



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 114th CONGRESS, FIRST SESSION

Vol. 161

WASHINGTON, FRIDAY, JANUARY 30, 2015

No. 16

Senate

The Senate met at 10:30 a.m. and was called to order by the President pro tempore (Mr. HATCH).

PRAYER

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

Let us pray.

Almighty God, Sovereign of our Nation and Lord of our lives, thank You for infusing us with the confidence that You order our steps each day.

Give our lawmakers courage and a strong resolve to glorify Your Name, as they trust the unfolding of Your loving providence. As they remember what You have already done to bless this Nation, inspire them to march confidently toward tomorrow's difficulties with a total dependence on Your power. May they recommit themselves each day to faithfully fulfilling the awesome responsibility You have entrusted to them. Lord, be their strength and shield this day and always.

We pray in Your mighty Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore 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.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mrs. CAPITO). Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

Mr. HATCH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER. The majority leader is recognized.

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2015—MOTION TO PROCEED

Mr. McCONNELL. Madam President, I move to proceed to H.R. 240.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 5, H.R. 240, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2015, and for other purposes.

CLOTURE MOTION

Mr. McCONNELL. Madam President, I sent a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative 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, do hereby move to bring to a close debate on the motion to proceed to H.R. 240, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2015.

Mitch McConnell, John Cornyn, Richard Burr, Jerry Moran, John Thune, Johnny Isakson, Marco Rubio, Roy Blunt, Pat Roberts, Deb Fischer, John Boozman, David Vitter, Tim Scott, Roger F. Wicker, Richard C. Shelby, Michael B. Enzi, Rand Paul.

Mr. McCONNELL. I ask unanimous consent that notwithstanding rule XXII, the mandatory quorum be waived and that the vote on the motion to invoke cloture occur at 2:30 p.m. on Tuesday, February 3. I further ask that if the motion to invoke cloture is agreed to, all postcloture time be yielded back and the Senate proceed to a vote on the motion to proceed to the bill.

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

MEASURES CONSIDERED BY THE SENATE

Mr. McCONNELL. Madam President, the Senate's passage of the Keystone jobs bill is great news for the American people. The Senate will soon turn its attention to a few different matters.

First, we will be voting on a bipartisan measure that has been championed by the Chairs of the Veterans' Affairs and Armed Services Committees.

We lose thousands of our heroes every year to suicide. It is a tragic situation. Senators McCAIN and ISAKSON are leading efforts to do something about it. Their legislation would provide more of the mental health and suicide prevention support our Veterans deserve. The measure already passed unanimously through the House of Representatives. Now we hope for a bipartisan outcome on the Senate floor.

The same should also be said of a second piece of legislation we will consider. It is a debate that will challenge our colleagues on the other side with a simple proposition. Do they think Presidents of either party should have the power to simply ignore laws they don't like? Will our Democratic colleagues work with us to defend key democratic ideals such as the separation of powers and the rule of law or will they stand tall with the idea that partisan exercises of raw power are good things?

The House-passed bill we will consider would do two things. It would fund the Department of Homeland Security and rein in Executive overreach.

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



Printed on recycled paper.

That is it. It is simple, and there is no reason for Democrats to block it.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Madam President, we are told that next week we can expect the Department of Homeland Security appropriations bill, which fully funds the Department of Homeland Security and includes the law enforcement priorities that were agreed to on a bipartisan basis in the House—and I think will be approved on a bipartisan basis in the Senate, hammered out in the Senate Appropriations Committee—will be coming to the Senate.

The House of Representatives has therefore voted to fund Homeland Security in essentially the way the President has asked for and the Democrats and Republicans agreed on. It is not a perfect bill for everybody, but we have to do those things. We have to agree and fund all the departments and agencies of our government.

Yet we now have a statement that our Democratic colleagues are going to block the bill. They apparently intend to say Republicans blocked the bill and that somehow Republicans didn't fund Homeland Security. That is the message they are going to try to promote.

They are going to say they want a clean bill. What does a clean bill mean? Is it a bill that funds the Immigration and Nationality Act as was passed by Congress, some 500 pages? It funds the officers and enforcement officials who carry out those duties every day. Does it fund those? Yes, it funds those.

