

The Senator from North Carolina is recognized.

Mr. EDWARDS. Madam President, this is an issue on which we have consensus. The President of the United States said, "Only employers who retain responsibility for and make vital medical decisions should be subject to suit."

Our bill provides exactly as the President describes. As Senator KENNEDY has indicated, we have consensus not only with the President of the United States but in this body and in the House of Representatives based on the Norwood-Dingell bill which was voted on before. This is an issue about which there is consensus.

We are continuing to work. Senator SNOWE and others are leading that effort. We are working across party lines to get stronger and more appropriate language so that employers know that they are protected without completely leaving out the rights of the patients.

I urge my colleagues to vote against the Gramm amendment, which is outside the mainstream, outside our bill, outside our position, outside Norwood-Dingell, and outside what the President of the United States has said.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, throughout this debate, those who are in favor of this bill have said our bill is just like the Texas bill. Look at Texas. No employers have been sued, and there have been a minimum number of lawsuits. Yet when you look at this bill, it says employers can't be sued. Then it says they can be sued. And it has 7½ pages of ifs, ands and buts.

Are employers connected with the decision? Do they exercise control? ERISA says that in any employee benefit the employer is deemed to exercise control, which would mean that every employer in America is covered. The Texas legislature did not assume that every employer was perfect. They were worried about unintended consequences.

They also concluded that no employer can be the final decisionmaker because this bill, as in our bill, has an external review process that is run by independent physicians that are selected independently of the plan. They make the final decision, not an employer.

The Texas legislature decided what we should decide here; that is, if you get into ifs, ands, and buts, what is going to happen all over America is businesses are going to drop their insurance.

If we should pass the bill without this amendment in it, it is easy to envision that we could have a small business where the business owner calls in his employees and says, Look, we worked hard to provide good health benefits, but my father and my mother

worked to build their business. I have worked. My wife has worked. We have invested our whole future in this business, and I cannot continue to provide benefits when I might be sued.

Think about the unintended consequences. That is what the Texas legislature did. They concluded that employers should not be liable. They cannot make the final decision under this bill. They cannot make the final decision under Texas law because it is made by an external group of physicians. But when you make it possible to sue them, they are going to drop their health insurance, and you are going to have fancy reviews and stiff penalties, but people aren't going to have health insurance.

I urge my colleagues to look at Texas. If you want to take all the claims of the benefits of Texas, do it the way they did it. They thought you created unintended consequences by letting employers be sued. They knew that employers could not make the final decision because they had external review, just as this bill and every other bill has. By doing an employer carve-out, they guaranteed that every small and large business in the State would know they cannot be sued.

The PRESIDING OFFICER (Mr. CORZINE). The question is on agreeing to amendment No. 810. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 43, nays 57, as follows:

[Rollcall Vote No. 197 Leg.]

YEAS—43

Allard	Frist	Nickles
Allen	Gramm	Roberts
Bennett	Grassley	Santorum
Bond	Gregg	Sessions
Brownback	Hagel	Shelby
Bunning	Hatch	Smith (NH)
Burns	Helms	Smith (OR)
Campbell	Hutchinson	Stevens
Cochran	Hutchison	Thomas
Collins	Inhofe	Thompson
Craig	Kyl	Thurmond
Crapo	Lott	Voivovich
Domenici	Lugar	Warner
Ensign	McConnell	
Enzi	Murkowski	

NAYS—57

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	McCain
Biden	Edwards	Mikulski
Bingaman	Feingold	Miller
Boxer	Feinstein	Murray
Breaux	Fitzgerald	Nelson (FL)
Byrd	Graham	Nelson (NE)
Cantwell	Harkin	Reed
Carnahan	Hollings	Reid
Carper	Inouye	Rockefeller
Chafee	Jeffords	Sarbanes
Cleland	Johnson	Schumer
Clinton	Kennedy	Snowe
Conrad	Kerry	Specter
Corzine	Kohl	Stabenow
Daschle	Landrieu	Torricelli
Dayton	Leahy	Wellstone
DeWine	Levin	Wyden

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, we were in the process of trying to propound a unanimous consent request, but all the parties are not here. We will do that at 2:15.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business for not to exceed 30 minutes with Senators permitted to speak therein for up to 5 minutes each.

Under the previous order, the Senator from Wisconsin is recognized to speak for up to 15 minutes.

COLORADO REPUBLICAN CASE

Mr. FEINGOLD. Mr. President, on April 2 of this year, the Senate voted overwhelmingly to pass the McCain-Feingold bill and ban soft money. Even before the roll was called on final passage and 59 Senators voted "aye," the Senate's foremost opponent of reform declared that he relished the opportunity to bring a constitutional challenge to the bill. "You're looking at the plaintiff," the Senator from Kentucky announced.

Opponents of reform have consistently expressed confidence that the courts will strike down our efforts to clean up the campaign finance system. They regularly opine that the McCain-Feingold bill is unconstitutional, and, despite clear signs to the contrary in the Court's opinion last term in Nixon v. Shrink Missouri Government PAC, express great certainty that the Supreme Court will never allow our bill to take effect.

Well, in its decision yesterday morning in FEC v. Colorado Republican Federal Campaign Committee, the Court again dumped cold water on that certainty. The court held that the coordinated party spending limits now in the law—the so-called "441a(d) limits"—are constitutional. It ruled that the coordinated spending limits are justified as a way to prevent circumvention of the \$1,000 per election limits on contributions to candidates that the Court upheld in the landmark Buckley v. Valeo decision in 1976. In my view, the