

selling arms to Assad in Syria for the murder and slaughter of his own people, making money from those sales to Assad in Syria, and from the government that is harboring and providing refuge to Edward Snowden, who has illegally—I guess I should use the words allegedly illegally—but clearly violated American law in disclosing secrets from our government.

Last week I visited a National Guard helicopter repair facility in Groton, CT, where over 100 technicians—to be precise, 137 technicians—civilian employees at this facility alone have been furloughed. They are furloughed 11 days. It was originally 22, but it has been reduced to 11. Our helicopter repair function in that region, and similarly across the country, has been hampered and impeded because of the sequester and the impact in requiring furloughs. Our military readiness is suffering because of lack of funds on the part of the U.S. Government, when we are at the same time buying Russian helicopters that will have no use for the Afghan Government. In fact, they have no pilots to fly them or people to make repairs and maintain them. Something is wrong with this picture.

Yet in the hearing I have just left, the Chairman of the Joint Chiefs of Staff, General Dempsey, maintained to me his view that a waiver should be exercised under the National Defense Authorization Act providing for the purchase of these Russian helicopters.

I respectfully disagree. I strongly disagree. I think the American taxpayers, certainly my fellow residents of Connecticut, ought to be equally outraged. We should be outraged in this body that we are wasting this money when precious funds have been forgone that can be used for military readiness of our Armed Forces.

I ask my colleagues to join me in saying to our U.S. military leaders that our national security is imperiled, not by refusing to acquire those helicopters but in fact by wasting taxpayer money on those purchases for an Afghan army that cannot use them, and for purchasing from a country that certainly means us no good and, in fact, an export agency that is selling arms to a murderous government and harboring an individual who has violated our laws and endangered our national security.

I will not let this matter rest. I will not let this issue go. I intend to pursue it. I ask my colleagues to join me in making sure we stop these purchases. In fact, Senator AYOTTE and I have a bill, which is called No Contracting with the Enemy, to expand very useful contracting tools that now apply in Afghanistan, where we have found our aid and assistance finding its way to enemy hands. I can't think of a more blatant example of contracting with the enemy than handing over our taxpayer money to a company that is at the very same time selling S-300 air defense systems to the Syrian Govern-

ment for use against its own people and violating international sanctions by helping Iran with that missile equipment.

MCCARTHY NOMINATION

I wish to turn to the reason I came to the floor, having just left that Armed Services Committee meeting, to speak on behalf of my very good friend Gina McCarthy.

I worked with Gina McCarthy over a number of years when she was, in fact, not only a fellow State official—I was then State attorney general—but also a client because I was her lawyer. I came to know her in a way that I think is very rare for any public official to know another, seeing her in times of crisis and public policy opportunity, the ups and the downs of public service.

I came to know her as a pragmatic person of consummate intelligence, integrity, an environmental protector for all seasons. She is not a partisan by any stretch of the imagination. There may be individuals who are more aggressive in the enforcement of environmental laws. There may be people who are more solicitous of economic progress and job creation, but I don't know. I certainly know no one who strikes the balance and seeks both goals of job creation, along with economic growth, and environmental protection with such zeal, passion, and great good humor.

I said before on this floor and I will say it again, Gina McCarthy knows how to bring people together. She knows how to work for a common goal.

We should seize this moment as a body to expand and enhance the bipartisan spirit of this past week and approve Gina McCarthy overwhelmingly because she epitomizes the kind of bipartisan spirit we should seek to grow and attract in our Federal Government, in fact, in all levels of government.

Let me give a few examples. My colleague Senator MURPHY spoke last night about a number of her specific accomplishments, but there are many more—maybe most important, which I don't think has been given enough attention on the floor, is her work in designing, building, and implementing the Northeast's pioneering cap-and-trade program, known as the Regional Greenhouse Gas Initiative, RGGI. Nine States currently participate in RGGI: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. It is a highly innovative program. It is a model for the Nation and the world.

A 2012 report issued in 2012 estimates that RGGI investments will offset the need for more than 27 million megawatt hours of electricity generation and 26.7 British thermal units of energy generation. These savings will help avoid the emission of 12 million short tons of carbon dioxide pollution, an amount equivalent to taking 2 million passenger vehicles off the road for 1 year.

