

miss the days when uncontroversial nominees regularly passed without cloture votes, but if my Democratic colleagues are going to insist on delaying the vast majority of nominations, we are going to have to keep spending time on judges because, let's remember, we are not doing these nominations for fun. This is part of our job. We are working to fill a substantial number of vacancies on the Federal bench.

Despite the Senate's efforts, the vacancy rate currently stands at 13.8 percent—higher than the rates faced by President Obama, President George W. Bush, and President Clinton at this point in their first terms.

Vacancies on the Federal bench have consequences. Primarily, they result in long waits to get cases heard, which serves nobody.

It would be nice if my colleagues across the aisle would abandon their delaying tactics on noncontroversial nominees and speed up the process of filling these vacancies, but, regardless, Republicans will continue moving forward with judicial nominees.

I am very proud of the judges we are confirming. We are putting excellent Federal judges on the bench who are committed to upholding the law. That sounds like a pretty obvious requirement for a judge—a commitment to upholding the law—but too often it seems like many on the left would prefer activist judges who act as superlegislators, rewriting laws they disagree with when the law doesn't reach a result that fits with Democrats' political opinions. Those kinds of judges—judges who move beyond the law when the law doesn't line up with their political agenda—are not a good thing for anybody.

Sure, it might seem nice when an activist judge who shares your political opinions reaches outside the plain meaning of the statute and rules for your preferred outcome, but what happens when that same judge reaches beyond the law to your detriment? What protections do you have if the law is no longer the highest authority? The answer is none. You don't have any protection because at that point the judge, not the law, has become the supreme authority, and you are at the mercy of his or her personal opinions.

Security, justice, equality under law, these principles can only be maintained as long as we have judges who are committed to upholding the law as it is written and not as they would like it to be.

If we have bad laws, we can and should change them, but any changes should be made by the people's elected representatives, as our Constitution dictates. They should not be made by unelected judges. Judges are meant to interpret the law, not make it. I am proud we have been putting judges on the bench who will uphold the rule of law in this country by interpreting the law as it is written, regardless of their personal opinions.

As I said earlier, we confirmed two excellent judicial nominees this week. Unfortunately, one ran into some Democratic opposition during the confirmation process because he was Catholic. That is right. Apparently, the fact that he takes his faith seriously enough—

The PRESIDING OFFICER. The Senator will suspend.

The Senate will be in order. Take your conversations outside of the Chamber.

The Senator from South Dakota.

Mr. THUNE. Apparently, the fact that he takes his faith seriously enough to participate in a Catholic charitable group, the Knights of Columbus, is enough to make him suspect as a judge.

I had hoped we were done with Democrats' flirtation with religious tests for public office when they questioned the fitness of Judge Amy Coney Barrett because she takes her Catholic faith seriously, but apparently Democrats think it is perfectly legitimate to suggest that you can't be both a person of faith and a nominee for the U.S. judiciary.

Let me just remind my colleagues what article VI of the Constitution has to say about that. Article VI states: "No religious test shall ever be required as a qualification to any office or public trust under the United States." I repeat: "No religious test shall ever be required as a qualification to any office or public trust under the United States."

It is deeply troubling that we have Democrats in the U.S. Senate suggesting that religious faith disqualifies you from public office. If Democrats are using their objections to these candidates' religious faith as cover for the fact that Democrats don't want to confirm anyone who doesn't share their most extreme political opinions, that is deeply troubling too.

Religious freedom is a bedrock principle of this Nation. Our Founders considered it so important that it is the very first freedom mentioned in the Bill of Rights. By freedom of religion, they didn't mean it is OK to pray or have religious beliefs if you do it quietly inside your home; they meant freedom to practice your faith in the public square, even if that means having different political opinions from Democrats.

I hope Judge Buescher is the last nominee who will have his fitness for public office questioned simply because he chooses to live out his faith. I was glad to vote to confirm him yesterday, and I look forward to confirming more qualified judicial nominees in the near future.

I hope the Democrats will drop their delaying tactics and join us as we work to fill these important vacancies on the Federal bench.

I yield the floor.

I suggest the absence of a quorum.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BRAUN). Without objection, it is so ordered.

