

We welcome bipartisan change. We know there is always give and take when that happens, but usually the product is better. A bipartisan process led by ALEXANDER and MURRAY to make the present system better will be a whole lot better for both the process in this body and for the health of the American people than this rushed-through, half-baked proposal.

We disagree in the Senate a lot. Very rare are the times when there is a clear right and wrong, but this bill and the process it has gone through are clearly wrong. The bill would hurt so many people in our great country. The process has damaged this institution and would do much greater damage if it were to pass.

We have a chance—a chance—to legislate the right way, through regular order, by resuming bipartisan work already started by the HELP Committee, which has had hearings and intends to—at least, as I understand it—go through a process with amendments. We Democrats are at the table. We ask our Republican friends to join us at the table once again.

I yield the floor.

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#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

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#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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#### EXECUTIVE SESSION

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#### EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of the Emanuel nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of William J. Emanuel, of California, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2021.

The PRESIDING OFFICER. Under the previous order, the time until 5:30 p.m. will be equally divided between the two leaders or their designees.

The Senator from Washington.

#### HEALTHCARE

Mrs. MURRAY. Mr. President, before I begin on the nomination before us, I wish to first echo what so many of my colleagues—Democrats and Republicans—and millions of people across the country have made very clear today: enough with all of the partisanship around healthcare, enough with playing politics with people's lives, and enough with the repeated attempts to roll back all of our progress and move our country backward.

It is time that we drop Graham-Cassidy, drop TrumpCare, once and for all, and join together to actually work to improve healthcare, starting with acting right now to lower premiums for families and strengthen healthcare in a bipartisan way.

That has been my message to colleagues all along. The truth is that I know many of my Republican colleagues prefer a bipartisan route. They have said as much in the last TrumpCare debate, in the very productive discussions we have had in and outside of the HELP Committee, and in many of their comments over the past few days.

It begs this question: Why are we in this spot yet again?

People across the country have been demanding for months to turn the page on TrumpCare. Instead of working in a bipartisan way to actually help people, a few of our colleagues have now pushed through yet another reckless repeal bill that is even worse than the previous TrumpCare version. It is a bill that will increase costs for families, especially seniors and people with pre-existing conditions.

It will allow insurance companies once again to charge people more for basic healthcare, such as maternity care, mental health services, and more, and it will take away women's access to care at health centers like Planned Parenthood and result in millions of people across the country losing their Medicaid. Just like last time, the bill has not been subject to any real hearings, public debate, or even a complete and thorough CBO score.

Let's be clear. This bill is not a new proposal. It is not serious policy. It is not regular order. It is yet another version of TrumpCare that would be devastating for people across the country.

This is actually pretty simple because there is a clear alternative path before us. Let's do what my colleague, the senior Senator from Arizona, and so many others have so bravely called for once again and return to working together.

As I have said, I wholeheartedly agree with my colleague from Arizona that the right way to get things done in the Senate—especially on an issue as important to families as their healthcare—is through regular order and finding common ground. That is why I am still at the table ready to keep working. I remain confident that we can reach a bipartisan agreement as soon as this latest partisan approach by Republican leaders is finally set aside.

Mr. President, I come to the floor today on the nomination before us and to urge my colleagues to vote no on William Emanuel to be a Member of the National Labor Relations Board.

On the campaign trail, President Trump promised to put workers first, but instead this administration has rolled back worker protections and prioritized corporate interests at the

expense of our workers. It is critical today, more than ever, that the NLRB remain what it is supposed to be—Independent and committed to protecting workers' rights to organize and to bargain collectively.

I am deeply concerned that President Trump's nominee, Mr. Emanuel, will use his place on the Board to advocate for corporations and special interests. As a corporate lawyer fighting on the side of management, Mr. Emanuel has spent decades repeatedly undermining workers and their efforts to unionize.

It is the core mission of the NLRB to encourage collective bargaining. Given his long anti-worker track record, I am afraid that workers' fundamental rights are not safe in his hands.

I urge my colleagues to join me tonight in doing what President Trump has failed to do and to start working to put working families first and to vote against this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

#### ANTITRUST

Mr. HATCH. Mr. President, I rise today to return to the topic of antitrust. When I last spoke on this matter, the debate was already simmering, albeit mostly on the left. In the time since, controversy in both our markets and our politics has kept it at the fore.

Handled prudently, that can be a good thing. I say we have this discussion. I think it is important. Heavens, I will even try to do my part to make it a little more fun. But I do have my concerns that the topic of antitrust policy is still more enthusiastically invoked than deliberately considered.

