

piggy bank to pay a significant portion of the administration's plan for health care reform. Well, in my view, it's a terrible idea, and on the 44th anniversary of this vital program that roughly 40 million Americans rely on each day, I think it is important to explain why.

Here is how one of the proposed cuts would work. Right now, if a senior citizen on Medicare needs surgery, his or her hospital stay will likely be covered by Medicare. And because health care costs go up each year, Medicare provides for annual increases that ensure that hospitals and other providers are able to keep pace with inflation.

What the administration and some Democrats in Congress are now proposing is that we reduce or even eliminate this annual increase—thus, cutting the amount of money we spend on Medicare, a drastic measure that could have a serious impact on our hospitals and the communities and patients they serve.

It would be one thing if these cuts were being proposed as a way of strengthening Medicare. The simple fact is that Medicare faces significant challenges that must be addressed. When Medicare Part A—the program that pays for hospital stays—was enacted, 44 years ago today, it was projected that in 1990 this program would spend \$9.1 billion on hospital services and related administration. As it turned out, spending in 1990 totaled almost \$67 billion—or more than seven times the original prediction. These exploding costs have taken a toll on the program's bottom line. Today, Medicare is already spending more than it is taking in, and it is expected to be insolvent in just 8 years. Unfortunately, the administration plans to use Medicare cuts in order to fund yet another new government program.

America's seniors don't want politicians in Washington tampering with Medicare to pay for health care reform. They want us to fix it. I get letters almost every day from some of the nearly 700,000 Kentuckians who have Medicare. They are counting on it in the years ahead, and they are worried about its future. In my view, we have a serious obligation to make sure it's there for them. Unfortunately, the administration's proposal takes the wrong approach.

Just yesterday, the Joint Economic Committee completed a study on the administration's proposed cuts to Medicare. It found that if these cuts were used to restore Medicare rather than to fund a government takeover of health care, the Medicare trust fund's 75-year unfunded liability would be reduced by 15 percent, or more than \$2 trillion, and that it would delay the trust fund's bankruptcy by 2 years. In short, while any savings from a reformed Medicare would strengthen it for a longer period of time were they put back into the current program, this just highlights how important overall reform is to ensuring that Medicare continues to serve our seniors.

This is why I have argued for weeks that any savings from Medicare should be put back into the program. And this is why I have also repeatedly urged the administration and my colleagues in the Senate to move forward on the bipartisan Conrad-Gregg proposal, which would provide a clear pathway for fixing the problems in Medicare and other important entitlement programs. Conrad-Gregg would force us to get debt and spending under control. It is the best way to reform Medicare. It deserves the support of every Member of Congress.

Doctors and hospitals across the country are worried about what these proposed cuts in Medicare would mean for them and their patients. Earlier this year, the Kentucky Hospital Association warned that the kinds of cuts being considered in Washington would seriously impact the services hospitals currently provide to seniors in my State. I would encourage my colleagues to talk to seniors, doctors, and medical professionals in their own States and see what they're saying. My guess is that it's a lot different than what some of the lobbyists and interest groups here in Washington are saying.

Some in Congress seem to be in such a rush to pass just any reform, rather than the right reform, that they are looking everywhere for the money to pay for it—even if it means sticking it to seniors with cuts to Medicare. If there was ever a program that needed to be put on a sounder financial footing it is Medicare. And yet throughout the debate over health care, we don't seem to be focusing our attention on this vital issue. Instead, the same people who are unwilling to make the hard choices that are needed to fix Medicare now want us to trust them to create a new government program that will inevitably suffer from these same problems. It just doesn't add up, and Americans are beginning to realize it.

So on this anniversary, here is my message: Using massive cuts to Medicare as a way to pay for more government-run health care isn't the kind of change Americans are looking for. Americans want savings from Medicare to be used to strengthen Medicare, not to create a system that would increase long-term health care costs, force Americans off the insurance they have and like, and lead to a government takeover of health care that has the same fiscal problems that Medicare has.

