#### NAYS-39

Alexander Crapo Lugar DeMint McCain Barrasso McConnell Bennett Ensign Brown (MA) Enzi Murkowski Graham Nelson (NE) Brownback Grassley Bunning Risch Burr Gregg Roberts Chambliss Hatch Sessions Coburn Hutchison Shelby Cochran Inhofe Snowe Collins Johanns Thune Vitter Corker Cornyn LeMieux Wicker

### NOT VOTING-5

Bond Isakson Voinovich

The motion was agreed to.

Mr. DURBIN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, it goes without saving we all appreciate everyone's cooperation, having the Senate work so well, yesterday and today. Therefore, after having had long discussions with my friend, the distinguished Senator from Kentucky, I ask unanimous consent that we are going to adjourn in a few minutes; that we will convene at 9:45 a.m. this morning, resume the bill, consider amendments up to 2 p.m., we will dispose of points of order that have been determinedand one is still under review—by 2 p.m. There will be no further amendments after 2 p.m., and the third reading will occur after points of order are disposed of after 2 p.m.

I ask that in the form of a unanimous consent agreement.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

# MORNING BUSINESS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

## TRIBUTE TO ROSE GORDON

Mr. REID. Mr. President, I rise today to honor Ms. Rose Gordon of Reno, NV. Ms. Gordon is a dedicated social worker and public servant who has devoted much of her life to serving the people of Nevada, especially those who are traditionally underrepresented. Her commitment toassisting Nevadans is

shown both by her work as a Washoe County social worker and by her involvement in numerous community organizations.

As a social worker, Ms. Gordon has been known for her endless motivation and the sense of self empowerment she gives to members of her community. For 15 years Ms. Gordon has partnered with local school districts to identify potential high school drop-outs and has worked with them and their families to encourage the student to complete high school and receive their diploma. For her efforts to assist children and families, Rose has been honored by the mavor of Reno.

Ms. Gordon has also worked diligently in the pursuit of civil rights for all individuals. Rose has previously held the positions of president of her local NAACP chapter and vice president of the NAACP Tri-State Conference of Idaho, Nevada, and Utah, and continues to serve as an adviser to the NAACP youth council. She is a member of the People of Color Caucus which focuses on the unequal distribution of wealth and knowledge to underserved populations. Through her participation and leadership in these organizations, Rose has been able to assist many members of her community and help ensure equal opportunities for Nevadans.

Ms. Gordon's selfless dedication to assisting individuals who are often forgotten shows that she is a truly great American. She is a leader in the Reno community and an example of how one person with a sense of duty can positively affect many around them.

I am honored today to recognize Ms. Rose Gordon and thank her for her commitment and for the work she has done to serve the people of Reno, NV.

#### TRIBUTE TO JUDY TREICHEL

Mr. REID. Mr. President, I rise today to honor the work of Judy Treichel, a true and dedicated public servant. Over two decades ago, the Federal Government decided to dump the country's nuclear waste in the Nevada desert, ignoring the opposition of most Nevadans and their leaders and widespread concern that the project was not scientifically sound. Judy recognized that the government's actions were unjust and decided to help lead the opposition to the Yucca Mountain project. So, she founded a nonprofit organization, the Nevada Nuclear Waste Task Force, and dedicated her career to making sure that the people of Nevada and across the country have access to accurate information on the proposed dump at Yucca Mountain and that they are given the opportunity to be heard.

Since 1987, Judy has attended thousands of meetings, hearings, conferences, and classroom discussions related to nuclear waste and Yucca Mountain. As executive director of the task force, she served as the principal liaison between the public interest community and the relevant Federal

Government agencies. She brought a public voice to government hearings, technical meetings, and national conferences, and she provided information to grassroots organizations and individuals on the very technical and complicated issues surrounding Yucca Mountain, which concerned and affected their communities. That is how Judy became one of the leading voices in Nevada on the proposed nuclear waste dump.