The numbers not only fail to tell the whole story about the environmental

impact but also fail to tell about Gina McCarthy's role in bringing together Republican and Democratic Governors for a common good, what she will do in this country for environmental protection and what she has already done in her role at the EPA.

Under her guidance, the State of Connecticut settled a Clean Air Act suit against Ohio Edison on July 11, 2005, again requiring pollution reduction consistent with business needs and goals.

She settled a citizen suit against American Electric Power on December 13, 2007, a dramatic reduction in nitrogen oxide and tons of sulfur dioxide. These Clean Air Act suits, which I assisted her in bringing to conclusion, I think embody her goal of reducing air contamination and pollution consistent with the business community's concern for its bottom line. She is sensitive to both.

She is remarkable for her professionalism, for her zeal and passion as an environmental protector, and also for her willingness to listen, her willingness to hear and truly listen to people sitting across the table who may come into the room with different and sometimes conflicting views and come to a common conclusion. She knows how to get to yes, and she does it as a tough, fair, balanced environmental law enforcer.

I hope my colleagues will join me in my enthusiasm because the President couldn't have picked a more qualified person. Gina McCarthy is as good as it gets in public service. She is as good as it gets for integrity, intellect, and dedication to the public good.

It is my wish that we will move forward as united as possible, carrying forward the great bipartisan spirit that has characterized these last few days in our consideration of the President's nominees, which I hope will be enhanced and continue as we move forward today.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican whip.

OBAMACARE

Mr. CORNYN. In a few minutes, President Obama is scheduled to give a major speech highlighting what he believes are the achievements of his signature health care law, the Affordable Care Act, otherwise known as ObamaCare.

I could understand why he is feeling a little defensive and why he feels he needs to frame the discussion because, after all, ObamaCare has disappointed some of its most ardent former supporters.

For example, back in 2009 and 2010, American labor unions were among the biggest supporters of the President's health care plan. Along with many of my friends across the aisle, they are having second thoughts and, in some cases, buyer's remorse.

Last week, three of the country's most prominent labor leaders, James Hoffa, Joseph Hansen, and Donald Taylor, sent a very concerned letter to

Senator REID and former Speaker PELOSI. Here is part of what they wrote:

When you and the President sought our support for the Affordable Care Act, you pledged that if we liked the health plans we have now, we could keep them. Sadly, that promise is under threat.

Picking up on this chart, they went on to say:

Right now, unless you and the Obama Administration enact an equitable fix, the ACA [Affordable Care Act] will shatter not only our hard-earned health benefits, but destroy the foundation of the 40-hour workweek that is the backbone of the American middle class.

They went on to say:

The unintended consequences of the ACA [Affordable Care Act] are severe. Perverse incentives are already creating nightmare scenarios. . . . The law, as it stands, will hurt millions of Americans.

ObamaCare has been controversial since its passage in 2010. Some Members of Congress voted for it. Obviously, the Democratic majority voted for it. Some people voted against it, people such as myself in the Republican minority.

But whether you supported the law with the hopes and aspirations that it would somehow be the panacea or answer to our health care needs in this country or whether you were a skeptic such as I, who believed that this could not possibly work, the fact seems to be—as these labor leaders have said—it has not met expectations and certainly it has created many problems that need to be addressed.

This same letter went on to detail some of the nightmare scenarios these labor leaders have concerns about. They pointed out that many businesses are cutting full-time employment back to part-time in order to avoid the employer mandate.

As I mentioned yesterday, the number of people working part-time for economic reasons has jumped from 7.6 million to 8.2 million, just between March and June. In fact, last month alone that number increased 322,000.

A new survey reports that in response to ObamaCare, nearly three out of every four small businesses are going to reduce hiring, reduce worker hours or replace full-time employees with part-time employees.

We know the President has unilaterally decided to delay the imposition of the employer mandate until 2015, but that doesn't change a lot. These businesses have to plan for the future and small businesses still have the same perverse incentives to limit the hiring of full-time workers, as these labor leaders point out.

