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Senate

The Senate met at 2 p.m. and was called to order by the Honorable CHRISTOPHER MURPHY, a Senator from the State of Connecticut.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Father, in a turbulent world filled with wars and rumors of war, be merciful and bless us.

May Your ways be known to our Senators, and may they seek Your guidance. Carry them in Your strong arms, enabling them to accomplish with Your might what they cannot do with their strength alone.

O God, summon Your might and display Your power in these challenging days of Earth's history. Use us to speak of Your majesty, power, and strength to those held captive by fear.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. LEAHY).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 14, 2014.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHRISTOPHER MURPHY, a Senator from the State of Connecticut, to perform the duties of the Chair.

PATRICK J. LEAHY,
President pro tempore.

Mr. MURPHY thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

PROTECT WOMEN'S HEALTH FROM CORPORATE INTERFERENCE ACT OF 2014—MOTION TO PROCEED

Mr. REID. Mr. President, I move to proceed to Calendar No. 459, S. 2578, the Protect Women's Health From Corporate Interference Act.

The ACTING PRESIDENT pro tempore. The clerk will report the motion.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 459, S. 2578, a bill to ensure that employers cannot interfere in their employees' birth control and other health care decisions.

SCHEDULE

Mr. REID. Mr. President, following my remarks and those of the Republican leader, if any, there will be a period of morning business until 6 p.m. this evening, with Senators permitted to speak therein for up to 10 minutes each. There will be no rollcall votes during today's session of the Senate. The reason for that is last week we were able to get a few things done. We were able to do some things around here the way we used to do them.

I know my Republican colleagues lament how things used to be. Well, I was there. I know how things used to be. One of the things we used to do is we would work out pieces of legislation, as we did on terrorism insurance. We have a number of people who worked hard on that: Chairman JOHNSON, Senator SCHUMER—he worked with Ranking Member CRAPO—and they came up with a way forward on an important piece of legislation. There will be some amendments. We will finish that legislation this week—very important, important

to our country, important to our economy, important to the construction industry. So I was very happy to see that done. So there are no votes tonight, and that is the reason for that.

There will be no rollcall votes during today's session, as I mentioned. The next rollcall votes will be tomorrow at noon. Those will be two cloture votes on nominees to be members of the Federal Energy Regulatory Commission.

SUING THE PRESIDENT

Mr. President, the Republicans have made a decision on a lawsuit against President Obama. It is difficult to understand how they have become so desperate that now they are talking about: Our issue of the day is not the minimum wage. Our issue of the day is not that women and men get the same amount of money for doing the same work. The issue of the day is not the crippling debt that is staggering this country; that is, student loan debt. Extended unemployment benefits—that is nothing they are focused on. I could go through a long list of what is important to the middle class that they simply are ignoring. So what are they doing to solve the problems of this country? Suing the President.

Mr. President, listen to what they are suing him about. They have been broadcasting for weeks their intention to sue the President, but they just did not know why. That is what they said, not I. Now, after misstep after misstep after misstep, they know why they are suing the President; they want to litigate ObamaCare.

The Acting President pro tempore has done a remarkably good job of calling out Republican Senators when they come to the floor and make these ridiculously false statements, and I appreciate that. I think everybody in the country, if they do not, should appreciate what the junior Senator from Connecticut has done.

House Republicans have identified President Obama's delayed enforcement of employer obligations in the

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Affordable Care Act as the centerpiece of that frivolous lawsuit. This provision, which affects companies with 50 or more full-time employees, ensures that employers pay their fair share if their employees receive health subsidies. But listen to this: The irony, of course, is that this specific provision, which is in the bill that became law, came about as a result of the Republicans wanting to put it in the bill. Senator GRASSLEY, Senator ENZI, and former Senator SNOWE—this was something they worked on with Senator BAUCUS and other Members to come up with this bill. They placed it in the bill. It became law.