PRESCRIPTION DRUG COSTS

Mr. CORNYN. Mr. President, this morning, the Senate Finance Committee marked up a legislative package that was designed to address the high prescription drug costs, which have become a burden to Americans of all ages. This is part of a bipartisan effort to make targeted reforms to our healthcare system in order to lower costs for patients and taxpayers without interfering with the free market or the beneficial innovation that comes from it.

Last month, the Health, Education, Labor, and Pensions Committee and the Judiciary Committee passed legislative packages that were designed to support this goal. This morning, the Finance Committee passed a package called the Prescription Drug Pricing Reduction Act. This legislation looks specifically at reducing prescription drug prices, particularly out-of-pocket costs, for seniors and children through Medicare and Medicaid reforms.

I have heard a lot from my constituents in Texas about the impact of these high costs.

Bob from San Angelo told me that both he and his wife have Medicare Part D and are struggling to stretch their retirement incomes far enough to cover the expenses for their prescription drugs. He told me, each month, they pay nearly \$800 for Medicare and Medicare supplements. On top of that, they are strapped with high prescription drug costs. In the first 4½ months of this year, Bob said they spent more than \$1,600 on his wife's medication alone. For seniors who live on fixed incomes, these high costs can simply be untenable.

Then there is Michael, another one of my constituents, who told me about his continued struggle to cover the cost of his medication. He said: "It feels like we are being taken advantage of because they know we have to take these drugs."

These individuals have been paying into this system for decades, and it is high time we look at ways to reduce the financial strain and provide some relief.

Now, coming up with policies that will lower out-of-pocket costs is not easy. The whole drug pricing regime is enormously complex—frankly, it is opaque—particularly the relationships between pharmacy benefit managers and drug manufacturers, but we need to work hard at this effort to lower costs in Medicare and Medicaid and to decrease the high cost of prescription drugs even in the commercial markets.

I appreciate the commitment of Chairman GRASSLEY and Ranking Member WYDEN to identify potential reforms, and I believe the package that was voted out of the Finance Committee this morning is a step in the

right direction. This is not a statement of endorsement of the legislation as it has come out of the committee. A lot of work needs to be done, particularly a lot of work in order to reconcile the different approaches of the different committees—the Health, Education, Labor, and Pensions Committee and the Judiciary Committee—because the last thing we want to do is to go through this arduous, complex legislative exercise only to find out that we have failed to lower out-of-pocket costs for American consumers or that we have introduced some other unintended consequence that makes things worse and not better.

The journey a drug takes from research and development to manufacturing, to pharmacy shelves, and eventually into our medicine cabinets is enormously complicated.

As I said, once a consumer has purchased a drug, figuring out who gets what part of each dollar requires—well, I was going to say it requires a Ph.D. It requires even more than that because you may need to hire an ex-FBI agent to try to track down what percentage of each dollar each of the players in the prescription drug field actually gets. As a consumer, this is particularly alarming because we don't really have any idea of whether we are paying a fair price or who is profiting and at what point or whether people are doing things that benefit their bottom lines. They don't actually add value to the system. Ultimately, they end up costing consumers more out of pocket.

When it comes to Medicare and Medicaid, it is doubly concerning because, in most cases, these prescriptions are being at least partially subsidized by taxpayer dollars. So we need to shine a bright light on the reasons behind these high costs and price increases to make sure patients aren't being gouged and to make sure the government—in other words, the taxpayer—isn't being overcharged. That is one of the primary goals of this legislation. It would require manufacturers to report information about price increases to the Department of Health and Human Services as part of that transparency effort.

As I suggested a moment ago, it also looks at the role of pharmacy benefit managers who are the intermediaries who link manufacturers to consumers. They negotiate with the manufacturers to secure rebates, which create a net price, but it doesn't appear that, by and large, this actually flows to the consumer or to the patient. Frequently, it is used, we are told, to keep premiums lower by the health plans. Yet we don't know that for sure because trying to get access to the information is really challenging, and the size of the rebate could mean the difference between a drug's being covered by insurance or not. Oh, by the way, rebates don't help you at all for your copay or for your deductible.

