MEDICARE PRESCRIPTION DRUG PRICE NEGOTIATION ACT OF 2007—MOTION TO PROCEED

The ACTING PRESIDENT pro tem. — The Motion to proceed to Calendar No. 118, S. 3, a bill to amend part D of title XVIII of the Social Security Act to provide for fair prescription drug prices for Medicare beneficiaries.

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 Calendar No. 118, S. 3, Prescription Drugs.

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Dick Durbin, Amy Klobuchar, Ken Salazar, Edward Kennedy, Mark Pryor, Blanche L. Lincoln, Daniel K. Inouye, Byron L. Dorgan, Chuck Schumer, Max Baucus, Kent Conrad, Jeff Bingaman, John F. Kerry, Ron Wyden, Debbie Stabenow, Jay Rockefeller, Maria Cantwell, Harry Reid.

The ACTING PRESIDENT pro tem. — By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 3, a bill to amend part D of title XVIII of the Social Security Act to provide for fair prescription drug prices for Medicare beneficiaries, 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. DURBIN. The following Senators are necessarily absent: the Senator from South Dakota (Mr. JOHNSTON) and the Senator from Arizona (Mr. MCCAIN).

The ACTING PRESIDENT pro tem. — Are there any other Senators in the chamber desiring to vote?

The yeas and nays resulted — yeas 55, nays 42, as follows:

**YEAS—55**

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Brown
Brown
Byrd
Cantwell
Cardin
Carder
Casey
Clinton
Cooper
Collins
Conrad
Dodd
Dorgan
Durbin

Feingold
Feinstein
Hagel
Harkin
Inouye
Kennedy
Kerry
Klobuchar
Kasich
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
McCaskill
McConnell
Mikulski
Murray

Nelson (FL)
Nelson (NE)
Obama
Pryor
Reed
Rockefeller
Sarrazin
Sanders
Schumer
Smith
Smith
Snowe
Specter
Stabenow
Tester
Webb
Whitehouse
Wyden

**NAYS—42**

Alexander
Bennett
Bond
Bunning
Burr
Chambliss
Coburn
Cochran
Corzine
Crapo
DeMint

Dole
Ensign
Espy
Graham
Grassley
Greer
Hatch
Hutchison
Isakson
Kyl
Lugar

Martinez
McConnell
Markowski
Rand
Roberts
Shelby
Stevens
Summers
Thomason
Thune
Vitter
Voinovich
Warner

The ACTING PRESIDENT pro tem. — On this vote, the yeas are 55, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader. Mr. REID. Mr. President, I enter a motion to reconsider that vote.

The ACTING PRESIDENT pro tem. — The motion is entered.

Mr. OBAMA. Mr. President, I am extremely disappointed by the Senate's failure to consider a bill that would have placed the needs of seniors ahead of the profits of the industry. Once again, a minority of the Senate has allowed the power and the profits of the pharmaceutical industry to trump good policy and the will of the American people.

We take a major crisis in this Nation, and that is the rising cost of health care. Over the last century, the Nation has witnessed tremendous advances in medical science and technology, and we now have treatments and cures for diseases and conditions that were at one time surely fatal.

Yet we are paying the price for this success. Health care, particularly the cost of drugs, is becoming increasingly unaffordable. Over the last decade the cost of drugs has quintupled, now totaling almost $500 billion. In 2006, the drug companies' profit was 16 percent of their revenues, compared to only 6 percent for all Fortune 500 firms. The total profit of the top 7 U.S. based drug companies was $34 billion in 2004, and, if you add it up, their CEOs were paid a shocking $91 million that same year. Clearly, the new drug benefit in Medicare has been a tremendous boon for the drug companies, adding to these extreme profits.

The growth in the cost of drugs has slowed in recent years, in part because of greater use of generic drugs. But given the pittance, and the financial challenges of our health care system, we can—and must—take additional steps to curb how much we are spending on drugs.

Allowing the Federal Government to negotiate for lower drug prices in the Medicare Program would have been an important step forward in this regard. When you look at the prices the Federal Government has negotiated for our veterans and military men and women, it is clear that the government can—and should—use its leverage to lower prices for our seniors as well.

