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Senate

The Senate met at 9:31 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

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

Let us pray.

God of peace, Author and Finisher of our faith, You hung the stars in their place and put the planets in their orbit. Inspire our Senators to commit this day and their lives into Your gracious care. Give them vision to discern their duties and the strength both of heart and resolve to discharge them. May they rededicate themselves to serving those in need, obeying Your command to labor for the least and the lost in our world. Lord, enable our lawmakers to be a credit and not a debit in the ledger of Your providential purposes.

We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 18, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLI-

BRAND, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Madam President, following leader remarks, the Senate will proceed to a period of morning business for 1 hour, with Senators permitted to speak for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority controlling the second 30 minutes. Following morning business, the Senate will resume consideration of the FAA bill. We will have debate run concurrently until 11:30 a.m., starting with the Sessions-McCaskill amendment and the Pryor amendment, with the time equally divided between Senators SESSIONS and PRYOR or their designees. At 2 p.m., the Senate will vote in relation to those amendments, with Sessions-McCaskill being the first in the sequence. Additional rollcall votes in relation to FAA amendments are expected throughout the day.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period of morning business for 1 hour, with Senators permitted to

speak for up to 10 minutes each, with Republicans controlling the first half and the majority controlling the final half.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. GREGG. Madam President, I ask unanimous consent that the Republican time be extended to 10:10 a.m.

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

HEALTH CARE

Mr. GREGG. Madam President, I rise with some of my colleagues today to discuss one of the issues that is going to have a huge impact on how this health care issue is resolved or not resolved; that is, the question of what reconciliation is and what it implies relative to the legislative process.

"Reconciliation" is an arcane term. It is a term that is tied to and created by the Budget Act under which we function in the Congress. It is ironic that the use of reconciliation would become the central effort in buying votes in the House of Representatives in order to pass the big, the giant health care bill, known as the Senate health care bill—which bill, as we all know, expands the size of government by \$2.3 trillion and, in fact, we understand now there is a new score from CBO which is going to raise that number even further when it is accurately reflected.

It takes the government and puts it into basically the business of delivering health care in this country in a way that is extraordinarily intrusive and will cost a lot of people who are on private insurance—the insurance they have—which they probably feel fairly comfortable with although it may be very expensive—and it still leaves 23 million Americans uninsured while claiming to do a better job of insuring Americans and improving our health care system when, in fact, what it does

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



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is create massive debt that will be passed on to our children which they cannot and will not be able to afford, explodes the size of government and, in my opinion, will lead to a diminution of quality of care in this country.

The way this big bill, which I outlined in the thumbnail process, is going to be passed in the House of Representatives is to have a trailer bill called a reconciliation bill, which is an art form developed around here relative to the budget process which is supposed to be used for very specific efforts, certainly not for the purpose of buying votes from the liberal constituencies in the House or to pass a bigger bill. But that bill needs to be discussed as to what its implications are.

A number of us have come to the floor of the Senate today to try to explain what the reconciliation bill is and how it has historically been used but what the implications are relative to some of the things in the bigger Senate bill, in the giant bill, the giant spending bill; what the implications of the reconciliation changes in the reconciliation trailer bill will be on the bigger Senate bill, and what the representations that are being made are and whether they are accurate.

Specifically, let's take one issue, and that is what is known as the Cadillac tax. The tax on Cadillac policies, which is the appropriate way to describe this, is a proposal which was in the Senate bill to basically eliminate the deductibility for health insurance policies that exceeded a certain level of cost—\$27,000, I believe, is the number. To the extent an insurance policy paid for by an employer exceeds that number in cost, the excess in amount—let's say it costs \$32,000 a year for an employer to have an insurance policy for you. That sounds like a lot of money, but actually there are a number that cost that much, especially of union programs. To the extent the difference between the \$27,000 and the \$30,000 is paid for by your employer, that will no longer be deductible by the employer as an expense. It is done in a more complex way, but that is basically the way it works out.

The effect of that is fairly significant on what is known as the Social Security trust fund because it actually creates a situation where there will be more taxable wages, which will mean that the Social Security trust fund will be getting more tax revenue.

This brings into play the question of whether you can even bring forward language of this type which affects the Social Security trust fund through the taxing of Cadillac policies in a reconciliation bill. I think this needs to be discussed because of a very important issue as to whether the House Members are being told correctly how this will be dealt with in the Senate.

