

just like the five who came up to me this weekend. They are still getting insurance, but their deductible went up to \$15,000 and their premium went up to \$1,440 a month.

Tell me, where in that scenario is this affordable? Tell me, where in this process did they get a better plan than they had before? Their deductible went up \$5,000. That means the first \$15,000 of their health care is coming right out of their pocket and they are paying \$1,440 a month to have the security of knowing there is insurance after that.

Clearly, these are five Americans who would tell me this falls woefully short of the promises made to them. I would be willing to bet in every State, in every House district around the country, we are going to continue to hear stories about this.

We will, I am sure, debate heavily where we move to from here. But don't forget that under this bill, now that we have extended the enrollment period to March 31, under the law every insurer who bids to be in the exchange, starting April 1 of next year through April 27, has to submit their bids for 2015. Let me repeat that. For every insurer that wants to be in the exchange, starting April 1 of next year through April 27, they will have to submit their premium bids for 2015. They are going to do that having no experience with the pool of insured lives because we have extended until March 31 the enrollment. That assumes the Web site gets fixed and that people are going to enroll. With little actuarial history, these insurance companies are going to have to bid for 2015. Imagine what the premium cost is going to be in 2015 when it is not 5 percent of the American people now in the exchange but it is 100 percent—it is all the employers that are impacted by 2015 prices.

I have always been taught there are signs you should pay attention to. When five people come to you and say: Listen, my deductible went from \$10,000 to \$15,000 and my premium went from \$450 to \$1,440, that is a warning sign. We ought to listen to it.

We still have a chance to fix this. Most important, as Senator BLUNT talked about, it means when you have a high-risk pool in Missouri and North Carolina, you let them keep the high-risk pool. We can manage it much better on a State level than we can in nationalizing and doing top-down health care in this country.

This will not be the end of the conversation on the Affordable Care Act. The American people deserve better and this Congress must produce it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Madam President, there is an old expression used by many Hoosiers and others across America that is time tested: Your word is your bond. In Indiana, as in so many other places across our country, we value honesty and good old-fashioned truth-telling, even if it hurts a little bit to hear the truth.

Having spent the previous 4 days in Indiana listening to Hoosiers, it is clear to me many people in my State—and as I am reading, nationwide—are pretty fed up with Washington right now, and they have good reason to be. They are frustrated because the promises that were made to them are being broken and outright guarantees have been disregarded.

President Obama, both before and after his signature legislation—now called ObamaCare—passed, promised all Americans they could keep their health insurance plans if they liked those plans. It was a promise repeated over and over again. For many Americans it was the sole reason they supported the Affordable Care Act. But the President's guarantee, announced publicly by him several times, simply was not true.

In recent months, millions of Americans have received notifications their plans are being canceled because of the ObamaCare law, and reports indicate now the White House has known this for over 3 years—that these cancellations were coming. So when the American people found out the White House knew the bad news was coming all along, they were, to put it mildly, not happy.

It is clear that some of those who voted for ObamaCare and continued to support it are now agreeing with the majority of Americans that the President's health care law simply is not working. One such Member has floated the idea of having the Government Accountability Office and the inspector general for the Department of Health and Human Services conduct “a complete, thorough investigation to determine the causes of the design and implementation failures of HealthCare.gov.”

We need to talk about the fundamental policies and provisions that undermine this law going forward.

Fixing the Web site, if that happens—it can happen and eventually it would have to happen—is not the real problem. The real problem is a flawed design. Two Democrats have introduced a bill entitled “Keeping the Affordable Care Act Promise Act.”

A House Democrat recently stated, “I think the President was grossly misleading to the American public” when he promised Americans they could keep their health care coverage if they liked it. Even former President Bill Clinton has said he thinks the President's pledge to allow Americans to keep their coverage should be honored.

In an interview this week, former President Clinton said:

So I personally believe, even if it takes a change in the law, the President should honor the commitment that the Federal Government made to those people and let them keep what they got.

There is a growing admission from the supporters of ObamaCare that we are dealing with more than just a Web site glitch; that we are dealing with fundamental policy design flaws. So I

agree with President Clinton. Regardless of whether you support ObamaCare, there should be 100 percent bipartisan support for letting Americans keep what they have been promised—that they can keep their existing health care insurance plans if they like them.

It is time to acknowledge, however, as Senate minority leader MITCH MCCONNELL said yesterday, that it goes beyond this; that the Affordable Care Act is beyond repair. This disastrous law needs to be repealed and replaced with real reforms that drive down the cost of health care, increase the quality of care, and put patients, not Washington bureaucrats, in charge of their health care decisions.