These days, we know, for example, for many Americans, the Affordable Care Act has resulted in sky-high

deductibles and high premiums. That means consumers have to pick up more of the cost at the list price, not at the net price, which is negotiated by the pharmacy benefit managers who work together with the healthcare plans.

I find it very strange, with as big a role as the pharmacy benefit managers play, that we know very little about how they operate or whether they all operate exactly the same or differently. This legislation would require pharmacy benefit managers to disclose details of the discounts of rebates they receive and finally pull back that cloak of secrecy.

I do have concerns about one portion of the bill that was voted out of the Finance Committee this morning, which would require manufacturers to pay a rebate on drug price increases that are higher than the rate of inflation. The Congressional Budget Office has estimated the inflation rebate will save \$50 billion for Medicare. It claims it will lower out-of-pocket costs for beneficiaries by \$7 billion and lower premiums by \$4 billion.

I asked the head of the CBO this morning: Well, if everybody saves money, who ends up paying more money? It basically comes out of the manufacturer's hide.

This really speaks to my other major concern, and that is that the Federal Government not get into a position in which it is setting prices. We know that when you institute price controls on a commodity—particularly if you are the Federal Government—and when you try to negotiate with somebody, it is not a level playing field. When you negotiate with somebody as the Federal Government, you are literally doing it with a gun to one's head or figuratively doing it with a gun to one's head. It is not a normal give-and-take negotiation. Ultimately, what happens with price controls is it creates scarcity because, at some point, the manufacturer or the producer of that commodity will say: I am not going to produce that at that controlled price by the government. So this is a serious concern.

The CBO also estimates that this rebate would reduce costs for prescription drug benefits offered by commercial insurance plans. Although we don't have a final score by the CBO—this is just a preliminary plan—I will share with you an observation made years ago by Senator Bob Bennett, of Utah, when I first came to the Senate.

He said: The one thing I can tell you about CBO scores is that they are always wrong. I can't tell you if they are too high or too low, but this is part of the complexity of trying to predict the future and how human behavior will affect their calculations and analyses. Sometimes they get it right, and sometimes they get it wrong.

Despite the encouraging estimates, many members of the committee had significant concerns that this policy could lead to higher launch prices or higher out-of-pocket spending. So this

morning in the markup, I supported an amendment by our friend from Pennsylvania, Senator TOOMEY, that would have removed this inflation rebate penalty. Unfortunately, it failed on a tie vote. It is something I don't think I have seen before, in which 14 Senators voted for it and 14 voted against it, but it means the amendment failed.

Here is the problem. There is a delicate balance between preventing price increases, which is something we would all like to do, and still preserving the market-based approach that has made Part D such an overwhelming success. It actually is a government program that works better than we thought it would when it was passed.

I think we need more input before this bill comes to the floor, for there is a lot of work yet to do. As the old adage goes, anything worth doing is worth doing right, and we had better get this right. I think there will be quite a price to pay if we undertake this huge exercise and end up failing to reduce consumers' out-of-pocket costs or creating more problems as a result of unintended consequences. Providing our seniors peace of mind when it comes to their healthcare costs is certainly worth doing right.

So I believe we need to continue refining this proposal to strike a better balance and effectively deliver on our promises. It is important that we not rush this process. There is no artificial deadline. There shouldn't be. That is why the Senate was created, to force deliberation in a body of 100 Senators with challenging rules to actually get things to the President's desk for his signature. But what it should do is force deliberation and force us to do our due diligence to make sure that we are not creating more problems or failing to accomplish our goal.

I told members of the committee this morning that I don't think this bill, as written, is anywhere near ready to be considered on the floor. I asked the chairman and the ranking member to commit to continue working with Members before this does come to the floor, and I was glad that both of them agreed to do so.

While I believe we are making some progress, we better be very careful, and we shouldn't impose on ourselves any artificial deadlines in order to get this thing done and perhaps get it done badly.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Utah.

DEBT CEILING

Mr. LEE. Mr. President, there is a quote that has long been attributed to St. Augustine, who, during his conversion to Christianity, famously uttered a prayer: Lord, help me be chaste. Grant me chastity, but not yet.

The idea behind this is as old as human nature itself, which is that it is easier to have a thought of doing something later than to do that thing now, especially when it is a difficult task.