# Withdrawal/Redaction Sheet
## Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001a. report | Report on Care Coordination (partial) (4 pages) | 11/17/1999 | P6/b(6) |
| 001b. report | Report on Care Coordination (partial) (4 pages) | 11/17/1999 | P6/b(6) |
| 002. memo | Neal Lane to John Podesta re: Possible Joint U.S.-U.K. Statement of the Human Genome Project (3 pages) | 11/17/1999 | P5 6327 |

**COLLECTION:**

Clinton Presidential Records
Domestic Policy Council
Chris Jennings (Faxes)
OA/Box Number: 16777

**FOLDER TITLE:**

November 15-30, 1999 Faxes [Binder] [1]

Racheal Carter
2011-0747-S
rc326

**RESTRICTION CODES**

**Presidential Records Act - [44 U.S.C. 2204(a)]**

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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6327

THE WHITE HOUSE

WASHINGTON

November 17, 1999

ACTION

MEMORANDUM FOR JOHN PODESTA

FROM: NEAL LANE NML for NL

SUBJECT: POSSIBLE JOINT U.S.-U.K. STATEMENT ON THE HUMAN GENOME PROJECT

Background

Almost one year ago, Harold Varmus reported to me that Prime Minister Tony Blair was interested in issuing some form of joint government-to-government statement on the human genome project. The statement (draft attached) has evolved into an endorsement of the policy of making human genome sequence data freely available within 24 hours of its generation. This practice is now a requirement for recipients of funds from the three principal not-for-profit partners in the international Human Genome Project: the NIH, DOE and U.K.'s Wellcome Trust. I have had a number of discussions about the merits of issuing a high-level statement with my U.K. government colleagues, Lord Sainsbury, Minister for Science, and Sir Robert May, Chief Scientific Advisor to the Prime Minister, as well as with Dr. Michael Morgan, CEO of the Wellcome Trust's Genome Campus. All three support such a statement and Morgan reports today that the Prime Minister has just given his approval.

The draft statement made the news on September 20th with an article in the London Guardian that was largely inaccurate in portraying it as a means for preventing entrepreneurs from obtaining patents (article and our press guidance are attached). It is true that public deposit renders information unpatentable. However, the statement is carefully worded to endorse free access to "fundamental data on the human genome, including the human DNA sequence and its variations," and does not criticize subsequent intellectual property claims to protect discoveries based on such sequences. Thus, the statement has limited relationship to patenting genome-based products. Issuing the statement might be useful in addressing the persistent confusion left by the Guardian article.

Next Tuesday, November 23rd, the Human Genome Project international partners will hold a multi-site event to mark the sequencing of the billionth DNA base pair (roughly one-third of the entire human genome). DHHS submitted a POTUS scheduling request with the hope of announcing the joint statement, in addition to another initiative that is not completed, but that we might discuss at a later date. Participants across the U.S. and the Sanger Centre in Cambridge, U.K., will be linked via satellite. Secretary Richardson's attendance is confirmed, and Secretary Shalala may also attend. Their roles will be to extol the virtues of the genome project, but they will not address the joint statement. Lord Sainsbury is prepared to represent the Prime Minister on the U.K. side to announce his approval of the joint statement, if the President agrees to do the same. If so, I can be available to speak on his behalf next Tuesday at the National Academy of Sciences, the local event site.

Decision on issuing a joint U.S.-U.K. statement:

____ Yes ____ No ____ Let's discuss

Possible Action:

The President and Prime Minister Blair will meet informally in Florence on Saturday. Perhaps they could discuss this issue briefly and agree to a coordinated announcement of the joint statement on Tuesday, November 23.

Attachment

cc: Bruce Reed
Sandy Berger
Thurgood Marshall, Jr.
Leon Fuerth
David Beier
Chris Jennings

DRAFT

# JOINT STATEMENT TO ENSURE THAT DISCOVERIES FROM THE HUMAN GENOME PROJECT ARE USED TO ADVANCE HUMAN HEALTH

In the last decade of the twentieth century, scientists from around the world initiated one of the most significant scientific projects of all time: to determine the DNA sequence of the entire human genome, the human genetic blueprint. Progressing ahead of schedule, human genome research is rapidly advancing our understanding of the causes of human disease and will serve as the foundation for development of a new generation of effective treatments, preventions, and cures. To realize this promise, fundamental data on the human genome, including the human DNA sequence and its variations, must be made freely and broadly accessible to scientists everywhere. The human genome is the fundamental shared heritage of all humankind. Unencumbered access to this information is essential to enable discoveries that will reduce the burden of disease and promote health around the world. We applaud the decision by scientists working on the Human Genome Project to release information about the human DNA sequence and its variants rapidly into the public domain, and we call on all scientists worldwide to adopt this policy.

