

recess is not defined in the Constitution, but according to the Congressional Research Service “it appears that no President, at least in the modern era, has made an intra-session recess appointment during a recess of less than 10 days.”

Both parties have relied upon the adjournment clause in Article I of the Constitution to argue that the absolute minimum recess period would conceivably be 3 days.

We can also look at the number of recess appointments made by recent Presidents. As of January 23 of this year, President Obama had made 32 recess appointments, all to full-time positions. At the same point in time in his first term, President Clinton had made nine recess appointments to full-time positions. President Bush, at about the same time, had made 35.

So they all made recess appointments—appointments while the Senate was in recess. That is provided for specifically in the Constitution as something the President could do. But President Clinton never did it when Congress was in session for less than 10 days. President Bush never did it when Congress was in recess for shorter than 11 days. Now, unfortunately, President Obama has broken that precedent and made 4 appointments when we were in a period of less than 3 days.

Why is that important? In 2007, the current majority leader of the Senate, HARRY REID, decided the Senate did not want President Bush making recess appointments; that is, making appointments while the Senate wasn't in session. So the Senate refused at that time to enter into prolonged recesses. They invented the idea of pro forma recesses every 3 days. President Bush strenuously objected to that, but he respected that. He respected the constitutional authority of the Senate under article I, section 5 to determine when the Senate is in session.

On November 16, 2007, Senator REID said: “With the Thanksgiving break looming, the administration has informed me that they would make several recess appointments.”

Senator REID didn't like the idea of recess appointments any more than we do. So he said: “As a result, I am keeping the Senate in pro forma to prevent recess appointments until we get back on track.”

The ACTING PRESIDENT pro tempore. The Senator has consumed 10 minutes.

Mr. ALEXANDER. I thank the Chair and ask to be notified when I have consumed 3 minutes more.

On November 16, 2007, Senator REID said:

As a result, I am keeping the Senate in pro forma to prevent recess appointments until we get this process back on track.”

And on July, 28, 2008 he said: “We don't need a vote to recess. We will just be in pro forma session. We will tell the House to do the same thing.”

The President is restricted, as Senator REID indicated, by article I sec-

tion 5 of the Constitution, which states that “neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.”

Last December when the House and Senate agreed to adjourn, the Speaker—a Republican—and the majority leader here—a Democrat—agreed the two Chambers would hold pro forma sessions for the express purpose of not going into recess. Yet the President went ahead and made his appointments. This is a dangerous trend. It is a dangerous trend.

The major issue before our country is the Obama economy. That is what we will be talking about more than anything else in an election year. But liberty is the defining aspect of our American character. If the President's current actions were to stand as a precedent, the Senate may very well find that when it takes a break for lunch, when it comes back, the country has a new Supreme Court Justice.

Because we believe in the importance of that constitutional system, all of us on the Republican side insist on a full and complete debate on this issue. We intend to take this issue to the American people. We will file amicus curiae briefs in all of the appropriate courts and we will take this issue to the most important court in the land and that is the court of the American people on election day.

I do not suggest that the President will find, or even should find, his relationship with Congress to be easy or simple. George Washington did not. President Washington once came up here to discuss a treaty with Senators and became so angry that he said, and this is Washington's word, he'd be “damned” if he ever went there again.

The separation of powers does not mean an easy distribution of powers but it is essential to the American character. We should remember that. A short trip to Mount Vernon would remind us of that. The President's recess appointments not only show disregard for the Constitution, they show disregard for every individual American who chooses liberty over tyranny, President over King.

I yield the floor.

REPEAL THE CLASS ACT

Mr. THUNE. Mr. President, I come to the floor today to laud the actions of the House of Representatives which voted to repeal the CLASS long-term care entitlement program that was created by the health care law. The vote yesterday in the House of Representatives was 267 in favor of repeal. It was a bipartisan vote. It was a clear, I think, message that this is a piece of legislation that needs to be taken off the books.

