

precedence over domestic law and international court rulings have equal authority to the decisions of a representative government. That is very significant. I know he actually believes this and he adheres to this school of thought, that international law is equal to or should take precedence over domestic law. Koh's transnational principles could have serious implications on U.S. sovereignty, especially regarding the authorization of the use of force in the prosecution of the war on terror, gun rights, abortion, and many other issues.

Koh believes a nation that goes to war should have—must have United Nations Security Council authority, going as far as writing that the United States was part of an “axis of disobedience” by invading Iraq—or should we say by liberating Iraq.

In October of 2002, Koh wrote:

I believe . . . that it would be a mistake for our country to attack Iraq without explicit U.N. authorization, because such an attack would violate international law.

Additionally, he supports ratification of the International Criminal Court, which could subject our troops to prosecution in a foreign court.

Implementation of this interpretation of international law raises a number of alarming questions. If the United States is required to gain U.N. authority for military action, what punitive actions might the United States be subjected to if it unilaterally uses preemptive force? Would our Navy SEALs have had to wait for authorization from the international body before rescuing the American being held hostage off the Horn of Africa? I think 99 percent of American people said they should have that authority and we should not have to go to any kind of an international court.

I don't know where this obsession has come from that nothing is good unless it is international anymore.

In 1992, George Will said:

There may come a time when the United States will be held hostage to . . . the idea that the legitimacy of U.S. force is directly proportioned to the number of nations condoning it.

That was back in 1992, and this is what is happening today. I hope that day never comes. The decisions made to protect our great Nation should not be made by members of an international body but by men and women who are elected by the people of these United States.

Equally concerning is Koh's treatment toward Department of Defense recruiting efforts. In October of 2003—some of us remember this—Koh led a team of Yale law faculty in filing an amicus brief in support of a lawsuit against the U.S. Department of Defense, claiming the Solomon amendment was unconstitutional. The Supreme Court rejected Koh's arguments unanimously. That was at a time when there were very few things that were unanimous in the Supreme Court. He was rejected unanimously.

Writing for the Court, Justice Roberts stated:

Nothing about recruiting suggests that law schools agree with any speech by recruiters, and nothing in the Solomon amendment restricts what the law schools may say about the military's policies.

Further, Koh supports accession to the International Criminal Court, the United Nations Convention on the Law of the Sea Treaty, the United Nations Convention on the Rights of the Child, and the Inter-American Convention Against Illicit Manufacturing of and Trafficking in Firearms. What is this CIFTA that has been promoted by President Obama? That is that we yield to an international group in terms of how we manufacture and distribute weapons in this country.

All of these treaties would greatly impact the lives of everyday Americans and would require the United States to alter its domestic law to meet their respective parameters.

In 2002, Koh spoke at Fordham University Law School about a “World Drowning in Guns.” That gives an indication where he is coming from. His speech was published in the Fordham Law Review. Koh's topic was the international arms trade, but, as usual, his analysis had serious domestic implications. Koh wrote that American legal scholars should pursue “the analysis and development of legal and policy arguments regarding international gun controls” through constitutional research on the second amendment. In other words, Koh believes the best way to regulate guns in America is through international law, through a global gun control regime.

As Legal Adviser, Koh would be in a position to pass judgment on whether a proposed treaty would raise legal issues for the United States, including issues related to the second amendment. He would, therefore, be able to endorse treaties that could be used by the courts to restrict the individual right to keep and bear arms—an idea he is clearly and openly in favor of. It is simply not true to say that his beliefs about gun control—this is what some people say—the second amendment right, doesn't really matter because he will be in the State Department advising on international law. On the contrary, he wants to use international law to restrict constitutional freedoms in this country.

In his position, he will have the power to advise the administration and to testify before the Senate about what reservations might be needed when ratifying a treaty to protect constitutional freedoms. However, he has a history of advocating for treaties without conditions. He cannot be trusted to express reservations with treaties that I believe will negatively impact everyday Americans.

The fact that he is in the State Department doesn't make him safe, it makes him more dangerous. This is exactly where, with the possible exception of the Supreme Court, he wants to

be. This is not an accident. It is his strategy. He realizes he cannot achieve his goals through legislation, so he has turned to international law. If he can establish that international law is binding on the United States, regardless of whether the Senate has ratified the treaty in question, activists can avoid Congress and work the issue through the courts.