# Withdrawal/Redaction Sheet
## Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001. fax | Jeff Lemieux to Jeanne Lambrew (partial) (1 page) | 09/22/1998 | P6/b(6) |
| 002. memo | From: Steve Ricchetti et al. re: Return call to Senator Breaux to discuss the Medicare Commission (3 pages) | 02/24/1999 | P5 6328 |

**COLLECTION:**
Clinton Presidential Records
Domestic Policy Council
Chris Jennings (Subject Files)
OA/Box Number: 21537

**FOLDER TITLE:**
Medicare Commission [1]

Racheal Carter
2011-0747-S
rc532

**RESTRICTION CODES**

**Presidential Records Act - [44 U.S.C. 2204(a)]**

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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RR. Document will be reviewed upon request.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

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6328

THE WHITE HOUSE

WASHINGTON

February 24, 1999

RECOMMENDED TELEPHONE CALL

TO: Senator John Breaux

DATE: February 24, 1999

RECOMMENDED BY: Steve Ricchetti, Gene Sperling, Larry Stein, Chris Jennings

PURPOSE: Return call to Senator Breaux to discuss the Medicare Commission

BACKGROUND:
Senator Breaux has requested that you call him to give your reaction to his Medicare reform proposal and, most likely, to seek your help in encouraging Laura Tyson and Stuart Altman to support the work of the Commission and help him achieve the 11 votes he needs to report out a recommendation. (The Senator is assuming he already has Senator Kerrey and, as such, has 10 votes -- 8 Republicans plus Senator Breaux and Senator Kerrey.)

Senator Breaux will no doubt continue to say he is very open to changes to appease Laura and Stuart. However, no proposal he has released to date comes close to reflecting the views of Laura, Stuart or -- for that matter -- meets the basic principles you outlined in your AARP speech. To the contrary, his proposal has so many serious shortcomings and major omissions that all of your base Democrats (the Vice President, Daschle, Gephardt, Dingell, Rockefeller) are urging us to avoid sending any positive signal about the Commission's work. Highlights of the problems include: no use of the surplus for Medicare, no acceptable prescription drug benefit, the inclusion of the age eligibility increase (without any policy to prevent the number of uninsured from rising OR any 55-65 buy in), and an income related premium that begins at $24,000 for single beneficiaries. (Attached is a more detailed summary of the current Breaux proposal.)

Although Senator Breaux's proposal contains some positive aspects (e.g., new market-oriented tools for the fee-for-service program, rationalizing its cost sharing, and at least the start of a potentially viable premium support program), we have concluded that the Commission's work product is both politically and substantively unsalvageable. Senator Breaux has not yet reached this conclusion and continues to court your appointees. In fact, as recently as this evening, he met with Laura and Stuart to solicit their ideas on what changes would be needed to obtain their votes. While Laura and Stuart do not believe that the Commission will be sufficiently responsive, they feel uncomfortable rejecting this request for assistance.

We believe the time has come to have an honest, direct conversation with Senator Breaux about why we do not believe we cannot support the Commission's proposal at this time. We believe it can be done in a way that illustrates why it would be beneficial to him and the prospects for reform to conclude the work of the Commission with the ten votes he has.

We believe you can have the most constructive conversation by telling him it would be completely counterproductive to the prospects for reform if you get in the middle of the debate and strong-arm the Democratic appointees. At this point, you can tell him, it would only divide the party and make it more difficult to pass legislation down the road. A better approach in which you can still show action and leadership is for the Senator to come forward with the best possible report and you can tell him you will: (1) praise the report for strongly advancing the issue and (2) assure him that you will commit to coming forward in the weeks that follow with your own constructive ideas for moving bipartisan legislation forward. Attached are some suggested talking points.

## TALKING POINTS

- John, I believe your Commission is performing a constructive function. It is floating important ideas that have real potential and that may well lay the groundwork for the type of reforms we both want.

- Having said this, my Commission members -- even those who are supportive of the premium support concept (Laura Tyson and Stuart Altman) -- have raised a number of very legitimate concerns. I am sure you can tell from your conversations with them that their beliefs are their own. I also want to assure you that the only message the White House has given to Laura and Stuart is to be constructive and to help you produce the best possible package.