I have been honored to work with Judy Treichel over the past 23 years, and I can say from experience, that the people of Nevada have been lucky to have such a dedicated and capable woman fighting on their behalf. That is why I was proud to send Judy a note recently letting her know that, with her help, we have won the fight against Yucca Mountain.

# PATIENT PROTECTION AND AFFORDABLE CARE ACT

Mr. LEVIN. Mr. President, I am pleased that the President signed into law today the Patient Protection and Affordable Care Act. This bill included a provision that would extend Medicare wage index reclassifications for hospitals across more than half of the United States, including several in my home State.

The Medicare Modernization Act of 2003 included section 508 which reclassified many hospitals' Medicare wage index to appropriately reflect the wage index of their area. This provision ensures that hospitals are able to compete fairly in that area's labor market. Since the MMA was enacted, section 508 has been extended numerous times. Many hospitals, including some in Michigan, were left out of these subsequent extensions. Consequently, those hospitals, originally included in section 508, required technical corrections so they could continue to be reclassified along with the other original hospitals included in section 508. This is something that we have done in previous years and is nothing new. These technical fixes just ensure that the original intent of section 508 is maintained.

Mr. LEAHY. Mr. President, earlier this week, we saw what I have called the dawn of a new day of hope for tens of millions of Americans who have fallen through the cracks—or who worry with good reason that they may fall through the cracks—of our broken health insurance system. The signing into law of comprehensive health insurance reform by President Barack Obama ranks with the creation of Social Security and Medicare as a defining moment and legislative achievement.

Congress and Presidents from both parties tried to reform the health insurance system for decades. Through an arduous process over the last year, America rose to meet one of its foremost challenges. This effort prevailed through the grueling gauntlet of obstructionism erected by defenders of

the status quo. It took a year of debate, the work of numerous committees and both chambers of Congress to enact health insurance reform and to begin to get a handle on costs by having Americans covered by health insurance.

Now that comprehensive health insurance reform is the law of the land, the Senate is already working on improvements to this legislation. These include making coverage more affordable and creating a more equitable distribution of Medicaid reimbursements to States like Vermont that acted early and correctly on reform.

Some are still in denial, and continue to resist the path to reform. Some in the Senate resist improvements to the aspects of the new law that they had previously criticized. They appear intent on voting against improvements and, in effect, in favor of the aspects of the law they had said raised concerns. Some opponents of reform continue to distort what this reform really means, and continue their misleading arguments and spurious attacks. Some appear to see political gain in trying to attack health care reform with lawsuits. This is an effort to have judges override the legislative decisions of Congress, the elected representatives of the American people. This is an effort to repeal through the courts what they cannot do in Congress. Regardless, health insurance reform is the law of the land.

Every member of Congress takes an oath of office. Ours is to "support and defend the Constitution of the United States." I take this oath very seriously and always have. We took it seriously during the many months of open and public debate of the Patient Protection and Affordable Care Act last year. During Senate debate last December, as chairman of the Senate Judiciary Committee, I responded to arguments about the constitutionality of the bill's requirement that individuals purchase health insurance. During that debate, the Senate rejected a purported constitutional point of order raised by Republicans claiming that the individual responsibility requirement was unconstitutional. The Senate's judgment and mine were that the act was constitutional.

This week the President signed the measure into law. This President has studied the Constitution. He has served in the Senate. He has taught classes on constitutional law. The oath he took when he became President of the United States of America is provided in the Constitution. He swore that he would to the best of his ability "preserve, protect and defend the Constitution of the United States." I know President Obama and know that he takes his oath seriously. I know that when he signed the Patient Protection and Affordable Care Act into law, he understood it to be consistent with the Constitution

Despite the overheated rhetoric from opponents, the authority of Congress

to act is well-established by the text and the spirit of the Constitution, by prior acts of Congress like Social Security and Medicare, by longstanding precedent established by our courts. and by the history of American democracy. These were arguments considered and rejected in congressional committees. They were arguments expressly considered by the Senate. Indeed the findings adopted and contained in the law itself are that the individual responsibility requirement is commercial and economic in nature, has a substantial effect on interstate commerce and "essential to creating effective health insurance markets." That is the congressional judgment.

