

controlling the first half and the majority controlling the final half.

The Senator from New Hampshire is recognized.

#### REGULATORY REFORM

Mr. GREGG. Mr. President, first, I congratulate the Republican leader for a superb statement on where we stand relative to the bill on regulatory reform. It is truly a bill that is misnamed. This bill should be called "The Expansion of Government for the Purposes of Making Us More Like Europe Act."

As a very practical matter, the bill does almost nothing about the core issues that have created the issue of financial stability in this country. It does nothing in the area of Fannie Mae and Freddie Mac, which is the real estate issue. It does virtually nothing in the area of making sure we have a workable systemic risk situation and structure so we can address the issue of systemic risk. Instead of addressing it in a constructive way, which would actually put some vitality and usefulness in to regulate the derivatives market, it actually steps back and creates a derivatives regulation that all the major regulators, whom we respect, have said simply will not work.

I wish to talk about that. I didn't think there was anything you could do that would make this regulatory proposal on derivatives worse. But now we see an amendment from the chairman of the committee, which I am sure is well intentioned, but it makes it worse. The way the derivatives language of the bill has evolved is it gets worse and worse, in an almost incomprehensible and irrational way, which is rather surreal. It is almost as if we were at the Mad Hatter's tea party the way this derivatives language is evolving.

We now have in the bill itself proposed language which the chairman of the FDIC, the Federal Reserve staff, Chairman Volcker, and the OCC have all said will not work. In fact, not only did they say it will not work, they have said it will have a negative impact on the stability of the derivatives market. It will cause the market to move overseas and make America less competitive. It will cause a contraction in credit in this country, and it will hurt consumers and users of derivatives across this Nation.

Those are the words—paraphrased to some degree but essentially accurate—of the major players who actually discipline and look at this market, in defining the bill as it is presently before us. Now, in some sort of bizarre attempt—as if the Mad Hatter had arrived—to correct this issue, we see an amendment from the chairman of the committee suggesting that we should put into place an even more convoluted system, tied to uncertainty of no decision occurring for 2 years. The proposal says we will have the stability council, which is made up of, I think, nine different regulators, take a look at what

is in the language of the bill now, relative to taking swap desks out of financial institutions and determine whether that language makes sense. Well, it doesn't. We know that already because a group of regulators has already said it doesn't make sense. So we are going to wait for 2 years to determine it doesn't make sense, when we already know it doesn't. Then they are going to make that recommendation to the Congress, so the Congress gets to legislate to correct what we already know is an error in the bill.

Then, to make this an even more Byzantine exercise in regulatory absurdity, the Secretary of the Treasury has the right to overrule the Congress or maybe act independently of the Congress and take action pursuant to whatever the stability council decided.

On top of this convoluted exercise in chaos, the proposal actually undermines the Lincoln proposal, which is in the bill, and makes it even less workable, by saying the swap desk cannot even be retained by affiliates but must be totally separated, which inevitably leads to swap desks that do not have capital adequacy or stability or the necessary strength to defend the derivatives action which they are making markets in. So you weaken and significantly reduce the stability of the market, making it more risky and, at the same time, the estimate is, you would contract credit in this country by close to \$4 trillion less credit.

What that means is John and Mary Jones, who are working on Main Street America producing something they are selling to a company that is maybe a little larger, and then they are selling that product overseas, are probably not going to be able to get the credit they need to produce the product, so they will have to contract the size of their business, and we will reduce the number of jobs in this country or certainly the rate of job creation.

This country's great and unique advantage is that we are the best place in the world for an entrepreneur and risk-taker—somebody who is willing to go out there and do something to create jobs—to get capital and credit at a reasonable price and in a reasonably efficient way. This bill fundamentally undermines that unique advantage that we have in this language, and this language compounds that event, undermining that unique situation. It is, as I said, similar to participating in the Mad Hatter's tea party to watch the way this bill has evolved on the issue of derivatives regulation. The product—I guess the Queen of Hearts would be proud of it, but I can tell you the effect on the American people, on commerce, and on Main Street will be extraordinarily negative should we pass it.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, I ask unanimous consent that I may be recognized for 15 minutes.

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

#### BERWICK NOMINATION

Mr. ROBERTS. Mr. President, recently, Leader MCCONNELL and Dr. JOHN BARRASSO, the distinguished Senator from Wyoming, and I engaged in a colloquy regarding President Obama's nominee for the head of CMS, the Centers for Medicare Services, Dr. Donald Berwick.

Simply put, Dr. Berwick has a long history of interesting statements—pertinent statements—that support government rationing of health care, an issue I have vigorously fought against throughout the entire health care debate.

