

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

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 nomination of Steven J. Menashi, of New York, to be United States Circuit Judge for the Second Circuit.

Mitch McConnell, John Hoeven, Steve Daines, James E. Risch, Roger F. Wicker, Pat Roberts, John Thune, Mike Rounds, Roy Blunt, Mike Crapo, John Boozman, John Cornyn, Lindsey Graham, Thom Tillis, David Perdue, Chuck Grassley, Rick Scott.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Steven J. Menashi, of New York, to be United States Circuit Judge for the Second Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. THUNE. The following Senator is necessarily absent: the Senator from South Dakota (Mr. ROUNDS).

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. BOOKER), the Senator from California (Ms. HARRIS), the Senator from Vermont (Mr. SANDERS), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

The PRESIDING OFFICER (Mr. LANKFORD). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 51, nays 44, as follows:

[Rollcall Vote No. 355 Ex.]

YEAS—51

Alexander	Fischer	Paul
Barrasso	Gardner	Perdue
Blackburn	Graham	Portman
Blunt	Grassley	Risch
Boozman	Hawley	Roberts
Braun	Hoeven	Romney
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Isakson	Scott (FL)
Cornyn	Johnson	Scott (SC)
Cotton	Kennedy	Shelby
Cramer	Lankford	Sullivan
Crapo	Lee	Thune
Cruz	McConnell	Tillis
Daines	McSally	Toomey
Enzi	Moran	Wicker
Ernst	Murkowski	Young

NAYS—44

Baldwin	Cardin	Cortez Masto
Bennet	Carper	Duckworth
Blumenthal	Casey	Durbin
Brown	Collins	Feinstein
Cantwell	Coons	Gillibrand

Hassan	Menendez	Sinema
Heinrich	Merkley	Smith
Hirono	Murphy	Stabenow
Jones	Murray	Tester
Kaine	Peters	Udall
King	Reed	Van Hollen
Klobuchar	Rosen	Warner
Leahy	Schatz	Whitehouse
Manchin	Schumer	Wyden
Markkey	Shaheen	

NOT VOTING—5

Booker	Rounds	Warren
Harris	Sanders	

The PRESIDING OFFICER. On this vote, the yeas are 51, and the nays are 44.

The motion is agreed to.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Steven J. Menashi, of New York, to be United States Circuit Judge for the Second Circuit.

The PRESIDING OFFICER. The Senator from Connecticut.

UNANIMOUS CONSENT REQUEST—S. 1416

Mr. BLUMENTHAL. Mr. President, I am proud to be here to advocate on behalf of a bill that has enjoyed, rightly, bipartisan support: the Affordable Prescriptions for Patients Act.

We all know that the astronomically rising costs of prescription drugs are a burden—in fact a bane for Americans regardless of where they live, regardless of their party, race, religion, or age, but particularly for our seniors. The choice between paying the mortgage, putting food on the table, and buying prescription drugs has become a daily challenge for people across the country.

This bill offers a positive, solid step toward ending abuses in the use of patents—abuses that are called patent thickening and product hopping—that all too commonly raise the cost of prescription drugs and preclude access for the people who need those drugs the most.

This effort has been a bipartisan one involving many of us in this Chamber. It passed from the Judiciary Committee unanimously. It is a testament to the still-possible bipartisan cooperation on an issue of paramount concern to the people of America that we have reached this point of bringing it to the floor of the Senate.

I am proud to have worked on this measure with my colleague from Texas who has really helped to lead this effort, Senator CORNYN, who is here on the floor with me, and I am happy to yield to him now.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I thank the Senator from Connecticut for his leadership.

At a time when people see bipartisan ship in short supply in Washington, DC, this is one area where we can actually make some real progress for the people we represent.

We all know that climbing healthcare costs are keeping people up

at night. Many people reached out to me in my office about the impossible decisions they are required to make in order to keep pace with rising prescription drug costs—particularly the out-of-pocket costs—whether they pay some bills and have to defer or not pay others; whether they cut their pills in half or self-ration the medications, which is dangerous to their health, or don't fill prescriptions altogether because they simply can't afford the out-of-pocket costs. No family should be required to make those sorts of decisions.

Sadly, I know my constituents in Texas are not alone. The Kaiser Family Foundation poll in September found that the No. 1 healthcare concern of the American people is prescription drug prices. This is something the President has said he wants to address, the House has said they want to address, and the Senate has said we want to address, and this legislation we are talking about will help move the ball in the right direction.