What is it that people are complaining about then? What is this clean bill they want to see?

I would suggest it is not a clean bill they want. In reality, they want legislation that will fund action by President Obama that violates the Immigration and Nationality Act, actions that he has taken through Executive amnesty. That is the problem we are dealing with.

Apparently they believe the President of the United States, who doesn't agree with the way immigration law is written, the way it has been carried out for 30, 40 years—he is not happy with that. He asked the Congress to change it.

Congress said: No.

He said: I am going to do it anyway. Right across the river from Washington—I am going to lease a building that houses 1,000 new workers—new workers—and those workers are going to process and give out legal status, work permits, Social Security participation, Medicare participation to 5 million people. People who, according to the Immigration and Nationality

Act, are unlawfully in the country and are not able to work. Businesses cannot hire somebody who is in the country unlawfully.

Is there any country in the world that says it is appropriate for a business to hire somebody who entered that country unlawfully? What kind of logic can support such reasoning?

So the President is not an imperial master. He asked Congress and Congress said no, but he wants to go ahead and do it.

Our Democratic colleagues are now telling us they are not going to support funding of Homeland Security because Congress—the House of Representatives bill and the bill I think will have a majority in the Senate—will not fund this building, the 1,000 people, and all the other activities that will be needed to execute this unlawful, unconstitutional Executive amnesty.

It is through the looking glass. I mean, what world are we in?

I was a Federal prosecutor for almost 15 years. They enforce the law, they don't enforce what some President said he would like to see done that is not lawful. Colleagues, this is so serious that the Immigration and Customs Enforcement officials, their association filed a lawsuit, and they challenged the actions of their supervisors telling them not to enforce plain immigration law. They went to Federal court.

Has anybody ever heard of that before? This is the equivalent of the FBI for the immigration service. These are first-rate officers. Many of them have been there 20 or 30 years.

They say: You are asking us to not enforce the law.

They have challenged it in court. I have never heard of anything such as that before. The people in charge of enforcing the law having to go to court to keep from being told not to enforce the law? It is amazing.

This bill will not deny a penny of funding. It will not deny any funding for any program, activity or action that is authorized by law. It does not deny funding for any of those programs that are actually authorized by the laws of the United States. In fact, it says: Spend the money, Mr. President, on enforcing and following the law. You cannot spend money unconstitutionally to advocate and create a system of law Congress rejected—an unlawful activity.

The Congress of the United States is not helpless when it confronts the President. Colleagues, we have to get out from under our desks. Are we afraid to say to the President of the United States we don't agree with this, and we are not going to fund this?

Is that the world we are in? Are we hiding under our desks, that the President may go on television and attack us because we will not agree with his ideas? Surely not, surely not.

The Congress has the power to appropriate money. It goes back to the historic development—before America became a nation—that the Parliament

took over the power of money from the King. Parliament passed the laws, not the King.

We adopted that and we created a constitutional order, instead of a King, to decide how we operate. The Parliament, and the Congress of the United States, was empowered to handle the money.

What obligation, colleagues, does this Congress of the United States have to give the President of the United States money to undermine the laws of the United States? What power does he have to compel us to do so? Zero.

We should do the right thing. And the right thing is to say: Mr. President, we are willing to consider a form of immigration law, but we didn't approve of this bill. We didn't support your bill last time and we are not going to pass your bill this time. We are going to continue to work to improve immigration law and make it better and serve the national interest of the United States—not special interests, not activist groups and not big businesses, but the average working American's interest. That is who we are going to serve in this process.

So why are we afraid to push back on that? It is amazing to me. So I don't think we will. In fact, it is sort of remarkable that this is a bipartisan position that the President has overreached. I am not going to quote the names of Senators. I will be a little bit courteous at this point and just quote some of the statements from all separate Democratic Senators in the last few months when asked about this Executive amnesty by the President. A lot of Senators have never been asked. They are probably thankful they weren't asked.

This is what one Senator said:

... but the President shouldn't make such a significant policy change on his own.

Another Democratic Senator:

... but executive orders aren't the way to do it.

Another Senator:

I disagree with the President's decision to use executive action to make changes to our immigration system.