Forty-four years ago today, President Johnson signed Medicare into law, saying that our Nation would never "refuse the hand of justice to those who have given a lifetime of service and wisdom and labor" to their Nation. Those of us in Congress have a responsibility to fulfill that vow. And the best way to do so is to work together on reforms that address the real problems in our health care system, problems like the ones we see with Medicare.

I have been encouraged, as lawmakers on both sides, and even the

President, have acknowledged that the reform proposals we have seen so far are not where they need to be. Strengthening Medicare to make sure it meets the needs of seniors today and in the years to come would be a very good place to start.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

#### SOTOMAYOR NOMINATION

Mr. ALEXANDER. Madam President, I have a statement to make about the President's nomination of Judge Sonia Sotomayor to be Associate Justice of the U.S. Supreme Court.

Even though Judge Sotomayor's political and judicial philosophy may be different from mine, especially regarding second amendment rights, I will vote to confirm her because she is well qualified by experience, temperament, character, and intellect to serve as an Associate Justice of the U.S. Supreme Court.

In 2005, I said on this floor that it was wrong for then-Senator Obama and half the Democratic Senators to vote against John Roberts—a superbly qualified nominee—solely because they disagreed with what Senator Obama described as Roberts' "overarching political philosophy" and "his work in the White House and the Solicitor General's Office" that "consistently sided" with "the strong in opposition to the weak." Today, it would be equally wrong for me to vote against Judge Sotomayor solely because she is not "on my side" on some issues.

Courts were never intended to be political bodies composed of judges "on your side" who would reliably tilt your way in controversial cases. Courts are supposed to do just the opposite: decide difficult cases with impartiality.

The oath Judge Sotomayor has taken twice and will take again when she is sworn in as Associate Justice of the Supreme Court says it best:

. . . I will administer justice without respect to persons, and do equal right to the poor and to the rich and . . . I will faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States.

During her confirmation hearings, Judge Sotomayor expressly rejected then-Senator Obama's view that in a certain percentage of judicial decisions, "the critical ingredient is supplied by what is in a judge's heart . . . and [in] the depth and breadth of one's empathy." In answer to a question from Senator KYL, she said in her confirmation hearing:

I can only explain what I think judges should do, which is judges can't rely on what's in their heart. They don't determine the law. Congress makes the laws. The job of a judge is to apply the law. And so it's not the heart that compels conclusions in cases. It's the law. The judge applies the law to the facts before that judge.

Giving broad Senate approval to obviously well-qualified nominees helps

to increase the prestige of the Supreme Court and to confirm its impartiality. For that reason, until the last few years, Republican and Democratic Senators, after rigorous inquiries into the fitness of nominees, usually have given those well-qualified nominees an overwhelming vote of approval. For example, no Justice on the Supreme Court that John Roberts joined in 2005 had received more than nine negative votes. Four were confirmed unanimously. All but three Republican Senators voted for Justice Ginsburg, a former general counsel of the American Civil Liberties Union. Every single Democratic Senator voted to confirm Justice Scalia.

In truly extraordinary cases, Senators, of course, reserve the prerogative, as I do, to vote no or even to vote to deny an up-or-down vote.

During the 8 years I was Governor of Tennessee, I appointed about 50 judges. In doing so, I looked for the same qualities Justice Roberts and Judge Sotomayor have demonstrated: intelligence, good character, restraint, respect for law, and respect for those who came before the court. I did not ask one applicant how he or she would rule on abortion or immigration or taxation. I appointed the first female circuit judge in our State and the first African-American court chancellor and the first African-American State supreme court justice. I appointed both Democrats and Republicans. That process served our State well and helped to build respect for the independence and fairness of our judiciary.

In the same way, it is my hope that my vote now will not only help to confirm a well-qualified nominee but will help to return the Senate to the practice only recently lost of inquiring diligently into qualifications of a nominee and then accepting that elections have consequences, one of which is to confer upon the President of the United States the constitutional right to nominate Justices of the Supreme Court.

Madam President, I ask unanimous consent to have printed in the RECORD my floor remarks in support of Judge John Roberts on September 27, 2005.