- More important, though, we are facing a real "melt-down" from the base Democrats. While you may want to still try, I am not at all confident that you can produce the changes that they want, let alone the alterations Laura and Stuart want, without losing all or most of your Republican support.

- And, because of the strong feelings the Democrats have against your package, I don't think it would be advisable or productive for me to jump in this debate at this time and try to jam it down their throats. Therefore, recognizing the situation you face, it may well be best for you to move your package out with 10 votes out of the Commission.

- Doing so would avoid giving Democrats more time to analyze, criticize and undermine your work, since the only way you could even hope to attract Laura or Stuart would be through a prolonged discussion about important details. If you do this, I will say very positive things about your work, underscoring my belief that it provides an important contribution toward addressing the complicated and numerous challenges facing the Medicare program.

- I will then work with you in trying to develop a proposal that takes your best ideas without totally driving away some of the key Democrats we will need to get the reform we both want.

# Withdrawal/Redaction Sheet
## Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001. note | re: phone number (1 page) | n.d. | P6/b(6) |
| 002. memo | From: Larry Stein et.al. re: Meeting with the Senators Kennedy and Rockefeller and Representative Dingell (3 pages) | 03/04/1999 | P5 6329 |

**COLLECTION:**

Clinton Presidential Records
Domestic Policy Council
Chris Jennings (Subject Files)
OA/Box Number: 23750

**FOLDER TITLE:**

Medicare Reform - POTUS Proposal [24]

Racheal Carter
2011-0747-S
rc543

**RESTRICTION CODES**

**Presidential Records Act - [44 U.S.C. 2204(a)]**

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

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March 4, 1999

# MEETING WITH THE SENATORS KENNEDY AND ROCKEFELLER AND REPRESENTATIVE DINGELL

| | |
|---|---|
| **DATE:** | Thursday, March 4, 1999 |
| **LOCATION:** | Oval Office |
| **TIME:** | 3:45 pm - 4:15 pm |
| **FROM:** | Larry Stein<br>Gene Sperling<br>Bruce Reed<br>Chris Jennings |

## I. PURPOSE

To meet with Senators Kennedy and Rockefeller and Representative Dingell at their request.

## II. BACKGROUND

Tomorrow, you are scheduled to meet with Senator Kennedy, Senator Rockefeller and Congressman Dingell to discuss their concerns with proposals being developed by the Medicare Commission. Their concerns have been heightened most recently by two developments. First, they believe that the latest version of the Commission's recommendations contains significantly flawed provisions and notable omissions which would harm the program and the beneficiaries it serves. Second, they are extremely disturbed by recent, intensive efforts by Senator Breaux and Congressman Thomas to persuade Laura Tyson and Stuart Altman to engage in an effort to find a compromise that they can support.

In short, these Members have concluded that nothing good can come out of this Commission. They believe that it is time to develop an exit strategy that helps ensure that the Commission's recommendations do not provide momentum for flawed policy to be passed by the Congress.

Last week, Senator Breaux presented his latest Medicare reform plan. It contains several important, innovative provisions, including policies to modernize fee-for-service and rationalize Medicare's cost sharing. Its premium support proposal -- while not fully developed and currently flawed -- maintains the Medicare entitlement and achieves needed savings for the program. However, the proposal also includes major shortcomings and serious omissions, including: (1) no reference to any sort of financing proposal or the dedication of the surplus, despite the Commission mandate to do so; (2) no prescription drug benefit; (3) an income-related premium that begins at $24,000 for single beneficiaries; and (4) a premium support model that has the potential to leave rural beneficiaries with higher premiums and no additional choices.

All of your appointees publicly and privately expressed their concerns about these elements of the plan. In response, Senator Breaux asked Laura Tyson and Stuart Altman to write down their concerns. They did so and passed back this document to the Senator two days ago. Their recommendations are generally consistent with the principles for reform that you outlined. For example, they suggest including the surplus or an analogous proposal, adding an optional prescription drug benefit accessible and affordable to all beneficiaries, ensuring guaranteed benefits, and allowing 62 to 64 year olds to buy into Medicare. However, the list also includes controversial elements such as raising the age eligibility from 65 to 67 so long as there is a subsidized Medicare buy-in and adding an income-related premium beginning at $50,000 (which is twice as high as recommended by the Commission but much lower than most of the Democratic base would contemplate). Although consistent with their past statements, the document reiterates their openness to premium support that meets the goals that they outline (e.g., adequate government payment, defined benefits).