Another Democratic Senator:

I'm disappointed the President decided to use executive action at this time on this issue, as it could poison any hope of compromise or bipartisanship in the new Senate before it has even started. It's Congress's job to pass legislation and deal with issues of this magnitude.

Absolutely correct. It is Congress's duty to do this.

What about another Democratic Senator:

I worry that his taking unilateral action could in fact inflame public opinion, change the subject from immigration to the President. I also have constitutional concerns about where prosecutorial discretion ends and unconstitutional authority begins.

A wise quote, I think.

Another Senator:

I have concerns about executive action... This is a job for Congress, and it's time for the House to act.

Another Democratic Senator:

... the best way to get a comprehensive solution is to take this through the legislative process.

So I would say, colleagues, why would any Senator, Democrat or Republican—when the very integrity of the constitutional powers given to Congress are eroded in a dramatic way by the President of the United States—not want to assert congressional authority? It is important for our constitutional structure, in my view.

Well, there we are. We had hearings in the Senate on these issues and on the new nominee for Attorney General. The new nominee said she supports and will actively work for the policy the President established. The Attorney General is the chief law enforcement officer in the land. They take an oath to see that the laws of the United States are faithfully executed.

I believe strongly in this. I don't think it is a close question. It is not a close question, colleagues. The President's actions are unlawful. The President's executive actions impose a policy that is detrimental to our ability to ever establish a lawful system of immigration in America. They are against the wishes of the Congress, which rejected this proposal, and they are overwhelmingly in opposition to the views of the American people, as poll after poll has demonstrated.

Do the American people have no role in their government? They can't expect their Members of the Senate to vote for legislation that follows the law instead of breaking the law? Aren't they frustrated already that Congress is not following the law, and they are frustrated with the President's failure to follow the law? I think they are.

Of course I would like to note that President Obama himself said 20 times he did not have the power to do this. He said, in May of 2008:

Congress's job is to pass legislation. The president can veto it or he can sign it . . . I believe in the Constitution and I will obey the Constitution of the United States. We're not going to use signing statements . . .

Another time he said:

Ultimately, our nation, like all nations, has the right and obligation to control its borders and set laws for residency and citizenship. And no matter how decent they are, no matter their reasons, the 11 million people who broke these laws should be held accountable.

October of 2010:

I can't simply ignore laws that are out there.

On October 25 of 2010, he said:

I am president, I am not king. I can't do these things just by myself. We have a system of government that requires the Congress to work with the Executive Branch to make it happen.

Well, even King George couldn't act contrary to the laws passed by Parliament. That statement goes on:

... I just want to repeat, I'm president, I'm not king. If Congress has laws on the books that says that people who are here who are not documented have to be deported,

then I can exercise some flexibility in terms of where we deploy our resources . . . but there's a limit to the discretion that I can show because I'm obliged to execute the law. That's what the Executive Branch means. I can't just make the laws up by myself.

Well, how true is that? That is absolutely correct. It goes on. There are 20 of these. I could continue, but we will be talking about this as the weeks go on.

Now, what do scholars say? Do the scholars say that this action is lawful and that Congress should fund it and we have an obligation to fund it or the President has the right to demand it? Jonathan Turley, who is a Shapiro Professor of Law at George Washington University, a nationally recognized constitutional scholar, testified before Congress many times, most often as a Democratic witness, has said he supports President Obama and voted for him. But he said this:

I believe the president has exceeded his brief. The president is required to faithfully execute the laws. He's not required to enforce all laws equally or commit the same resources to them. But I believe the president has crossed the constitutional line . . .

He said that again yesterday at the judiciary hearing on the Attorney General. He continues:

This goes to the very heart of what is the Madisonian system. If a president can unilaterally change the meaning of laws in substantial ways or refuse to enforce them, it takes offline that very thing that stabilizes our system. I believe the members will loathe the day that they allow that to happen. This will not be the last president. There will be more presidents who will claim the same authority.

Well, I think that is pretty significant. Professor Turley is a supporter of President Obama personally, and someone who has been a frequent Democratic witness for Congress.

