Kentucky. This case involved a challenge to the placement of the Ten Commandments on the walls inside two Kentucky courthouses. By a vote of 5-to-4, the Supreme Court held that the placement of the Ten Commandments inside of courthouses was a violation of the First Amendment's Establishment Clause. Justice Scalia dissented. He wrote that:

> Historical practices demonstrate that there is a distance between the acknowledgment of a single Creator and the establishment of a religion. The former is, as Marsh v. Chambers put it, ''a tolerable acknowledgment of beliefs widely held among the people of this country.'' The three most popular religions in the United States, Christianity, Judaism, and Islam—which combined account for 97.7% of all believers—are monotheistic. All of them, moreover (Islam included), believe that the Ten Commandments were given by God to Moses, and are divine prescriptions for a virtuous life. Publicly honoring the Ten Commandments is thus indistinguishable, insofar as discriminating against other religions is concerned, from publicly honoring God. Both practices are recognized across such a broad and diverse range of the population—from Christians to Muslims—that they cannot be reasonably understood as a government endorsement of a particular religious viewpoint.

More recently in 2014, Justice Scalia dissented from a denial of certiorari in the case of Elmbrook School District v. Doe. In this case, the entire seventh circuit, over three dissents, held that a suburban Milwaukee public high school district violated the Establishment Clause of the First Amendment by holding its graduation in a nondenominational church. Justice Scalia wrote that:

> Some there are—many, perhaps—who are offended by public displays of religion. Religion, they believe, is a personal matter; if it must be given external manifestation, that should not occur in public places where others may be offended. I can understand that attitude: It parallels my own toward the playing in public of rock music or Stravinsky. And I too am especially annoyed when the intrusion upon my inner peace occurs while I am part of a captive audience, as on a municipal bus or in the waiting room of a public agency.
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> In this case, at the request of the student bodies of the two relevant schools, the Elmbrook School District decided to hold its high-school graduation ceremonies at Elmbrook Church, a nondenominational Christian house of worship. The students of the first school to move its ceremonies preferred that site to what had been the usual venue, the school's gymnasium, which was cramped, hot, and uncomfortable. The church offered more space, air conditioning, and cushioned seating. No one disputes that the church was chosen only because of these amenities.
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> In this case, it is beyond dispute that no religious exercise whatever occurred. At most, respondents complain that they took offense at being in a religious place. It bears emphasis that the original understanding of the kind of coercion that the Establishment Clause condemns was far narrower than the sort of peer-pressure coercion that this Court has recently held unconstitutional.

Although many of his dissents were memorable, not all of Justice Scalia's notable opinions on religion in public life were issued in dissent. In 1995, Justice Scalia wrote the opinion for the Court in Capitol Square Review and Advisory Board v. Pinette, where the Court rejected an Establishment Clause challenge to the Christmas season display of an unattended Latin cross in a plaza next to the Ohio State Capitol. Writing for the Court, Justice Scalia said:

> Respondents' religious display in Capitol Square was private expression. Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince.

And just last term, Justice Scalia wrote the opinion for the Court in EEOC v. Abercrombie & Fitch Stores, a case about accommodation on the basis of religion in the employment environment. In this case, a Muslim individual who wore a head scarf as part of her religious observation applied for a job at a clothing retailer, but was not hired due to the company's policy, which prohibited employees from wearing ''caps.'' In reversing the court of appeals in favor of the applicant, Justice Scalia wrote that:

> Congress defined ''religion'' for Title VII purposes as ''including all aspects of religious observance and practice, as well as belief.'' Thus, religious practice is one of the protected characteristics that cannot be accorded disparate treatment and must be accommodated.

As we see, these opinions by Justice Scalia involve parties of varied faiths—Christians, Jews, and Muslims. Regardless of the identity of the party, Justice Scalia's opinions on religion in public life consistently evidence a deep respect for the unique history of religious pluralism in this country and a heartfelt appreciation for its positive impact across the landscape of the nation. While some may say his opinions are not consistent, I disagree. Religion in American life is an important and complex subject. Judges must think carefully but not abandon common sense as so many opinions have. Justice Scalia saw limits on free exercise of religion when it came to the contention, for example, that one's religion required the use of drugs that a State had declared illegal.