Ironically, the so-called individual mandate has long been a Republican proposal. The individual mandate was supported by the senior Senator from Arizona, Mr. McCAIN, when they opposed health care reform efforts during the Clinton administration. It was a part of the health care reform effort in Massachusetts supported by former Governor Mitt Romney, a Republican.

This individual mandate did not originate with President Obama. In fact, when President Obama was a candidate, as a matter of policy he did not support the individual mandate requirement as part of his initial comprehensive health reform proposal. It was one of the hundreds of Republican health care reform ideas he came to support and that were included in the law as the bill was drafted, developed, debated and passed. Now that the law is enacted, some Republicans have changed their tune in order to undercut these reforms by suggesting that it is unconstitutional.

Although the legislative record supports the constitutionality of the individual mandate, and expert after expert maintain that there is no question about congressional authority, I, again, recall what I set forth last December when the Senate considered this issue, made its findings and reached its determination.

The Constitution of the United States begins with a preamble that sets forth the purposes for which "We the People of the United States" ordained and established it. Among the six purposes set forth by the Founders was that the Constitution was established to "promote the general Welfare." It is hard to imagine an issue more fundamental to the general welfare of all Americans than their health.

The authority and responsibility for taking actions to further this purpose is vested in Congress by article I of the Constitution. In particular article I, section 8, sets forth several of the core powers of Congress, including the "general welfare clause," the "commerce clause" and the "necessary and proper clause." These clauses form the basis for Congress's power, and include authority to reform health care by containing spiraling costs and ensuring its availability for all Americans.

Any serious questions about congressional power to take comprehensive ac-

tion to build and secure the social safetv net have been settled over the past century. According to article I, section 8: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States." This clause has been the basis for actions by Congress to provide for Americans' social and economic security by passing Social Security. Medicare and Medicaid. Those landmark laws provide the well-established foundation on which Congress builds with the Patient Protection and Affordable Care Act.

As noted by Tom Schaller, enforcing the individual mandate requirement by a tax penalty is far from unprecedented, despite the claims of critics. Individuals pay for Social Security and Medicare, for example, by payroll taxes collected under the Federal Insurance Contributions Act, FICA. These FICA payments are typically collected as deductions and noted on Americans' paychecks every month. As Professor Schaller recently wrote: "These are the two biggest government-sponsored insurance programs administered by the [Federal Government], and two of the largest line items in the federal budget. These paycheck deductions are not optional, and for all but the self-employed they are taken out immediately." The individual mandate requirement in the Patient Protection and Affordable Care Act is hardly revolutionary when viewed against the background of Social Security and Medicare that have long required individual payments.

Congress has woven America's social safety net over the last three score and 12 years. Congress's authority to use its judgment to promote the general welfare cannot now be in doubt. America and all Americans are the better for it. Growing old no longer means growing poor. Being older or poor no longer means being without medical care. These developments are all due to congressional action.

The Supreme Court settled the debate on the constitutionality of Social Security more than 70 years ago in three 1937 decisions. In one of those decisions, Helvering v. Davis, Justice Cardozo wrote that the discretion to determine whether a matter impacts the general welfare "is not confided in the courts" but falls "within the wide range of discretion permitted to the Congress." Turning then to the ʻnation-wide calamity that began in 1929" of unemployment spreading from state to state throughout the Nation, leaving older Americans without jobs and security, Justice Cardozo wrote of the Social Security Act: "The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near."

The Supreme Court reached its decisions upholding Social Security after the first Justice Roberts—Justice

Owen Roberts in the exercise of good judgment and judicial restraint began voting to uphold the key New Deal legislation. He was not alone. It was Chief Justice Hughes who wrote the Supreme Court's opinion in West Coast Hotel v. Parrish upholding minimum wage requirements as reasonable regulation. The Supreme Court also upheld a Federal farm bankruptcy law, railroad labor legislation, a regulatory tax on firearms and the Wagner Act on labor relations in National Labor Relations Board v. Jones & Laughlin Steel Corporation. The Supreme Court abandoned its judicially-created veto over congressional action with which it disagreed on policy grounds and rightfully deferred to Congress's constitutional authority.