Professor Nicholas Rosenkranz of Georgetown University Law Center, in his testimony yesterday before the Senate Judiciary Committee, said—and how simple and true is this. It is pretty insightful, frankly:

Rather than declining to comply with a duly enacted statute—

The INA.

the President has decided to comply meticulously—with a bill that never became law.

What a statement that is. And it is absolutely true. He went on to say:

Congress has repeatedly considered a statute called the DREAM Act, which would exempt a broad category of aliens from the Immigration and Nationality Act. The President favored this DREAM Act, but Congress repeatedly declined to pass it.

It is not in the code. It didn't pass. He goes on to say:

Once again, the President does have broad prosecutorial discretion and broad discretion to husband executive resources. But in this case, it is quite clear that the President is not merely trying to conserve resources . . . To put the point another way, the President shall "take Care that the Laws"—capital L—"be faithfully executed"—not those bills which fail to become law. Here, in effect, the President is faithfully executing the DREAM Act, which is not law at all, rather than the

Immigration and Nationality Act, which is supreme law of the land. The President cannot enact the DREAM Act unilaterally, and he cannot evade article 1, section 7, by pretending that it passed when it did not.

How much clearer can you lay it out? This professor is simply telling the truth. There is no other way to look at this, in my opinion. Congress is being challenged at its very core by this action, and the result of this challenge will have constitutional ramifications and it will have ramifications as we consider the relative powers of the executive, legislative, and judicial branches in the years to come.

This is not a little matter, colleagues. It really is an affront to constitutional order. We have a duty no matter what we feel about this amnesty that goes well beyond DREAM Act amnesty. We have a constitutional duty to defend the integrity of the Congress against an encroachment of monumental proportions by the President. That is the fundamental issue we will be dealing with when people complain about the funding bill for DHS.

David Rivkin, who served two Presidents in the Office of White House Counsel, and Elizabeth Price Foley, a constitutional law professor, wrote an article recently in the Wall Street Journal. It just hammers and devastates the arguments the President is making in favor of his executive amnesty. They say this:

By announcing a global policy of non-enforcement against certain categories, Mr. Obama condones unlawful behavior, weakening the law's deterrent impact, and allows lawbreakers to remain without fear of deportation . . . These individuals are no longer deportable although Congress has declared them so.

They conclude with a statement we need to consider. I believe their concluding statement is accurate. I think it is pretty much indisputable. And if it is accurate, then Congress has a duty to stand firm.

This is what they conclude:

The President, after months, finally extracted from the Office of Legal Counsel of the U.S. Department of Justice a memorandum that allows basically what he is trying to do. It has been heavily criticized. Legal scholars say it is a poor analysis in a whole lot of ways. In fact, it is unacceptable.

This is what the authors of this recent opinion piece in the Wall Street Journal said:

The OLC's memo endorses a view of presidential power that has never been advanced by even the boldest presidential advocates. If this view holds, future presidents can unilaterally gut tax, environmental, labor or securities laws by enforcing only those portions with which they agree. This is a dangerous precedent that cannot be allowed to stand.

So this is what is at stake. And now we learn that the Democrats intend to oppose even going forward to consider the House bill that funds the Department of Homeland Security—and they intend to block that through the filibuster.

This is what Senator BARBARA MIKULSKI is reported by Congressional Quarterly as saying last night:

Senator Mikulski tells CQ that Democrats will block the Senate from proceeding to debate the DHS spending bill over immigration riders.

Have they made that decision? Surely not. Surely we should move to the bill. If they are unhappy with the language the House put in this, then offer an amendment to take it out. They will have the right to have full amendments, consistent with the rules of the Senate, on this legislation. They can offer amendments to strike the language in the House that simply says we are not going to fund unlawful Executive amnesty. It is a pretty stunning thing that we are dealing with and that we will be confronting next week. I believe it is a position that is untenable. It is untenable constitutionally, it is untenable lawfully, and it is untenable because it is contrary to the will of Republicans and Democrats in the House and Senate who oppose the President's action. It is untenable politically because overwhelmingly the American people reject it.

I am flabbergasted that we are now hearing that Democrats might not even allow the bill to come up on the floor. What does that mean?

I suppose they will say: Mr. Republican Congress, are you shutting down Homeland Security?