There being no objection, the material was ordered to be printed in the RECORD, as follows;

FLOOR REMARKS OF U.S. SENATOR LAMAR ALEXANDER IN SUPPORT OF JUDGE JOHN ROBERTS, SEPTEMBER 27, 2005

My constituents have been asking me: who will President Bush nominate for the second Supreme Court vacancy? And the question reminds me of the kicker from California who went to Alabama to play for Coach Bear Bryant. Day after day in practice, the kicker kept punting it more than 70 yards. Day after day, Bryant never said a word. Finally, the young man went to Bryant. Coach, I came all the way here from California to be coached by you and you never say a word to me. "Son," Bryant said, "When you start kicking it less than 70 yards, I will remind you of what you were doing when you kicked it 70 yards."

My only respectful suggestion to President Bush is that he try to remember what he was thinking when he appointed John Roberts,

and to do it again. For anyone who has been trained in the law, as I have, and who knows something about the profession, it has been a pleasure to watch Judge Roberts' nomination and his confirmation process. It is difficult to overstate how good Judge Roberts seems to be. He has the resume of most talented law students' dreams: editor of the Harvard Law Review and clerk to Judge Henry Friendly. I was a law clerk to Judge John Minor Wisdom in New Orleans who regarded Henry Friendly as one of the two or three best appellate judges of the last century. Judge Roberts learned from Judge Friendly. Then he was law clerk to the last Chief Justice. Add to that his work in the Solicitor General's office where only the best of the best are invited to work. Then add his success as an advocate before the Supreme Court both in private and in public practice. Then still further add his demeanor, his modesty both in philosophy and in person—something that is not always so evident in a person of superior intelligence and great accomplishment. And his kindnesses to individuals with whom he has worked. His performance before the Senate Judiciary Committee demonstrated all of those qualities: restraint, good humor, intelligence, and a command of the body of law that a Supreme Court justice must consider. The televised episodes could be the basis for a law school course or any civics class.

Judge Roberts brings, as he repeatedly said, no agenda to the Supreme Court. He understands that he did not write the Constitution, and it's not his job to rewrite it but to interpret it. That he does not make laws, but is obligated to apply them. He understands the federal system.

For a devotee of the law, watching the John Roberts hearings was like watching Michael Jordan play basketball at the University of North Carolina in the early 1980s or Chet Atkins as a session guitarist in the 1950s in Nashville. One doesn't have to be a great student of the law to recognize there is unusual talent here.

So then if Judge Roberts' professional qualifications and temperament are so universally acclaimed why do we now hear so much talk of changing the rules and voting only for those justices who we can be assured are "on our side." That would be the wrong direction for our country. In the first place, history teaches us that those who try to predict how Supreme Court nominees will decide cases are almost always wrong. Felix Frankfurter surprised Franklin Roosevelt. Hugo Black surprised the South. David Souter surprised almost everybody.

In the second place, courts were never intended to be set up as political bodies that could be relied upon to always tilt one way or another in controversial matters. Courts are supposed to do just the opposite: to hear the facts and impartially apply the law and the Constitution in controversial matters. Who will have confidence in a system of justice that is deliberately rigged to be on one side or the other despite what the facts and the law are?

Finally, failing to give overwhelming approval to an obviously well-qualified nominee like Judge Roberts just because he is "not on your side" reduces the prestige of the Court. It jeopardizes its independence. It makes it less effective as it seeks to perform its indispensable role in our constitutional republic.

For these three reasons Republican and Democratic senators, after rigorous hearings and discussions, have traditionally given well-qualified nominees for Supreme Court justice an overwhelming vote of approval. I'm not talking about the ancient past, I'm speaking of justices who are on the Court today, none of whom are better qualified than Judge Roberts.

Justice Breyer—Confirmed by a vote of 87-9 in a Congress composed of 57 Democrats and 43 Republicans.

Justice Ginsburg—Confirmed by a vote of 96-3 in that same Congress.

Justice Souter—Confirmed by a vote of 90-9 in a Congress composed of 55 Democrats and 45 Republicans.

Justice Kennedy—Confirmed by a vote of 97-0 in a Congress composed of 55 Democrats and 45 Republicans.