It was a disaster in the making from the very beginning. Many of us tried to predict that ultimately this program

was destined to fail. The vote in the House of Representatives yesterday to repeal this insolvent program I hope will pave the way for the Senate to follow suit. My fear has been all along that if we do not get this program off the books, at some point there will be an attempt to resurrect it. That would be the absolute worst outcome and worst scenario for the American taxpayer because this is a program that, even before it was voted on and added to the health care bill, was predicted would fail.

The Congressional Budget Office said it would run deficits in the outyears. The Actuary at the Health and Human Services Department predicted that this was a program that actuarially was unsound, could not be viable in the long run. It was here in the last few months that finally the Secretary of Health and Human Services, Kathleen Sebelius, came out and said, “I do not see a viable path forward for CLASS implementation.”

That was a statement she made back in the middle of October. So even the person who was tasked with implementing this program has now said there is no viable path forward for CLASS.

We ought to get this off the books. It was, in fact, a pay-for in the health care bill. It was designed to help understate the cost of the health care bill. It front-end-loaded premiums, got revenue in the door early, knowing full well that when the demands for payments came later on that it was going to be upside down, and it was clearly a program that I think, by any account, all who observed this process closely knew just flat out this would not work. But what was done—it obscured the cost of the health care bill and helped it to sort of balance out because it was front-end loaded, saw revenues come in in the early years before payments would have to go out in the outyears.

I am hopeful the Senate will take the action that was taken by the House of Representatives and end this once and for all. We have people on both sides of the aisle who have come to that conclusion. There was a lot of debate, even in the runup, the lead-up to the health care bill, about how this would not work. I offered an amendment during the health care debate to strip it. We had 10 Democrats at the time who voted with me on that amendment. Many of them made statements regarding this legislation and the implications if it were to pass. In fact, the Senator from North Dakota, the chairman of the Senate Budget Committee, said at the time that this is “a Ponzi scheme of the first order, the kind of thing that Bernie Madoff would have been proud of.”

He vowed to block its inclusion in the Senate bill. It ended up in the Senate bill and ended up in the overall bill, so to this day it is still a part of the health care legislation but a part that needs to be stripped out if we are going to do what is in the best interests of

the American taxpayer and not put yet another unfunded liability on the backs of our children and grandchildren.

We have a lot of bipartisan support for repealing it. There are a lot of people who have weighed in against this, who know it will not work. We have an awful lot of outside interests as well who have observed, now, that this is not something that is sustainable over time. In fact, a lot of editorial pages around the country, newspapers have weighed in on this. The Washington Post:

... a new gimmick that has been designed to pretend the health reform is fully paid for.

That is something they said back when this was being debated.

The Wall Street Journal:

Known by the acronym CLASS, the long-term care insurance program for nursing homes and the like was grafted onto the health-care bill mostly to hide that bill's true costs.

It has been described as "a budgetary time bomb."

It seems to make perfect sense to me, and I hope to many of my colleagues, that we take the steps necessary to get this program off the books once and for all. In trying to justify this, there are people who say we ought to keep it on the books in case we figure out a way to go forward with it, to implement it. It does not work. It cannot work. That has been known from the very outset.

I want to mention something else the Actuary, Rick Foster, said prior to it being voted on. He said:

Thirty-six years of actuarial experience lead me to believe that this program would collapse in short order and require significant federal subsidies to continue.

I want to repeat that. This is from the person who studies the trends and makes sure, or tries to make sure, these programs are actuarially sound.

Thirty-six years of actuarial experience lead me to believe that this program would collapse in short order and require significant federal subsidies to continue.

That was the warning that was issued way before the vote ever occurred on the CLASS Act.

He described it as "... a classic 'assessment spiral' or 'insurance death spiral.'" Those are words he used to describe this.

The program is intended to be "actuarially" sound but at first glance this goal may be impossible.

These were all statements made by the Actuary.