If you believe the second amendment confers an individual right to bear arms on the American people, then I urge you to reaffirm that principle by voting against Harold Koh. If you believe our Nation should not be subjected, by a variety of treaties, to threats to our national sovereignty and American way of life, I urge you to reaffirm those values by voting against the nominee.

I mentioned several international treaties he has promoted. It is not just confined to our second amendment rights, it is everything else. The basis of his influence in these areas is that somehow international law should have precedence over our laws. This is something we have been in trouble with for a long period of time. Every time we yield to the United Nations, we end up with a very serious problem. I have talked to a number of our troops overseas who are very much concerned about being subjected to the international court.

Let me make one comment before I yield back any remaining time, and that is on the subject that was discussed by the Senator from Vermont.

HEALTH CARE

Mr. INHOFE. It is easy to say, and people will applaud when they say: You are going to end up getting something for nothing. You are going to get an education for nothing. You are going to get a college education. You are going to get health care for nothing. That sounds real good. Someone has to pay for all this stuff.

I suggest that if you go up to the Mayo Clinic in the Northern tier of the United States, you will look and you will see a very large population of patients from Canada who are there; patients who have been told: Well, yes, you have breast cancer. But because you are at a certain age, we are not able to operate on you. If we do, it is going to be a waiting period of some 18 months. At the end of that time, of course, the patient is going anyway.

We are talking about, in this country, we need to do something about it, about the way we have been running our health care system. I think improvements can be made. I remember one time the first lithotripter was used, I believe, in a hospital in my State of Oklahoma, in Tulsa, OK, at St. Johns Hospital.

That was a technique where you could submerge a patient and dissolve different things that were within them, kidney stones and that type of thing. However, they could not use it. So they

had to surgically and very invasively operate on people and cut them open to remove these things that could otherwise have been dissolved.

But the problem was, we have, in our Medicare system, a lot of people who are making medical decisions who are not qualified. So we have a lot of improvements that need to be made. But by adopting a system that has been a failure everywhere it has been tried, whether it is Sweden or Great Britain or Canada, is not something we are prepared to do in this country. I know the effort is out there, and they are going to make every effort to see that that happens. We are going to make sure that does not happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN. Mr. President, I know that most of my colleagues seem to enjoy the government health care plan of which they are a member. I am always surprised when I hear my colleagues, first of all, almost all of whom are on the government health insurance plan, talking about the government not providing a decent health care plan.

I particularly am intrigued when I hear my colleagues say it is a dismal failure anywhere else in the world. I am not proud of this, as I stand on the floor of the Senate, but I know we spend twice what almost any other country does in the world on health care.

I also know that in the rankings, based on the rankings of various kinds of health care indexes, maternal mortality, infant mortality, life expectancy, immunization rates, the United States ranks near the last among the rich industrialized countries.

But in one category, the United States of America rates almost first among the rich industrialized countries; that is, life expectancy at 65. If an American gets to the age of 65, yes, we do have some of the best health care in the world because everybody has the opportunity to join Medicare. And 99 percent of our society's elderly, 99 percent-plus, belong to Medicare.

When I hear my colleagues, most of whom are on the government health insurance plan paid for by taxpayers, saying that government cannot do health insurance in pointing to other countries saying it is a failure everywhere else, I look at them a little quizzically, because when I hear—when I talk to a Canadian, they have to wait too long, they underfund their system. But I do not see Canadians repealing their health care law because they are unhappy with it. I do not see the Brits doing it, I do not see the French or the Germans or the Japanese or the Italians. They spend less than we do, and they have higher life expectancies, they have a lower maternal mortality rate, lower infant mortality rates.

So maybe we can learn something. That being said, health care reform—I am right now working across the street

with Chairman DODD and Senator COBURN and others in both parties writing health care legislation.

Health care reform, first and foremost, is about protecting what is working in our system—there is much that works well in our health care system—and fixing what is broken in our system. That is, in a nutshell, what we are doing. We are working to protect what works in our health care system. We need to fix what is broken. It is about giving Americans the choices in the health care they want.

It is about providing economic stability for millions of middle-class families in Ohio and around the Nation, in Delaware and other States, the Presiding Officer's State.

I know an awful lot of people, a huge number of people in our country, say: You know, I am pleased with the health insurance I have. It works pretty well. The copays may be a little too high, the deductibles may be too high, I argue with insurance companies more than I would like to. So they are generally happy. We want to protect what is working.

