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Senate

The Senate met at 10 a.m. and was called to order by the Honorable ROBERT P. CASEY, Jr., a Senator from the State of Pennsylvania.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Divine Master, You are our stronghold and the pioneer of our future. Teach us to work with greater faithfulness. May pleasing You become our primary focus as You place a song in our heart for each burden on our shoulders.

Guide our lawmakers today. Lead them to Your fortress of love, patience, and kindness. Remind them that any success alien to Your way is worse than failure and that any failure in Your Spirit is better than gold. Let Your benediction rest upon our Senators, and may they bring their stewardship in line with the destiny You desire for their lives. Make them channels of Your grace and coworkers in the building of Your kingdom.

We pray in Your wonderful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROBERT P. CASEY, Jr., led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 9, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT P. CASEY, Jr., a Senator from the State of Pennsylvania, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. CASEY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, this morning, the Senate will be in a period of morning business until 11 a.m. The minority will control the first half and the majority will control the second half. Under a previous order, the Senate will begin consideration of the ethics legislation at 11 a.m., for debate only, until the Senate goes into recess for its normal weekly party conference luncheons.

The managers of the bill will be here at 11 a.m., and they will be making their opening statements, if appropriate, as well as a number of other Members who have expressed an interest in speaking this morning. When the Senate returns after the party luncheons, the substitute amendment will be laid down. So Members should be ready to review this amendment and prepare their amendments accordingly.

I am working with the distinguished Republican leader to see if we can offer something together—I am hopeful and very confident we can—as a substitute amendment.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that following the opening statements of Senators FEINSTEIN and BENNETT with respect to S. 1, the following Senators be recognized to speak for the times specified: Senator TESTER, 10 minutes; Senator NELSON of Florida, 15 minutes; Senator SALAZAR, 15 minutes; and that when the Senate reconvenes at 2:15, debate time be extended for another 30 minutes, with Senators LIEBERMAN and COLLINS recognized for 15 minutes each; that following that time, the majority leader be recognized to offer a substitute amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, let me be very clear that if a Republican Member is available and desires to speak, they would follow a Democratic speaker. We would alternate that. These times only list Democrats, but if there is a Republican, we will insert them between the two, if they want to speak.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

SENATOR ALBEN BARKLEY

Mr. MCCONNELL. Mr. President, a few months prior to this body's convening last week, I was honored and humbled when my colleagues elected me to serve as the Republican leader in the 110th Congress.

I am thankful for the trust my friends have placed in me, and I won't break that trust.

At such a time as this, and in such an historic Chamber, my thoughts turn toward great Kentuckians of the past who have left their indelible mark on this body.

Henry Clay served as Speaker of the House, Senator, and Secretary of State, despite losing three Presidential campaigns.

John Sherman Cooper served as the conscience of the Senate, and I have

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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spoken on this floor before of the admiration and respect I will always have for the Senator who mentored me in my first job on Capitol Hill.

But there is another famous Kentuckian who once dominated these Senate hallways who we should not forget.

He was a key lawmaker during World War II, and close friend to Presidents—a passionate orator, champion of the New Deal, and popular teller of tall tales. After his Senate service, he made famous the nickname ''the Veep.''

That man is Alben Barkley, the last, and until now, the only Senator from Kentucky to be elected his party's leader.

Senator Barkley served as majority leader for 10 years, from 1937 to 1947, longer than anyone else before him. From 1947 to 1949 he served as minority leader, and in 1948 he was elected Vice President to President Truman.

But some of my colleagues may not know that Senator Barkley almost became the first President of the United States from Kentucky since Abraham Lincoln. He lost that opportunity by taking a courageous stand to put the Senate, the Senators he led, and principle ahead of political ambition.

Like Lincoln, Alben Barkley was born in a log cabin, literally, on his father's tobacco farm in Graves County, KY, in 1877. The Barkley family was not a family of means, and Alben grew up chopping wood, harvesting tobacco, and plowing fields. Swapping stories with his father's hired hands, Alben began to develop his fun-loving, storytelling persona.

When he got older, Alben worked odd jobs to make ends meet. One time at a shoe store, a man with exceptionally large feet walked in and said to Alben, ''I'd like to see a pair of shoes that would fit me.'' The sharp-witted tobacco farmer's son retorted, ''So would I!'' Alben had to change jobs quite often.

Becoming a lawyer in Paducah, Barkley's political career began with a race for county attorney in McCracken County. The history books tell us he bought a one-eyed horse named Dick and stumped the whole county riding that horse.