So this is an important area that needs to be cleared up so that we can bring some reality to the question of the expression of religious conviction in public life. Because the Constitution says we shall not establish a religion—Congress shall not establish a religion. It doesn't say States couldn't establish a religion; it says Congress can't establish a religion. It also says ''nor shall Congress prohibit the free exercise thereof.'' So you can't prohibit the free exercise of religion.

I think we have forgotten the free exercise clause and over-interpreted the establishment of religion. Some States at the time had established religions. Most of the countries in Europe had a religion that they put in law for their country, and we said: No, we are not going to establish any religion here. You have the right to exercise your religious faith as you choose.

Madison and Jefferson particularly believed it was absolutely unacceptable for this government to tell people how to relate to that person they considered to be their creator. That was a personal relationship that ought to be respected and the government ought to have no role in it.

Like Madison and Jefferson, Justice Scalia, too, believed in American exceptionalism. Indeed, he was truly exceptional. Although he will be impossible to replace, his seat on the Supreme Court will eventually be filled by the next President. After that nominee is confirmed, his or her decisions will likely impact our Nation for the next 30 years and far beyond. Next year, when we debate this eventual nominee's qualifications to assume Justice Scalia's seat, we need look no further than his own words for wisdom to guide us as we consider our decision. In no uncertain terms, Justice Scalia's McCreary County dissent reminds us that:

> What distinguishes the rule of law from the dictatorship of a shifting Supreme Court majority is the absolutely indispensable requirement that judicial opinions be grounded in consistently applied principle. That is what prevents judges from ruling now this way, now that—thumbs up or thumbs down—as their personal preferences dictate.

That is the governing principle that Justice Scalia abided by—unwavering commitment to the rule of law even when reaching the outcome that the law dictated did not align with his policy preferences. This—above all things—is the duty of a judge or Justice, and it is a principle that has fallen by the wayside far too often in recent years. It is imperative that we keep these words in mind when we consider appointments not only to the Supreme Court, but all lifetime appointments to the Federal judiciary.

I thank the Presiding Officer and yield the floor.

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

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

COMPREHENSIVE ADDICTION AND RECOVERY BILL

Mr. WYDEN. Mr. President, now that the Senate has passed the Comprehensive Addiction and Recovery Act, I wish to take a few moments to reflect on what I believe are going to be additional steps that are needed to really

put an end to the horrible opioid epidemic. This is a horrible, horrible health scourge that has carved a path of destruction throughout communities in Oregon and across our country.

Now, over the last several weeks, I have traveled around Oregon to spend time listening to experts. We heard powerful testimony in the Finance Committee, and I have spoken with colleagues here in the Senate about the urgency and the important scale of this national crisis. The message has been very clear: Our country is paying for a distorted set of priorities. Our citizens get hooked on opioids, there is not enough treatment, and enforcement falls short. My view is that is a trifecta of misplaced priorities.

What it says to me is that our country needs a fresh approach where prevention, better treatment, and tougher enforcement work in tandem. We have to have all three working together to really get on top of this horrible, horrible health scourge. The Congress ought to be working overtime on policies that start moving our Nation towards this tandem approach that I have described.

Now, my view is that the bill that was passed by the Senate takes the first step toward updating the country's out-of-date approach to substance abuse. More needs to be done, and that is what I and other colleagues have pushed hard to do. I very much hope that more can be done in this Congress.

As ranking member of the Finance Committee, we are required to pay for Medicare and Medicaid. I wish to spend a few minutes talking about the fundamental role that is going to play in stemming the tide of opioid abuse.

These are bedrock health programs, and they are expected to account for over a third of substance abuse-related spending in the upcoming years. We are talking about billions and billions of dollars. Medicare and Medicaid have an important role when it comes to preventing addiction at its source, and talking about prevention has to include talking about how these drugs are prescribed in the first place.

As I visited with citizens around Oregon, I was struck—and I know of the Presiding Officer's expertise in health care as a practitioner—by what I have come to call the prescription pendulum. Doctors were once criticized for not treating pain aggressively enough, and today they are criticized for prescribing too many opioids to manage pain. So in the days ahead, our country is going to have to look for solutions that get the balance right.

During the debate on this bill, the Senate considered an amendment I wrote that would have doubled the penalties for opioid manufacturers who give kickbacks to prescribers and put profits over patients. It has been well documented in recent years that companies are pushing the unapproved use of some drugs at the expense of patient safety. It is high time for real accountability when the manufacturers go too far.