Even more absurd is the fact that Republicans in Congress have long targeted this specific provision of comprehensive health reform. In fact, just after President Obama announced the delay of the employer provision, House Republicans voted on legislation to do the exact same thing—delay the so-called mandate. So they are suing the President of the United States because he did what they wanted him to do—delay the mandate.

Every word I have spoken I wrote down in my own handwriting. That is what they wanted to do. They wanted him to do this. He did it and they sued him for doing what they wanted him to do. They could have applauded him.

House Republicans are trying something worthy of daytime television's "The People's Court" on one of those channels you do not watch very much. There are a lot of court channels, but this would be one where you would really have to be desperate to watch. They would not put it on a channel that made any common sense.

So, to sum it up, Republicans create an employer obligation provision in the Affordable Care Act. The Affordable Care Act becomes law. Republicans vilify the employer provision they themselves authored. Republicans demand that the employer provision in ObamaCare be delayed. President Obama agrees to delay the employer provision, and House Republicans sue President Obama for delaying the employer provision. Is this weird? Is this weird? I can answer my own question. Yes, it is weird.

This is the behavior we have come to expect from the Republican Party that is determined to do one thing: undermine this President. No matter the issue, even when they ask him to do it, they oppose him on it. They sue him this time.

We have seen this so often in the Senate. It is not just in the House. Last week the Republicans filibustered a bill on which there were 26 Republican cosponsors. That is a new one. More than half of the Republican Senators put their names on a bill and then turned around and voted against it.

With this provision in the health care law, House Republicans are ignoring the fact that they gave President George W. Bush a pass for doing the exact same thing—delaying a specific

provision of a congressionally passed health care law. Then President Bush, through Executive order, waived Medicare Part D penalties for seniors enrolled after the deadline. He did this by Executive order. Republican leadership in the House did not consider suing President Bush for his administration's delay of health care law. So they chose now to do this. Why? Because it is President Obama.

While Republicans accuse President Obama of Executive overreach, they neglect the fact that he has issued far fewer Executive orders than any two-term President in the last 50 years. President George W. Bush issued 291 Executive orders. President Clinton issued 364 Executive orders. President Reagan is the record holder; he issued 381 Executive orders. President Obama is not close to their records. He is 109 behind President Bush. He is 182 behind President Clinton. He is 199 behind President Reagan. What is the President's tally to date? As I have indicated, he is behind them all—an 8-year President. He has issued only 182.

Republicans' disdain for President Obama and health care reform has prevented them from accepting the obvious: ObamaCare is proving more and more successful every day. It seems as if every week—sometimes every other day—there is some new study or survey showing how good ObamaCare is, how it is helping American families.

Mr. President, the Commonwealth Fund:

The uninsured rate for people ages 19 to 64 declined from 20 percent in the July-to-September 2013 period to 15 percent in the April-to-June 2014 period. An estimated 9.5 million fewer adults were uninsured.

That is big-time stuff.

Young men and women drove a large part of the decline; the uninsured rate for 19-to-34-year-olds declined from 28 percent to 18 percent—

Remember when everybody said young people will run from this. They are not running from this. They are running to it—

with an estimated 5.7 million fewer young adults uninsured.

That is so important. Because of the high cost of health care previously, young people—many of them—would not do it. Mr. President, 5.7 million more would not sign up for any kind of health insurance. And what happens? Young people do not realize they get very sick also. They get into accidents also. Bad things happen to young people, as they do to middle-aged and older people. And younger people are signing up for ObamaCare.

By June, 60 percent of adults with new coverage through the marketplaces or Medicaid reported they had visited a doctor or hospital or filled a prescription; of these, 62 percent said they could not have accessed or afforded this care previously.

That is stunning. It is no wonder—it is no wonder—we have fewer and fewer Republicans coming down here giving these speeches about how bad ObamaCare is.

A Gallup survey: "In U.S., Uninsured Rate Sinks to 13.4% in Second Quarter." This deals with millions of people.

The uninsured rate in the U.S. fell 2.2 percentage points. . . .

