



Written by [Joe Wolverton, II, J.D.](#) on December 21, 2009

## Midnight in the Garden of Good and Evil: Healthcare Set for Senate Passage

“The die is cast.” These were the fatal words spoken by Julius Caesar as he stood before his loyal legion on the northern bank of the Rubicon River (the boundary between Italy and the wide world) and proclaimed his revolutionary intent to enter Italy, thus declaring war on his rival Pompey and Pompey’s allies in violation of the law of the Roman republic. This same bold epigram was spoken last night by a much lesser light, Senator Charles Schumer (D-N.Y.), as he stood on the banks of the Potomac and proclaimed that the Healthcare Reform War of 2009 was over and that he and his cohorts in the Democratic Caucus had overcome their Republican opponents and would now march into the New Year imposing a revolutionary healthcare regime.



Although Senator Schumer did not (and would never) admit it, this legislation, should it be enacted, would be in violation of the constitutional law of the American Republic.

Schumer exultantly slapped his leader on the back as the sixtieth vote was cast in favor of invoking cloture on Senator Reid’s final version of the Senate’s alteration to the legislation passed in November by the House of Representatives. Senator Ron Wyden (D-Ore.) ceremonially stood up from his desk and cast his vote in favor of cloture. With that, Senator Reid laughed out loud and grabbed Senator Schumer and headed directly for the gathered throng of reporters to proclaim victory and deride his Republican colleagues for their dilatory tactics that resulted in a middle of the night vote (1:03 a.m.) under the shade of darkness and a shroud of snow.

In his closing argument, Republican leader, Mitch McConnell (R-Ky.), presented an alternate version of why such a momentous vote was taken while the good people of the country were fast asleep. “If the people who wrote this bill were proud of it, they wouldn’t be forcing this vote in the dead of night.” According to published reports, so loudly did Senator Reid snicker upon hearing this statement, that his laugh was heard clearly in the spectator gallery above the Senate floor.

Reid’s jocular mood is likely to last until the final vote on the Senate bill is held on Christmas Eve. This is the soonest the bill can be presented for an up or down vote if the GOP follows through with its commitment to employ every parliamentary procedure provided by Senate rules. Specifically, every amendment must be given 30 full hours of debate after the invoking of cloture, and with four more amendments scheduled for a vote, the deciding vote has been penciled in for 7 p.m. on December 24.

Final enactment of the overhaul of the American healthcare system is not foregone, however, as the respective House and Senate bills must be combined into one joint bill and then that measure must be



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approved by both houses. There are a couple of noticeable differences between the bill passed in November by the House of Representatives and the one all but passed in the pre-dawn hours Monday by the Senate. Most problematic of the handful of the differences between the two bills is the existence of a “public-option” provision and the absolute proscription on federally funded abortion extant in the House version. The government-subsidized “public-option” medical care insurance policy was a casualty in the conflicts of compromise that were fought in the Senate to guarantee the support of more moderate members of the caucus. As for abortion, the ink was sufficiently smudged to attract the approbation of celebrity hold-out, Senator Ben Nelson (D-Neb.).

In the end, it seems Nelson — like other Senators — cared less about preventing federal dollars being spent on abortion than on federal dollars being spent in his home state. First there was the “Louisiana Purchase,” the \$100 million perk package given to Senator Mary Landrieu’s home state in order to swing her vote the Caucus’ way, and now comes “Nelson’s Column,” a slate of Medicaid-subsidies paid forever and fully by the federal government to Nelson’s low-wage constituents in Nebraska. Specifically, Reid’s amendment (known officially as the Manager’s Amendment) contained a key provision called the Equitable Support for Certain States that included a \$100 million assistance package to recipients of Medicaid in the Cornhusker State. Senator Nelson said he resented the use of the word “bribe,” and preferred to describe the concession as a fair fix to Nebraska’s budget woes. “Well, you know, look, I didn’t ask for a special favor here. I didn’t ask for a carve-out,” explained Nelson. Nelson didn’t need to explicitly ask for what he knew would be the result of a week of waffling combined with a pressing deadline.