I know my colleague wants to speak to the issue.

Mr. THUNE. Madam President, I ask my colleague, it seems to me, as he described this reconciliation trailer bill

that the House will use, first, to try to fix elements of the Senate bill they do not like, and then that reconciliation bill would come back to the Senate, I ask the Senator: Is it not true that the House and Senate already passed their health care bills? Why then is this second vehicle, this reconciliation bill necessary?

It seems to me at least the House, if it were to vote on the Senate-passed bill, that would put into law most of the provisions that are included in that bill. So why is the second process necessary, I ask my colleague from New Hampshire?

Mr. GREGG. It appears that the House Democratic membership is, first, afraid to vote on the bill. They are actually going to "deem" this, it appears, versus vote on it, which is an incredible act of political cowardice, in my opinion.

Secondly, they definitely do not want to go to conference. They do not want to do what the traditional process around here calls for. When you have two different bills—a Senate bill and a House bill—we take them to conference and discuss those bills and come out with a final bill. Why don't they want to do that? Because they know they cannot pass the final bill in the Senate. To get around that, they developed this policy of reconciliation as a trailer bill so they will send back the reconciliation bill to be voted on here—not on the big bill, a \$2.5 trillion bill. Thus, not only will they avoid a vote in the House on the big bill, they will avoid having to go to conference, and they will have basically bypassed the constitutional process in this manner.

Mr. CORNYN. If the Senator will yield for a question, I have heard this process whereby the House is going to deem the Senate bill passed and then pass a reconciliation bill which will then be sent over to the Senate as Speaker PELOSI is asking Members of the House to hold hands and jump off a political cliff, hoping the Senate will catch them by passing the reconciliation bill unaltered or just in the same form that it passed the House. But is it not true that complications arise in section 313 of the Congressional Budget Act because of the Byrd rule?

We have heard a lot of talk about the Byrd rule, what points of order might be appropriate in the Senate. I wonder if the Senator—he touched on this a moment ago—would explain, with 41 Senators agreeing to sustain all points of order in the Senate, how many different holes can be punched in the reconciliation bill passed by the House when points of order are sustained.

The Senator from New Hampshire mentioned the Cadillac tax. I note that the president of AFL-CIO was visiting with President Obama at the White House on Wednesday seeking further reassurances that the tax on the Cadillac plans would be deferred, and presumably that would be part of the reconciliation bill.

Can the Senator from New Hampshire explain what kind of jeopardy the

Byrd rule and points of order call into play that would make it unlikely that the President's promise to defer the tax on union Cadillac plans could pass the Senate?

Mr. GREGG. In order to buy votes, as I understand it, in the House—and this is basically a vote-buying exercise—the reconciliation bill, in order to buy votes, they are going to put changes to the Senate bill in the reconciliation bill, and then send the reconciliation bill back here to be voted on, on the theory that it only takes 51 votes to pass it.

The only problem with that approach is that a reconciliation bill is part of the budget process and has very strict limitations on what can be in it. So much of what they are talking about putting in the reconciliation bill may well be knocked out in the Senate.

For example, the Senator from Texas mentioned the Cadillac tax. If in any way the Cadillac policy tax language impacts Social Security, it will be subject to a point of order. In fact, it will be subject to two points of order in the Senate, and it will take 60 votes to overwhelm that point of order. Therefore, since 41 members of the Republican Party have signed a letter saying we are going to sustain the rules of the Senate, we are going to stand by the laws that govern the Senate, the procedures here, that language will be knocked out.

What is being represented to House Democrats as a way to get their vote, to vote for the big bill which is to change the language relative to the Cadillac policy tax in the smaller bill, the reconciliation bill, that probably will not survive the process and will probably be knocked out on a procedural move, a procedural challenge on the Senate floor because it is inconsistent with the Senate rules.

Mr. CORNYN. If the Senator will allow me another question to clarify a point he made, and then certainly turn to the Senator from South Dakota, the point of order we are talking about, is it true that under section 313(B)(1)(F), that provision, that specific provision could drop out of the bill, but under a separate point of order under section 310(g) of the Congressional Budget Act, it could literally bring down the entire bill? Is that a correct reading of the Congressional Budget Act?