Since Laura and Stuart forwarded their recommended changes, there have been numerous conversations about whether and how there can be a compromise. Senator Breaux is now saying that he is committed to making a number of changes to be responsive, including a prescription drug benefit and that there will be some reference to financing in the plan. However, Laura and Stuart believe that his changes, including his drug benefit, will fall short. Despite the Senator's verbal commitments, our Commission Members have not yet received anything in writing that reflects any of these changes. Most importantly, it is becoming more clear that Senator Breaux will be unable and potentially unwilling to push the Republican Members to support an explicit commitment to dedicating the surplus to the Medicare program.

**DEMOCRATS' CONCERNS**

We expect that Senator Kennedy, Senator Rockefeller, and Congressman Dingell will uniformly critique the plan. Inevitably, they will raise their serious objections to supporting an untried, untested premium support program; a weak prescription drug benefit; beneficiary payment increases (e.g., home health copay, income-related premium set at $24,000, and the age eligibility increase); and the complete lack of discussion or commitment to add new revenues to Medicare. Each of the three also have their own additional concerns.

Senator Kennedy will make a political case for avoiding any positive statements towards the work of the Commission in general and premium support in particular. He may also raise his pet concern about the Commission's proposal to pull out a portion of medical education from the Medicare Trust Fund; he believes it will leave academic health centers extremely vulnerable to future budget cuts.

Senator Rockefeller will express his frustrations with how Senator Breaux has run the Commission. As a former commission chair, he believes that Senator Breaux has not exhibited leadership and has left Democrats with no alternative other than to oppose his recommendations. He can also be expected to critique the Breaux plan's effects on beneficiaries who live in rural areas. These beneficiaries would pay more for fee-for-service, probably not have any new plan choices, and, depending on its design, not have access to an affordable drug benefit.

Congressman Dingell will also likely emphasize his disappointment in the process. He will underscore that he kept an open mind to the Commission work until last week, when he concluded that he did not have sufficient information to make an informed decision on the plan -- and the information that he did have led him to conclude that this plan is a simple cost shift to beneficiaries.

All three Members will urge you to not send any positive signals about the Commission's work. They may also suggest that you do everything possible to advise Laura and Stuart that their continued discussions represent a political and substantive gamble that is unjustified given the lack of likelihood of a positive outcome.

## III. PARTICIPANTS

Pre-Brief
President
John Podesta
Steve Ricchetti
Doug Sosnik
Larry Stein
Gene Sperling
Bruce Reed
Chris Jennings

# Withdrawal/Redaction Sheet
## Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001. draft | re: ERISA (10 pages) | 11/26/1998 | P5 6330 |
| 002. memo | Vicki Rivas-Vazquez to Chris Jennings re: phone number (partial) (1 page) | 09/15/1998 | P6/b(6) |

**COLLECTION:**

Clinton Presidential Records
Domestic Policy Council
Chris Jennings (Subject Files)
OA/Box Number: 23745

**FOLDER TITLE:**

Patient's Bill of Rights [18]

Racheal Carter
2011-0747-S
rc588

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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Pilot Life File 6330





2. For the reasons stated in point 1, petitioner's contention that applying the notice-prejudice rule would conflict with Section 502 of ERISA should be rejected on the ground that this is an action for benefits under Section 502, applying the notice-prejudice rule as a rule of decision on the merits in a suit under Section 502 ~~action~~ therefore in no way conflicts with any intent by Congress to make Section 502 the exclusive source of a cause of action. In our view, petitioner's contention not only may, but should, be rejected on that ground alone. If the Court does so, there will be no occasion for it to consider the difficult issue of whether ERISA preempts a state law cause of action or remedy outside of Section 502 even where the state law in question "regulates insurance" within the meaning of the insurance saving provision. Resolving the interaction between Congress's intent to make Section 502 an exclusive remedy for claims under ERISA and its simultaneous intent to save state laws that "regulate[] insurance" would present the Court with the question whether it should reconsider part of the rationale of its decision in Pilot Life v. Dedeaux. As we explain below, there may be substantial reasons for the Court to do so, but that determination should be reserved for a case in which the issue is squarely presented.