I am concerned that it is still undermined by the same old easy retreats to the right and to the left. That may be typical of issues here in Washington, but on no issue can we afford it less. You see, especially in antitrust policy, it is critical that the center hold. It is critical that we secure that delicate middle ground—hard won over the years and easily lost in a moment of fervor—whereon economic liberty thrives.

I have come to the floor, once again, to speak and, to the growing discussion, to contribute.

Permit me to say a few words about holding the center. When I took to this floor last month, I argued that on the fundamental question of economic management, America has courageously defied the historical norm. Rather than acquiescing to the central planning, we fully embraced free enterprise. Thus, ours is a market economy and the most prosperous one of our times.

Markets are messy. They are chaotic and, from the individual perspective, impossibly complex. Perhaps, most counterintuitively, they are, in a sense, disorganized.

For all their productivity, for all the wonders they work, there is no single actor or entity in control. The miracle arises all on its own, through an order

spontaneously coordinated by price and balanced by the efforts of millions. Little surprise then that in America's free enterprise tradition, no less than in its larger political tradition, we deeply distrust concentrated power. We distrust the intervention of the State, to be sure.

Our system is largely defined by limited government but so, too, do we cast a wary eye upon powerful private entities. We have little tolerance for the monopolist which secures its market position anticompetitively, and we offer no quarter to the naked cartel. In other words, we no sooner trust concentrated private power than concentrated public power to dictate the direction of our economy.

That, right there, is why we turn to antitrust. That is the middle ground—between intrusive public management and corrosive private conduct, which antitrust is charged with seizing and protecting, for we know our markets will never fulfill their promise unless they remain free and competitive, and we know they will not long remain free or competitive without a sound competition policy holding that center ground.

Now, as I mentioned earlier, events of late seem determined to keep antitrust at the forefront of the public debate. We are witnessing innovation and disruption at a dizzying pace. Markets are concentrating, powerful players are staking out valuable ground, and accusations of anticompetitive behavior—some bona fide and many not—are mounting. Across the board, an anxiety seems to be settling in.

Therefore, I want to be very clear, especially to my friends on the left: I see it. I understand it. That the challenges here are real, there can be no real doubt. That an update in the doctrine may well be necessary, there should be no dispute. Where, perhaps, I differ is that I don't quite see the need for the panic. I think American antitrust is up to this challenge.

The story of capitalism has always been a story of change, and if we are doing things right, that change does not come according to anyone's plan or script. Just when society grows comfortable in habits of law and commerce—just as each part of the economy learns to play its part—the ground again shifts beneath our feet. It can be a bit disorienting but not to worry. That is where our old, trusted friend, the consumer welfare standard, comes back in.

As I emphasized in my last address on the floor and as I will continue to emphasize here, it is a proven way of directing us aright. As new innovation fundamentally alters the landscape, as entrepreneurs press beyond current frontiers and into the unknown, the consumer welfare standard is like a compass with a bearing set toward that critical middle ground which antitrust is charged with protecting. True north is not what is best for market competitors, not what is most convenient for

market regulators, but what most furthers market competition itself, the better to ward off the dangers of collectivism, the surer to escape the stagnation of monopoly.

Now, I know—I understand—that this hardly settles things. Identifying the principle by which we orient ourselves is the start of the discussion, not the conclusion. The consumer welfare standard is, like I have said, a compass; it is not a map. It guides our journey without fixing a precise course through the changing terrain. Adjustments are to be expected. After all, much of antitrust doctrine, as it is received today, was built upon the familiar economic process of resource extraction, manufacture, distribution, and retail.

That the digital age would present commercial arrangements to defy those traditional classifications is not, altogether, surprising. Fortunately, antitrust is a common law exercise and leaves plenty of room for improvement. Our conventional categories of anticompetitive conduct can be tweaked, refashioned, or even expanded in light of technological advancement and market evolution. That process will become all the easier as our tools for taking the measure of the land improve.

Current analysis does well in taking account of price. It may do better still in taking account of quality. Reams of data never before thought obtainable and new econometric methods only recently deemed practical entice us with a chance to plot curves, which until recently were confined to the theoretical. Our basic and time-honored foundational models are increasingly nudged and bounded by contributions from the behavioral sciences, and game theory is continuously opening new horizons in market analysis.

I am happy to have that discussion. Again, we keep our markets fresh by keeping our doctrine current, but I would—as an old Republican must—urge caution, especially to some of the more zealous advocates for reform, hipster or otherwise. I will gladly sample the avocado toast—I really will—but nobody should get the idea that we have moved on from the meat and potatoes. It is easy, with the benefit of hindsight, to critique past precedent formed in the familiar image of the mass industrial process. It is far more difficult to refashion doctrine for a new age that is still evolving in surprising ways.