Mr. GREGG. The Senator from Texas understands the rules very well. A 310(g) challenge—to put it in understandable language—is a challenge that says it affects Social Security. The language affects Social Security. If the Cadillac policy tax impacts the Social Security trust fund, which, in my opinion, it does, and the Parliamentarian rules that it does, then the entire bill will fall.

Mr. THUNE. Let me, if I might, explore this a little further with the Senator from New Hampshire and follow up with a question that the Senator from Texas asked.

As I understand this then, the Cadillac tax provisions that were in the

Senate bill—and that bill is now over in the House and going to be voted on—because of the changes that have been proposed to it now, it would delay the implementation of the Cadillac tax. Of course, the Cadillac tax, as the Senator from New Hampshire explained, would cap the amount of health care benefits that would be tax free, essentially, so above and beyond that would then become taxable. There is an assumption made that there would be a shift from health care benefits from employers to cash compensation, which would be taxable and generate more payroll tax revenues. That was the Senate bill as it passed here. The additions or modifications that are being considered in the House would delay the implementation date. Therefore, there is a lot of payroll tax revenue that would be coming in under Social Security that would no longer be realized or at least not be realized until the year 2018, which affects the amount of revenue that would be coming in under the Senate-passed bill, if these changes are adopted.

As I understand what the Senator from New Hampshire is saying, that will impact Social Security revenues. Those are payroll tax revenues, and any changes that are made to Social Security create a violation of the reconciliation process in the Senate—the Byrd rule, as the Senator from Texas referred to—and, therefore, a point of order would lie against that reconciliation bill when it comes back over here.

The majority, I assume, would move to waive that point of order, but what happens if that point of order is not waived? If the majority is not successful in having that point of order waived, what happens to that reconciliation bill, which at that time would be under consideration in the Senate.

Mr. GREGG. Well, there are two points of order available. One is the Byrd point of order. If that were not waived, that section would go out of the bill. So people interested in that section, who used that section as the reason they were justifying voting for the bigger bill, that section would not survive. So they would have been sold a bill of goods.

The second point of order would take down the whole bill, and it would lose its reconciliation protections, which would mean the bill would require 60 votes to pass here. I can absolutely guarantee you it could not get 60 votes to pass. So you could presume the entire reconciliation bill would be dead. Again, people who are relying on the reconciliation bill in the House of Representatives—House Members on the Democratic side who are being told we will fix it in reconciliation—may well be being sold a bill of goods, if it is determined that some of this reconciliation language affects Social Security because it is very likely the entire bill will go down in the Senate because it will violate our Senate rules.

Mr. CORNYN. Following up with what the Senator from New Hampshire

is saying by “being sold a bill of goods,” is he suggesting the leadership in the House and Speaker PELOSI are guaranteeing to House Members that the bill they pass—the reconciliation bill—will pass the Senate intact and, thus, they will have political cover from their constituents who don’t like this bill, but they will be able to shape and affect the final outcome?

Is the Senator from New Hampshire suggesting that because the 41 Senators who have said we will vote against waiving any budget points of order, that there will either be holes punched in that reconciliation bill that will make it impossible for the Speaker to keep her promise to the House Members ultimately or that it will bring down the bill entirely? Is that what the Senator is saying when he talks about selling them a bill of goods?

Mr. GREGG. Essentially, what I am saying is—and the Senator from Texas has certainly put it in context—the only reason they could possibly be using this vehicle, this reconciliation vehicle, this extraordinary process is because they are using it to get people to vote for the bigger bill that they do not like, and they are claiming that bigger bill will be improved by this reconciliation vehicle. Yet it is pretty obvious that the reconciliation vehicle, when it comes over here, is going to be punched through and through with holes because it will violate the rules of the Senate on issues such as this.

Mr. CORNYN. That is particularly true of the promise the President has apparently made to union leadership to defer the application of a Cadillac tax—the excise tax on Cadillac health insurance plans. That promise, as the promise to televise the negotiations and pass the bill on C-SPAN; the promise that if you have a policy you like, you can keep it; the promise that the bill would not raise taxes and the like; that would be another promise that would not be kept—that promise would be broken?

Mr. GREGG. That would be like a “the check is in the mail” type promise. I would not take it with a serious grain of salt.

