

payment models in pilot programs as a thinly veiled guise for delaying Medicare Advantage cuts ahead of an election. Never mind the clear conflict between awarding the bonuses across the board and the statutory purpose of such demonstration projects to determine if the payment changes produced efficiency and economy. Never mind the obvious absurdity of pretending to use pseudodemonstration authority to delay the Medicare Advantage cuts unilaterally, when such a demonstration is at least seven times larger than any other Medicare demonstration conducted since 1995 and is greater than the budgetary impact of all those previous demonstrations combined. And never mind that the statutory authority for the demonstrations calls for budget neutrality.

When I first learned of the Obama administration's clear abuse of this narrow statutory authority, I asked GAO to investigate. GAO's report confirmed that the administration had indeed exceeded its legal authority and recommended canceling the program because it wasted taxpayer money. Still, the administration pressed forward, simply ignoring its obligations and usurping Congress's constitutional power of the purse.

I wish I could say this move was surprising, but through a repeated pattern of such actions, President Obama and his administration have earned a reputation for executive arrogance and constitutional abuse.

The list of fundamentally illegal actions by this administration in implementing ObamaCare goes on and on. For now, let me mention one more example where President Obama has completely disregarded his obligation to enforce the law and yet again sought to usurp Congress's power to make taxing and spending decisions through the constitutionally ordained legislative process.

The ObamaCare provision at issue in this instance is remarkably simple. It provides tax subsidies for individuals to purchase health coverage through an exchange "established by the State under section 1311."

Section 1311 is the provision of ObamaCare that allows States the option to create their own exchanges, but section 1311 is not the provision that authorizes the creation of the Federal exchange to operate where the States choose not to act. That is section 1321.

I can't imagine how this provision could be any clearer. The law only authorizes subsidies in connection with State exchanges, not the Federal exchange, and this is no accident. ObamaCare incorporated the principle of so-called cooperative federalism—a polite term for thinly veiled Federal coercion and commandeering of the sovereign States. Indeed, this figleaf hiding Federal dominance was critically important to rounding up 60 votes to pass ObamaCare in the Senate.

As my friend, the former Senate from Montana—now Ambassador to China

and a principal author of the ObamaCare text—noted during the Finance Committee markup of the bill, conditioning tax credits in this way was the only means by which our committee could establish jurisdiction to demand rewriting State insurance laws, as ObamaCare requires, but in the end, the Federal Government's own exchange ended up covering the majority of States.

As written, the law does not permit subsidies in connection with the Federal exchange. Given these circumstances, did the administration choose to enforce the legislative compromises to which President Obama agreed by signing the bill into law? Did the White House seek to work with Congress to address this disparity? Of course not.

Yet again, HHS chose to ignore the clear statutory restrictions and instead authorized billions of dollars in illegal subsidies through the Federal exchange in direct conflict with the plain text of the law.

This obvious abuse has been challenged in court, and after hearing the judges' deep skepticism of the administration's case, I am confident the U.S. Court of Appeals for the DC Circuit will roundly reject the Obama administration's radical arguments seeking to justify this lawlessness. I hope the court will hold the administration accountable for its deliberate and unmistakable violation of the law and that it will do so despite the effort by President Obama and his allies to fill the DC Circuit with compliant judges who might overlook the administration's executive abuses, but whatever that or any other court determines as a matter of specific legal principle, the fact remains that Obama administration officials—and in particular the HHS Secretary—have repeatedly and purposefully sought to undermine Congress, usurp legislative power, and become a law unto themselves.

President Obama came into office promising the most transparent and accountable Presidential administration in history. The Obama administration has ended up being transparently lawless.

Today I have discussed only five examples of the administration's lawlessness in implementing ObamaCare. I will save for another day the significant legal concerns surrounding the administration's abusive handling of high-risk pools, its actions involving the small business exchange, its sweetheart deals granting unauthorized exemptions for labor unions, and many other similarly problematic actions.