Drug negotiation is the smart thing to do and the right thing to do, and it is unconscionable that we were not able to take up this bill today.

Mr. WHITEHOUSE. Mr. President, I speak today in outrage that my colleagues on the other side of the aisle have chosen to block S. 3, the Medicare Prescription Drug Price Negotiation Act, from coming to the floor.

You meet a lot of people when you campaign for a seat in this esteemed body. You meet people of all ages, from all socioeconomic levels, from all ethnic and cultural backgrounds, liberal and conservative, rural and urban, healthy and ailing—you meet them all. These individuals bring personal voices to national issues. They educate us with their stories, and they trust us to be stewards of their experiences. I am sure my fellow freshman Senators will agree with me when I say that listening to these stories was the best part of running for U.S. Senate.

Sometimes these stories are uplifting tales about the triumphs of government: SCHIP providing health insurance to at-risk children. AmeriCorps helping young people serve communities. The Family and Medical Leave Act allowing parents, spouses, and children the time to care for loved ones. But sometimes these stories are just the opposite—depressing, discouraging, disheartening tales of the government has failed in its duty to support and safeguard our most vulnerable citizens.

I have hosted community dinners throughout my State. Some of the very saddest stories that Rhode Islanders shared with me were about their experiences with the Part D drug benefit. I would like to share with you a particularly touching story from Travis, who came to one of my community dinners in Woonsocket. Travis told me of his great-grandmother, a woman over 90 who was living independently, in a second or third story walk-up apartment building in Woonsocket. She, like other women her age, had signed up for a Part D plan, and was taking a number of prescription medications. One day, Travis's great-grandmother arrived at the pharmacy, only to be told that she was in the donut hole, that she would now be responsible for almost the entirety of her drug bill. His great-grandmother called Travis in despair. She would no longer be able to afford her apartment, or her independent lifestyle. She was forced to choose between her spirit of self-reliance and her health.

This is a tragedy. It is a human tragedy because no human being should be forced to choose between her dignity and her life, and it is a moral tragedy because this is a totally unnecessary choice. The Congressional Budget Office concludes that the privatization of the drug benefit will not simply add the drug program onto the established Medicare benefit—costs almost $5 billion a year. The Center for...
Economic and Policy Research reveals that the combined cost of privatization and failure to negotiate prices is more than $30 billion a year. I do not know about you, Mr. President, but I cannot look Travis in the eye and tell him that in a country that has seen a great economic expansion, but struggle to make ends meet, the government needs to give it to pharmaceutical manufacturers, an industry that, in 2004, was three times more profitable than the median for all Fortune 500 companies. An industry that from 1995 to 2002 was the most profitable industry in the entire country.

I was not in the Senate when the drug benefit was created. I was not privy to the debates that went on here regarding the complexities and particulars of the bill. But I have a very hard time understanding how, with a successful Federal drug benefit model in place at the VA, this body created a new program that pays, on average, 70 percent more for drugs than the existing VA system, according to a GAO study on Medicare's preferred provider organizations. The net result of this was that in Rhode Island alone, there will be 51 plans, each with 1,500 prescription drug plans offered in 2006, there were nearly 1,500 prescription drug plans offered through the proposed legislation. In fact, 73 percent of seniors who describe themselves as in in the middle of last year to make its own determination about the usefulness of the feature. Eighteen percent of calls received inaccurate responses, 8 percent of the responses were inappropriate given the question posed, and 17 percent showed disconnection, and 3 percent of responses were incomplete. In total, one-third of calls placed by GAO in this study were handled in an unacceptable fashion. Our mechanism to demystify the drug benefit for the average consumer is furthering the confusion of one-third of callers. This is a catastrophe.

A second value that some of my colleagues argue excuses the convoluted and costly nature of the drug benefit, is expanded coverage. More seniors have drug coverage now than they did before January 2006. No one disputes this. But insurance is not insurance unless it is there for you when you really need it. Our sicker seniors are reporting far more problems getting medications across the pharmacy aisle than their healthier seniors are. Over 40 percent of seniors who describe themselves as in ‘fair’ or ‘poor’ health report problems filling a prescription under their Part D coverage, while only 12 percent who describe themselves as ‘very good’ health report a problem. If Part D is failing to help the sick, it is failing to meet the basic definition of insurance.

