The legislative clerk proceeded to call the roll.

Mr. BARRASSO. I ask unanimous consent that the order for the quorum call be rescinded.

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

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 now be a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

Mr. BARRASSO. I ask unanimous consent to speak for up to 30 minutes in a colloquy with a number of colleagues.

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

APPOINTMENT OF DR. DONALD BERWICK

Mr. BARRASSO. Madam President, I rise to discuss a recess appointment made last week when many of us were traveling to visit with constituents to talk about the issues of the day.

During that time, I was in Wyoming, and one of the main issues brought up at senior centers was the appointment by the President of Dr. Donald Berwick to be the head of Medicare and Medicaid. I heard the concerns of these folks because of statements Dr. Berwick had made about the British health care system and his love of the National Health Service in England. They are concerned as to how this gentleman, who has taken positions and made a number of statements, would run Medicare and Medicaid. Specifically, they had concerns because they had heard his statement:

The decision is not whether or not we will ration. The decision is whether we will ration with our eyes open.

Seniors around the State were concerned about what this means. Then to hear that the President made a decision to do a recess appointment of this very individual, without hearings in the Congress, without an opportunity for the American people to hear speeches concerning many of his comments. One of his greatest rhetorical hits is: “any health-care funding plan that is just, equitable, civilized and humane must redistribute wealth from the richer among us to the poorer and less fortunate.” That in itself is a remarkable statement.

But I wish to, for a second, with my friend, Dr. BARRASSO, go back to this process. The fact is, our colleagues on the other side of the aisle blocked for over 2 years the nomination for this position by President Bush, and this nomination was barely 3 months old. He had not even filled out the nomination form. So the rationale used by the administration was: Well, the Republicans are going to block it. Well, we may have. And given the comments and record of Sir Donald—he is a knight. I understand, knighted by Queen Elizabeth—well, the comments by Sir Donald certainly do give one extreme pause. But shouldn’t we at least go through the process of hearing?

I have been around here a long time, and I have not paid attention to every nomination and the process they have been through, but I cannot remember a time where blocking the nomination took place—or announcement of preventing the nomination from moving forward was done before a hearing took place, or even the questionnaire.

In fact, I was very interested to see the comment of the chairman of the Finance Committee, under whose supervision in his committee the nomination would go through. I quote Senator BAUCUS:

I’m troubled that, rather than going through the standard nomination process, Dr. Berwick was recess appointed. Senate confirmation of presidential appointees is an essential process prescribed by the Constitution that serves as a check on executive power and protects Montanans and all Americans by ensuring that crucial questions are asked of the nominee—and answered.

So not a single question was asked of the nominee, much less answered. And, of course, I understand. Having been a committee chairman myself, I will take great umbrage of my party, the President, or the other party that the process was completely bypassed. Because the Senate has the responsibility of advice and consent. And over time, I must admit that both Republican and Democrat administrations have abused the recess appointment process. Yes, they have abused it. But I must say, this takes it to a new high or low depending on which way you view it.

We have now seen in this administration the appointment of various czars,” people given responsibilities over vast areas of government, not as “czars.” They have got more czars than the Romanoffs. So this is another step, in my view, of incursion and encroachment by the executive branch on the legislative branch, a coequal branch of government. So that in itself is extremely disturbing.

Are we going to have nominations made—an announcement of those nominations, and then automatically are we going to have “recess” appointments made? What was the hurry? There is going to be another recess in August. There is going to be another recess in October, unless we go out for elections. But yet in their zeal and haste, they had to do it over the Fourth of July recess.

I tell you, my friends, this is more than just one individual. This is a gradual and steady erosion of the responsibilities of the Senate of the United States called advice and consent, which can set dangerous precedence for the future. I say to this administration, and my friends on the other side of the aisle, and I appreciate the comments of the chairman of the Finance Committee—if we allow this to go on, it will hurt the Senate as an institution, not just Republicans, not just Democrats, but it will hurt this institution, if we allow, unresponsive to a situation where a nominee is recess appointed, and not even having a hearing, not even a question is asked—and immediately that nominee is recess appointed, which means they are in a position of enormous power and authority for a long period of time. And this appointment—this appointment—has enormous consequences in light of the passage of the most sweeping overhaul of
the health care system in America, having just taken place over our obviously strenuous objections.

But it happened. Now the individual in charge, the individual who will bear great responsibilities, has not answered a single question asked by Members of this body on either side. I say to my colleagues, this is a dangerous precedent and one that should not go unaddressed by either Democratic or Republican because of our responsibilities as a coequal branch of government, my colleague, the Republican leader.

Mr. MCCONNELL. I say to my colleagues from Arizona, I just came on to the floor and am not quite certain what happened earlier in this colloquy, but there is no doubt about it that they did not want Dr. Berwick's name to surface during the health care debate. They did not want any questions asked of him in public. We have had recess appointments, of course, by Presidents of both parties. Typically, they have gone through a hearing, a committee vote, and end up out here on the calendar so that at least there was some exposure to the nominee's views.