When you have 300 million people, 2.2 percent is a lot of people.

The previous low point was 14.4% in the third quarter of 2008.

So it is well below that.

The RAND Corporation: "Changes in Health Insurance Enrollment Since 2013."

. . . . overall, we estimate that 9.3 million more people had health care coverage in March 2014, lowering the uninsured rate from 20.5 percent to 15.8 percent.

Stunningly important numbers.

So the evidence—not the shrill statements made by my colleagues over here bemoaning the fact of how terrible things are—all the evidence indicates that the Affordable Care Act is helping millions of Americans. You can say anything you want, but facts are nasty things. They are nasty to the point that they are factual. Do not believe all these crazy statements when there is no basis for it. It is helping—this ObamaCare—Democrats, Republicans, and Independents. It is helping residents of blue States, red States, and purple States.

How about the State of Kentucky, the home State of our Republican leader? Well over 400,000 Kentuckians have signed up for coverage through the Affordable Care Act. That is not a State with the population of Illinois or New York or California or Texas; it is a sparsely populated State.

Four hundred thousand Kentuckians have signed up for coverage. Even Republicans love it. The Commonwealth Fund that I referred to found that 74 percent of newly insured Republicans are happy with their ObamaCare health coverage, but instead of embracing the good that ObamaCare has done and working with Democrats to address any necessary fixes, Republicans would rather file a foolish and meritless lawsuit.

Is there anyone who believes this lawsuit has some basis? It is a sham—an effort to appease the tea party radicals in the House of Representatives. One Yale law professor was questioned on why the lawsuit is receiving so much media attention. Here is what he said: "I see this every day now, being covered as if it's, as if it's somehow not a joke." It is a joke.

Another law professor from Harvard said: "The lawsuit will almost certainly fail, and it should fail, for lack of any Congressional standing." Imagine how many lawsuits there would be if House Republicans could sue the President every time they disagreed with him about something—or some future President—but there is no reasoning with the radical Republicans in the House or the tea party-driven Members of the Senate.

House Republicans would rather waste taxpayer dollars than accept the

fact that their constituents, their very own neighbors, are benefiting from health care reform.

This is a phony trial that will come up. It is a show trial. It is what Republicans want.

I guess that is what they want, but if that is truly what they want, they should go talk to Judge Judy. I think she would throw this case out in half a second. The Congress is no place for inane, politically motivated litigation. I think Judge Judy would agree.

It is expensive and wasteful. It is wasting taxpayers' hard-earned money on something that is without any merit. Enough is enough. The fight over ObamaCare should be long since ended. The law is here to stay and, more importantly, newly insured Americans, all who have signed up, not only those who are newly insured but those who have signed up who had insurance before, want the law to stay just where it is.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 6 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Mr. REID. 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. BARRASSO. I ask unanimous consent that the order for the quorum call be rescinded.

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

BAY NOMINATION

Mr. BARRASSO. Mr. President, I rise today to discuss the nomination of Norman Bay. President Obama has nominated Mr. Bay to be a commissioner of the Federal Energy Regulatory Commission, or FERC. The President has announced that if Mr. Bay is confirmed, his plan is to elevate Mr. Bay to the position of chairman of FERC. Over the past few months there has been much discussion about whether the President should have nominated Mr. Bay to be chairman, and I think there is very good reason to ask whether the President really should have nominated Mr. Bay at all.

In my view Mr. Bay is not qualified to be a commissioner, let alone to be chairman of FERC. Mr. Bay has only 5 years of working experience in the energy sector—a total of 5 years. This is less time than the Keystone XL Pipeline has been pending with the Obama administration.

During the nomination hearing, I specifically asked Mr. Bay about his lack of experience. In response, he cited his summer internship at a Department of Energy research facility during college—a summer internship during college. With all due respect, this man does not have the background, the qualifications, and certainly not the experience to take on this important role.