Justice Scalia—Confirmed by a vote of 98-0 in a Congress composed of 47 Democrats and 53 Republicans.

Justice O'Connor—Confirmed by a vote of 99-0 in a Congress composed of 46 Democrats and 53 Republicans.

Justice Stevens—Confirmed by a vote of 98-0 in a Congress composed of 61 Democrats and 37 Republicans.

The only close vote on this Court was for the nomination of Justice Thomas following questions of alleged misconduct by the nominee. Thomas was confirmed by a vote of 52-48. However, even in that vote, 11 Democrats crossed the aisle to support the nominee.

If almost all Republican senators can vote for Justice Ginsburg, a former General Counsel for the American Civil Liberties Union, and a nominee who declined to answer numerous questions so as not to jeopardize the independence of the court on cases that might come before her, and if every single Democratic U.S. senator could vote for Justice Scalia—then why can't virtually every senator in this chamber vote to confirm Judge Roberts?

I was governor for eight years in Tennessee. I appointed about fifty judges. I looked for the same qualities Judge Roberts has demonstrated: intelligence, good character, restraint, respect for the law, and respect for those who came before the court. I did not ask one applicant how he or she would rule on abortion or immigration or taxation. I appointed the first woman circuit judge, as well as men. I appointed Tennessee's first African American chancellor and the first African American state supreme court justice. I appointed Republicans and Democrats. That process served our state well and helped build respect for the independence and fairness of our judiciary. I would hope we would try to do the same as we consider this nomination for the United States Supreme Court.

It is unlikely in our lifetimes, that we will see a nominee for the Supreme Court whose professional accomplishments, demeanor and intelligence is superior to that of John Roberts. If that is so, then I would hope that my colleagues on both sides of the aisle will do what they did with all but one member of the current Supreme Court, and with most of the previous justices in our history, and vote to confirm him by an overwhelming majority.

Mr. ALEXANDER. Madam President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. KLOBUCHAR. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. KLOBUCHAR. Madam President, I ask to speak as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## HEALTH CARE REFORM

Ms. KLOBUCHAR. Madam President, health care reform is a very personal matter for me and a personal matter for so many people in my State. I first got interested in this issue, as I think many of us did, after something happened to me when my daughter was born. When she was born, she was very sick. She could not swallow. Back then, insurance companies had a rule that new moms and their babies were kicked out after 24 hours. After she had been in intensive care, I was kicked out of the hospital after 24 hours. As my husband wheeled me out in a wheelchair, I remember thinking: This wouldn't have happened to the wife of the head of the insurance company, but it happened to me.

I went to the legislature, along with a lot of other mothers, and said we have to change this to at least guarantee new moms and their babies a 48-hour hospital stay. Minnesota was one of the first States in the country to adopt that rule, which later, under President Bill Clinton, became national policy.

I remember going to the legislature and standing there at the conference committee, and some of the insurance companies were there trying to make sure the implementation of this 48-hour rule was delayed. I decided to take all the pregnant women I knew to the conference committee. We outnumbered the lobbyists two to one. So when the legislators said, When should this new bill take effect which guarantees new moms and babies 48 hours, all the pregnant moms said, "Now." And that is what happened. That is my experience, and that is how I got involved in this issue.

As I have traveled our State, I have heard from Minnesotans about the importance of doing something about health care. They want cost-effective health care. We have one of the best health care systems in the country. The President has lauded Minnesota. We know it is good. We have something like 93 percent coverage, and it tends to be run a lot more efficiently.

But still there are people in my State, as there are all over the country, who are saying: We can't have the status quo because we know our premiums are going up and up. Maybe we can afford it this year, but we are not going to be able to afford it next year; or, if I lose my job, I am not going to have health care tomorrow.

That is what the people in my State are saying. I heard from Dawn in Staples, MN, who is struggling to afford the prescription drugs necessary to treat her multiple sclerosis, and John in Oakdale, MN, who has insurance for his wife and three sons but ends up paying thousands of dollars in deductibles and coinsurance if one of his boys gets sick.

Meanwhile, a new study by the White House Council of Economic Advisers found that small businesses pay up to more than 18 percent—18 percent

more—to provide health insurance for their employees, often forcing these businesses to lay off employees or cut back on their coverage.