Unfortunately, this President and Senate Democrats have made it clear they will never allow a full repeal to pass, despite all the broken promises to the American people and despite the fact the law simply isn't working.

Given this reality, the appropriate step, I believe, and one with growing, bipartisan support is for a 1-year delay of the implementation of ObamaCare.

I have offered a bill to delay the individual mandate—to join with the decision already made by the President to have a 1-year delay of the employer mandate—so all Americans can have the same relief, not just business. By delaying the mandates—all the mandates in this health care law—we can give the American people a fundamental choice when they go to the polls in 2014: continue ObamaCare or replace it with sensible, affordable reforms that drive down the cost of care, increase the quality, and, most important, put patients, not Washington bureaucrats, in control of their health care decisions and their health future.

In closing, I would say this to the President: Your word needs to be your bond. As Albert Einstein once said: Whoever is careless with the truth in small matters cannot be trusted with important matters.

I yield the floor, and 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.

Ms. WARREN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. WARREN. Madam President, I ask unanimous consent to speak as if in morning business.

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

NOMINATIONS

Ms. WARREN. Madam President, it hasn't been even a month since the end of the Republican shutdown of the government, and they are already back at trying to paralyze the government again.

Yesterday, the Republicans blocked an up-or-down vote on the nomination

of Nina Pillard to the DC Circuit Court of Appeals. This filibuster comes just 1 week after Republicans filibustered the nomination of Patricia Millett to the DC Circuit, and less than 1 year after Republicans filibustered Caitlin Halligan, who eventually just gave up and withdrew her nomination.

Republicans now hold the dubious distinction of having filibustered all three women that President Obama nominated to the DC Circuit. Collectively, these women have diverse experiences in private practice, in government, and in public interest law. Between them, they have argued an amazing 45 cases before the Supreme Court and have participated in many more. All three have the support of a majority of Senators. So why have they been filibustered? The reason is simple. They are caught in a fight over the future of our courts—a fight over whether the courts will be a neutral forum that decides every dispute fairly or whether the courts will be stacked in favor of the wealthy and the powerful.

Every day in Congress we deal with the influence of powerful groups and their armies of lobbyists. But in our democracy, when we write laws, sometimes we can push back on that power. In our democracy we have tools that can be used in the legislative process—tools such as open debate, public opinion, and political accountability, tools that can help the people win these fights. I saw it happen up close in the 2008 financial crisis when we were able to get a strong consumer financial protection bureau despite the efforts of the large financial institutions to kill it.

But the story doesn't end when Congress passes a law. Powerful interests don't just give up. They shift their fight to the courts because they know that if they can weaken or overturn a law in court, they turn defeat into victory. If they can break the courts by putting enough sympathetic judges in lifetime positions, a friendly judicial system will give them the chance to undermine any laws they don't like. That is already happening in the Supreme Court. Three well-respected legal scholars, including Judge Richard Posner of the Seventh Circuit, a distinguished judge and conservative Reagan appointee, recently examined almost 20,000 Supreme Court cases from the last 65 years. The researchers concluded that the five conservative justices currently sitting on the Supreme Court are in the top 10 most procorporate justices in more than half a century. Justices Alito and Roberts are number one and number two.

Take a look at the win rate of the national Chamber of Commerce in cases before the Supreme Court. According to the Constitutional Accountability Center, the national Chamber moved from a 43-percent win rate during the last 5 terms of the Burger court, to a 56-percent win rate under the Rehnquist court, to a 70-percent rate

under the Roberts court. Follow this procorporate trend to its logical conclusion, and pretty soon you will have a Supreme Court that is a wholly owned subsidiary of big business.

The powerful interests that work to rig the Supreme Court also want to rig the lower courts. The DC Circuit is a particular target because that court has the power to overturn agency regulations. If a business doesn't like it when the agencies implement the will of Congress, they try to undermine those agencies through the DC Circuit.

In the next 5 years, the DC Circuit will decide some of the most important cases of our time—including cases which will decide whether Wall Street reform will have real bite or whether it will just be toothless. Swaps dealers, the securities industry, the Business Roundtable, and the Chamber of Commerce are all lining up to challenge the new rules that agencies have written to try to put some teeth into Wall Street reform and other laws. These big-industry players want business-friendly judges to help bail them out.