The White House response to our colloquy, it seems to me, was most unfortunate, if not rather incredible. Here is what the Obama administration had to say:

No one is surprised that Republicans plan to use this confirmation process to trot out the same arguments and scare tactics they hoped would block health insurance reform.

The fact is, rationing is rampant in the system today, as insurers make arbitrary decisions about who can get the care that they need. Dr. Don Berwick wants to see a system in which those decisions are transparent—and that the people who make them are held accountable.

This is a fascinating response. Instead of flatout denials of government rationing, we have excuses. If you read between the lines, you will notice that for the first time ever in this debate, the Obama White House is admitting their health care plan will ration health care. It just doesn't make it transparent.

Remember, when Republicans, such as myself and JON KYL and Dr. COBURN, the Senator from Oklahoma, tried to warn that health care reform would result in government-rationed care, we were dismissed as crazy reactionaries or even worse. President Obama accused us of trying to scare people, and no less than the American Association of Retired Persons, AARP—that organization that purports to represent Medicare patients and seniors all across our great Nation—said our rationing concerns were a mere "myth"—that "none of the health care reforms . . . would stand between individuals and their doctors or prevent any American from choosing the best possible care."

How interesting that now, after the health care bill has become law, the President is admitting we were right all along. Here is the quote:

Don Berwick wants to see a system in which those [rationing] decisions are transparent—and that the people who make them are held accountable.

That is a complete and utter about-face.

Although cloaked in the typical straw man arguments that have come to characterize this administration,

the statement is undeniable. The government is going to ration your health care.

To set the record straight, I don't accept rationing, whether it be transparent or otherwise. I am opposed to rationing whether it is done by the government or by an insurance company. I am not defending any of the practices of insurance companies that have unjustly denied claims.

I am against rationing whether it is proposed by Republicans or Democrats or think tanks or the special interest sidelines in this city.

But the Obama administration's response does nothing to address my concerns that our government will ration health care. Instead, we finally have an admission from the White House that this is what they plan to do.

I am not holding my breath for an apology or a correction from the President or the AARP or any of the other organizations that demonized our concerns for the past year. But I do intend to ask some very tough questions of Dr. Berwick, the President's pick to implement and enforce literally thousands of regulations that will soon come pouring out of the Department of Health and Human Services, and that will inevitably include rationing.

It is nothing personal, as I have said before. I have met Dr. Berwick. He is a very personable, affable, intelligent man. I don't doubt that he has support from his peers who know him. I am not questioning his honor or his motives or his love for this country.

As an aside, I would appreciate it—and I know a lot of other Members of this body would as well—if the White House extended the same courtesy to me and, for that matter, anybody else raising serious policy questions.

But we have a fundamental disagreement about the future of our health care delivery system. I happen to think it is important that we have this conversation so the American people can understand what is going on.

Please quit attacking my motives and the motives of others. Accentuate the policy, eliminate the politics, and don't mess with those in between raising reasonable questions. That is an old song that rather dates me, but I think it is appropriate. Questions such as this: What did Dr. Berwick mean when he said:

I am a romantic about the [British] National Health Service; I love it. All I need to do to rediscover the romance is to look at the health care in my own country.

So he is both romantic and supportive of the British National Health Service.

With cancer survival rates for women 10 percentage points higher in the United States than in England and over 20 points higher for men, why does he think their government-run system is superior to our system?

Please explain this quote:

If I could wave a magic wand . . . health care [would be] a common good—single payer . . . health care [would be] a human right—

universality is a nonnegotiable starting place . . . justice [would be] a prerequisite to health equity as a primary goal.

While that may sound very nice, very idealistic, the reality is, declaring health care to be a human right necessarily places some citizens' rights above others—suppressing the rights of some in favor of another government-favored group.

If you are saying health care is a universal right, what you are essentially saying is that some people have a right to someone else's property, whether that be taxable income or doctor services or their health care.

I disagree with this argument. Health care has become an entitlement for some in this country, but it cannot be properly described as a right without egregious government coercion and income redistribution and patient care consequences.

But maybe that is OK with Dr. Berwick. After all, he did say that "any health care funding plan that is just, equitable, civilized, and humane must—must—redistribute wealth from the richer among us to the poorest and less fortunate." I want to hear more from Dr. Berwick on this point.

Furthermore, what did he mean when he said that "equity" is a necessary component of "quality"? Does that mean high-quality care should not be available unless it is available to all? This certainly seems to square with the United Kingdom's practice of delaying access to the latest breakthrough drugs and technologies because of their high costs. What does Dr. Berwick think this attitude will do to investments and innovations in life-saving treatments?