Do I mean to say that providing some coverage is worse than being uninsured? No. But that was not the option on the table in 2003. We had the option to provide everyone with excellent coverage. We had the option to care equally and comprehensively for every elderly American, whether healthy, sick, or in between. We did not. Instead, we chose to write checks to the pharmaceutical industry, we chose to write checks to private insurers, and we left our seniors to write their own. What, then, can we do to fix this broken benefit? There is a lot we can do, and today is the first step. Today, we can allow the Secretary of Health and Human Services to negotiate directly with drug companies to lower prices for prescription drugs. The underlying facts are that the pharmacy benefit managers who negotiate prices for the prescription drug plans represent substantially more people than the Secretary would under Part D. For example, Medco represents 32 million people, Caremark represents 80 million and Wellpoint represents 30 million, contrasted to the 29 million people covered under Medicare Part D. Accordingly, it may be that the pharmacy benefit managers have even more incentive to leverage drug companies, or even the Secretary, if the Secretary was authorized to negotiate prices. That is not certain because the negotiations between the pharmacy benefit managers and the pharmaceutical companies are conducted on a confidential basis, so that it is not known with certainty that the lowest prices are obtained or that the cost savings are all passed on to the prescription drug plans.

The latest Congressional Budget Office estimate for Part D costs is $388 billion below the original Medicare Baseline, for the 10-year period from fiscal year 2007 to fiscal year 2016. That suggests the current system is working well.

Extended Senate floor deliberation would provide an opportunity to debate these proposals. It could allow the Senate to proceed to give full consideration to the proposed legislation which would authorize the Secretary of Health and Human Services to negotiate with the pharmaceutical companies under Medicare Part D coverage. In the past, I have favored such proposals because of the argument that the Secretary’s bargaining power would result in lower negotiated prices.

In light of the conclusion by the Congressional Budget Office in a letter dated April 10, 2007 from Director Peter Orszag to Senate Finance Chair Specter, that the new authority to the Secretary “would have a negligible effect on federal spending because we anticipate that under the bill the Secretary would lack the lever to negotiate better prices across the broad range of covered Part D drugs that are more favorable than those obtained by PDPs [prescription drug plans] under current law,” I have reviewed the negotiation process under existing laws.

The prevailing facts are that the pharmacy benefit managers who negotiate prices for the prescription drug plans represent substantially more people than the Secretary would under Part D. For example, Medco represents 32 million people, Caremark represents 80 million and Wellpoint represents 30 million, contrasted to the 29 million people covered under Medicare Part D. Accordingly, it may be that the pharmacy benefit managers have even more incentive to leverage drug companies, or even the Secretary, if the Secretary was authorized to negotiate prices. That is not certain because the negotiations between the pharmacy benefit managers and the pharmaceutical companies are conducted on a confidential basis, so that it is not known with certainty that the lowest prices are obtained or that the cost savings are all passed on to the prescription drug plans.

The latest Congressional Budget Office estimate for Part D costs is $388 billion below the original Medicare Baseline, for the 10-year period from fiscal year 2007 to fiscal year 2016. That suggests the current system is working well.

Extended Senate floor deliberation would provide an opportunity to debate these proposals and obtain greater detail on the facts.

One of the additional arguments favoring giving the Secretary power to negotiate was the analogy to the savings achieved through the negotiating power of the Department of Veterans Affairs. In analyzing the VA’s bargaining power, it must be noted that the Veterans Department represents 4.4
million veterans, a much smaller number than represented by the pharmacy benefit managers. It is also important to note that among brand-name drugs listed on the 300 most popular drugs for seniors, only 42 percent are available to the VA plan because the pharmacy benefit managers have decided to provide some of the drugs because of their unwillingness to meet the price determined unilaterally by the VA. On the other hand, it is estimated that PDPs under Medicare Part D have access to 97 percent of the brandname drugs among the most favored 300 drugs. The Medicare Part D beneficiaries have an opportunity to select the prescription drug plans that best meet their prescription drug needs, with the opportunity to select a new plan on an annual basis.