We recognize that Pilot Life has been read to preclude even state law causes of action arising under laws that "regulate[]

insurance."[10] That portion of Pilot Life's rationale is, however, in tension with the text of the insurance savings provision and was unnecessary to Pilot Life's holding that the law at issue there was ~~not an~~ in any event insurance regulation within the meaning of that provision. Accordingly, we urge the Court to leave open the question whether some state laws that "regulate[] insurance" by providing for a cause of action or remedy in addition to those provided for in Section 502 of ERISA are saved from preemption under ERISA.[11]

In Pilot Life, the Court considered whether ERISA preempted state common law tort and contract causes of action for bad faith processing of a claim for benefits by an insurer. Analyzing the state common law creating the cause of action at issue, the court initially concluded that (a) under a "common sense" view, the cause of action was rooted in general principles of Mississippi tort and contract law and was not "specifically directed toward th[e insurance] industry," 481 U.S. at 50; and (b) it "at most meets one of the three criteria used to identify the 'business of

[10] Most lower courts to have confronted the issue have concluded, like petitioner here, that Pilot Life requires the preemption of claims for benefits or remedies under state-law provisions that otherwise clearly constitute insurance law. See Kanne v. Connecticut Gen. Life Ins. Co., 867 F.2d 489, 493-494 (9th Cir. 1988), cert. denied, 492 U.S. 906 (1989); In re Life Ins. Co. of N. Am., 857 F.2d 1190, 1194-1195 (8th Cir. 1988) (citing district court cases); but see Franklin H. Williams Ins. Trust v. Travelers Ins. Co., 50 F.3d 144, 151 (2d Cir. 1995).

insurance' under the McCarran-Ferguson Act," id. at 51. Those holdings were sound, and they provided ample basis to conclude that the state law did not come within the ERISA insurance savings clause. The Court's holding in Pilot Life that the state law was preempted was therefore correct.

In a succeeding portion of the Pilot Life opinion, however, the Court -- (consistent with) ~~as urged by~~ the (position of the) Solicitor General in a brief filed ~~filing~~ at the petition stage of the case (see 481 U.S. at 52; see note __, infra) -- went on to consider whether its conclusion that the state law was preempted was supported by the express provision in ERISA of a cause of action by a participant or beneficiary for plan benefits under Section 502(a)(1)(B), on the theory that that cause of action is exclusive of any others, such as a cause of action arising under state law. The Court concluded that it was, see 481 U.S. at 52-57, stating that "[t]he policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA." 481 U.S. at 54. In that portion of its opinion, the Court did not advert to the text of the insurance savings clause. Instead, it relied heavily on Congress's intent with respect to Section 502, evident from the legislative history of ERISA, to federalize ERISA remedies in the same way that Section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. 185(a), had federalized remedies for violations of collective bargaining agreements. See 481 U.S. at 54-56.

We do not question that reasoning in Pilot Life as a general matter. Unquestionably, "Congress intended § 502 to be the exclusive remedy for rights guaranteed under ERISA." Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 144 (1990) (emphasis added). And it is certainly true that, outside the context of state laws that "regulate insurance" within the meaning of the ERISA insurance savings clause, that exclusivity of the Section 502 civil enforcement provisions also appropriately informs the Court's understanding of the scope of ERISA preemption where a plaintiff brings a cause of action under state law that "relates to" an ERISA plan. See, e.g., Ingersoll-Rand, 498 U.S. at 142; Mertens v. Hewitt Assocs., 508 U.S. 248, 253-254 (1993) (because of comprehensive enforcement scheme, Court will not infer additional federal causes of action). Congress, in short, clearly intended the remedial provisions of ERISA to be exclusive of any generally applicable state-law remedies related to ERISA plans. H.R. Conf. Rep. No. 93-1280, 93d Cong. 2d Sess. 327 (1974); see also Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 62-64, 66 (1987); Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 24 (1983).

It does not follow, however, that ERISA Section 502 should inform the preemption inquiry to the same extent with respect to a state law cause of action or remedy that specifically "regulates insurance" as it does with respect to one of general

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applicability. In that situation, Congress has saved state substantive law, ~~see FMC Corp., 498 U.S. at 501 (state law that "regulates the substantive terms of insurance contracts" saved),~~ and it is not clear why Congress would have wanted to foreclose all access to state-created remedies or sanctions to enforce that substantive law, even where the causes of action provided under Section 502 itself are not suited to that purpose (e.g., steps by a state insurance commissioner to enforce state insurance law).[12]

The savings clause states that "nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance." 29 U.S.C. 1144(b)(2)(A) (emphasis added). "[T]his subchapter" includes Section 502 as well as the preemption provision itself, Section 514(a). Accordingly, the savings clause by its terms directs that nothing