At 27 years old, he toppled the incumbent in the Democratic primary and easily won the general election in 1905, for Kentucky in those days was very much a one-party State.

Barkley then won election as McCracken County judge before going to the U.S. House of Representatives in 1912. Kentucky voters re-elected Barkley, an avid progressive and devotee of President Woodrow Wilson, six times until sending him to this Chamber in 1926.

Barkley's long shadow over history was fixed here in the Senate, where he served from 1927 to 1949, and then after his Vice Presidency again from 1955 until his death in 1956.

Here in the Senate, Barkley became known as a first-rate speechmaker and storyteller. Many can recall Senator Barkley's saying: ''A good story is like fine Kentucky bourbon . . . it improves with age and, if you don't use it too much, it will never hurt anyone.''

By 1933, Barkley was selected as an assistant to Senate Majority Leader Joe Robinson of Arkansas. In 1937, Robinson died, clearing the way for Barkley's election as leader—but the manner of Barkley's election to the top spot would serve today as an object lesson to Senators of how not to get the job, and it hampered Barkley's effectiveness as leader for several years thereafter.

When the 75th Congress began, the Democrats held a whopping 76 seats in the Senate, leaving only 16 Republicans and four Independents. Their majority was so large that freshmen Democrats had desks over here on the Republican side of the Chamber in the back.

Senators in those days referred to the lone outpost of Democrats over here on the Republican side in the back as the ''Cherokee Strip'' because those unlucky Members were off the reservation.

But the Democratic Party was badly split in two. Half the caucus supported Franklin Roosevelt's New Deal policies, and the other half frequently undermined them.

In the leader's race, the first group lined up behind Barkley, and the latter behind Senator Pat Harrison of Mississippi. Each Senator had pledges of support from enough Senators to win, so they thought.

Usually in the Senate, it is the Vice President who breaks ties. But this close vote was broken by the President himself. The day after Robinson's death, Roosevelt sent Barkley a letter that began, ''My Dear Alben.'' Roosevelt even referred to Barkley, correctly, but cheekily, as the ''acting majority leader.''

Now, Roosevelt preferred Barkley over Harrison because he knew he could count on Barkley to shepherd his New Deal policies through the upper Chamber. Besides his public letter, FDR also dispatched aides to exert pressure on Senators to vote for Barkley.

One week after Robinson's death, all 75 Senate Democrats met to vote—75. With 74 votes tallied, Barkley and Harrison stood tied at 37 votes apiece. The 75th and final vote put Barkley over the top. Senator Barkley had won the election, but he had lost a much more important race with his colleagues.

As the Presiding Officer and all of my friends in the Chamber know, the Senate has the sole power to choose its own leaders and chart its own course of affairs, without interference from the executive branch. And every Senator guards that right very seriously.

Many Senators took offense at the President's influence in Senator Barkley's election, and Barkley, frankly, paid the price. His colleagues granted him the title of majority leader, but not the accompanying authority or respect.

On his first day in the top post, Democratic Senators ignored his plea not to override a Presidential veto, putting Barkley on the losing side of a 71 to 19 vote. The bill had originally been sponsored by Barkley himself, putting the leader in the humiliating position of losing a vote to sustain a veto of his own bill.

Over the next few years, Barkley's troubles mounted, actually, as he kept finding himself on the losing end of votes. Senators cruelly reminded him of how he had climbed to the top spot by mockingly referring to him as ''Dear Alben.''

Even worse, Washington journalists, seeing the leader unable to move his colleagues, dubbed him ''Bumbling Barkley,'' and the name stuck.

In March 1939, Life magazine published a poll of Washington journalists rating the 10 ''most able'' Senators. Barkley's one-time rival Pat Harrison ranked fifth. The Senate majority leader did not make the list.

Despite setbacks, Senator Barkley plunged ahead to lead the Senate and to champion President Roosevelt's New Deal. His colleagues began to melt under his considerable personal charm.

In contrast with Robinson's heavy-handed leadership style, Barkley often sat down with a colleague, disarmed him with humor or a funny story, and then made his case.

Barkley led from the podium at his desk, speaking persuasively and knowledgeably on any and every bill. By 1940, much of official Washington realized that legislation was actually moving faster and more successfully through the Senate—and that Barkley deserved the credit.

Barkley was crucial at negotiating compromise with his fellow Senators. As the war in Europe heated up and international affairs took up more of the Senate's time, Barkley's record of success continued to mount.

Historians note the vital role he played in passing the Lend-Lease Act, repealing the Arms Embargo Act and the Neutrality Act, and enacting the first peacetime military draft.