But an awful lot of families know they are a pink slip and an illness away from bankruptcy. A whole lot of families know they are watching their health care disintegrate or at least decline. They are seeing copays go up. They are seeing drug coverage scaled back. They are seeing their dental care and their vision care eliminated because their employers cannot afford it. So, again, we have to protect what works, we need to fix what is broken.

A part of economic stability for health care is the public health insurance option. It is an option. A public health insurance option would expand health insurance choices available to Americans. It would increase competition in the health insurance market.

There is hardly an American alive who has private health insurance that does not think they have been mistreated from time to time by their insurance company.

Bringing more competition to the insurance market with a public health insurance option—whether you take it, whether you stay in your private health insurance, your choice or you go unto the public health option, again your choice, some Medicare lookalike, you can make that choice.

But the existence of both of them will make them both better. It will make the public health insurance Medicare lookalike option better, it will make private insurance better, because, what? Presto. It is American competition. It is what works.

But every time meaningful health care reform has been debated over the last six decades, we have heard misleading shouts from conservatives, from insurance companies, from the American Medical Association.

They say government takeover. They say bureaucratic redtape. They say socialized medicine. We heard it in 1949, after President Harry Truman was first

elected. He had been President for almost 4 years after succeeding President Roosevelt.

President Truman called for health insurance reform. They said it was socialized medicine. We heard it even back in the early 1930s, when Franklin Roosevelt was creating Social Security, thought about creating "health security" at the same time, a Medicare-like program. He backed off because of the opposition of the American Medical Association because he knew they would say "socialized medicine."

Then they said it a decade and a half later when Harry Truman was President. Then another decade and a half later, as you know, they, again, the doctors and the insurance companies and the conservatives and many in the Republican Party and both Houses, again, said "socialized medicine," when we were passing Medicare.

We know Medicare is not socialized medicine. You have your choice of doctor, your choice of hospital, your choice of providers. Medicare is the payer, the government serves as the insurance company. That is not socialism. That is just a program the American people love.

We hear these same kinds of things now. We hear about a public health insurance option. We hear it is socialism, a government takeover, it is bureaucratic redtape. Yet at the kitchen tables of middle-class homes in Toledo and Dayton and Akron and Gallipolis and Zanesville and Mansfield and Lima in my State, hard-working families are talking about using mortgage payments to pay for a sick child's health care treatment.

Small business owners are talking about cutting jobs because health care insurance costs simply are too high. Around the Nation, middle-class Americans are talking about how public health insurance options are needed to help provide economic stability for their families.

As we debate reform, we cannot forget that millions of Americans are depending upon us, us in this Chamber, and our colleagues on the other end of the building, depending upon us to do the right thing.

We should listen to people such as Darlene, a school nurse from Cleveland. Darlene treats students who come from economically distressed neighborhoods, who lack access to healthy food, who lack access to safe recreation. Her students struggle in school because they are worried about a sick parent or grandparent who cannot afford health care.

Darlene wrote to me describing that one student has asthma and has a heart condition. This is a grade school student. But she does not have an inhaler because her parents are unemployed and they lack health insurance. She has asthma attacks, but she does not have an inhaler because her parents simply cannot afford it.

We are not going to pass a public health insurance option?

At a time when too many Americans are struggling to pay health care costs, the public health care option will make health insurance more affordable. Our Nation spends more than \$2 trillion—\$2 trillion—that is 2,000 billion dollars. Mr. President, if you had \$1 billion, if you spent \$1 dollar every second of every minute of every hour of every day, it would take you 31 years to spend that \$1 billion.

We spend on health insurance 2,000 billion dollars, 1 trillion. Think how much that is. Yet too many of our citizens are only a hospital visit away from a financial disaster. We cannot afford to squander this opportunity for reform. We cannot settle for marginal improvement. Instead, we must fight for substantial reforms that will significantly improve our health care system.

Remember, it is about protecting what works and fixing what is broken. That is why we must make sure a public health insurance option is available for Americans, not controlled by the health insurance industry. We must preserve access to employer-sponsored coverage for those who want to keep their current plan. But that is not enough. Give Americans the choice to go with a private or public health insurance plan and let them compete with each other. It is good policy. It is common sense. A public insurance option will make health care affordable for small business owners such as Chris from Summit County.

Chris writes that his small business is struggling to keep up with rising health insurance costs for his employees. He is getting priced out of the market. Chris explains how a public health insurance option would help reduce the cost to his small business and provide the employees the health care they need that he so much wants to provide to his employees whom he cares about, whom he knows are productive, who help him pay the bills.