Why? I would ask.

Well, because you are putting in language that says the President shouldn't go off and create and endorse and support and fund changing of the law of the United States that Congress hasn't changed, and we insist that you fund his activities and give him the money he needs to carry out this project.

Then Congress says: No. We don't want to do that.

We oppose it and we won't pass the bill that funds Homeland Security.

That is a bad thing to do. The American people won't like it that you don't fund Homeland Security, the Republicans may say.

And do you know what our Democratic colleagues will say?

No. You shut Homeland Security down because you kept the President from doing his activity. We are going to accuse you of not funding Homeland Security, and we are going to say you placed the Nation at risk. The President is going to accuse you of defunding Homeland Security, and he is going to accuse you of putting the country at risk. And the media? Why, they are on our side, and they are going to report it that way. When you turn on your television at night, they are going to say to the American people that Republicans didn't fund Homeland Security, and you are going to lose.

Look, we are not through the looking glass yet. Give me a break. That is not going to sell. The American people are not going to buy that and the press is not going to shill for this kind of story. It is going to be clear who is not funding Homeland Security. It is going to

be clear who wants to create a lawful system of immigration and to fund it in an effective way and serve the national interests in this fashion.

I feel strongly about it. Hopefully this won't happen. Hopefully the report last night is not going to be the position of the Democratic Party.

I just read of seven or eight of them who said they don't approve of the President's action. Why would they vote not to even go to a bill? And remember, if the bill comes up and our colleagues don't like this language in it, they can move to alter it or strike it. Let's vote on it.

Sometimes you win in this body; sometimes you lose. We lost many times—many on the Republican side—in supporting the Keystone Pipeline. Now we are told the President may veto the bill that has well over 60 votes and many Democrats voting for it. Well, is Congress going to say "We are going to ignore that" and ask the law enforcement officers or the other officers to ignore the President's veto and pretend the law passed when it didn't pass? Of course not. And neither can the President. We are coequal branches, and the President does not have the authority and the right and the power to enforce a law that never passed to grant amnesty to people who are unlawfully here.

It goes beyond prosecutorial discretion. As I said, I was a prosecutor for a long time. It is not prosecutorial discretion to give someone who is unlawfully in the country a work permit, a photo ID—as they intend to do—a Social Security number, the right to participate in Social Security, the right to work, to take any job in America. What job are they going to take? Who is offering any jobs of any numbers today in America? Not many. So these individuals who are here unlawfully will now be able to go to the trucking company and take a pretty good trucking job or maybe a forklift operator job or maybe they want to work for the county commission.

I asked the Attorney General nominee 2 days ago at a hearing would the Department of Justice sue a business that said: Well, we have job openings, but we are going to hire those people who have green cards or who came here lawfully and have a lawful status, but we are not going to hire somebody with temporary Presidential amnesty? Are you going to sue them for some sort of violation of rights?

She said she didn't know. They might. She basically said they might sue them. So this is a real danger.

The truth is, colleagues, we don't have enough jobs in America today. We have the lowest percentage of Americans actually working, in the working ages, that we have had since the 1970s. It has dropped steadily year after year. There is no doubt that if you bring more people into our country than we have jobs for, it does make it harder.

Also, an excess of labor pulls down wages, and things aren't really getting

better. Median family wages since 2007 are down \$4,000. That is a stunning amount. Wages in December—last month—in America dropped 5 cents an hour.

This idea that the economy is on track, everything is wonderful—it is not so wonderful for average working Americans. Their wages went down, not up, as we have been told is happening. This is not going to help. It is going to make that situation worse.

Fundamentally, we need a lawful system of immigration that we can be proud of, and somebody needs to be concerned first and foremost about the people we represent. We should be concerned about the people who have immigrated here lawfully. Their wages are down also, in some cases even more so. In fact, they are often competing most directly against unlawful immigrants.

I would say this: This is not the right way to do it. We are going to continue to talk about this. I believe the Congress of the United States, once it is really understood what is happening, will listen to the constituents of America. They will decide first and foremost that our duty is to create a lawful system of immigration that is fairly endorsed, that we can be proud of, and that serves the interest of the American people—the national interest. That is what is being overlooked.