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[12] During the congressional debate on ERISA, substantive and enforcement provisions of law were linked by Senator Williams with reference to both the rule of preemption and its exceptions. Senator Williams observed that "with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations." 120 Cong. Rec. 29933 (1974), quoted in Shaw, 463 U.S. at 99. To the extent ERISA preempts the field for federal regulation, see California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A., 519 U.S. 316, 335-336 (1997) (Scalia, J., concurring), it follows that both state substantive law and the measures to enforce that state law are preempted. But where ERISA does not preempt the field, here because the insurance "exception" in Section

proposition that both state substantive insurance law and at least some enforcement measures necessary to make that substantive law effective are saved. Surely, for example, ERISA's saving of "any generally applicable criminal law of a State," 29 U.S.C. 1144(b)(4), authorizes the State to bring a criminal prosecution, not merely to have its substantive law applied in a suit or prosecution brought by someone else.

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in Section 502, which concerns causes of action and remedies under ERISA, shall be construed to relieve or exempt any person from "any law" of a State that regulates insurance. Thus, the insurance savings clause, on its face, saves state law conferring causes of action or affecting remedies that regulate insurance, just as it does state mandated-benefits laws and other prescriptive measures that do so.

This Court gave effect to the facially unrestricted scope of the insurance savings clause in Metropolitan Life, when it "declin[ed] to impose any limitation on the saving clause beyond those Congress imposed in the clause itself and in the 'deemer clause' which modifies it," and concluded that "[i]f a state law 'regulates insurance,' as mandated-benefit laws do, it is not preempted." 471 U.S. at 746; cf. Pilot Life, 481 U.S. at 56-57 (Metropolitan Life clearly "rejected an interpretation of the [insurance] saving clause * * * that saved from preemption 'only state regulations unrelated to the substantive provisions of ERISA'").[13] In addition, the force of the savings provision's

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[13] Of course, notwithstanding the savings clause, an insurance law that conflicts with a provision of ERISA itself is preempted by virtue of the Supremacy Clause. See John Hancock, 510 U.S. at 99-100. Although the insurance savings clause "leaves room for complementary or dual federal and state regulation," ERISA "calls for federal supremacy when the two regimes cannot be harmonized or accommodated." Id. at 98. "[I]n the case of a direct conflict, federal supremacy principles require that state law yield." Id. at 100. Such conflict preemption occurs "where compliance with both federal and state regulations is a physical impossibility, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." See Boggs v. Boggs, 520 U.S. 833, 834 (1997), citing Gade v. National Solid Wastes (continued...)

express terms is reinforced by the Court's frequent recognition -- particularly in recent cases -- that ERISA's preemption provisions must be read against the background of the "assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Travelers, 514 U.S. at 655; see also De Buono v. NYSA-ILA Med. & Clinical Servs. Fund, 520 U.S. 806, 813 n.8 (1997), California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A., 519 U.S. 316, 325 (1997).

Furthermore, insofar as the significance of Section 502 for the preemption inquiry derives from Congress's intent to pattern suits under Section 502 ~~as well~~ on suits under Section 301 of the LMRA ~~Labor Management Relations Act, 29 U.S.C. 185,~~ that intent does not bear directly on the preemption of a state law cause of action or remedy that "regulates insurance." That is because LMRA Section 301 does not contain any statutory exception analogous to ERISA's insurance savings provision. While Section 301 is no doubt highly instructive in cases in which the scope of ERISA's broad "relates to" preemption provision is at issue, Congress's enactment of the insurance savings provision suggests

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(...continued)
Management Ass'n, 505 U.S. 88, 98 (1992). There is no indication, for example, that Congress believed that judicial enforcement of state insurance law by a state insurance commissioner (or ~~perhaps~~ by a participant or beneficiary) would ~~necessarily~~ conflict with the purposes of the provision in Section 502(a)(1)(B) for a participant to bring an action for benefits under the plan itself.

express terms is reinforced by the Court's frequent recognition -- particularly in recent cases -- that ERISA's preemption provisions must be read against the background of the "assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Travelers, 514 U.S. at 655; see also De Buono v. NYSA-ILA Med. & Clinical Servs. Fund, 520 U.S. 806, 813 n.8 (1997), California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A., 519 U.S. 316, 325 (1997).