A whopping 70 percent of people think growing prescription drug costs should be the top priority for Congress, which should make it our No. 1 item on our to-do list. The good news is, we are making some progress. Here in the Senate, we have taken a bipartisan approach, which is the only way to actually get things done in Congress. We talked to every major player in the supply chain, and we asked questions about whether confusing practices that are not transparent to outsiders are all combining to drive up costs.

What I find seriously concerning are the anti-competitive behaviors of some of the drug manufacturers, the gamesmanship, particularly when it comes to our patent system. We know companies pour a lot of time and money into the research and development of new medications, and we don't want to do anything to stop that. We want to incentivize that so that they are able to recover their costs and perhaps make a profit when the drug turns out to be successful. But we don't want them playing games with the patent system in a way that prevents others at some point, after that period of exclusivity, from being able to compete with a generic alternative.

Ninety percent of the drugs we take are generic, and that is why they are so affordable and so inexpensive, but for the top 10 percent of branded drugs that people take, many of them simply are unaffordable. These patents I refer to do protect the intellectual property for these key drugs and are an important part of the incredible innovation that occurs here in the United States, but increasingly we are seeing companies using the patent system as a shield for competition beyond the life of the patent.

It is time to put a stop to that. We can do that today. We can begin that process today. That is exactly why I introduced the Affordable Prescriptions for Patients Act with the Senator from

Connecticut. It targets two specific practices used by drug companies to keep prices high. First is product hopping, which occurs when a company develops a reformulation of a product that is about to lose its exclusivity period and then pulls that original product off the market. This is done not because the new formula is necessarily more effective but because it prevents generic competitors for that product that has now been pulled off the market. The second phenomenon we are trying to combat is something called patent thickening, which occurs when an innovator uses multiple, overlapping patents with identical claims to make it nearly impossible for competitors to enter the field.

This is not how patents were supposed to be used, and we shouldn't allow these anti-competitive practices to continue. In one case involving the drug HUMIRA, the most popular drug being prescribed today, there are more than 120 separate patents for essentially the same molecule. Meanwhile, patients can't get access to competitive drugs that probably would be cheaper here in America, while there are four approved alternatives in Europe.

The American people simply should not have to put up with this. We need to stop companies from manipulating the system and keeping competitors tied up in courtrooms so that patients can start to feel some relief.

Patients aren't the only ones who would benefit from this bill. The Congressional Budget Office released a cost estimate and found that it would lower Federal spending by more than half a billion dollars over 10 years. That is not a whole lot of money in the grand scheme of things, but when you consider what the impact would be in the private insurance market, too, that begins to add up, and it adds up where it counts the most when it comes to seniors and other patients paying out of pocket for their copays and deductibles in order to get the drugs they need.

This bill really checks every box. It protects innovation, increases competition, lowers prices for patients, and saves money for taxpayers. Not surprisingly, as the Senator from Connecticut pointed out, it has strong support on both sides of the aisle. The Judiciary Committee, which ordinarily is a pretty contentious place, unanimously voted this bill out of committee. Our friend from Illinois, Senator DURBIN, and Senator MURRAY from Washington—two Members of the Democratic leadership—are both cosponsors of the bill, which shows just how noncontroversial this is.

I think it is time that we pass this legislation and let our constituents know we have heard their concerns and we are committed on a bipartisan basis to bringing down drug prices.

Mr. President, as if in legislative session, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 132, S. 1416.

I ask unanimous consent that the committee-reported substitute be withdrawn and the Cornyn amendment at the desk be agreed to; that the bill, as amended, be considered read a third time and passed; and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, let me start by saying I support this bill, the bill offered by Senators CORNYN and BLUMENTHAL. It is bipartisan in nature and passed the Judiciary Committee. I not only voted for it, I cosponsored it, and I think it should become the law of the land. It will be helpful in reducing the cost of pharmaceuticals.

I am offering a modification to the bill. I believe this modification is one that should be passed by the Senate as well. In fact, it did pass the Senate last year by a voice vote. Not a single Senator objected when it passed the Senate last year. We know—I have been told by my colleagues—that they support the concept, but they are not alone. The bill I am offering is also supported by the American Medical Association; the American Hospital Association; 88 percent of the American people, Republicans and Democrats; President Trump; his health Secretary, Dr. Azar; the AARP—a long list.

What could I possibly propose that would have all of these people supporting it? Simple. When the drug companies decide to run an ad on television—and you see a lot of them, don't you? The average American sees nine every day. All we ask is that included in the ad, they disclose the cost of the drug.

How did I pick this as the cost for the drug? I didn't pick it; it was chosen by the pharmaceutical company. That is the list price of the drug. They can go on to say "You will not have to pay that amount," but I believe the American people should know what the drugs cost.