Mr. THUNE. Well, is it possible, I would ask both my colleagues, that the process the House is using—and by the way, this deeming the bill passed seems to be a very curious way of trying to pass legislation of this consequence, which literally impacts one-sixth of our economy and literally impacts every American in a very personal way—is meant to somehow divorce themselves from the accountability or the responsibility that comes with voting for this in the House; therefore, they are going to use this deeming provision that would essentially pass this bill without having to have a recorded vote on it? By the way, I find that incredibly ironic for a legislative body, which is supposed to be about debating and voting on legislation.

But let’s assume that happens and they pass the Senate bill and then at-

tach this reconciliation vehicle, which both my colleagues have referred to. Then it comes over here and these points of order that have been raised against the bill, which the Senator from Texas and the Senator from New Hampshire have both referred to—the Byrd point of order and this section 310(g), if that point of order is raised and the Chair sustains it, I guess—or essentially validates that is a valid point of order—there would be a motion to waive it. But this point of order on this extraneous Social Security provision that could be raised against the bill would sink the bill entirely, as I understand what the Senator from New Hampshire is saying. This other—the Byrd rule point of order—would punch holes in it, but it would, in any case, have to go back to the House of Representatives.

So if you are a Member of the House of Representatives, the best you can hope for is that you are going to get a bill back to the House that has a lot of provisions you cared about knocked out. The worst is that it might completely tube that process in the Senate, if this point of order, the Social Security point of order that could be raised against it, is actually not waived by the Senate. Our Republican Senators—41 of us—have signed a letter saying we will oppose waiving points of order that are raised against the reconciliation bill when it gets to the Senate.

I guess my question for my colleagues is: Under that type of scenario, what happens next? Do the House Members who are going to be voting for this, assuming the Senate will fix all these things, then have to have that bill come back? Is there any way in which all these fixes that they hope are going to be eventually attached to the Senate-passed bill will be attached or that these things they hope to fix in this bill are going to be fixed?

It seems to me it is very curious that they are betting on the come, so to speak, and trusting the Senate to fix these things and that is an incredible leap of faith.

Mr. CORNYN. I think the Senator explained it very clearly. Put in this larger context, can you imagine being asked to cast a career-ending vote because the people in your district hate this bill. Yet you are following Speaker PELOSI’s instructions to vote for it and defying the wishes of your constituents. Can you imagine doing it in the context where there is so little certainty as to the outcome because of this reconciliation process and the Byrd rule and the points of order we have talked about.

Put that also in the larger context that the Senator mentioned of the deeming of the bill passed. I think that is clearly unconstitutional. Have you ever heard of a bill becoming law that wasn’t passed by the House and the Senate? There have been legal scholars who have written this is clearly unconstitutional. I imagine there is going to be months, perhaps years, of litigation,

possibly even going to the U.S. Supreme Court, challenging this bizarre “Alice in Wonderland” procedure known as deeming the bill passed. Have you ever heard of such a thing?

Mr. GREGG. The concept where you would take the most important piece of legislation dealing with domestic policy in this country in the last 50 years and not vote on it is an affront to the purpose of a constitutional democracy. We are sent to the Senate to vote on a lot of issues and a lot of them not quite as significant as this one. But if you have the most significant issue you are going to possibly ever have before you, certainly in my career, you would expect that you would want to vote because you would want to express yourself.

I mean, why did you run for this job? Why did you want to serve your constituents if you were not willing to stand on something of this importance?

The ACTING PRESIDENT pro tempore. The hour of 10:10 has arrived.

Mr. GREGG. I thank the Chair, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

HEALTH CARE

Mr. CASEY. Madam President, I wished to review a couple points with regard to where we are on health care. We are at a point now where, of course, we are still awaiting action in the House—the other body, as it is sometimes referred to in the Senate—so we have to allow the House process to take place, and then, of course, we will be taking up health care more directly or more definitively next week.

But I think it is important to put this issue into the context of real people. We have a lot of discussions in the Senate and throughout Washington on process and procedure and numbers and all that, and that is important and relevant, but at the end of the discussion—the old expression “at the end of the day”—we have to be able to not only talk to the American people, as we have over many months now—in some cases many years—about what this legislation will do, but also we have to be aware of what is concerning a lot of people, a lot of families.

I received a letter in the early part of 2009 from a woman in Pennsylvania who lives in Berks County—kind of the eastern side of our State, just north of Philadelphia, a couple counties north of Philadelphia, Berks County—and the woman who wrote to me, Trisha Urban, is someone whom I have come to know over the past couple years because of the tragedy in her own life which relates directly to health care.