My amendment would also have made significant progress to connect those struggling with addiction to appropriate treatment. Some parts of the bill the Senate passed crack down on those on Medicare who are suspected of abusing opioids. It is an enforcement-only approach, and my view is that the story cannot stop there. Without treatment, those addicted to opioids might try to get their pills on the street or turn to heroin. My amendment would have ensured that those who are at risk for opioid abuse are connected to meaningful treatment choices so they can better manage their pain and limit excessive prescriptions.

I also proposed an amendment that would have helped some of the most vulnerable Americans, including pregnant women on Medicaid who struggle with addiction. The costs of inaction here add up every single day for moms and their babies. A recent Reuters investigation found that, on average, an opioid-dependent baby is born every 19 minutes. These are high-risk pregnancies that can have lifelong consequences for mothers and their children. Some of these babies tragically aren't going to make it. Many of them are going to be placed in foster care if their mothers cannot break their addiction.

So it is critical that these women have and retain full access to pre- and post-natal care as well as addiction treatment. Yet, today, if a pregnant woman on Medicaid receives treatment for drug or alcohol dependency, in certain in-patient facilities, that woman loses her health coverage for the duration of her stay. That just defies common sense.

The good news is, the country has a pretty good idea of a straightforward solution. There is no reason someone who is pregnant should lose access to their health insurance. This amendment simply states that no pregnant woman would lose her Medicaid while she receives treatment for addiction. To be clear, this amendment doesn't instruct Medicaid to pay for these treatment services. That charge requires a broader debate. I do believe, though, in the meantime, access to services like prenatal care should not be restricted for pregnant women who want to receive care for their addiction.

It is unfortunate these amendments didn't make it into the Senate legislation today, but I have seen a number of times—and I look forward to working with my colleagues in the Senate—that sometimes we don't win on day one, and you have to come back again and again and again. A few weeks ago, a bill I authored well over a decade ago, the Internet Tax Freedom Act, finally got passed permanently into law. So sometimes when something is important, you just have to stay at it, and I want colleagues to know I think the CARA bill is a good start. It focuses on enforcement, but unless you get the prevention and treatment part of it in addition to enforcement, you are not going to get the job done properly.

The Congress obviously has some tough choices to make. If prevention and treatment aren't addressed upfront, the costs are going to be even higher—pregnant mothers giving birth to opioid-dependent babies, EMTs in emergency rooms dealing with overdose calls every night, county jails taking the place of needed treatment, able-bodied adults in the streets instead of working at a family wage job. American tax dollars need to be spent more wisely, and it is my view the Senate has to come back to this issue. It has to come back to this issue and get the job done right.

I indicated earlier that I am very much aware of the expertise of the Presiding Officer in health care and his involvement as a practitioner, and I look back, as I said, to how the prescription pendulum has moved. It wasn't very long ago when I was of the view that there wasn't enough done to manage pain. As patients began to insist on those kinds of drugs and therapies to help them with their pain, we saw they were able to get relief. The pendulum may have swung the other way now, and there is too much prescribing. I don't pretend to be the authority on how to get the prescription pendulum right, but I do know from listening to practitioners in the field, to citizens, to grieving parents, that you have to have more than enforcement. That is what the Senate has done with the bill that was passed today. The story must not end there. The Senate can do better in the days ahead. The Senate can fill in the rest of the story and ensure that in addition to enforcement, there will be prevention, there will be treatment, and a sensible policy that ensures that these three priorities work in tandem and is what the Senate pursues on a bipartisan basis in the days ahead.

WOMEN'S HEALTH CARE

Mr. WYDEN. Mr. President, I want to spend just a few minutes to discuss women's health care because I believe women's health care in America is in trouble—very deep trouble. It is in trouble in Congress, it is in trouble in the courts, and it is in trouble in our statehouses. In these bodies, I think there is a serious risk to women's access to affordable, high-quality health care. There is an assault on women's right to choose their own physicians and their own providers, and that assault is wrong. Drip by drip, State by State, the assault goes on.

The latest example is in Florida, where lawmakers seem to be heading down the same road that Texas and Louisiana have traveled, restricting the choices of women. This all began with a Texas law, HB2, that has been challenged all the way to the U.S. Supreme Court. Arguments were heard just last week. HB2 backers have argued the law is about protecting women's health. My view is that is pretty