When all is said and done, the total cost of this overhaul of the healthcare industry will be in excess of \$1 trillion over 10 years. The Congressional Budget Office (CBO) report on the net cost of implementing the bill indicates that all the money paid to build and sustain the over 100 new bureaucracies necessary to carry out the bill’s mandates will be offset by the litany of new payroll and other taxes that will be laid on the backs of the middle class, those least likely to benefit at all from all the “reforms.” Individuals earning over \$200,000 will be hit with an increase in payroll tax, as well as anyone whose employer-provided health insurance policy is found to contain luxurious provisions (the so-called “Cadillac policies”).

Buried within the more than 2,000 pages of the bill’s painful prose are several suspicious sections benefiting very niche (but politically crucial) constituencies. For example, in Section 1881A of the bill, there is a cryptic subsection funneling money to any “individual described in subsection (e)(2) who resides in or around the geographic area subject to an emergency declaration made as of June 17, 2009.” That’s as closely defined as the legislation gets, but a quick study of possible beneficiaries reveals that there are but 7,000 – people exposed to asbestos in a mine in Montana. Why Montana? Because Senator Max Baucus is cosponsor of the bill and as Chairman of the Senate Finance Committee he wrote this provision into the Manager’s Amendment. He’s reportedly been trying for years to get these people money, and now he’s taken advantage of his powerful position to get it done.

Another curious and complex concession is found in Section 10502. This section mandates that the Secretary of Health and Human Services pay \$100 million to renovate or pay down the debt of an unnamed “health care facility” located in a state with only one public medical school and dental school. While the bill requires the Governor of any applicable state to certify to the Secretary his state’s qualification for the funds, Commonwealth Medical College in Scranton, Pennsylvania, is already calling dibs on the money.



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Next, there is Section 10324, entitled the “Protections for Frontier States.” In this provision, doctors and hospitals in states where “least 50 percent of the counties in the State are frontier counties” will receive increased Medicare payments beginning October 1, 2010. According to the clause in question, a “frontier county” means “a county in which the population per square mile is less than 6.” Again, the bill does not specify the lucky winners of the legislative lottery, but once again, Montana fits the bill. Freedom is priceless, but it certainly pays to be the home state of the Finance Committee Chairman.

The maze of legislative language that leads to pots of gold for several Senators (or their constituents) has been described by detractors as bribes. “This process is not legislation. This process is corruption. It’s a shame the only way we can come to a consensus in this country is to buy votes,” lamented Senator Tom Coburn (R-Okla.). David Axelrod, a senior advisor to President Obama, was quick to respond to Coburn’s charges, “People understand that we’re on the doorstep of doing something really historic that will help the American people. Every Senator uses whatever leverage they have to help their states. That’s the way it has been and that’s the way it will always be,” he told CNN. Hardly a passionate refutation of Coburn’s allegations. If bribery it takes, then bribery it shall be. As one commentator quipped, “Above all things, thy bill be done.”

All the preceding perquisites are evidence of the “at all costs” strategy of Democratic leadership regarding healthcare legislation. Senator Reid was bound and determined from the moment the House of Representatives sent him a bill to pass that bill along to President Obama for his signature by Christmas. That will now be impossible, but he will have a Senate version signed, sealed, and delivered to the Conference Committee by December 25. Why would Senator Reid and President Obama (both suffering historically low approval ratings) insist on foisting this act on the American people, despite the multiple polls that indicate a majority of Americans oppose enactment of any such scheme? The same conundrum faced kamikaze pilots in World War II. These ill-fated airmen knew they would die, but they genuinely believed they would be offering their lives for the sacred cause of Japanese imperialism.

In the present case, although Senator Reid (and those whose votes he bought) and President Obama may pay the ultimate price (loss of election) for their devotion to healthcare overhaul, it is evident in their behavior that both men quite firmly believe they will have sacrificed their narrow self-interest in favor of the greater good of the incremental and irreparable disintegration of constitutional moorings and the legalized and legislative implementation of socialism in America. As John McManus, president of the John Birch Society so accurately and aptly commented, “And it [healthcare reform] is, as with so much else being undertaken by the U.S. government, totally unconstitutional. There is no authorization for the federal government to have anything to say about healthcare. As our nation plunges more deeply into socialism and totalitarian rule, the future for today’s children grows dimmer. A huge wake-up is needed. If Harry Reid is driven out of office, it will signal that the much needed wake-up is gathering steam.”

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