What we do know about this nominee is what he has said in the past about the British health care system. It is stunning that anybody in this country could look at the national health service in England and decide they were in love with it. So I would say to my friend from Arizona, and my friends from South Dakota, there is no question what they were up to there. They wanted to sneak this guy through with a minimum amount of exposure.

Mr. MCCAIN. Could I ask the Republican leader a question. He has been around here a fair amount of time, as I have. I ask the Republican leader, has he ever heard of or recalled of a nominee who was recess appointed without even the questionnaire from the relevant committee of oversight being responded to or a hearing before that committee? For the life of me, I cannot recall that.

Mr. MCCONNELL. I say to my friend from Arizona, I do not know the answer to that. But we do know it was a curious, maybe not totally unprecedented but certainly unusual situation where a nominee is subjected to so little scrutiny and oversight, no opportunity to testify. This is a truly unusual situation. I think we know the answer as to why. This guy is in favor of rationing health care——openly, unabashedly, an advocate of rationing health care. I do not think they wanted to have him have to answer the questions. He may not have been very good at details, I say to my friend from South Dakota, but he got the big picture. And the big picture in his mind is:

The decision is not whether or not we will ration care—the decision is whether we will ration with our eyes [wide] open.

That is what he intends to do.

Mr. MCCAIN. So a nominee whose clear philosophy of record indicates redistribution of wealth, as he describes it, and a use of health care in a way that includes greater and greater “levying of the small distribution of income in America”—does that give us some indication of the philosophy or intentions of the administration when they proposed health care reform in this package, despite the statements made by the President that if you like the health insurance policy you have, you can keep it; there will be no tax increases for people below $250,000, et cetera? Does this appointment of an individual with a clear-cut philosophy that this is a way to redistribute wealth in America indicate that maybe the real—again, not being a cynic, but with a real intent of this “health care reform” we resisted so strenuously for more than a year?
Mr. McCONNELL. I think my friend from Arizona has it exactly right. Every single Member of the Democratic Party in the Senate voted for a bill that is going to impose $500 billion of Medicare cuts over the next 10 years. We have been writing to the Senate: Dr. BARRASSO. He intends to reach that target, does he not, I would inquire of my friend from Wyoming, by rationing health care?

Mr. BARRASSO. Madam President, I believe the President of the United States, I say to my colleague and friend, now has what he wants: his health care rationing czar—not someone approved by the Senate but someone he has appointed and put into place without an open hearing.

It is so interesting, as my colleagues from Arizona and South Dakota talk about, that the failings of the British health care system—a system that Dr. Berwick says, "I am romantic about; I love it; it is a national treasure," but then the headline today is: "U.K. Will Revamp Its Health Service." It says: Health care experts called the plan one of the biggest shakeups in the national health service’s 62-year history. Its new coalition government proposes to pare back public and private health care costs, announced an overhaul of the state-funded health system that it said would put more power in the hands of the doctors and involves cutting huge swaths of bureaucracy.

This is at a time when we have just in this country passed not what we voted for but what the Democrats and the President voted for: a bill that increases the bureaucracy, including $10 billion for Internal Revenue Service agents and higher and higher numbers of government workers and bureaucrats taking power away from the doctors, away from the patients. Now it is government-centered health care at a time the President is moving away from it, and the person the President of the United States has put in as his health care rationing czar is someone who calls that approach a national treasure; cutting $500 billion from our seniors depending on that for Medicare, not to save Medicare but to start a whole new government program.

Britain is trying to revamp because they know that someone with cancer in the United States has a much better chance than someone in the United Kingdom. It is not because our doctors are better in the United States—and I have practiced medicine in Wyoming for 25 years—it is because people get care in the United States that is delayed and therefore denied in Britain. But Dr. Berwick is romantic. He has fallen in love with that national health service, a service that is not good for patients, and it is not good for providers.

I see my friend from South Dakota, another rural community and State. I am sure he is seeing and hearing the same things from his seniors there, their concerns about what is going to happen to the cost of their care, the quality of their care, and the availability of the care, especially with Dr. Berwick now in charge. Mr. THUNE. The Senator from Wyoming knows full well how difficult it is to deliver health care to rural areas. Being a physician himself, he knows the challenges we face.

It seems to me that notwithstanding the comments to the contrary, we have to look at what people do. In this case, what the administration has done is appointed somebody to run this massive new health care program who clearly is on the record by his previous statements in favor of redistribution of wealth, in favor of rationing of health care, in favor of government-run health care. He is romantic about the British national health system, which, as the Senator from Wyoming mentioned, is having all kinds of complications and problems, including runaway costs, and now how are we going to move away from it. The problem they have is that 1.6 million people are employed by the British national health system, a huge employer in their country, so the economic impact, the political impact of making changes in that system would be significant. That being said, it doesn’t seem as though they have any choice because they are facing such difficult fiscal circumstances in their country and they are seeing these runaway health care costs contributing in a very significant way to that.