As the Senate majority leader, Barkley eagerly embraced the responsibility to lead the charge for the administration's legislation. But sometimes—sometimes—the President took the loyal leader for granted.

That ended when Senator Barkley dramatically broke with his beloved President on a matter of principle.

Barkley's move may have angered Roosevelt, but by stepping out of the President's shadow and throwing off the impression of servility that the mocking phrase ''Dear Alben'' implied, Barkley forever earned the respect and trust of his Senate colleagues.

The principle Barkley made his stand on is one dear to my heart; and that is, keeping taxes low. By February 1944, America was at war with the Axis Powers, and President Roosevelt wanted to raise taxes considerably to pay for it. He requested a tax increase of $10.5 billion, which was, apparently, a lot of money in those days.

Majority Leader Barkley knew that the Senate didn't have nearly the appetite for higher taxes that the President did. A $10.5 billion tax hike simply could not pass.

But Barkley did the best he could for his President, and successfully steered through the Finance Committee and onto the floor a bill to raise revenues by $2.2 billion.

Barkley pleaded with Roosevelt to accept the bill as the best he could get and to sign it. He knew the Senate, and he knew his Senators. But the President dismissed the leader's advice.

Even though he knew it was coming, Roosevelt's veto message stung Barkley. It was petty, and it was personal.

The President wrote that, having asked the Congress for a loaf of bread, the final bill was ''a small piece of crust.'' Then his next words struck hardest of all. He declared the final bill as ''not a tax bill but a tax-relief bill, providing relief not for the needy, but for the greedy.''

After years of devotion and support to the President—often at the cost of the respect of his own colleagues—this insult to his integrity as a legislator, a leader, and a disciple of the New Deal was too much for Barkley.

Overwhelmed with passion, Barkley dictated a speech to his secretary and walked out to the Senate floor. Word had leaked of what was coming. Journalists packed the galleries, and many Senators took their seats to listen to their leader.

For the first time Senator Barkley, Washington's most famous raconteur, seemed to nervously stumble over his words. His voice cracked with emotion as he related his history of steadfast support for the Roosevelt administration.

> I dare say that during the past seven years of my tenure as majority leader, I have carried that flag over rougher terrain than was ever traversed by any previous majority leader,

Barkley explained.

> But . . . there is something more precious to me than any honor that can be conferred upon me by the Senate of the United States, or by the people of Kentucky . . .
>
> Or by the president of this Republic. And that is the approval of my own conscience and my own self-respect.

And with that Alben Barkley resigned as majority leader.

Barkley had always believed the leader must have overwhelming support for the President's position. Unable to give that, stepping down was his only choice.

Nearly every Senator in the chamber rose for a thunderous ovation. The galleries stood as one to applaud as well. Longtime Senators said they could not remember the last time a speech received such a tremendous response, and Vice President Henry Wallace called it ''the most dramatic occasion in the U.S. Senate over which I ever presided.''

Within a day of Barkley's declaration of independence, he received over 7,000 telegrams. Roosevelt saw when he was beaten and wrote a letter urging Barkley not to resign. But he needn't have bothered.

The next day, the Democrats unanimously reelected Barkley to the leader's post. ''Make way for liberty!'' shouted Texas Senator Tom Connally, expressing the joy of his colleagues that their leader, and by extension, the entire Senate, had stood up for the Senate's independence as a co-equal branch.

The Senate turned back Roosevelt's veto 72 to 14, and this time Alben Barkley led his colleagues to win that vote. Senator Elbert Thomas of Utah summed up the newfound power and prestige of the majority leader.

''By his one-vote margin in the 1937 contest when he was first elected leader, the impression was given, and it has been the impression ever since, that he spoke to us for the president,'' Thomas said. ''Now he speaks for us to the president.''

The majority leader and the President mended the breach soon after and continued to work together. But you could say their relationship was never again the same.

That summer, the Democratic National Convention nominated President Roosevelt to an unprecedented fourth term. But with Vice President Wallace deemed too liberal by most of the party and dumped from the ticket, the President needed a new running mate. Could it be Barkley?

As the convention opened, Barkley emerged as a seeming front-runner. He had the respect and confidence of the delegates. The Kentucky delegation—not surprisingly—formally endorsed him.

But ever since breaking with Roosevelt in February, the President had had ''a certain intangible reserve'' towards the majority leader. Roosevelt emphatically told his supporters Barkley was unacceptable as a running mate.

Of course, we all know that the 1944 vice presidential nomination eventually fell to another Senator, Harry Truman of Missouri, who was hand picked by the President himself.