These Supreme Court decisions and the principles underlying them are not auestion. AsDean Erwin in Chemerinsky of the University of California Irvine School of Law wrote in an op-ed in the Los Angeles Times: "Congress has broad power to tax and spend for the general welfare. In the last 70 years, no federal taxing or spending program has been declared to exceed the scope of Congress' power. The ability in particular of Congress to tax people to spend money for health coverage has been long established with programs such as Medicare and Medicaid." I included this article in the CONGRESSIONAL RECORD in December.

The opponents of health insurance reform are now going so far as to call into question the constitutionality of America's established social safety net. They would leave American workers without the protections their lifetime of hard work have earned them. They would turn back the clock to the hardships of the Great Depression, and thrust modern American back into the conditions of Dickens' novels. That path should be rejected again now, just as it was when another inspiring President led the effort to confront the economic challenges facing Americans 70 years ago. To strike down principles that have been settled for nearly threequarters of a century would be wrong and damaging to the Nation, and would stand the Constitution on its head.

For the past year we debated whether or not to pass health insurance reform. Before passing the law, we debated whether to control costs by having all Americans be covered by health insurance. We considered untold numbers of amendments in committees and before the Senate. That is what Congress is supposed to do. We consider legislation, debate it, vote on it and act in our best collective judgment to promote the general welfare. Some Senators agreed and some disagreed, but it was a matter decided by the full Senate. In fact, due to Republican obstruction, it took an extraordinary majority of 60 Senators, not a simple majority of 51, for the Senate's will to be done.

The fact that Senate Republicans disagree with the majority's effort to help hardworking Americans obtain access

to affordable health care does not make it unconstitutional. Nor does the fact that some partisans seek to make political gains by attacking the health care reform we have passed. As Justice Cardozo wrote in upholding Social Security: "[W]hether wisdom orunwisdom resides in the scheme of benefits set forth . . . it is not for us to say. The answer to such inquiries must come from Congress, not the courts." I agree. Justice Cardozo understood the separation of powers enshrined in the Constitution and the Supreme Court's precedent.

As Chief Justice Marshall wrote in his landmark decision in McCulloch v. Maryland: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional." In 1803, our greatest Chief Justice. John Marshall, upheld the constitutionality of the Judiciary Act in Stuart v. Laird, and noted that "there are no words in the Constitution to prohibit or restrain the exercise of legislation power." That is true here, where Congress acted to provide for the general welfare of all Americans.

I believe that Congress was right when it decided that the problems of the lack of availability and affordability of health care and of health insurance and the rising health care costs that burden the American people, is a problem, "plainly national in area and dimensions," as Justice Cardozo wrote of the widespread crisis of unemployment and insecurity during the Great Depression. I believe that it was right for Congress to determine that it is in the general welfare of the Nation to ensure that all Americans have access to affordable quality health care. But whether other Senators agree or disagree with me, none should argue that we should turn back to clock to the Great Depression when conservative activist judges prevented Congress from exercising its powers to make that determination.

In seeking to discredit health insurance reform, the other side relies on a resurrection of long-discredited legal doctrines used by courts a century ago to tie Congress's hands by substituting their own views of property to strike down laws such as those guaranteeing a minimum wage and outlawing child labor. They have to rely on such cases of unbridled conservative judicial activism as Lochner v. New York, Shechter Poultry Corporation United States, Reagan v. Farmers Loan and Trust and the infamous Dred Scott case. Those dark days are long gone and better left behind. The Constitution, Supreme Court precedent, our history and congressional action all stand on the side of Congress's authority to enact health insurance reform legislation

Under article I, section 8, Congress has the power "to regulate Commerce

with foreign Nations, and among the several States." Since at least the time of the Great Depression and the New Deal, Congress has been understood and acknowledged by the Supreme Court to have power pursuant to the commerce clause to regulate matters with a substantial effect on interstate commerce. The Supreme Court has long since upheld laws like the Fair Labor Standards Act against commerce clause challenges, ruling that Congress had the authority to outlaw child labor. The days when women and children could not be protected, when the public could not be protected from sick chickens infecting them, when farmers could not be protected and when any regulation that did not guarantee profits to corporations would be voided by the judiciary are long past. The reach of Congress' commerce clause authority has been long established and well settled.