The employer mandate is one reason why ObamaCare needs to be repealed entirely and replaced with something better. As these leaders say in their letter, the law, as it stands, will hurt millions of Americans.

We have already seen its effect on job creation, not only with the employer mandate but also with the medical device tax that has prompted many com-

panies, including those in Texas, to simply grow their businesses in places such as Costa Rica, where they can avoid that medical device tax, rather than in my State or in other States that have medical device companies. It has also caused these companies to close factories and cancel plans for new ones in the United States.

We have also seen, as these leaders point out, that ObamaCare will disrupt Americans' existing health care arrangements. As they point out in their letter, one of the promises the President made was that if you liked what you have, you can keep it, but, in fact, that has not proven to be true.

Indeed, my constituents are already getting their letters from health care providers informing them that their current policies are no longer going to be available because of the implementation of ObamaCare. Millions of people will eventually have that same experience, according to the Congressional Budget Office.

Why have we made this huge shift in one-sixth of our economy? What was the goal of the proponents of this piece of legislation? What we were told is that it was universal coverage. There were too many people who didn't have health care coverage. But as for this promise of universal coverage, I am afraid that is another broken promise as well.

According to the Congressional Budget Office, even if ObamaCare is fully implemented on schedule, there will still be 31 million people in America without health insurance by the year 2023. Even though the proponents of ObamaCare said we need to do this, as expensive as it is, as disruptive as it is to the existing health care arrangements, we need to do this because everybody will be covered, that promise is not going to be kept either.

Let me repeat, 13 years after the passage of ObamaCare, America will still have 31 million uninsured. Meanwhile, many of the newly insured under ObamaCare will be covered by Medicaid, a dysfunctional program that is already failing its intended beneficiaries.

I, perhaps unwisely, decided during the markup of the Affordable Care Act in the Senate Finance Committee to offer an amendment that said Members of Congress will henceforth be put on Medicaid. I told my colleagues that I knew if Congress was covered by Medicaid we would do our dead-level best to fix it because, as it exists now, it is a dysfunctional program. It is dysfunctional for this reason: Giving people coverage is not the same thing as access. Many Medicaid recipients have a very hard time finding doctors who will accept Medicaid coverage because the program reimburses providers at such low rates. In my State, it is about 50 cents on the dollar as compared to private coverage. In my State of Texas, fewer than one-third of physicians will accept a new Medicaid patient, and many of them are accepting no new Medicaid patients.

Most Texas physicians believe Medicaid is broken and should not be used as a mechanism to expand coverage, certainly if it is not fixed and reformed, which it needs to be. By relying on Medicaid as one of the primary vehicles for reducing the number of uninsured in America, the Affordable Care Act will make the program even more fragile and weaker and less effective at securing dependable health care for the poor and the disabled, the very people it is designed to protect.

We also have good reason to fear ObamaCare's Medicaid expansion will reduce labor force participation. A new National Bureau of Economic Research paper argues ObamaCare "may cause substantial declines in aggregate employment." Rather than expand and damage an already broken system, the Federal Government should give each State more flexibility to manage the Medicare dollars that come from Washington so they can provide better value for recipients and taxpayers.

Right now, State policymakers can't manage Medicaid without first going through a complicated waiver process and obtaining Federal approval—too many strings attached. Ideally, Washington would give each State a lump sum—a block grant, if you will—as well as the freedom to devise programs that work best in their States and for the population covered.

Meanwhile, we should adopt health care reforms that would make health care more affordable and accessible to everyone—for example, equalizing the tax treatment of health insurance for employers and individuals; expanding access to tax-free health savings accounts so people can save their money, and if they don't use it for health care, they can use it for other purposes, such as retirement. We should let people and businesses form risk pools in the individual market, including across State lines. We should improve price and quality transparency.

One of the most amazing forces in economics is consumer choice and transparency and competition. It is called the free enterprise system, and we see it at play in the Medicare Part D Program, for example, one of the most successful government health care programs devised. We made a mistake when we passed Medicare Part D because it was not paid for—it should have been—but it has actually come in 40 percent under projected cost and it enjoys great satisfaction among its beneficiaries, seniors who have access to prescription drugs, some of them for the first time. But the reason why it has come in 40 percent under cost is because companies have to compete for that business, and they compete—as they always do in the marketplace—on price and quality of service, and we get the benefit of that market discipline.