And we all know that in April 1945, less than 3 months after taking the oath of office for his fourth term, Franklin Delano Roosevelt died. His health had been failing for some time, even back during the 1944 convention.

Harry Truman became the 33rd President of the United States. Alben Barkley stayed on as Senate majority leader and narrowly missed becoming the first President from Kentucky since Abraham Lincoln.

Henry Clay, who once held Alben Barkley's Senate seat, said ''I would rather be right than be President.'' Alben Barkley lived by that motto.

He chose to stand for his personal sense of honor and the integrity of the Senate, knowing it could cost him the favor of the President and possibly the Vice-Presidential nomination. It did. But Alben Barkley never regretted it.

In fact, Barkley kept his keen sense of humor. In a speech to newly elected Senators in 1945, Barkley warned them to run ''for the tall and uncut'' if they ever received a letter from the President that began with ''Dear'' followed by their first name.

Like so many other revered figures who have occupied these chairs, Alben Barkley loved the Senate, and he fought to protect it. As the Senate majority leader, that was his duty, and he fulfilled it without hesitation.

After 4 years as Vice President to Truman, Barkley retired from politics, seemingly forever. But he longed to return to this Chamber which had seen his greatest successes and his most ignoble defeats. So he ran for and won reelection in 1954, ousting Republican John Sherman Cooper.

Alben Barkley died on April 30, 1956. He left this world doing what he loved—giving a speech.

In his final moments, he explained to a crowd of students at a mock convention at Washington and Lee University that as a newly elected Senator, he had refused a seat in the front row of this Chamber, despite his decades of service.

''I am glad to sit in the back row,'' the 78-year-old Barkley said. ''For I would rather be a servant in the house of the Lord than to sit in the seats of the mighty.''

Those were Senator Barkley's last words before he collapsed. The crowd's applause was the last thing he would hear, before suffering a massive heart attack.

I wanted to share the story of Alben Barkley with my colleagues because I know that as we all debate the issues of the day in the Senate, we are mindful not just of what is happening in our country today, but what has gone before. History, and men like Alben Barkley, has much to teach us.

Politics in America today can often be a bruising exercise. But I take comfort in Alben Barkley's reminder that even if that is true, we can and should put principle over the pursuit of power.

We've just had a hard-fought election. I for one, have always enjoyed a good political contest.

I appreciate the opportunity to present a set of principles and ideals to the people and to hear their choice when they cast their votes.

But while we spar in the arena of ideas, let's not forget what we're sparring for. The goal is not just to win, but to win because you stand for a cause that will better your countrymen and your country.

Many of my colleagues on both sides of the aisle understand that lesson well. It is an honor for me to share this floor with them.

I am looking forward to continuing the contest in the time ahead. For now, we are ready to roll up our sleeves and get back to work on behalf of the American people.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business until 11 a.m., with the first half of the time under the control of the minority, and the second half of the time under the control of the majority.

The Senator from Iowa.

MEDICARE DRUG BENEFIT

Mr. GRASSLEY. Mr. President, I welcome the new Presiding Officer to the Senate. I look forward to working with him as a new Senator. I hope he enjoys his time in the Senate.

I am back here again today, as I was yesterday, to talk about the Medicare drug benefit. Yesterday I spoke about how the benefit uses prescription drug plans and competition—with emphasis upon competition—to keep costs down for our senior citizens. I spoke about how well that system of competition that is in the prescription drug bill has been working for the last 2 years of its operation. Today I want to get to the crux of this debate and a debate that is going to take place a few days from now in this Chamber, the so-called prohibition on Government negotiation with drugmakers.

Opponents of the Medicare drug benefit have misrepresented what we call the ''noninterference clause'' language. That language doesn't prohibit Medicare from negotiation with drugmakers. It prohibits the Government from interfering in negotiations that are actually taking place.

Much of this debate hinges on a convenient lapse of memory that I am going to emphasize during my remarks about the history of the noninterference clause. So today I want to take my colleagues on a little trip down memory lane. For our first stop on memory lane, I would like to read something. This is a quote from someone talking about their very own Medicare drug benefit proposal:

> Under this proposal, Medicare would not set prices of drugs. Prices would be determined through negotiations between private benefit administrators and drug manufacturers.

The person who said this clearly wanted private negotiation with drug companies for a Medicare benefit, not Government negotiations. The person I quoted was proposing—and I will quote again what he said—''negotiations between private benefit administrators and drug manufacturers.'' I don't think that person could be more clear in what he was attempting to accomplish with his proposal.