Even recent decisions by a Supreme Court dominated by Republican-appointed justices have affirmed this rule of law. In 2005, the Supreme Court ruled in Gonzales v. Raich that Congress had the power under the commerce clause to prohibit the use of medical marijuana even though it was grown and consumed at home, because of its impact on the national market for marijuana. Surely if that law passes constitutional muster, Congress' actions to regulate the health care market that makes up one-sixth of the American economy meets the test of substantially affecting commerce. Conservatives cannot have it both ways Nor can they ignore the settled meaning of the Constitution as well as the authority of the American people's elected representatives in Congress.

The regulation of health insurance clearly meets the test from Raich, since the activities "taken in the aggregate, substantially affect interstate commerce." In fact, when the Senate considered the health insurance reform bill in December, it adopted a set of findings related to the impact of the individual mandate on interstate commerce. Among those findings, now the law, were that "health insurance and health care services are a significant part of the national economy," that the individual "requirement regulates activity that is commercial and economic in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased" and that the "requirement is essential to creating effective health insurance markets.

These findings demonstrate that Congress took into account the significant cumulative economic effects on the Nation of the rising costs of health care, with those costs making up a large percentage of our economy and with American businesses struggling to provide benefits to their employees. As set forth in a paper by Georgetown University and the O'Neill Institute for National and Global Health Law, which I discussed in December, the requirement for individuals to purchase health

insurance would address the problem of free riders, millions of Americans who refuse to buy health insurance and then rely on expensive emergency health care when faced with medical problems. This shifts the costs of their health care to people who do have insurance, which in turn has a significant effect on the costs of insurance premiums for covered Americans and on the economy as a whole. A requirement that all Americans have health insurance—like requirements to pay FICA—is within congressional power if Congress determines it to be essential to controlling spiraling health care costs. In passing health care reform, Congress determined that requiring that all Americans to have health insurance coverage, and preventing some from depending on expensive emergency services in place of regular health care, can and will help reduce the cost of health insurance premiums for those who already have insurance.

Addressing these problems is at the core of Congress's powers under the commerce clause. In fact, the Supreme Court expressly addressed this issue 65 years ago, ruling in 1944 that insurance was interstate commerce and subject to Federal regulation. Congress responded to this decision in 1945 with the McCarran-Ferguson Act, which gave insurance companies an exemption from antitrust laws unless Federal regulation was made explicit under Federal law. It is the immunity from Federal antitrust law enacted in McCarran-Ferguson that I have been working to overcome with the Health Insurance Industry Antitrust Enforcement Act of 2009. My proposal would repeal health insurance companies' antiquated exemption from the antitrust laws. These are the pro-competition rules that apply to virtually all other businesses, to help promote vibrant markets and consumer choice. Competition and choice help lower costs. expand access and improve quality.

I launched this effort last fall, built a hearing record to examine its merits and worked to build bipartisan support. House leaders late last year added it to their plan. And last month it became the first stand-alone part of the health reform package to pass on its own, in a strong bipartisan vote of 406 to 19 in the House. To me this is the latest proof that, appearances aside, there is much common ground in the health reform plan—more than partisan opponents or the insurance industry would have the public believe.

Why would this exemption have been necessary if insurance was not interstate commerce? I strongly believe that the exemption in McCarran-Ferguson is wrongheaded. But would anyone seriously contend that it is unconstitutional? Of course not.

Now that we have enacted the Patient Protection and Affordable Care Act, I hope we will soon turn to this reform by taking up and passing the House-passed bill. We should end the health insurance exemption from our

precompetitive Federal antitrust laws without delay.