We also need to address frivolous medical malpractice lawsuits—something my State has done at the State level, which has made medical malpractice insurance more affordable and

which has caused many doctors to move to Texas who otherwise might not have gone there, providing greater access to health care.

As I have said, we also need to allow the interstate sale of health insurance policies. There is no reason why I shouldn't be able to buy a health insurance policy in Virginia if it suits my needs better than one available in Texas. Why would we not allow that? Again, why would we not want the benefit of that competition and the benefits to the consumer in terms of service and price?

We also need to boost support for State high-risk pools to protect Americans with preexisting conditions. This is one of the reasons why the President and other proponents of ObamaCare said we have to have ObamaCare, because we need to deal with preexisting conditions, and we do. But we can do it a lot cheaper and a lot more efficiently by using Federal support for existing State preexisting condition high-risk pools. We don't have to take the whole 2,700-page piece of legislation that cost us several trillion dollars. We can do it much cheaper and more efficiently.

Finally, we need to save Medicare by expanding patient choice and provider competition. These policies would allow us to expand quality insurance coverage and improve access to quality health care without disrupting people's existing health care arrangements, without discouraging work and job creation, without raising taxes on medical innovation, and without weakening Medicaid and Medicare.

The chairman of the Senate Finance Committee, one of the principal Senate architects for the Affordable Care Act, famously described the implementation of ObamaCare as a train wreck. These three leaders of American labor would agree, and they have also warned us that unless we fix it, it could destroy the very health and well-being of millions of hard-working Americans.

It is time for us to acknowledge the reality that whether you were a proponent and voted for ObamaCare or whether you were an opponent and a skeptic that it would actually work, we need to deal with the harsh reality and the facts that exist. It is time for Democrats, including the President, to work with us to replace ObamaCare with better alternatives.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. REID. Mr. President, if my friend from Virginia will yield to me for the purpose of doing a unanimous consent request, we have an agreement as to how we will proceed with votes.

Mr. Kaine. I have no objection.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that the vote on the confirmation of the Perez nomination as Secretary of Labor occur at 12:15 p.m. today; that if the nomination is confirmed, the motion to reconsider be

considered made and laid upon the table with no intervening action or debate; that no further motions be in order; that any related statements be printed in the RECORD; and the President be immediately notified of the Senate's action; further, that following disposition of the Perez nomination, the time until 2:30 p.m. be equally divided in the usual form prior to the cloture vote on the McCarthy nomination.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, while I have the floor, I want the RECORD to reflect how fortunate the State of Virginia is for the work done by this good man. We have a good situation with our delegation from Virginia—two former Governors, and they are both such outstanding human beings and wonderful Senators.

As I have told my friend personally, the person whom I just interrupted—and I spread this in the RECORD here—there is no one I know in the Senate who is able to deliver the substance of what he says as well as the Senator from Virginia. He does such a good job of explaining things. We all have an idea of what we want to say, but sometimes we don't explain it very well. He does an excellent job.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. KAINE. I thank the majority leader for his kind words.

WAR POWERS RESOLUTION OF 1973

Mr. President, I rise in order to note an important anniversary. Forty years ago this week the Senate passed the War Powers Resolution of 1973. The resolution was passed in a time of great controversy—during the waning days of the Vietnam war. The purpose of the resolution was to formalize a regular consultative process between Congress and the President on the most momentous decision made by our Nation's Government—whether to engage in military action.

The question of executive and legislative powers regarding war dates back to the Constitution of 1787. Article I, section 8 of the Constitution provides that "Congress shall have the power . . . to declare war." Article II, section 2 of the Constitution provides that the President is the "Commander in Chief" of the Nation's Armed Forces. In the 226 years since the Constitution was adopted, the powers of the respective branches in matters of war have been hotly debated. In a letter between two Virginians in 1798, James Madison explained the following to Thomas Jefferson:

The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch most interested in war, and most prone to it. It has accordingly, with studied care, vested the question of war in the legislature.