You are going to be shocked to hear who said this. The quote is from none other than President Clinton. President Clinton made that comment as part of his June 1999 plan for strengthening and modernizing Medicare for the 21st century. President Clinton went on to say that under his plan ''prices would be determined through negotiations between the private benefit administrators and drug manufacturers.''

I quote further:

> The competitive bidding process would be used to yield the best possible drug prices and coverage, just as it is used by large private employers and by the Federal Employees Health Benefits Plan today.

President Clinton also described his plan as using private negotiators as opposed to Government negotiators, because ''these organizations have experienced managing drug utilization and have developed numerous tools of cost containment and utilization management.''

Does this ring any bells? It should because it is the same framework used in today's Part D Medicare prescription drug benefit, private negotiations with drug companies, and it is based on the nearly 50-year history of the Federal Employees Health Benefits Program.

I would like to refer to another part of Medicare history for memory's sake as well. This is another interesting spot on memory lane for history buffs. The Clinton plan had a coverage gap that we refer to in the Senate as the doughnut hole, just like the bill eventually signed into law in 2003.

Like many others, the brandnew Speaker of the House has questioned why one would pay premiums at a point in time when you are not receiving benefits, as is the case with the doughnut hole. Well, that is how insurance works. We all know how the insurance industry works. Go look at your homeowner and auto policies and Part B Medicare. You pay premiums to have coverage. That is how President Clinton's plan was meant to work, if it had become law.

In Sunday's Washington Post, the new Speaker of the other body, PELOSI, was quoted about having a doughnut hole. She said:

> How could that be a good idea, unless you are writing a bill for the HMOs and pharmaceutical companies and not for America's seniors?

Was she referring to President Clinton's plan proposed in 1999? As I said, he proposed his plan in June of that year. On April 4, 2000, S. 2342 was introduced in the Senate. S. 2342 would have created a drug benefit administered through private benefit managers. So here again would be private negotiators negotiating with the drug companies to save seniors money on their prescription drugs. Does that sound familiar? It is just like today's Medicare Program that is law.

Here is another important stop down our memory lane. That bill, S. 2342, introduced in 2000, included language on noninterference:

> Nothing in this section or in this part shall be construed as authorizing the secretary to authorize a particular formulary, or to institute a price structure for benefits, or to otherwise interfere with the competitive nature of providing a prescription drug benefit through benefit managers.

This is the first bill—the very first one—where the noninterference clause appeared. This is the first prohibition in present law on Government negotiation that was introduced. But S. 2342 wasn't introduced by a Republican; it was introduced by my esteemed colleague, the late Senator Moynihan. One month later, there was a bill, S. 2541, introduced. I will read some of the language that was in that bill. That bill said this; I have it on the chart:

> The secretary may not (1) require a particular formulary, institute a price structure for benefits; (2) interfere in any way with negotiations between private entities and drug manufacturers, and wholesalers; or (3) otherwise interfere with the competitive nature of providing a prescription drug benefit through private entities.

I will make it clear that this wasn't a Republican bill, either. It was introduced, as you can see, at that time by Senator Daschle, who was joined by 33 other Democrats, including 3 who are still prominent in the Senate—REID, DURBIN, and KENNEDY. That is right. I want you all to know that 33 Senate Democrats cosponsored a bill with a noninterference clause in it. You see, it turns out that the Democrats didn't want the Government—nor did President Clinton—interfering in the private sector negotiations either. They recognized then that the private sector would do a better job, and they didn't want some Government bureaucrat messing it up.

I will go to another chart. In June 2000, two Democratic bills were introduced in the House of Representatives that also included noninterference language. H.R. 4770 was introduced by then-Democratic leader Dick Gephardt. That bill had more than 100 Democrats cosponsoring, including the new Speaker of the House—then not speaker—NANCY PELOSI, and Representatives RANGEL, DINGELL, and STARK. RANGEL, DINGELL, and STARK are people whom I have worked closely with in Congress recently on a lot of health legislation or tax legislation—or trade legislation, in the case of Congressman RANGEL.

The prohibition on Government negotiation included in that House bill was almost identical to the language Senator Daschle had in his bill. Here is the text of the actual noninterference clause included in the bill signed by the President in 2003, present law—what we refer to as Part D now:

> Noninterference.—in order to promote competition under this part and in carrying out this part, the secretary (1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and (2) may not require a particular formulary or institute a price structure for reimbursement of covered part D drugs.

Well, that sounds a bit like what was sponsored by Democrats over the last several years. Last week, the senior