So let's be clear. Nine of the 14 judges on the DC Circuit who currently hear cases were appointed by Republican Presidents. The President with the most appointees on that court right now is Ronald Reagan.

This lopsided court has been busy striking down environmental regulations that stop companies from spewing mercury into the air we breathe, striking down investor protections that hold corporate boards accountable, striking down a requirement for employers to provide access to birth control under ObamaCare. Each of these regulations exists because Congress has passed laws telling the agencies to write them.

It is true that sometimes an agency may get it wrong, but these days the DC Circuit seems to be finding more and more ways to help bail out the businesses that never wanted to be regulated in the first place.

Republicans have noticed what is going on with this lopsided court. They would like to keep things the way they are, and they have not been subtle about it. Many Republicans have talked openly of their opposition to any new judges to fill the three vacancies on this court precisely because the new nominees will give the court more balance and fairness. Republicans may prefer a rigged court that gives their corporate friends and their armies of lobbyists and lawyers a second chance to undercut the will of Congress, but that is not the job of judges. Judges aren't supposed to make law. Judges aren't supposed to tilt politically one way or the other.

Republicans may not like Wall Street reform. They may not like ObamaCare. But Congress passed those laws. President Obama signed those laws. President Obama ran for reelection on those laws, while his opponent pledged to repeal them—and his opponent lost by nearly 5 million votes. It is not up to

judges to overturn those laws or their associated regulations just because they don't fit the judges' policy preferences.

There are three vacancies on the DC Circuit, and the President has nominated three impressive people to fill those vacancies—including Patricia Millett and Nina Pillard. These nominees are not ideological. They have extraordinary legal resumes and have received bipartisan support from top litigators around the country. They are among the top legal minds of this generation.

This is how the President plans to push back against efforts to tilt our judicial system: by nominating judges who will be judges—judges who will be fair, judges who will be evenhanded, judges who will have the diversity of professional experience to understand and consider all sides of an issue.

I understand that Republicans may prefer to keep the DC Circuit exactly as it is. But article II, section 2 of the Constitution says the President of the United States nominates judges, with the advice and consent of the Senate. There is no clause that says, except when that President is a Democrat. Democrats allowed President George W. Bush to put four very conservative judges on the DC Circuit. All four are still serving, and one is Chief Justice of the U.S. Supreme Court.

There are three vacancies in the DC Circuit Court of Appeals. The President of the United States has nominated judges to fill those vacancies. That is his job, and it is the job of the Senate to confirm highly qualified, independent judges. That is how our system works. That is what the Constitution demands.

Republicans these days do not seem to like that. They keep looking for ways to keep this President from doing his job. So far they have shut down the government, they have filibustered people he has nominated to fill his administration, and they are now filibustering judges to block him from filling any of the vacancies with highly qualified people. We need to call out these filibusters for what they are—naked attempts to nullify the results of the last Presidential election, to force us to govern as though President Obama had not won the 2012 election.

President Obama did win the 2012 election—by 5 million votes. He has done what the Constitution requires him to do—nominated highly qualified people to fill open vacancies on the Federal bench. If Republicans continue to filibuster these highly qualified nominees for no reason other than to nullify the President's constitutional authority, then Senators not only have the right to change the filibuster rules, Senators have a duty to change the filibuster rules. We cannot turn our back on the Constitution. We cannot abdicate our oath of office. We have a responsibility to protect and defend our democracy, and that includes protecting the neutrality of our courts

and preserving the constitutional power of the President to nominate highly qualified people to court vacancies.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DRUG QUALITY AND SECURITY ACT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consideration of the motion to proceed to H.R. 3204, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to the bill (H.R. 3204) to amend the Federal Food, Drug, and Cosmetic Act with respect to human drug compounding and drug supply chain security, and for other purposes.

Ms. WARREN. Madam 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. THUNE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

OBAMACARE

Mr. THUNE. Madam President, the question of the week is, more important than apologizing, will President Obama live up to his promise that Americans can keep the care they have and like? Democrats are clearly running away from embracing this law and are suggesting the President live up to his promise as well. Yesterday former President Clinton said:

I personally believe, even if it takes a change to the law, the President should honor the commitment the Federal Government made to those people and let them keep what they got.

That is from former President Clinton yesterday in an interview he did.

More and more we see people on the Democratic side of the aisle coming forward, acknowledging what many of us have been acknowledging for a long time; that is, this is not living up to expectations. We need a timeout. It is clearly not working, it is not ready for prime time, and it is obvious that we need to acknowledge that and come up with plan B.