So it seems to me, at least, that what we have done here with this massive health care bill passing in the U.S. Congress—$2.5 trillion when it is fully implemented over a 10-year period—what we are already seeing now is the Actuary at CMS coming out and saying it is going to bend the cost curve up and it is going to cost considerably more and beyond the normal year-to-year increases in health care costs. Americans have already been seeing. Then we also have the CBO now coming out and saying it is not going to achieve the deficit savings that were advertised here on the floor when we had the debate. There is all this information coming out which validates the argument we were making at the time, and that is that we don’t want to move toward the government-run health care system that rationing, somebody in charge who believes in redistribution of wealth, rationing of health care, government-run health care—all things we argue this would lead us toward. Clearly, the administration really shows their hand when they appoint someone such as this to run this important, comprehensive, wide-reaching, and expensive bureaucratic program that very much will resemble, in terms of the model, what they are doing in Britain, which Britain is moving away from.

Mr. McCAIN. Madam President, I ask unanimous consent to have printed in the RECORD the Wall Street Journal editorial of July 12, 2010, entitled "Who Pays for ObamaCare? What Donald Berwick and Joe the Plumber both understand."

I have some relationship to Joe the Plumber, not to Donald Berwick. I believe he is doing no one any good to print that material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Editorial July 12, 2010]

WHO PAYS FOR OBAMACARE?
WHAT DONALD BERWICK AND JOE THE PLUMBER BOTH UNDERSTAND

Among Donald Berwick’s greatest rhetorical hits is this one: “any health-care funding plan that is just, equitable, and civilized must—must—must redistribute wealth from thericher among us to the poorer and less fortunate.” Count that as one more reason that President Obama made Dr. Berwick a recess appointee to run Medicare and Medicaid rather than have this philosophy debated in the Senate.

We are also learning that “spreading the wealth,” as Mr. Obama famously told Joe the Plumber in 2008, is the silent intellectual and political foundation of ObamaCare. We say silent because Democrats never admitted this while the bill was moving through Congress. But only days after the bill passed, Senator Finance Committee Chairman Max Baucus excitedly said it would result in “a leveling” of the “mal-distribution of income in America,” adding that “The wealthy are getting way, way too wealthy, and the middle-income class is left behind.” David Leonhardt of the New York Times, who channels White House budget director Peter Orszag, also cheered after the Senate vote that ObamaCare “is the federal government’s biggest attack on economic inequality” in generations.

An April analysis by Patrick Pleven and Gerald Prante of the Tax Foundation reveals how right they are. ObamaCare’s new “health-care funding plan” will shift some $104 billion in 2016 to Americans in the bottom half of the income distribution from those in the top half. The wealth transfer will be even larger in future years. While every income group sees a direct or indirect tax increase, everyone below the 50th income percentile comes out a net beneficiary.

At least at the start, Americans in the 50th through 80th income percentiles—or those earning between $99,000 to $158,000—are near to the 80th income percentile comes out a net beneficiary. While every income group sees a direct or indirect tax increase, everyone below the 50th income percentile will be even larger in future years. While every income group sees a direct or indirect tax increase, everyone below the 50th income percentile comes out a net beneficiary. While every income group sees a direct or indirect tax increase, everyone below the 50th income percentile comes out a net beneficiary. While every income group sees a direct or indirect tax increase, everyone below the 50th income percentile comes out a net beneficiary. While every income group sees a direct or indirect tax increase, everyone below the 50th income percentile comes out a net beneficiary. While every income group sees a direct or indirect tax increase, everyone below the 50th income percentile comes out a net beneficiary. While every income group sees a direct or indirect tax increase, everyone below the 50th income percentile comes out a net beneficiary.
the lower middle class from the upper middle class, and the President habitually promises that people earning under $200,000 will be exempt from his tax increases. We now know they won’t be.

With his vast new powers over what government spends, Dr. Berwick will be well situated to equalize outcomes even more, and he clearly intends for the final result of his reform to be that same degree of redistribution to the “less fortunate,” that is, to the sick from the healthy.

Yet Dr. Berwick made those comments in the context of a larger, and bitter, indictment of the U.S. health system, even though the huge public programs he will run already account for about half of all national health spending. From his point of view this isn’t enough. And his main stance was that individual clinical choices must be subordinated to government central planning to serve his view of social justice and health care guaranteed by the state.