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(...continued)
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that it did not intend that parallel to be controlling where the state law, while within the scope of the preemption provision, also falls within the terms of insurance savings clause. Thus, the general background of Section 502(a) discussed in Pilot Life does not in itself require that a state law that "regulates insurance," and so comes within the terms of the savings clause, is nevertheless preempted if it provides a state law cause of action or remedy.[14]

N.B. we think this sentence does the job — not clear the SG intends it to.

## II. THE ELFSTROM RULE DOES "RELATE TO" ERISA PLANS WHEN IT IS APPLIED TO THEM, AND IT IS THEREFORE PREEMPTED

[14] In a brief in support of the petition for a writ of certiorari in Pilot Life, we argued "that since Congress intended the procedures it established in Section 502 to be the exclusive procedures for enforcing claims for benefits due under employee benefit plans, the states are barred from establishing alternative procedures." Br. for the United States as Amicus Curiae at 19, Pilot Life Ins. Co. v. Dedeaux, No. 85-1043. We adhere to that conclusion in circumstances like those that were actually before the Court in Pilot Life, where a beneficiary invoked a general "state common law cause of action," ibid., to obtain benefits under a plan, as well as other remedies. For the reasons given in the text, however, the exclusive nature of Section 502 may come into conflict with, rather than reinforce, the terms of the insurance savings clause where the participant or beneficiary (or state insurance commissioner) invokes a cause of action under state law that "regulates insurance" -- e.g., to enforce a specific provision of state insurance law that could not be enforced in a suit under Section 502. Insofar as our discussion in the text casts doubt on the views we expressed at the certiorari stage in Pilot Life, it is worth noting that our submissions concerning ERISA preemption -- like the Court's analysis -- have been refined in light of the benefit of significant experience with ERISA preemption in the intervening 12 years. Specifically, it is now clear that preemption analysis must begin with the presumption that Congress did not intend to preempt state law, particularly in "fields of traditional state regulation." Travelers, 514 U.S. at 654-655. That presumption is particularly strong in the area of state insurance regulation, whose continued validity and application to ERISA plans Congress expressly provided for.

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# Withdrawal/Redaction Sheet
## Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001. memo | From: Pat Griffin re: Meeting with Senate Majority Leader Mitchell (3 pages) | 05/17/1994 | P5 6331 |
| 002. memo | From: Pat Griffin re: Meeting with House and Senate Health Care Leadership (5 pages) | 05/24/1994 | P5 6332 |
| 003. memo | From: Pat Griffin re: House Democratic Cacus Meeting (2 pages) | 05/24/1994 | P5 6333 |
| 004. memo | Chris Jennings and Steve Ricchetti to Hillary Rodham Clinton re: Proposed Schedule for Congressional Consultative Meetings (3 pages) | 06/01/1993 | P5 |
| 005. memo | Chris J. and Lynn M. to Hillary Rodham Clinton and Jeff Eller re: Health Care University (11 pages) | 06/28/1993 | P5 |

**COLLECTION:**

Clinton Presidential Records
Domestic Policy Council
Chris Jennings (Subject Files)
OA/Box Number: 21536

**FOLDER TITLE:**

POTUS Memos 1st Term [1]

Racheal Carter
2011-0747-S
rc853

**RESTRICTION CODES**

**Presidential Records Act - [44 U.S.C. 2204(a)]**

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

6331

May 17, 1994

# MEETING WITH SENATE MAJORITY LEADER MITCHELL

DATE: May 18, 1994
LOCATION: Oval Office
TIME: 1:15 PM
FROM: Pat Griffin

## I. PURPOSE

- To thank Senator Mitchell for all of his hard work in educating members on health reform and contributing to their engagement in the health care reform debate.
- To provide an opportunity for him to report on his conversations with individual Finance Committee members on health reform.
- To get his appraisal of where the Democratic Caucus, as a whole, currently stands on health care reform.
- To get his assessment of timing with regard to Committee and Floor activities on health reform.

## II. BACKGROUND

- Over the last several weeks, the Administration has provided extensive briefings for Senator Mitchell on health care reform options that reduce the burden on small businesses through adjustments in the mandate and better targeting of subsidies, while at the same time reducing the deficit. The briefings have also reinforced the importance of real and scorable cost containment, both to prevent windfalls and to assure deficit neutral financing.

- Senator Mitchell has used this information to craft options for the Democratic Caucus to review. Since the Jamestown retreat in April, the Majority Leader has held two Caucus–wide briefings. During the course of these usually well attended discussions, a number of Senators have sent some encouraging signals. For example, Senator Breaux and Senator Bingaman have indicated their openness to an employer requirement if it includes a carve out for under 10 employees. Senator Exon has stated his general support for an employer requirement and his grave reservations about an individual mandate.