I was up in Two Harbors, MN, about a month ago visiting a little backpack company that has done amazing things. They are actually making some of the backpacks now for our troops in Iraq and Afghanistan. They said that their health care premiums now are something like \$20,000 for a family of four—small businesses paying that much, for one family, for health care insurance. It cannot go on.

I was down in southern Minnesota in the southeastern corner of our State and met with one of the clinic heads there, someone who heads up one of the hospitals in Wisconsin and Minnesota. He said they had three emergency appendectomies in just a 2-week time period and they should not have happened at that point, they should have been caught earlier. When they talked with the three people who showed up for the emergency appendectomies, they said: Why are you here? Two said: We are in small businesses, and we thought if we came in too early—we thought we could just get over this because we were afraid what it would do to the premiums. The third person who had the emergency appendectomy said: I just don't have the money to pay for this.

That is what we are hearing all over our State, in a State that tends to have one of the best health care systems in the country.

The American people know inaction is not an option. If we do not act, costs will continue to skyrocket and 14,000 Americans will continue to lose health insurance every single day. That is the status quo. We must not waiver in our efforts to enact a uniquely American solution to our Nation's health care problems. We must keep what works and fix what is broken. We must also level the playing field between consumers and insurance companies, preserve choice, expand access, and provide safeguards so that people do not lose their coverage if they lose or change their jobs, have preexisting medical conditions, or simply grow older.

As we prepare to take up landmark health reform legislation, many in Washington are looking to Minnesota as a national leader. In Minnesota, we have developed a health care system that rewards quality, not quantity. It promotes coordinated, integrated care, and it focuses on prevention and disease management and controls costs. That is why we tend to have healthier people in our State. That is why we tend to have more people covered. That is why we tend to have more quality health care, because we focus on the system as a whole.

Congressional Budget Office Director Doug Elmendorf recently testified before the Senate Budget Committee that to truly contain health care spending, Congress must change the way Medi-

care pays providers in an effort to encourage cost-effectiveness in health care.

I couldn't agree more. Shifting to a value-based system is critical to controlling health care costs. Because you know what—and people would be shocked by this—when you look at States that have some of the highest quality, they tend to have some of the lowest costs, and States that have the highest costs tend to have the lowest quality care. That is messed up.

Most health care is purchased on a fee-for-service basis, so more tests and more surgeries—if not done appropriately, with the patient in mind—can mean more money; quantity, not quality, pays. According to researchers at Dartmouth Medical School, nearly \$700 billion per year is spent on unnecessary or ineffective health care. That is 30 percent of total health care spending.

To rein in costs we need to have all health care providers aiming for high-quality, cost-effective results, as they do in Minnesota. That is why I have introduced legislation, along with Senator MARTINEZ, that would create a value index as part of a formula used to determine Medicare's fee schedule. This indexing will help reduce unnecessary procedures because those who produce more volume will need to also improve care or the increased volume will negatively impact fees.

To correct myself, that legislation was actually introduced with Senator GREGG, and Senator MARTINEZ and I have introduced a bill to focus on Medicare fraud.

Linking rewards to the outcomes for the entire payment area creates the incentive for physicians and hospitals to work together to improve quality and efficiency. In too many places patients must struggle against a fragmented delivery system where providers duplicate services and sometimes work at cross-purposes.

We must also look at other areas where we can help reduce inefficient health care spending because, in the end, this is about focusing on quality care and getting that care to the patients who need it. It is focusing on the patients instead of all the insurance providers and all the other people who feed off the system. It is focusing on what works best for the patients. Recent studies show if all the hospitals in the country followed the protocol the Mayo Clinic uses in the last 4 years of a chronically ill patient's life—lives where the quality index is incredibly high—I think most people in this country and their families would love to have that kind of health care. If we used the model the Mayo Clinic uses, we would save \$50 billion every 5 years in Medicare spending. That money can be used to bring more people into the system. That money can be used to make health care more affordable for the people of this country.

That is what we are talking about when we talk about health care reform. The bill we have on Medicare costs and