Madison's definitive statement notwithstanding, the intervening history has been anything but definitive. Aca-

demics and public officials have advanced differing interpretations of the constitutional division of power. There is no clear historical precedent in which all agree the legislative and executive branches have exercised those powers in a consistent and accepted way. And the courts have not provided clear guidance to settle war powers questions.

Some facts, however, are very clear. The Congress has only formally declared war five times. In many other instances, Congress has taken steps to authorize, fund, or support military action. In well over 100 cases, Presidents have initiated military action without prior approval from Congress.

Congress supposed 40 years ago that the War Powers Resolution of 1973 would resolve many of these questions and establish a formal process of consultation on the decision to initiate military action. But this was not the case. President Nixon vetoed the resolution, and while Congress overrode the veto, no administration since has accepted the constitutionality of the resolution. Most recently, President Obama initiated American involvement in a civil war in Libya without congressional approval. The House of Representatives rebuked the President for that action in 2011. But the censure rang somewhat hollow because most legal scholars today accept the 1973 resolution is an unconstitutional violation of the separation of powers doctrine.

So why does this matter? We are in the 12th year of war. The attack on our country by terrorists on September 11, 2001, was followed 1 week later by the passage of an authorization for use of military force that is still in force today. The authorization is broadly worded and both the Bush and Obama administrations have given it an even broader interpretation.

In recent hearings before the Senate Armed Services Committee, administration officials expressed the opinion the authorization of September 18, 2001, might justify military action for another 25 to 30 years in regions spread across the globe against individuals not yet born or organizations not yet formed on 9/11. This was likely not contemplated by Congress or the American public in 2001.

Congress is currently grappling with the status of the authorization and whether it should be continued, repealed, or revised. We face immediate decisions about the reduction of American troops in Afghanistan and the size of a residual presence we will leave in that country to support the Afghan National Security Forces. We are wrestling with the scope of national security programs that were adopted in furtherance of the authorization, and we are engaged in serious discussion about new challenges—from the rebellion in Syria to growing nuclear threats in Iran and North Korea.

All of these issues are very hard. I recently returned from a trip to the Middle East—a codel sponsored by Senator

CORNYN. Accompanying us were Senators COCHRAN, SESSIONS, BOZEMAN, FISCHER, and in Afghanistan, Senators MCCAIN and GRAHAM.

In Turkey and Jordan we heard about the atrocities committed by the Asad regime in Syria and the flood of refugees pouring into those neighboring countries. In Afghanistan we met with our troops and heard about the slow transition from NATO forces to Afghan security. In the United Arab Emirates we discussed the growing threat of Iran throughout the region, and we made a meaningful stop at Landstuhl Regional Medical Center in Germany to visit recently wounded Americans—and NATO partners—who have sacrificed so much in this long war against terrorism. In the voices of our troops, our diplomats, our allies, and our wounded warriors, we heard over and over again a basic question: What will America do?

Answering this question isn't easy, but I believe finding answers is made more difficult because we do not have any agreed-upon consultative process between the President and Congress. The American public needs to hear a clear dialogue between the two branches justifying decisions about the war. When Congress and the President communicate openly and reach consensus, the American public is informed and more likely to support decisions about military action. But when there is no clear process for reaching decision, public opinion with respect to military action may be divided, to the detriment of the troops who fight and making it less likely that government will responsibly budget for the cost of war.

I believe many more lawmakers, for example, would have thought twice about letting sequestration cuts take effect if there had been a clear consensus between the President and Congress about our current military posture and mission.

So at this 40th anniversary, I think it is time to admit that the 1973 resolution is a failure, and we need to begin work to create a practical process for consultation between the President and Congress regarding military action.

In 2007 the Miller Center at the University of Virginia impaneled the bipartisan National War Powers Commission under the leadership of former Secretaries of State James Baker and Warren Christopher. The Commission included legislative, administrative, diplomatic, military, and academic leadership. The Commission issued a unanimous report to the President and Congress urging the repeal of the War Powers Resolution and its replacement by a new provision designed to promote transparent dialog and decision-making. The Commission even proposed a draft statute, preserving the constitutional powers of each branch while establishing a straightforward consultative process to reach decision in a way that would gain support from the American public. The House and

Senate Foreign Relations Committees held hearings on the report in 2008, but the time was not yet right for change.