Those of us who were here at the time and were concerned about this being included in the health care bill came to the floor and, as I said, I offered an amendment to strip it. It came close to getting the necessary votes but unfortunately came short. It had broad bipartisan support but we recognized at the time this thing was destined to fail. Now we have all this, the studies that have been done since, that validate that by the objective third-party validators, if you will, by the HHS Actuary.

It seems to me at least that the American taxpayers, the American people deserve to know where their elected officials stand on the CLASS Act. Are they for keeping this unviable, insolvent, actuarially unsound provision in the health care bill, which now even those who are tasked with implementing it—the Health and Human Services Secretary, Kathleen Sebelius—have said there is no viable path forward for its implementation? Are we going to continue to keep this around? Or are we going to have a vote here in the Senate to put an end to this once and for all?

I hope the majority leader, Senator REID, will allow us to get this up for a vote. It has been passed in the House of Representatives. It is very clear based on not only all the actuarial evidence but all those who have looked at it who are tasked with trying to put it into practice that it is not going to work. I hope before this goes any further we will get a vote here in the Senate that will echo what happened in the House of Representatives and that we will do the right thing by the American taxpayer and get rid of a program that, if it ever is resurrected, if it ever is reincarnated in some form, would be a terrible drain on American taxpayers, not only today but well into the future, and represent yet another unfunded liability that we will put on the backs of our children and grandchildren. It is time to end the CLASS Act once and for all.

I am going to continue to press for a vote on this and I hope Majority Leader REID will allow us to get a vote on repeal of the CLASS Act so the American people do know exactly where their elected officials stand and whether they are going to stand on the side of the taxpayer, stand on the side of common sense, or stand on the side of using this budgetary gimmick to understate the cost of the health care bill and perhaps at some point in the future put a plan in place that literally is not going to work, is only going to continue to lead us on the pathway to bankruptcy.

I yield the floor.

Mr. President, 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. MCCONNELL. 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.

RECOGNITION OF THE MINORITY LEADER

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

THE STOCK ACT

Mr. MCCONNELL. Mr. President, I think it is pretty clear at this point

that there is broad bipartisan support for legislation that provides greater transparency in Congress. The more important question at this point is whether the executive branch is willing to play by the same rules. I mean, I think a lot of people out there want to know why a venture capitalist who raised hundreds of thousands of dollars for the President, only to end up overseeing the administration's green energy loan program, should not be held to the same high standard as others. Shouldn't the President's Chief of Staff be held to the same standard as a legislative director or a freshman Senator?

Let's be honest, people are equally, if not more, concerned about the kind of cronyism they keep reading about over at the White House and within the executive branch agencies such as the Department of Energy that it controls. There is no question that Congress should be held to a high standard, but if we are going to pass new standards here, the same standards should apply to the White House and to the executive agencies that spend hundreds of billions of dollars of taxpayer money at the President's direction.

That leads to a larger point, which is this: As long as the White House and the agencies it controls continue to play favorites, this economy will never fully recover and the playing field won't ever be level. As long as Washington has this much say over the direction of the economy, people won't ever feel they are getting a fair shake. So, yes, let's hold Congress to a high standard, but the White House must be held to the very same standard.

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

The PRESIDING OFFICER (Mr. BROWN of Ohio). Without objection, it is so ordered.

Mr. GRAHAM. I ask unanimous consent to speak in morning business.

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

Mr. GRAHAM. Please let me know when 5 minutes elapses. I will try to keep my comments short.

CLASS ACT REPEAL

Mr. GRAHAM. Mr. President, the topic I wish to address is the CLASS Act repeal being taken up by the House. I understand the HHS Secretary has indicated that from her point of view the CLASS Act will not work, and this is music to my ears.

During the Obama health care debate, one of the revenue raisers was the CLASS Act wherein the Federal Government would be in the long-term health care insurance business and, supposedly, would collect premiums over a decade that would allow something like \$80 billion in revenue that