sympathies are with their families, friends, and all those they touched.

I want to take a moment to praise the first responders, who worked tirelessly through the night to rescue the injured and save lives. It is during tragedies such as this that we can fully appreciate the heroism and bravery of our first responders.