Senator DURBIN, here in the Senate, said in an interview Tuesday that the cancellations of their coverage that people might face under ObamaCare and the statement that people could keep their plans “should have been clarified.”

Democratic Representative KURT SCHRADER from Oregon thinks the President was grossly misleading to the American public and said:

I think the President was grossly misleading the American public.

Senator FEINSTEIN, who is not up for reelection, is supporting legislation to allow individuals to maintain enrollment in the plans they like.

These mistruths are clearly affecting the President's credibility. President Obama's approval ratings have dipped to a record low. A poll from Quinnipiac University that was released shows respondents disapprove of the President's job performance by a 54-to-39 margin. His approval rating of 39 percent is worse than his previous alltime low of 41 percent in the Quinnipiac survey done previously. Further, more people—52 percent—say the President is not honest and trustworthy.

We are on the verge of another misstatement from this administration where they make promises to the American people that they do not meet. Last month the administration promised they would have healthcare.gov fixed by the end of November. It appears unlikely, according to today's Washington Post, where a headline reads: “Troubled HealthCare.gov unlikely to work fully by end of November.”

For proof that this Web site design has been a failure of leadership, compare it to Cyber Monday volume at amazon.com in 2012. According to amazon.com's press release, it sold 27 million items on Cyber Monday, or 306 items per second. That is how the private sector has been able to process huge volumes of data and requests. If we compare and contrast that with the rollout of ObamaCare and healthcare.com, it is a stunning failure—even epic in terms of the inability of that whole program to function with any level of competence.

It is clear that technology exists to fix the Web site to handle high volumes, but, as the President has said, the health care law is more than just a Web site, and that is where most of us come down on this issue. This is a flawed policy that is causing millions of Americans to lose the health care they like. Most of us know someone who has had his or her health care canceled by ObamaCare, and it is going to get worse. The Associated Press reports that at least 3.5 million have received cancellation notices, and that number is expected to increase to tens of millions of people. As Americans—millions more—are losing their plans, only thousands are signing up through ObamaCare.

Constituents are encouraged to visit our Web site at republican.senate.gov/yourstory to submit their stories about how this is impacting them personally. The American people deserve to have their stories heard, and Americans deserve to have the President and congressional Democrats keep their promise.

We believe what former President Clinton said yesterday is correct; that is, President Obama should honor the commitment the Federal Government made to those people and let them keep what they have. That is essentially

where we are today. I would simply ask rhetorically, what is the President going to do to address and honor the promise he made to the American people that they can keep what they have?

Increasingly, more and more Democrats—and, of course, there are many of us on this side of the aisle who predicted this would happen a long time ago—realize this was an ill-conceived policy. I have maintained for a long time that it was built upon a faulty foundation; therefore, you cannot just fix a Web site or have an IT specialist come in and expect this to get better. This is a flawed policy, and it is already having profound and harmful impacts on the American people. We believe many more people will be harmed in the future as the insurance is fully implemented.

The best we can do for the American people in order to minimize the impact and harm is to put off, suspend, delay—whatever you want to call it—the implementation of ObamaCare. Frankly, the best we could do in the long run is pivot away from this failed policy and move in a direction that actually does address some of the fundamental problems we have with health care in this country today.

There is a whole list of solutions Republicans have advanced and put forward in the past—for example, allow people to buy insurance across State lines and create interstate competition so we have insurance companies competing with each other. Obviously, if we have competition and the forces of the market at work, it helps to bring down costs and prices.

Another example is to allow small businesses to join larger groups to get the benefit of group purchasing power—to pool, if you will. That is something we have been proposing for some time, and it has been consistently defeated by Democrats in Congress. Other examples are reducing the cost of defensive medicine by ending the junk lawsuits that clog up our legal system and drive up the cost of health care, allowing an expanded use of health savings accounts and those types of vehicles that are out there for people today to put money aside for their health care needs; allowing people to have a refundable tax credit so they can buy their own insurance, which would give them more choices, create more competition, and, again, put downward pressure on the cost and price of health care in this country.

Those are commonsense step-by-step solutions that we think would work so much better than having one-sixth of our entire economy, which is what health care represents, taken over by the Federal Government. Political command and control in Washington, DC, is driving the decisionmaking for Americans across the country. As we have already seen, the Federal Government does not do complicated tasks very well, and the Federal Government doesn't do comprehensive tasks very well.