I believe the time for change is upon us. We struggle today with urgent military decisions that demand better communication between the President, Congress, and our citizens. President Obama has discussed this very need during his 2013 State of the Union Address and also during his recent speech at the National Defense University.

As we reach the 40th anniversary of the failed War Powers Resolution, Senator JOHN MCCAIN has agreed to work with me to form a group of Senators committed to finding a better way. Senator MCCAIN and I serve together on both the Armed Services and Foreign Relations Committees. I have profound admiration for his service to this country, both as a military veteran and a veteran Senator. I am a newcomer, but veterans and newcomers alike have an interest in finding a more effective process for making the most important decision that our government ever makes—whether to initiate military action. We can craft a process that is practical, constitutional, and effective in protecting our Nation. We owe this to those who fight, and we owe this to the American public.

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 assistant legislative clerk proceeded to call the roll.

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

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

Mr. RUBIO. Mr. President, I ask unanimous consent that I be recognized to speak for up to 12 minutes as in morning business.

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

OBAMACARE

Mr. RUBIO. Mr. President, just a few moments ago I heard the President speaking from the White House regarding ObamaCare. He was lamenting, saying: Why are we still litigating old news around here? Let's move on to other things. This issue has been finished.

The reason this issue is still being talked about is because ObamaCare is a disaster. I think it is important to remember when we talk about health insurance that most Americans do have health insurance they are happy with. But no one would dispute that we have a health insurance problem in this country.

For many who have insurance the cost of their insurance is getting unaffordable, and many others have no access to insurance at all. They have a job, perhaps, that doesn't provide it or they are chronically ill so insurance is impossible for them to find or they are

young and healthy and they never go to a doctor, so they figure, why do they need it? Yes, for millions of people the cost and availability of insurance is a real problem, and we should do something about that.

The problem is ObamaCare, as a solution, is a massive government takeover of health insurance in America, and it does not fix the problem. It only makes it worse, and that is why we are still talking about it. It makes it worse for a number of reasons.

Tomorrow I am going to visit a business in Florida where the reality is growing every single day. Tomorrow I will visit Gatorland. Gatorland is in central Florida. It is a tourist destination where many Floridians and tourists have taken their kids to see alligators and to enjoy Florida's unique wildlife.

For 135 Orlando area residents, however, Gatorland is their workplace. It is their livelihood. It is how they feed their families. It is how they pay their mortgages. It is how they get ahead in life. The reason we are still litigating this, Mr. President, is because like hundreds of thousands of other businesses around the country, ObamaCare is threatening to unravel it all. It is threatening to unravel the livelihood of 135 Floridians who work at Gatorland, to shatter their financial security for them and their families.

Let me describe the problem. Gatorland has 135 full-time employees. Gatorland is currently paying 80 percent of the insurance cost for these employees. But now, under ObamaCare, evidently what they are doing is not going to be enough. ObamaCare, first of all, requires them not to just provide insurance but to provide for them a certain type of insurance, a type of insurance the government decided is enough.

Second, because of ObamaCare, the cost of the insurance that Gatorland wants to provide for its employees is going to go up; that is, if they want to continue to pay 80 percent of the insurance costs for the 135 Floridians who work there, it is going to cost them a lot more money. Those are the two problems.

No. 1 is they have to offer a certain type of insurance; the one they have potentially may not be enough according to the government. No. 2, because of all these changes, it is going to cost Gatorland more money to provide 80 percent of the cost of the insurance.

What does this mean in the real world? Here is what it means. It means that as Gatorland looks to next year and into the future, they now have a new cost on their books. As they look at their business plan for the coming year, all of a sudden they see on the cost side it has gotten more expensive. So if they want to stay in business, they are going to have to figure out a way to come up with that extra money.

What are their options to come up with this extra money? Option No. 1 is they can raise their prices. Option No.