And what about this quote:

Limited resources require decisions about who will have access to care and the extent of their coverage. The complexity and cost of health care delivery systems may set up a tension between what is good for the society as a whole and what is best for an individual patient . . . Hence, those working in health care delivery may be faced with situations in which it seems that the best course is to manipulate the flawed system for the benefit of a specific patient . . . rather than to work to improve the delivery of care of all.

Is this a suggestion that it is a doctor's duty to concentrate on the good of society or the good of his or her patient? That certainly sounds like a proponent of socialized medicine to me. I use that word very carefully.

Finally, this is a question about the following statement by Dr. Berwick:

Most people who have serious pain do not need advanced methods; they just need the morphine and counseling that have been around for centuries.

That is an amazing statement. I know Dr. Berwick is familiar with the Liverpool Care Pathway to death that is employed in the British health care system and its reliance on morphine and counseling. He should also be aware of the growing concerns of many British doctors that this so-called pathway to death is being overused for patients who would have otherwise re-

covered, especially stroke patients. Is this what is being advocated for the American health care system? For Medicare patients? This certainly sounds like the "death panels" that became so roundly ridiculed and dismissed by ObamaCare supporters during last year's debate.

I know that "socialized medicine" and "death panels" have become loaded terms. I understand that. But if that is what you are for, you should just say so. Don't be afraid to have this discussion. Dr. Berwick certainly has not been shy about his views in the past.

Maybe this is a comment more appropriately directed at the administration than at Dr. Berwick, but do not hide behind straw men and name-calling of those who disagree with you.

I have legitimate concerns—many of us have legitimate concerns—about the direction we are taking in this country with particular regard to health care. The thousands of people in Kansas who have contacted me over the last year have very legitimate concerns, too, and if you do not think I deserve some answers, they certainly do.

The American people are sick and tired of being told that they are crazy or racist or that they do not know what they are talking about or being misled or that any question raised is simply partisan politics. Promise after promise has been broken, from the pledge not to raise taxes to the promise that if you like what you have you can keep it, to the falsehood that this new law does not cut Medicare. And remember the one about lowering premiums. The list goes on and on. Now it is beyond a shadow of a doubt that the law will ration health care. I think we are duty-bound to hold this administration and its nominees accountable for these broken promises and for what lies ahead for patient care. That is why I will continue to ask the hard questions that need to be asked of this nominee.

I will continue to fight against what I truly believe is government rationing of health care. I did so on the HELP Committee when we considered it, the Finance Committee when we considered it, and during the reconciliation process when we considered it. All, of course, were defeated by party-line votes. And I will continue to maintain that the American health care system, with all of its flaws, is the best health care system in the world. We need to fix the flaws. We do not need rationing.

In the case of Dr. Berwick, we need answers.

I yield the floor. It appears to me there is not a quorum, so I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

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

Mr. CARDIN. Mr. President, I ask to speak on the Democratic time.

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

### ENERGY POLICY

Mr. CARDIN. Mr. President, what has happened in the Gulf of Mexico makes one thing very clear; that is, America's energy policy is a disaster. I thank Senator KERRY, Senator LIEBERMAN, and Senator BOXER for their leadership in pointing out the need for America to get off its addiction to oil and promote safe and clean energy sources for America so that we can be independent, so that we can achieve the type of economic growth we need and contribute to a cleaner environment. If we do our energy policy right, as Senator KERRY, Senator LIEBERMAN, and Senator BOXER have been telling us, we can solve all three problems.

I must tell you, I think one of the most urgent needs for an energy policy is to make America more secure. We spend almost \$1 billion a day on imported oil that goes to many countries that disagree with our way of life. Americans are actually helping to fund those who are trying to compromise America's security. That makes no sense whatsoever.

The Department of Defense has pointed out that our energy policy actually contributes to international instability. We spend a lot of money trying to figure out how we can make the world safer. One way we can make the world safer is to develop an energy policy where we are self-sufficient, where we do not have to rely on imported oil.

We can also solve the second problem, and that is economic growth. Take a look at what is happening in China. They are investing heavily in solar and wind power because they know they are going to create jobs. We want to create these clean jobs in America. We want to manufacture the component parts for solar and wind. We want to be able to manufacture component parts for nuclear. We believe we can create jobs in America by having a policy that relies more on clean energy. There are more jobs to be created, much more so than in oil. For the sake of our economy, we need to develop a comprehensive energy policy.