The most heavily advertised drug in America today is HUMIRA. HUMIRA is used for forms of arthritis and psoriasis. But few Americans know, as they watch people sitting by the swimming pool with clear skin, that HUMIRA costs \$5,500 per month. The reason I want to disclose this is because I think consumers have the right to know.

Someone is going to pay that amount—your insurance company. Somebody is going to pay that amount. When Blue Cross and Blue Shield of Illinois says that the No. 1 driver in health insurance premiums is high prescription drug prices, I think people ought to know. It is not just a matter of being in a bathing suit without a red patch on your elbow; it is \$5,500 per month.

President Trump believes that disclosure should be made, the Secretary of

Health and Human Services believes it, the American Medical Association, the Hospital Association, all the people I mentioned, as well as almost 90 percent of Democrats and Republicans. Who opposes this? Who would oppose disclosing the price of the drug? I will bet you are guessing the pharmaceutical industry, and you are right. They are looking for one Senator who will object to what I am offering. That is what they need. They need just one Senator to say no, and frankly I am afraid we are going to face that this afternoon.

The bottom line is this: If you believe consumers in America have a right to know the cost of a drug, if you believe the pharmaceutical companies have a responsibility to disclose it, if you believe high prescription drug prices are unfair and costing a lot more in our healthcare system than they should, then support this basic measure that passed the Senate last year without one negative voice. None. None whatsoever.

So having reserved the right to object, I ask that the Senator modify his request so that in addition to the pending request, the Finance Committee be discharged from further consideration of S. 1437 and the Senate proceed to its immediate consideration; that the Durbin-Grassley amendment at the desk be agreed to; that the bill, as amended, be considered read a third time and passed; that the Durbin-Grassley amendment to the title be agreed to; and that the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Would the Senator modify his request?

Mr. TOOMEY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, first let me say that I think Senator CORNYN's legislation is very constructive. I fully support it. I think it would result in lower costs for consumers. It is very commendable. I think we should pass it. I am sympathetic with the idea of requiring greater transparency on healthcare costs generally, but I have significant policy concerns and process concerns with the proposal from the Senator from Illinois.

The policy concern, broadly, is that what his legislation would do is it would single out one industry and require a mandate that in their direct-to-consumer advertising, they provide systematically misleading information to consumers. It doesn't strike me, obviously, as a good idea to mislead people, including in this context.

Why do I say it is misleading? It is because the legislation requires the list price or the wholesale acquisition price of a drug to be the price that is put in the ad, despite the fact that almost no one ever pays either of those prices. There are huge rebates that are built into the system.

We can have a good debate about whether it is a good model by which

the government has created all of these perversities in our healthcare delivery system, but that is what it is. The truth and the reality is almost no one pays either the list or the wholesale acquisition price. Think about it. If you are on Medicaid, you pay zero. If you are on Medicare, you often pay zero—usually, nearly zero. If you have private insurance, it varies enormously from zero to something significantly different, but almost no one pays the price that the Senator from Illinois would require to be posted in all direct-to-consumer advertising.

Think about some of the unintended consequences. The number that would have to be in the ad is way higher than what almost anyone actually pays. Think of what could happen. I can imagine senior citizens sitting there watching an ad. Maybe they see a medicine they actually would benefit from, and then at the end there is some huge number that does not reflect—it doesn't come close to reflecting what the actual cost would be, but it is a big number so that a senior citizen would understandably say: Gosh, I can't afford that. I guess I can't pursue that therapy, even though they might need that. I am sure that is not the intended consequence of this legislation, but I am pretty sure it would happen.

It is also peculiar to me that the authors of this legislation choose to single out a small fraction of the healthcare industry to impose this mandate. Prescription drug spending is about 10 percent of healthcare. Hospitals are about 32 percent, but I haven't seen that we are going to impose this. If you look at the rate of price increases in various sectors of healthcare, you see that actually prescription drugs, over the last 20 years—their increase in prices is considerably less than hospital services and considerably less than medical care services.

Then, of course, we have other sectors in the economy altogether. Are we going to put mandates on colleges, for instance? The rate of tuition increase in colleges is much greater than the rate of increase of prescription drugs in recent years. I haven't heard a proposal yet, but maybe one is coming that would require this of other industries as well.

If I didn't know better, I would think it seems part of a theme to vilify the industry that has developed the therapies that allow us to live longer, healthier, and save lives. Most importantly, maybe it will not lower costs. It is not going to lower costs for consumers. The only way we are going to do that is if we better align the incentives of the consumer and the person paying.