As we trek into the unknown, let's take note of where we have been and appreciate the hazards of the route. Let's recall that whatever the changes at the surface of the market, basic economic principles persist through the ages. Network effects in our digital infrastructure may feel very new today, but as I emphasized in my last address, the concept is actually very old. It structured the telephone market long before we could even conceive of an online search market. Let's recall also that the foresight of regulators and thus the wisdom of their regulation is inevitably limited.

We talk a lot about platform economics today and worry about the bottlenecks of digital traffic as if the future has finally and permanently arrived, but with the rate of innovation these days, there is no telling whether the essential facilities of today will prove all that essential tomorrow. We can do little more than guess at what form exclusive dealing or foreclosure may take in markets yet unseen. Let's recall that markets often correct themselves. As more than a few formally invincible corporate titans can attest, free enterprise offers few opportunities for eternal life, and when regulators do step in, doctrine still tends to lag behind the market. Thus, the powers we grant government now will likely survive into a future that is not yet defined.

Finally, before we rush to grant enforcement officials a broad mandate with an ill-defined objective to do something, let's recall that regulation can hurt as much as it can help. As we have seen in some attempts at rate regulation, a regime meant to restrain the biggest players may very well, with the passage of time, become the preferred tool for excluding new entrants. Merger analysis sometimes does more for rivals than for consumers, and as we have learned in nearly every form of intervention, a medicine which creates too much unpredictability and upsets too many investment-backed expectations may well prove worse than the disease itself.

In the end, like I said, I think we are up to this challenge. With compassion in hand, an open mind, and appreciation for what our journey thus far has taught, antitrust will continue the work of securing that middle ground whereon markets thrive. When all is said and done—after all of the controversy and high emotion have subsided—we may just find that all we needed was a small course adjustment. Perhaps this needn't be a reckoning when just a little reform will do. We can set about correcting market failures and readjusting system incentives without going after some industry or bringing this or that firm to heel.

When I first sounded the alarm on Microsoft—years ago really—it was not merely because it was deemed too powerful or because a new class of high-tech barons risked undermining democratic norms; it was because of well-founded concerns of concrete, competitive harm to developing markets.

The question in antitrust was not then—and we must not allow it to become today—whether any of our companies are too big or too profitable or too dominant; the question is whether they engage in identifiable anticompetitive conduct or if a merger is likely to facilitate it.

The question is whether it can be shown, as far as the imperfect tools of economics allow and an evolving doctrine can bear, that the conduct at issue or the merger proposed does more to fortify the firm than serve the consumers of America.

Of course, that kind of analysis may not make headlines, and it may not satisfy our deep-seated yearning to identify heroes and villains, but it is the best way to handle antitrust. If we are going to get this right, we are going to need to keep cool heads.

Antitrust already asked some of the hardest questions, like why we allow the market to put scarce resources to their highest uses when our social and political valuations do not match that of prevailing prices. Antitrust already forces some of the hardest choices, like how to trade the losses of some industries and some actors for the gains of the economy as a whole.

There is no need to make things harder still by turning antitrust into a political cudgel, as the left is wont to do, or by dismissing it as yet another example of government overreach, as the right is often guilty.

So let us let all of us on all sides tone down the political rhetoric. Should this debate do no more than feed our appetite for political gamesmanship, antitrust will not be the better for having it. Do you know what? I do not think I am alone here. My colleagues in the Senate seem to be rising to the occasion. My friends on the other side of the aisle introduced legislation that, however flawed in my view, reflects the seriousness with which they take these issues.

I am happy to see there is finally movement again on the nomination of Makan Delrahim. He is an exceptional antitrust attorney and just the person we are going to need as we sort this thing all out. I will not shy from discussing his qualifications here, and I would not fault my colleagues for using his nomination as an opportunity for a wider discussion on antitrust, but now it is time to put him to work. I am pleased to see we are almost there.

At the same time, this debate is not going to be confined to the floor of the Senate. At the agencies, in the courtroom, from the lecture hall to the opinion pages, there are going to be a lot of voices weighing in. Most, we can hope, will be helpful. All, we can resolve, will be heard, I hope.

I want to applaud those on the left for jumping into this debate, and I wish the best of luck to the new Open Markets Institute. I had a little fun with the hipsters the last time around, and they took it in good stride. I am now told some prefer the title New Brandeis School. I think that is fitting. Justice Brandeis was a bit of a hipster in his time. I should know, as I was basically a contemporary of his.