The Constitution contains in article I, section 8, the necessary and proper clause. That, too, provides a basis for congressional action. This clause gives Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by his Constitution in the United States.' The Supreme Court settled the meaning of the necessary and proper clause 190 years ago in Justice Marshall's landmark decision in McCullough v. Maryland, during the dispute over the National Bank. Justice Marshall's wrote that "the clause is placed among the powers of Congress, not among the limitations on those powers." The necessary and proper clause goes hand in hand with the commerce clause to ensure congressional authority to regulate activity with a significant economic impact.

Congress has enacted and the President has signed into law the Patient Protection and Affordable Care Act. This landmark legislation addresses our health care crisis and helps provide health care insurance for millions of Americans previously uninsured and seeks to encourage lower costs for Americans who are insured. We have acted to ensure that Americans not risk bankruptcy and disaster with every illness. Americans who work hard their entire lives should not be robbed of their family's security because health care is too expensive. Americans should not lose their life savings because they have the misfortune of losing a job or getting sick. That is not America.

One of the great American successes of the last century was the establishment of a social safety net of which all Americans can be grateful and proud. Through Social Security, Medicare and Medicaid. Congress established some of the cornerstones of American economic security. Comprehensive health insurance reform has now joined them. Congress has acted within its constitutional authority to legislate for the general welfare of all Americans. No conservative activist court, on any level, should overstep the judiciary's role by seeking to turn back the clock and deny a century of progress.

#### WORLD TUBERCULOSIS DAY

Mr. BROWN of Ohio. Mr. President, I wish today to recognize World Tuberculosis Day.

It is a day that allows us to take stock of how far we have come, and how far we have to go, in the fight against this deadly disease. Claiming about 1.8 million lives each year, TB is a vicious killer that must be stopped in order to protect the global public health.

Today we recognize not only that we must do more, but that, with the technology, medical expertise, and a world-wide commitment, we can do more.

We have waged an aggressive campaign to eliminate TB in the U.S. However, progress toward TB elimination has slackened.

Anywhere from 9 to 14 million Americans are infected with latent TB. Without treatment, about 5 to 10 percent of them will develop active TB. As the global pandemic of drug resistant TB spreads, the disease poses an imminent public health threat to the United States

According to the World Health Organization, 5 percent of all new TB cases are drug resistant, with estimates of up to 28 percent in some parts of Russia. Of these cases, it is estimated that only 7 percent are being treated.

Over the past decade, the U.S. has had more than 83 cases of an extremely drug resistant strain of TB, known as XDR-TB, which is very difficult and expensive to treat. Because XDR-TB recognizes no borders, these cases will continue to rise unless we adopt control measures on a global scale.

As it stands, drug resistant and extremely drug resistant forms of TB are not easily transmittable; however, should an easily transmittable strain arise, we face the real possibility of a deadly pandemic in our country and across the globe.

TB control is not just an imperative for the developing world; it is an imperative for every nation on this planet.

Our current drugs, diagnostics, and vaccines are out of date and increasingly inadequate to control the spread of TB. The TB vaccine, for instance, provides some protection to children, but provides little to no help to prevent TB in adults.

In addition, the most commonly used TB diagnostic in the world, sputum microscopy, is more than 100 years old and lacks sensitivity to detect TB in most HIV/AIDS patients and in children.

Finally, the course of treatment available today is simply too long, resulting in skipped doses and the development of resistant strains.

New TB drug regimens are long overdue, and Congress must act to help accelerate the development, approval, and delivery of new TB medicines around the globe. We must bring our methods of prevention and treatment into the 21st century so we can fight the new age of the TB epidemic.

Congress has made significant strides toward this goal. The enactment of the Lantos-Hyde Act and the Comprehensive TB Elimination Act reaffirmed our commitment to research, treatment, and prevention.

These laws put the U.S. on the path to successfully treating 4.5 million TB patients and 90,000 new multidrug resistant TB cases by 2013. However, Congress and this administration must not underfund the commitment we made with this legislation.

World Tuberculosis Day provides an opportunity to reflect on the progress made to eradicate TB, acknowledge the