In contrast, by the way, the Finance Committee and HELP Committee reported out legislation that actually would lower out-of-pocket costs for prescription drugs. We have Senator CORNYN's legislation that I think absolutely would lower the cost of consumer prescription drugs. Yet that is

not what is on the floor today from the Senator from Illinois.

Now, despite my policy concerns—and they are serious—I actually think we ought to debate these things. We ought to put this kind of legislation on the floor. We ought to have a debate. We ought to have a vote, but this is complicated, and it is fraud. We should not be trying to just pass this by unanimous consent. This legislation has not gone through committee, and contrary to my colleague from Illinois—this actual piece of legislation has never had a vote as a freestanding matter. A version of it that is different from what is being offered today was buried in a larger legislation which passed. That is not the same as scrutinizing this policy, subjecting it to amendments, and deciding on it. That is what I think we ought to do.

Unlike my colleagues on the other side who have been consistently preventing us from taking up legislation, such as the approps bills they have not allowed us to get on to or the SECURE Act, on which I offered a unanimous consent process for us to take up and process, I think we ought to consider this legislation, even though I don't think I would support the final product.

What I suggest we do is let's move on to the Defense appropriations bill. Arguably, the most fundamental responsibility of Congress is to fund our national defense. Let's make in order as the first amendment after the managers' amendment the amendment of the Senator from Illinois that he has just described. I don't support it, but I support his right to have a debate and have a vote. Let's go on to an appropriations bill and let's make his amendment in order as the first amendment. We can debate it; we can vote it; and we will all live with the consequences. I think that is what we are here for. I think the purpose of the Senate is to take on these issues, put them on the floor, have a debate, and have a vote. I am willing to live with the outcome of that.

Mr. President, I ask that the Senator from Illinois modify his request and that the Senate proceed to the immediate consideration of Calendar No. 132, S. 1416. I further ask unanimous consent that the committee-reported substitute amendment be withdrawn and that the Cornyn amendment at the desk be agreed to; that the bill, as amended, be considered read a third time and passed; and that the motion to reconsider be considered made and laid upon the table; and finally, that following disposition of S. 1416, the Senate proceed to the immediate consideration of H.R. 2740, and following the offering of a substitute amendment by Senator SHELBY or his designee, the first amendment in order be an amendment offered by Senator DURBIN or Senator GRASSLEY, the text of which is identical to S. 1437, as amended, which is at the desk.

The PRESIDING OFFICER. Does the Senator modify his request?

Mr. DURBIN. Reserving the right to object.

I am not a zoologist, so I don't know if crocodiles can cry, but I am very concerned about the argument the Senator from Pennsylvania made. He is actually standing here, in defense of senior citizens, by objecting to disclosing the list price that the pharmaceutical companies charge for these drugs. I didn't choose that price; they chose that price.

Mr. TOOMEY. Will the Senator yield?

Mr. DURBIN. I will not yield until I am finished.

I said they could put a disclaimer on that saying maybe you will not pay the full list price depending on your insurance or coverage, but to argue that you are standing here in defense of senior citizens and denying this information to them and that the only way we can consider this measure is call up the Department of Defense appropriations bill—from where I am standing, this measure, which passed the Senate without your objection last year, should pass now with the underlying legislation. Let's get this done in a comprehensive way to help seniors, and let's not stand in defense of pharmaceutical companies. They have plenty of people to defend them.

The PRESIDING OFFICER. Does the Senator object to the modification?

Mr. DURBIN. I object.

The PRESIDING OFFICER. Objection is heard.

Is there objection to the original request from the Senator from Illinois to modify his request?

Mr. TOOMEY. I object.

The PRESIDING OFFICER. Objection is heard.

Is there objection to the Senator from Texas?

Mr. SCHUMER. Reserving the right to object.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. SCHUMER. Mr. President, I am so glad to be out here today to deal with the issue of reducing prices on drugs for seniors and others. There are so many things we must do. Some are small. Some are large. We want to do all of them.

We Democrats know how bad drug prices are for seniors. We know how bad the sabotage of our healthcare system is for seniors. If you don't have insurance, you probably can't pay for the drugs no matter what happens.

I would say to my good friend the Senator from Texas that we have a whole lot of legislative ideas, not just his. He demands his. It is good, but it is hardly large. There are millions and millions who need help who are not affected. The Senators from Illinois and Iowa have a bill to lower prescription drug costs. The HELP Committee has a bill that would help community health centers. The Senate Finance Committee has a good bipartisan bill to lower costs for seniors who are very