Further, I acknowledge the efforts of private litigants and policy advocates pressing their cases in courts here and in Europe. They have been working tirelessly to make a data-driven case that speaks directly to consumer harm. They play an important role, and the doctrine is better for their efforts, however their cases turn out.

Finally, I want to implore my fellow conservatives, continue joining in on

this debate, keep investing in antitrust, embrace it as an area of the law in which we speak to the power of the markets by speaking to the importance of sound regulation. Make the case that, like property or contract or commercial law, antitrust is that rare species of government regulation which opens doors rather than slamming them shut.

As I have been arguing for decades now, should our doctrine grow stagnant, markets may well concentrate beyond what is politically acceptable, calls for excessive government intervention will only increase, and the yoke of the regulator could soon be our portion.

With that, Mr. President, I will close right where I began. As this debate proceeds, it falls to all of us to do our part in getting this right. The challenges presented by our evolving markets are real, but we are not the first to break new ground, and will we be the last to worry that the new ground broken sits far removed from the competition's precious center? One way or another, we have made it before. I trust we can make it again.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

#### HEALTHCARE

Mr. PETERS. Mr. President, the debate over healthcare can be very confusing. Last night, a tweaked third version of this year's third bill to repeal the Affordable Care Act was released. This is after several dozens of votes taken in Congress on this very same issue since 2010.

There is no question—the debate over healthcare has been exhausting. Our Nation's disability advocates, patients, doctors, and anyone with a preexisting condition have spent this past year on high alert, waiting on a razor's edge for the next time they would need to plead with Republicans in Congress not to take away their healthcare.

Healthcare is a very complex subject, but rather than engaging in thoughtful, bipartisan debate, my colleagues on the other side of the aisle are rushing to pass something—anything—even if they don't know the details.

What we do know about this bill is that millions of people will lose their healthcare. Why? Because Republicans in Congress are facing a deadline of September 30 to use an arcane, expedited procedure that will let them repeal the Affordable Care Act with a simple majority of the Senate. My Republican colleagues are in such a rush that they don't even want to wait until we get a nonpartisan analysis from the Congressional Budget Office. I believe they don't want to wait because they know the budget analysis will make it very clear that this is a very bad bill.

Although the healthcare debate is often confusing, exhausting, and complex, I think we should focus on just one very simple concept: No one in this great country of ours should ever go bankrupt because they get sick.

Let me repeat that. No one should ever go bankrupt because they get sick.

Every American, no matter what ZIP Code they live in, should be able to have affordable, quality healthcare.

As I stand here today, we don't know what version of the Affordable Care Act repeal we will be voting on later this week, but some things are virtually certain: Michiganders will be forced to pay more for less healthcare; costs for older Americans will increase dramatically; insurance companies will once again be free to discriminate against individuals with preexisting conditions, such as cancer, diabetes, and heart disease; and even if policies are available, Michiganders will never be able to afford them.

This last-ditch effort to meet an artificial deadline is not thoughtful, measured or kind; it is messy, rushed, and cruel.

The Affordable Care Act is not perfect, and nobody here is saying that it is, but while we are spending this week debating yet another repeal bill, we are wasting time that should be spent on improving our healthcare system for all Americans. We need to reauthorize the Children's Health Insurance Program, which expires at the end of this week. If it is not reauthorized, it could jeopardize care for over 100,000 children in my State alone. We need to also act quickly to support community health centers, which face the same funding deadline and serve as the primary healthcare home for nearly 700,000 Michiganders. What we need is a truly bipartisan process to improve the Affordable Care Act, while keeping what works in place.

The legislation to repeal the Affordable Care Act before us this week will jeopardize care for individuals with preexisting conditions and increase costs for older Americans who are already living on a fixed income. I heard from countless Michigan veterans, small business owners, hard-working parents with children, and many others who will be hurt by the proposals in this Republican bill. My constituents are fearful that they will be forced to choose between going without the care they need or facing potential bankruptcy over the costs.

I will say it again. No one in America should ever go bankrupt because they get sick. Every American should be able to afford quality healthcare, and I will continue fighting to ensure we never go back to the days when families had to face impossible choices.

This bill is simply wrong. It is wrong on policy, it is wrong on process, and it is wrong for millions of Michiganders who are worried about their families' healthcare.

I urge my Republican colleagues to end this misguided repeal fight once and for all so that we can come together on a bipartisan basis and make healthcare work for each and every American.

Mr. President, I yield the floor.