Trisha Urban related to me, in a letter she wrote to me but also in subsequent conversations, her story, which was the subject of a lot of discussion and public notoriety in her home area. I wish to read portions of the letter—not the whole letter but I think the relevant parts of this letter. She talks

about her husband, she and her husband having all kinds of trouble with health care, which relates directly to almost every major issue we are talking about. Quoting from her, she said:

Like many Americans, we have difficulty with our health insurance. My husband had to leave his job for 1 year to complete an internship requirement to complete his doctorate in psychology. The internship was unpaid and we could not afford COBRA.

I will end the quote there for a second. We have had debates for weeks on extending COBRA health insurance to those who are unemployed—a safety net not only for Trisha Urban and her family, at that time, but so many American families—millions of them—especially in the midst of a terrible recession.

Picking back up on her letter:

Because of preexisting conditions, neither my husband's health issues nor my pregnancy—

She talked earlier in the letter about her pregnancy.

—would be covered under private insurance. I worked four part-time jobs and was not eligible for any health benefits. We ended up with a second-rate health insurance plan through my husband's university. When medical bills started to add up, the insurance company decided to drop our coverage stating the internship did not qualify us for the benefits.

I will comment on that section. In those few sentences, you have the preexisting condition problem and the “insurance company dropped our coverage” problem. This is information we have heard over and over in testimony from real people about what insurance companies in America are doing to these families. They are discriminating against families—legally, apparently, under current law. That is part of why we want to change what has been happening in America, change the law through passage of legislation to deal with the question of protecting families with preexisting conditions.

At long last—we have talked about this issue for decades but certainly in the last couple of years and more intensively in the last couple of months—this opportunity we have, this legislation gives us a chance not just to talk and to pontificate about what is wrong with the system but to act, to vote and to act to change the system to protect families.

Again, we are talking about preexisting conditions, we are talking about people, families who are going to work every day, paying their premiums, doing their part of the agreement they have with an insurance company. Yet, despite paying their premiums, despite doing what they are supposed to do under the current system, they are being denied coverage, they are being discriminated against because they have a preexisting condition or, even more outrageously, their children are being denied coverage because of a preexisting condition.

I have to ask myself—and I think a lot of Americans are asking this question—why do we tolerate this? Why do

we go from year to year and say: it is terrible, insurance companies deny people coverage because of preexisting conditions even though they have been paying their premiums; it is terrible that insurance companies drop their coverage; it is terrible that they put limits on the kind of care they will provide, but they will put a dollar limit on it for a year or for a lifetime? That is really terrible, but there is nothing we can do about it.

That is basically what we have been saying for years. We complain about the problem, and no one or not enough people here in Washington are willing to take on the insurance company and say: No, you are not going to do that any longer. We are going to make those practices illegal.

We have a chance, and it is an up-or-down vote situation. We have a chance over the next couple of days—I hope not weeks but certainly the next couple of days—to decide these questions once and for all. We are either going to stand up to insurance companies or we are going to allow them to control people's lives in a way that is insulting to the American people. It is damaging the ability for families to have coverage and to have better health care.

I believe what insurance companies do on these discriminatory practices is harming our economy long term. How can you be a productive worker if you have to worry every day, even though you paid your premium, whether an insurance company can discriminate against you, against your family, and especially against your children?

That is what Tricia Urban was pointing to here, not because it was an issue in Washington but it was an issue in her life, in the life of her husband, and eventually having an impact on her own pregnancy. I pick up the letter again, and I am quoting Tricia Urban again in the letter. She talks about what the costs were for her and for her husband:

We were left with close to \$100,000 worth of medical bills. Concerned with the upcoming financial responsibility of the birth of our daughter and the burden of current medical expenses, my husband missed his last doctor's appointment less than 1 month ago . . .

Meaning less than 1 month prior to February of 2009.

Here is where she begins to close the letter. I am quoting again.

I am a working class American and do not have the money or the insight to legally fight the health insurance company. We had no life insurance. I will probably lose my home, my car, and everything we worked so hard to accumulate and our life will be gone in an instant.

If my story is heard, if legislation can be changed to help other uninsured Americans in a similar situation, I am willing to pay the price of losing everything.

You might be wondering what happened to her, what happened in her life. Was it just a situation where they got dropped from their coverage? That is bad enough. Is it a situation where they got dropped from coverage and also were denied treatment or care or