The great irony is that this sort of enforced egalitarianism imposes higher taxes and even more redistribution of wealth; second, this entire process of an individual not even filling out a questionnaire—a nominee—or any semblance of a hearing before the Senate before a “recess” appointment is made. This is an erosion of the constitutional responsibilities of advice and consent of the Senate.

Mr. THUNE. Madam President, if the Senate from Arizona will yield, just to put a final point on that, again, 454 days before the administration put forward this nominee, there have been 79 days since, and they are blaming Republicans for holding up this nominee again, notwithstanding the fact that it was 454 days before they ever put it forward. If we don’t have a hearing and he doesn’t have to come in and answer questions about these at least what I would characterize as outlandish statements, again, it is an abrogation of the responsibility. Dr. Berwick has had time of working with the Senate, the Senate’s power of advise and consent, to at least have a hearing, to at least have a vote, to at least have some public discussion about this gentleman’s qualifications and his record with regard to this important position to which they are going to appoint him.

I wish to point out as well that there is one other example of this. The TSA Administrator, which is another very important job, by the time they actually got somebody submitted who could be acted upon here in the Senate, 482 days had lapsed. It was 521 days when the new TSA Administrator was finally approved, but we went 249 days when they actually put the post in place. The time the post was vacated in January of 2009 until they appointed their first nominee, who then had to withdraw because of problems. Then they appointed somebody else who withdrew because of problems. They finally submitted somebody who was actually approved, but it took 521 days. That is not us. That is not the Republicans in the Senate holding things up, nor is it the case with Berwick’s nomination where 454 days later the administration put his name forward. Then they just quickly, without giving us an opportunity—the Senate an opportunity—to do our job recess-appointed him to a position where he is going to be responsible for thousands of employees and millions of dollars when it comes to the health care delivery in this country, and that is very unfortunate.

So, as the Senator from Arizona has pointed out, it is partly about this gentleman and how he intends to do with this position, but it is also the process by which he was actually put into this position and how it completely short-circuited and bypassed what is regular order and what should be under our Constitution the responsibility of the Senate to provide advice and consent.

Mr. BARRASSO. Madam President, if I could just ask my colleague, talking about the darkness of private enterprise. Dr. Berwick coauthored a book called “New Rules.” In it he argues that the primary function of health regulation is to constrain decentralized, individual decisionmaking—constrain individual decisionmaking—and to weigh public welfare against the choices of private consumers. I mean, could anything fly further in the face of what Americans believe? The decisions, the choices of private consumers—that is how we make decisions in America. That is what I recommend for patients: Make your individual choice. What is best for you? How to help keep down the cost of your care; prevention, coordinating care; working and making smart choices for you as an individual. Who knows better? Who knows better how to spend your money? You do. Who knows better how to make choices for your life? You do.

That is not what Dr. Berwick is saying in this book, “New Rules.” It is to weigh public welfare against the choices of private consumers.

So I inquire of my colleague from South Dakota, what would people from South Dakota think about that? This is somebody who is saying: Government knows better than you do. People of Wyoming have never felt that way, and I would imagine the people from South Dakota have never felt that way either.

Mr. THUNE. I say to my neighbor from Wyoming, he understands his constituents very well, and we share a border, but we also share a lot of other things, including a common set of values and a sense of individual responsibility and belief in freedom.

I think what this gentleman represents in terms of his view is completely contradictory to what the majority of my constituents and I am sure the majority of the constituents of the Senator from Wyoming would say with regard to how you ought to approach issues. The American individual, the American consumer is in a much better position to make decisions about their own health care than any government bureaucracy here in Washington, DC.

Essentially what Mr. Berwick has concluded over time—and he has had a long career analyzing and studying many of these issues—is that a government-run system where some government bureaucrat is in a position of making decisions that are important to an individual—it is not his health care or her health care—that is clearly a model he endorses and supports.
It is very contradictory, I would say, to what I think is the view of a majority of Americans. Frankly, one of the reasons I think many of us opposed the health care bill when it was under consideration in the Senate—and the Senator from Wyoming made some excellent points during the course of that debate about his experience with health care as a practicing physician—is that clearly the American model is one that is very different from the European model.

What we have with Mr. Berwick is somebody who wants to remake the American health care system in the image of the model that we see in places such as Europe. His example of the British health care system, about which he is romantic, is a good example of how he intends to implement the health care bill passed in the Senate.

We have argued all along that the intention of those behind it is to move us in the direction of a more single-payer, European-style system as opposed to what we have experienced in this country and have enjoyed for such a long time, and that is one that has its basis at least in the market where we have individuals who are in charge of making decisions, as opposed to some government bureaucrat.

This is very unfortunate in terms of the fact that this was an appointment that was made in the recess without the normal process being adhered to, with no Congress entering in to test what we have experienced in this country and have enjoyed for such a long time, and that is one that has its basis at least in the market where we have individuals who are in charge of making decisions, as opposed to some government bureaucrat.

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