People are coming from abroad. They want to come to America. We have always had the most generous immigration system in the world, and we believe in immigration. But they should come lawfully and the Congress should help create a system that supports a lawful entry into America.

The council that represents the Customs and Immigration Service Officers just January 22nd of this year issued a strong statement. They said:

The dedicated immigration service officers and adjudicators at USCIS are in desperate need of help. The President's executive amnesty order for 5 million illegal immigrants places the mission of USCIS in grave peril.

Has anybody been listening to them or do they just listen to big business? Do they just listen to activist groups? Do they just listen to lobbyists, politicians with their political schemes to win elections? Is that what they are listening to? They are not listening to the officers who are carrying out the duties.

Last fall the same group who represents these government workers—Ken Palinkas, a very able leader, said this:

Making matters more dangerous, the Obama administration's executive amnesty, like S. 744 that he unsuccessfully lobbied for, would legalize visa overstays and cause millions additionally to overstay—raising the threat level to America even higher.

It goes on with many other points.

I thank the Chair for the opportunity to speak. I am very worried that our Democratic colleagues are making a mistake. I think it is the right thing in this new Senate with Majority Leader

McCONNELL who has allowed more votes in 1 day than the Republicans got from Senator REID the entire year last year. We probably doubled the number of votes this year than we had all of last year.

The Democrats are saying, we are not even going to go to this bill that would fund Homeland Security. And if we don't go to it, then Homeland Security is not funded. Are they going to block a bill that would fund Homeland Security?

Senator McCONNELL is saying you can have your relevant amendment. If you don't like the language the House put in that says the money can only go to fund lawful activities, then you can vote to take it out and offer an amendment to take it out; but if you don't have the votes, you lose. That is the way the system should work.

I thank the Chair and yield the floor. 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. McCONNELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

EMPLOYER WELLNESS PROGRAMS: BETTER HEALTH OUTCOMES AND LOWER COSTS

Mr. ALEXANDER. Madam President, I ask unanimous consent that a copy of my remarks at the Senate Health, Education, Labor and Pensions Committee hearing yesterday be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EMPLOYER WELLNESS PROGRAMS: BETTER HEALTH OUTCOMES AND LOWER COSTS

This morning we are holding a hearing entitled "Employer Wellness Programs: Better Health Outcomes and Lower Costs."

Ranking Member Murray and I will each have an opening statement, then we will introduce our panel of witnesses. I ask that each of our witnesses limits their testimony to no more than five minutes. We will conclude the hearing at noon.

About half of Americans, or 149 million, have health insurance through an employer. One thing we agree upon is that it's a good thing for employers to encourage employees to be healthier. There are a few ways that employers can do this. Offering employees free gym memberships, access to weight loss coaches, and on-site nurses, to name a few. Today, we're going to hear from employers who offer lower cost insurance if their employees lead a healthy lifestyle.

Obamacare was not a bipartisan law, but it did include a bipartisan provision to strengthen workplace wellness programs. Former Senator Harkin and I worked together on this during the HELP Committee markup of Obamacare. Before Obamacare, employers relied upon a 2006 regulation which empowered them to discount employee premiums up to 20 percent.

Today, employers have certainty of law that they can give their employees up to 30 percent off of their premiums if they make healthy lifestyle choices like maintaining a healthy weight or keeping their cholesterol levels in check. The law also gave the Secretaries of Labor and Health the authority to extend this discount to 50 percent off through regulations. And the Secretaries did just that for tobacco cessation, so companies can also give employees who are smoke-free a 50 percent discount off their premiums.

But these discount programs aren't a blank check. By law, employers have to meet several conditions. First, they cannot discriminate. Employers must make these programs available to everyone and must provide a reasonable alternative if an employee cannot complete the standard requirement. Second, they have to be designed to promote health. So, your boss can't offer a reward for a better job performance, but she can do so if you stop smoking. Third, everyone should have a chance to qualify at least once a year.

To get started, employees might simply fill out a questionnaire about themselves and their family's medical history, or undergo a basic health screening to take their weight, temperature, blood pressure, as well as a finger prick test for cholesterol or diabetes. This information provides employees a baseline from which to work with a medical professional to improve.