Notwithstanding these factors, there may be answers and compelling arguments in support of the proposed legislation to give the Secretary negotiating authority rather than full debate by the Senate on these important issues would pose the opportunity to resolve these complicated questions and come to a reasoned judgment. The Senate will doubtless revisit this issue in the future. In the interim, I intend to inquire further and consider these issues in greater depth to determine what policies would best serve the interests of the beneficiaries of Medicare Part D.

COURT SECURITY IMPROVEMENT ACT OF 2007—MOTION TO PROCEED—Resumed

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 2 minutes of debate equally divided between the Senator from Vermont, Mr. LEAHY, and the Senator from Pennsylvania, Mr. SPECTER, prior to a vote on a motion to proceed to S. 378.

The Senator from Vermont.

Mr. LEAHY. Mr. President, this week we join in mourning the tragic killings at Virginia Tech on Monday. The innocent lives of students and professors are a terrible loss for their families and friends and for their community. It affects us all. We honor them and mourn their loss. I expect that in the days ahead, as we learn more about what happened, how it happened and perhaps why it happened, we will have debate and discussion and perhaps legislative proposals to consider.

For example, I know that Senator BOXER has introduced a School Safety Enhancement Act, S. 677, to allow matching grants for school security, including surveillance equipment, hotlines and tip lines and other measures. We may need to further enhance the COPS in Schools Program begun by President Clinton. I look forward to working with Regina Schofield, the Assistant Attorney General for the Office of Justice Programs at the Department of Justice, Domingo Herreza, the Director of the Bureau of Justice Assistance, and others to make improvements that can increase the safety and security of our children and grandchildren in schools and colleges.

Today, we may finally make progress on security in another important setting by turning to the Court Security Improvement Act of 2007. Frankly, this legislation should have been enacted last year but was not. It should not be a struggle to enact these measures to improve court security. We are fortunate that we have not suffered another violent assault on judges and their families.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I concur with the statements by the chairman. We introduced court security during the 109th Congress after we had the brutal murders of the family of a Federal judge in Chicago. We have continuing problems. Rat poison was mailed to each of the nine Justices on the Supreme Court. There is no doubt that there is an urgent need for additional court security, in light of the attacks on the judges. The independence of our judiciary is fundamental in our society for the rule of law.

This bill passed by unanimous consent last December, but, unfortunately, it was not taken up by the House. We ought to consider it expeditiously, and I urge my colleagues to vote to invoke cloture.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant 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 Calendar No. 107, S. 378, the Court Security Improvement Bill.

Harry Reid, Jeff Bingaman, Chuck Schumer, John McCain, Dick Durbin, Jay Rockefeller, S. Whitehouse, Barbara A. Mikulski, Ken Salazar, Edward M. Kennedy, Pat Leahy.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to consideration of S. 378, a bill to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) and the Senator from West Vir- ginia (Mr. ROCKEFELLER) are necessarily absent.

Mr. LOT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from Arizona (Mr. MCCAIN).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 93, nays 3, as follows:

[Roll Call Vote No. 133 Leg.]

YEAS—93

NAYS—3

Coburn Gregg Inhofe
Brownback McCain Johnson Rockefeller

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 93, the nays are 3. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, the motion to proceed has just passed, 93 to 3. We will bring before the Senate in fairly short order the Court Security Improvement Act of 2007. I rise today to speak in support of that act. It is a bill that is as simple as it is important.

At a time when judges are the subject of sometimes vitriolic criticism, when judges and their families have been made the targets of acts of violence and murder, when the independence of the judiciary must be maintained in a climate of violence, we should take these important steps to improve the safety of our judges and their families. This bill will do that by requiring the U.S. Marshals Service—which has oversight over the safety of the judicial branch—to consult with the Judicial Conference to determine whether any programs at the judicial branch, and it authorizes $20 million for the Marshals Service to protect the judiciary further.