But even in the five examples I have mentioned today, the overriding point is clear: the tenure of President Obama has amounted to an unmistakable pattern of executive abuse. Time and again his administration has flouted its constitutional responsibilities, exceeded its legitimate authority, ignored duly enacted law, and sought to escape any accountability for its executive overreach.

Such executive abuse cannot stand. Whether Republican or Democratic, each of us has a sworn obligation to defend the Constitution, and each of us has the responsibility to defend the rightful prerogatives of the legislative branch. I have long argued that ObamaCare unconstitutionally intrudes on our most basic liberties, but those liberties cannot be secured when the executive branch defies legal bounds and ignores its constitutional obligations.

The continued well-being of our Nation, the legitimacy of our republican self-government, and the basic liberties of our fellow citizens depend on ensuring the exercise of executive prerogative is properly kept within lawful bounds. Doing so requires continual vigilance—by the courts, by Congress, and by the American people—especially in the face of such reckless lawlessness by the current administration.

Our Nation needs new leadership. Ultimately, we need to elect a new President in 2016, one who will respect the Constitution and seek to protect the rights of its citizens, but until then we need an HHS Secretary who will uphold the law and respect the rightful prerogatives of the legislative branch.

That is why I pressed Ms. Burwell during her confirmation hearing last week about the administration's illegitimate and lawless actions and about the need for a different approach. No matter how cordial our debate may be, no matter her impressive qualifications, my overriding concern is that she be accountable to Congress, to the law, and to the Constitution.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. WARREN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

---

#### UNANIMOUS CONSENT AGREEMENT—H.R. 3080

Mr. REED. Madam President, I ask unanimous consent that if the Senate receives the papers with respect to the conference report to accompany H.R. 3080, the Water Resources Reform and Development Act, by Thursday, May 22, at a time to be determined by the majority leader with the concurrence of the Republican leader, but no later than Thursday, May 22, the Chair lay before the body the conference report to accompany H.R. 3080, and the Senate proceed to vote on adoption of the conference report; that the vote on adoption be subject to a 60-affirmative-vote threshold; further, that no motions or points of order be in order to the conference report.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## EXECUTIVE SESSION

NOMINATION OF DANA J. HYDE TO BE CHIEF EXECUTIVE OFFICER, MILLENNIUM CHALLENGE CORPORATION

NOMINATION OF SUSAN McCUE TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE MILLENNIUM CHALLENGE CORPORATION

NOMINATION OF MARK GREEN TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE MILLENNIUM CHALLENGE CORPORATION

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations which the clerk will report.

The assistant legislative clerk read the nominations of Dana J. Hyde, of Maryland, to be Chief Executive Officer, Millennium Challenge Corporation; Susan McCue, of Virginia, to be a Member of the Board of Directors of the Millennium Challenge Corporation; and Mark Green, of Wisconsin, to be a Member of the Board of Directors of the Millennium Challenge Corporation.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate, equally divided in the usual form, prior to a vote on the Hyde nomination.

Mr. REED. Madam President, I ask unanimous consent that all time be yielded back on the nominations.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

## VOTE ON HYDE NOMINATION

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Dana J. Hyde, of Maryland, to be Chief Executive Officer, Millennium Challenge Corporation?

The nomination was confirmed.

## VOTE ON MCCUE NOMINATION

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Susan McCue, of Virginia, to be a Member of the Board of Directors of the Millennium Challenge Corporation?

The nomination was confirmed.

## VOTE ON GREEN NOMINATION

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Mark Green, of Wisconsin, to be a Member of the Board of Directors of the Millennium Challenge Corporation?

The nomination was confirmed.

## NOMINATION OF GREGG JEFFREY COSTA TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH DISTRICT

The PRESIDING OFFICER. Under the previous order, the clerk will report the Costa nomination.

The assistant legislative clerk read the nomination of Gregg Jeffrey Costa, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. There will now be 2 minutes of debate, equally divided in the usual form.