The President has nominated Mr. Bay to replace FERC's current chairman Cheryl LaFleur. In contrast to Mr. Bay, whom the President has nominated to replace Ms. LaFleur, Ms. LaFleur has over 25 years of experience in the energy sector. That includes 4 years as a commissioner of FERC and 7 months as the chairman of FERC. I don't often agree with Ms. LaFleur's policies, but you cannot deny that she is qualified to serve.

Mr. Bay's lack of experience is not the only reason I oppose his nomination. There are a number of outstanding factual disputes about Mr. Bay's tenure as the FERC's enforcement director. For example, there are serious allegations that the enforcement staff, during the time Mr. Bay has been in charge, has violated basic principles of due process. These allegations include the withholding of exculpatory evidence from subjects of FERC investigations.

In May the Energy Law Journal published an article by William Scherman, who was a former general counsel of FERC and by two other attorneys familiar with this situation, and they write: "There is a wide-spread view that the FERC enforcement process has become lop-sided and unfair."

They said that:

One need only to observe the fact that Enforcement Staff denies, in case after case, the existence of exculpatory or exonerating materials . . . only to . . . produce a subset of those materials too late in the process to be of use . . . in raising defenses.

The authors explain that "one of the fundamental principles of due process is that the government is not permitted to hide information from the accused that may aid in his or her defense." They say that "[FERC] Enforcement Staff routinely fails to produce exculpatory documents"—routinely fails to produce exculpatory documents.

During Mr. Bay's nominating hearing, I asked him about these allegations. At first he denied the allegations were true, but then he stated he was "not aware of any instance in which Enforcement Staff has failed to produce exculpatory materials."

So I asked him to clarify his remarks. I asked him whether the allegations were true or not. He pled ignorance.

With all due respect, this answer is inexcusable. This is his staff doing his work under his direction. He should know whether they withheld the evidence from defendants.

There are not only questions about his commitment to due process, but

there are also questions about the President's nominee on whether he or anyone else at FERC suggested that an enforcement action be settled in return for approval of a merger. So there are questions about whether an enforcement action should be settled in return for approving a merger.

The ranking member of the energy committee asked all about this during the nomination hearing. The ranking member of the committee asked Mr. Bay about the connection between FERC's enforcement settlement with Constellation Energy and FERC's approval of Constellation's merger with Exelon.

The ranking member noted that FERC settled with Constellation the day before—1 day before it approved a merger between Constellation and Exelon. In fact, the enforcement settlement, which Mr. Bay himself signed, specifically mentions the merger between these two. The ranking member of the Energy Committee asked Mr. Bay whether he is concerned about the appearance of a quid pro quo between the settlement agreement one day and the merger approval the next. Mr. Bay admitted he would be concerned.

The ranking member then asked if he or others suggested to FERC that Constellation should settle the enforcement action in order to get its merger approved. In response he said that "[t]o the best of [his] recollection" he didn't make such a suggestion and that he did not know what others at FERC—including his own staff—may have suggested.

With all due respect to Mr. Bay, his answer is, at best, hard to believe.

At the time FERC's enforcement settlement with Constellation was the largest enforcement settlement completed in the history of the agency. So they make this settlement, it is the largest enforcement settlement in the agency's history, and the next day they allow a merger which has created one of the Nation's largest utilities. Are we really to believe that Mr. Bay doesn't remember what he or others at FERC said to Constellation? Can we really believe that?

I believe the energy committee or some other independent entity should get answers to these and other questions surrounding Mr. Bay's record before we decide—this Senate—to confirm and promote him.

I know that some Senate Democrats are nervous about voting for Mr. Bay—and I believe rightfully so. These Senate Democrats have said they will vote for Mr. Bay only because they believe a so-called deal was cut with President Obama. Specifically, they say the President will allow Ms. LaFleur to continue serving as chairman for 9 months after her confirmation.

The President hasn't put it in writing, hasn't really told all of the Members that. And even if the President had, this is no way for the Senate to be able to enforce it. The truth is this is