Today, we will seek to answer several questions. First, how well are these programs working? A 2014 study conducted for Interactive Health found 85% of 15,550 people surveyed either improved or maintained their level of health risk and companies' health care costs rose 6% more slowly. A September 2014 survey by the benefits consulting firm of Towers Watson & Co. found that 18% of employers already use outcomes-based wellness incentives and 48% plan to add one by 2017.

Next, we want to explore if any of these programs need to be changed. There are a number of laws and regulations on the books governing wellness programs, but do employers have all the tools they need?

And we want to hear how a disturbing turn of events may affect these programs. Specifically, the action the Equal Employment Opportunity Commission (EEOC) is taking against companies like Honeywell for encouraging employees to lead a healthier lifestyle. I'm concerned the government is encouraging workplace wellness on one hand, and discouraging it on the other.

There is a great deal of evidence that tells us these programs can make employees healthier and happier at work, and for the investment employers make, they can see lower health care costs.

Honeywell has a wellness program that is reportedly compliant with Obamacare, provides for reasonable alternative accommodations, and protects patient privacy. And, it's working to improve employee health. 61 percent of Honeywell employees identified with more than one health risk factor eliminated at least one of those risk factors; and 46 percent eliminated all of their risk factors.

What's wrong with that? Well, the EEOC seemingly believes employers should not reward employees who make healthy lifestyle choices with lower premiums. And in October last year, the general counsel sued to stop Honeywell from doing just that.

Even the White House has expressed concern regarding the EEOC's actions. In December, when asked about the president's thoughts on the EEOC wellness lawsuits, White House Press Secretary Josh Earnest said the administration is concerned EEOC's actions are, or could be, "inconsistent with what we know about wellness programs and the fact that we know that wellness programs are good for both employers and employees."

Congress was clear in the health care law. The administration was clear in the regulations. And the White House has again reiterated its support for these programs. But apparently that is not clear enough for the EEOC. The EEOC is sending a confusing message to employers—reliance on Obamacare's authorization of wellness programs does not mean you won't be sued.

So, I'm working on legislation to provide employers and employees even more clarity and certainty to continue to offer these voluntary wellness programs and encourage healthy lifestyle choices. Innovation and healthy choices should be applauded, not punished.

Workplace wellness programs give individuals some control over rising health care costs. Instead of watching powerlessly as more money comes out of their paychecks each month to cover rising health insurance premiums—wellness programs give individuals the ability to regain some control over those costs.

I admit that this represents a big shift in how we think about the workplace in relation to our health. There has been a sea change in how we talk about health at work. I remember well the smoke in the hallways of the Nixon White House. That was true in most workplaces then. These days, about the only workplace you can smoke is the Speaker's office.

REMEMBERING CHIP KENNEDY

Mrs. SHAHEEN. Madam President, I wish to pay tribute to Bayard Winslow "Chip" Kennett II, a native of Conway, N.H., who passed away on January 17 at the age of 34.

Growing up in the Mount Washington Valley, Chip was a fantastic student-athlete and natural leader. At A. Crosby Kennett High School, one of two schools in Conway which bears his family name, Chip quarterbacked the Kennett High School football team and was honored with the Jack Burns Memorial Award for leadership, dedication and loyalty to his teammates on the Kennett High baseball team. His parents, Bayard and Theresa, instilled in Chip a love for the region and its people, and Chip spent his summers volunteering and working at Conway's community recreation center.

Chip would later go on to a career in public service that spanned close to a decade, rising from a college internship with then-New Hampshire Representative John Sununu to a position in Senator Judd Gregg's office, after which he returned to work for John Sununu upon his election to the Senate. Before leaving Capitol Hill to join Raytheon's government affairs practice, Chip most recently worked for Maine Senator SUSAN COLLINS as her military legislative assistant and director of appropriations. During his time in Washington, Chip was active in the New Hampshire State Society, helping to raise funds for New Hampshire students hoping to intern in the Nation's capital as he had during college. All those who knew him in the Senate recall his upbeat and caring nature, both qualities that buoyed him and his family through the difficulties of the past 2 years.