The Senator from Rhode Island.

Mr. REED. Madam President, I ask unanimous consent that all time for debate be yielded back.

The PRESIDING OFFICER. All time is yielded back.

Mr. REED. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Gregory Jeffrey Costa, of Texas, to be United States Circuit Judge for the Fifth Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Arkansas (Mr. BOOZMAN), the Senator from Indiana (Mr. COATS), and the Senator from Kentucky (Mr. McCONNELL).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

## [Rollcall Vote No. 158 Ex.]

## YEAS—97

Alexander	Graham	Murray
Ayotte	Grassley	Nelson
Baldwin	Hagan	Paul
Barrasso	Harkin	Portman
Begich	Hatch	Pryor
Bennet	Heinrich	Reed
Blumenthal	Heitkamp	Reid
Blunt	Heller	Risch
Booker	Hirono	Roberts
Boxer	Hoover	Rockefeller
Brown	Inhofe	Rubio
Burr	Isakson	Sanders
Cantwell	Johanns	Schatz
Cardin	Johnson (SD)	Schumer
Carper	Johnson (WI)	Scott
Casey	Kaine	Sessions
Chambliss	King	Kirk
Coburn	Kirk	Shaheen
Cochran	Klobuchar	Shelby
Collins	Landrieu	Stabenow
Coons	Leahy	Tester
Corker	Lee	Thune
Cornyn	Levin	Toomey
Crapo	Manchin	Udall (CO)
Cruz	Markey	Udall (NM)
Donnelly	McCain	Vitter
Durbin	McCaskill	Walsh
Enzi	Menendez	Warner
Feinstein	Merkley	Wyden
Fischer	Mikulski	Whitehouse
Flake	Moran	Wicker
Franken	Murkowski	
Gillibrand	Murphy	

## NOT VOTING—3

Boozman	Coats	McConnell
The nomination was confirmed.		
The PRESIDING OFFICER.	Under the previous order, the motion to re-	

consider is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

## CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

## CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Stanley Fischer, of New York, to be a Member of the Board of Governors of the Federal Reserve System.

Harry Reid, Tim Johnson, Thomas R. Carper, Richard J. Durbin, Tom Udall, Angus S. King, Jr., Mark Begich, Elizabeth Warren, Martin Heinrich, Patty Murray, Tom Harkin, Robert Menendez, Patrick J. Leahy, Benjamin L. Cardin, Charles E. Schumer, Heidi Heitkamp, Mark R. Warner.

The PRESIDING OFFICER. There will be 2 minutes of debate equally divided.

Mrs. MURRAY. We yield back all time.

The PRESIDING OFFICER. Without objection, all time has been yielded back.

By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Stanley Fischer, of New York, to be a Member of the Board of Governors of the Federal Reserve System, shall be brought to a close?

The yeas and nays are mandatory under the rules.

The clerk will call the roll.

The bill clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Arkansas (Mr. BOOZMAN), the Senator from Indiana (Mr. COATS), and the Senator from Kentucky (Mr. McCONNELL).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 62, nays 35, as follows:

## [Rollcall Vote No. 159 Ex.]

## YEAS—62

Alexander	Hagan	Murphy
Ayotte	Harkin	Murray
Baldwin	Hatch	Nelson
Begich	Heinrich	Pryor
Bennet	Heitkamp	Reed
Blumenthal	Hirono	Reid
Blunt	Johnson (SD)	Rockefeller
Booker	Kaine	Sanders
Boxer	King	Schatz
Brown	Kirk	Shah
Burr	Klobuchar	Shah
Cantwell	Landrieu	Stabenow
Cardin	Leahy	Tester
Carper	Levin	Udall (CO)
Casey	Manchin	Udall (NM)
Chambliss	Markey	Walsh
Coburn	Merkley	Warner
Cochran	Mikulski	Whitehouse
Collins	Moran	Wicker
Coons	Murkowski	
Corker	Murphy	
Cornyn	Wyden	