Chris wants me and other Members of the Senate to push for real change for the health care system that helps small business owners and workers alike.

A public health insurance option would also make insurance affordable for Americans struggling when life throws them a curve, such as Karen from Toledo. She wrote to me explaining how she now takes care of her adult son who is suffering from advanced MS. Over the course of the last 5 years, her son lost his small business, lost his insurance, then was diagnosed with progressive MS. They spent years meeting with specialists, dealing with insurers, fighting for care.

All the while, Karen dropped out of her Ph.D. program because her savings were depleted and she needed to take care of her son and she had no one else to turn to.

And we are not going to pass a public health insurance option?

The public health insurance option would offer American workers and fam-

ilies such as Karen and her son affordable, transitional insurance if you lose your job and lose your insurance. We cannot let the health insurance industry dictate how the health care system works or limit the coverage option Americans deserve.

Anyone who has had to shop for individual health coverage knows how expensive it can be, even if you are eligible, such as Peter from Cincinnati. Peter retired after a successful career as an architect, where he enjoyed very good health care coverage. After he retired, he thought he would have no problem affording private health insurance coverage. But despite never filing a claim, his premiums and his deductibles kept rising, forcing him to buy a second policy. And merely 2 weeks after total knee replacement surgery, his secondary insurer dropped him and left him with a bill of \$27,000. Peter asked that we fix what is broken.

And we are not going to pass a public health insurance option?

That is what we are here to do. Millions of Americans are demanding a public health insurance option that increases choice for all Americans and provides economic stability for our Nation's middle-class families. The stories of Darlene, Chris, Karen, and Peter must guide this administration and must direct this Congress to protect and provide health care for all Americans.

Health care reform is about protecting what works and fixing what is broken.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

KOH NOMINATION

Mr. DEMINT. Mr. President, I rise today, regretfully, to oppose the nomination of Harold Koh to be the State Department legal adviser. It is hard to do because in meeting Mr. Koh, I certainly enjoyed him. I have friends back in South Carolina who know him. He is certainly a very likable person. But his nomination to this important position requires some scrutiny about what his philosophy is when it comes to the United States and our international agreements and the sovereignty of our country.

I oppose Mr. Koh's nomination for many reasons, and most important of these is my belief that if confirmed, he will work to greatly undermine the principles of sovereignty that I believe all Americans expect of our Federal Government.

Let me talk a little bit about his role and what that would be if he is confirmed as the legal adviser to the State Department.

According to the State Department's Web site, the legal adviser would furnish "advice on all legal issues, domestic and international, arising in the course of the department's work and negotiate, draft, and interpret international agreements involving peace initiatives, arms control discussions, and private law conventions on subjects such as judicial cooperation in recognition of foreign judgments."

On a daily basis, Mr. Koh will also advise our government on a variety of Federal legal issues that he believes affect international law and our foreign relations. He will determine positions the United States should take when dealing with international bodies and in international conferences, and counsel administration officials on international negotiations, treaty interpretations, and treaty implementations.

As we move forward in the future as a country, one of the biggest debates we are going to have is what role does American sovereignty play in the world and how important is it, and there is a difference of philosophy here in Washington today.

So as we review this nomination, it is very important to us, particularly Republicans, that we start from the foundation in our State Department that we will act in the best interest of our country and the American people, and that our interests as a country are paramount in how we deal with the rest of the world. Of course, that does not mean that we don't try to support other countries as best we can, but the fact is, the role of the Federal Government is to protect and defend our people and our interests. So we need to make sure this key adviser to our State Department and our international relations believes those principles.

Many of Mr. Koh's supporters claim that the allegations that have been voiced against him, such as undermining the Constitution, are unjustified. However, Mr. Koh's own writings suggest otherwise. For example, in a 2004 law review article titled "International Law As Part Of Our Law," Mr. Koh states:

U.S. domestic courts must play a key role in coordinating U.S. domestic constitutional rules with rules of foreign and international law, not simply to promote American aims but to advance the broader development of a well-functioning international judicial system. In Justice Blackmun's words, U.S. courts must look beyond narrow U.S. interests to the "mutual interests of all nations in a smoothly functioning international legal regime" and, whenever possible, should "consider if there is a course of action that furthers, rather than impedes, the development of an ordered international system."

Certainly we want good relations with countries all over the world, and we are looking at making treaties of various kinds, but an idea of a smoothly functioning international legal regime, when it subordinates the interests of the American legal regime, should cause all of us to stop and think. Our protection, our prosperity,