Then, for our environment, I can talk a great deal about why we need to move forward and get the pollutants out of our air and reward those who use clean technologies. Climate change is real. Tell the people on Smith Island, as they see their island disappearing because of the rising sea level, or tell those who see the traditional seafood industry go in decline because of warmer waters. We know climate change is real, and it is causing instability around the world. We need to deal with it.

If we need a reminder, take a look at what is happening in the Gulf of Mexico. BP originally told us there was

1,000 barrels a day leaking. Now they tell us it is 5,000. We do not know whether that is accurate. We know one thing: It has caused an environmental disaster in the Gulf of Mexico. We can expect dead zones because of oxygen deprivation. We can expect that our wetlands, which are critically important for our ecosystem and to protect our environment, will be invaded by this oil. As Senator NELSON points out frequently, if it gets into the Loop Current, it could very well go through the Keys and the east coast of the United States.

The tragedy of this is, we all know we cannot drill our way out of our energy problem. We have less than 3 percent of the oil reserves and we use over 25 percent. We know we cannot drill our way out of our energy problems.

Additional exploration will give us very little as far as energy independence. I will talk about the mid-Atlantic because I am most familiar with the mid-Atlantic. We have been told by recent studies that we may have enough oil in the mid-Atlantic to handle our energy needs for 2 months in the United States. Think about that—the risk factor versus the reward. It makes no sense whatsoever.

If we have a Deepwater Horizon episode in the mid-Atlantic, it will be catastrophic to the Chesapeake Bay. Many of us have invested a lot of energy to clean up the Chesapeake Bay. We know we need to do more. EPA has come out with its game plan. I filed legislation with my colleagues to have a stronger effort in cleaning up the bay. But if we had an oilspill in this region anywhere near what happened down in the Gulf of Mexico, it would set us back for generations.

Some say: Is that a real possibility? Could that really happen? Let me tell you about the lease site 220 off of Virginia which is being primed for offshore drilling. That is 60 miles from Assateague Island and 50 miles from the mouth of the Chesapeake Bay. The prevailing winds are toward the coast, which means a spill is likely to come on the coast a lot quicker than we saw in the Gulf of Mexico.

I have a few suggestions for my colleagues. First, we need to stop any further offshore exploration of gas or oil until we have put in place the regulatory structure to make sure we have done adequate environmental assessments before any new drilling is permitted. That is the least we can do.

We know the exploration plans submitted by BP Oil told us there was virtually no risk, and if there was a spill, they had the proven technology to make sure it did not reach our coastlines. The proven technology was these blowout protectors that we note failed in the past, had very little experience at 5,000 feet of water, and as a result we see the disaster that has unfolded.

The regulatory system is not independent. It needs to be changed. We need to make sure other agencies in the Federal Government that are

knowledgeable about wildlife are consulted before permits are granted. At least we need to make sure those regulatory changes are in place.

Secondly, we need to protect, as Secretary Salazar has said, those places in America that are environmentally too sensitive to risk drilling. Secretary Salazar points with pride—and I agree—to the west coast of the United States or to the North Atlantic.

The area off the coast of the Chesapeake Bay is environmentally too sensitive to risk drilling for the little bit of oil that may be there. I urge my colleagues to provide protection—permanent protection—from the offshore drilling in the mid-Atlantic.

Then we need to consider legislation for a comprehensive energy policy in this Nation. I applaud Senator KERRY and Senator LIEBERMAN for bringing forward a proposal. It is a good start. I compliment them for the manner in which they handled offshore drilling because they give States, such as Maryland, a veto if the environmental risks are there. To me, that is far better protection than current law and better than what the administration has proposed.

I hope we can do better. There are provisions in the bill I want to strengthen. There are issues I want to make sure are added to it. But unless we get started on energy legislation, unless we bring to the Senate Floor and are willing to debate, as we should, an environmental and energy policy for our country, we won't have a chance to move on these issues.

I can't tell you how many people I have talked to in the State of Maryland who say: Look, we need to be energy independent, we need to create jobs, we need to be sensitive to the environment. But we can't do that unless we have a bill before us.

I want to applaud Senators KERRY and LIEBERMAN for their efforts. I hope we will have a chance to consider that, and I can assure my colleagues that I will have some suggested changes for that legislation in order to strengthen it so we truly can achieve the goals of making America more secure, of creating the jobs we need and being an international leader on preserving our environment to make sure that polluters do not continue to pollute our environment.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

### FINANCIAL REGULATORY REFORM

Mr. FRANKEN. Mr. President, I rise today to clarify some confusion regarding two amendments adopted by the