- While he has been conducting these briefings, Senator Mitchell has also been meeting on an individual and group basis with Members of the Senate Finance Committee to get a sense where they stand. To date, he has met with all the Democrats of the Committee, as well as Senators Chafee and Durenberger. His conversations have been constructive and consistent with his past intention to help the Chairman get a block of Democrats behind a set of particular concepts, so that they can negotiate with moderate Republicans from a position of strength.

- Although there have been some encouraging signals from key swing Committee Democrats, Senators Breaux and Boren, no final compromise has been achieved. As of now it seems clear that they both will want some level of a carve out for small business. Their final position on premium caps remains uncertain. Their preference, and most likely their bottom line requirement, will be to craft a compromise that -- regardless of policy -- attracts at least a couple of moderate Republicans off the Finance Committee. In short, they want cover.

- He will also inform you of his assessment of where the Committee as a whole stands, with a particular focus on Chairman Moynihan. Just today, Senator Moynihan informed his Finance Democrats that the White House -- through the New York event with Pathmark -- had "attempted to embarrass him into supporting the employer mandate." He made clear, in no uncertain terms, his contempt for this alleged "scheme" and the White House in general. Later in the afternoon, he asked Senator Daschle to inform Senator Mitchell that he had heard that the White House has instructed Senator Mitchell to "organize against him within his Committee." Senator Mitchell will want to talk to you about this situation and how best to deal with it.

## III. PARTICIPANTS

The President
Majority Leader Mitchell and his staff, John Hilly
Pat Griffin
Harold Ickes
Ira Magaziner

## IV. SEQUENCE OF EVENTS

Majority Leader Mitchell arrives at time to be announced.

The President opens up meeting.

## V. PRESS PLAN

Closed press. (White House photographer will be present.)

6332

THE WHITE HOUSE

WASHINGTON

May 24, 1994

# MEETING WITH HOUSE AND SENATE HEALTH CARE LEADERSHIP

| | |
|---|---|
| DATE: | May 25, 1994 |
| LOCATION: | EF 100<br>The Capitol |
| TIME: | 4:15 PM |
| FROM: | Pat Griffin |

## I. PURPOSE

- Review current status of health care legislation in Committees.
- Outline necessity to complete committee action by July 4; floor action by August break; and final action by the end of the session.
- Restate bottom-line commitment to universal coverage.
- Underscore desire for bipartisan cooperation but need for Democrats to unify in any event.

## II. BACKGROUND

You will be meeting with the House and Senate leadership (and Chairmen with jurisdiction over health care) to discuss the status of health care reform. It is important that this meeting focus on progress that has been made as well as the obstacles that remain. In particular, it is important to proceed on the basis of a common understanding of the necessity to complete committee action before July 4.

Press coverage has raised expectations that this is a meeting to reassess and redirect strategy. We have worked to reverse that impression, characterizing the meeting as consistent with a pattern of periodic meetings to coordinate White House and congressional efforts. If the meeting is characterized as a reassessment of the Administration's health care strategy, raising expectations that even the objective of universal coverage is being reconsidered, it will become much more difficult for the committees to complete action.

This meeting will be very constructive if it produces a plan for completing action in June on legislation providing for universal coverage, making it possible for bills to be on the respective floors in July.

## III. SUGGESTED APPROACH

The regular order of listening to each chairman report on the status of health care in their committee is likely to produce a complete list of the remaining problems, but is less likely to underscore the progress that has been made. **We would suggest that you consider opening with remarks that illustrate that you are closely following the progress in the committees.** Following your brief remarks, we would suggest that you ask the Chairmen how you can assist them to achieve the mutual goal of reported bills by the July 4th recess.

## IV. STATUS IN EACH COMMITTEE

Ways and Means: Ways and Means will complete its preliminary business by Memorial Day, and will be prepared to begin marking up in earnest immediately after the break. While the Chairman must continue to work for a majority, and he will not have a mark to put before the Committee for consideration until CBO completes its cost estimates, the prospects for reaching a majority remain promising. Rostenkowski has met with his Republicans privately, expressing a willingness to work together, but he continues to assume that he will need 20 Democratic votes to report the bill.

Education and Labor: The Williams Health subcommittee plans to complete action on its mark either today or tomorrow. While the mark-up has been slow, there still appears to be a clear majority in both subcommittee and full committee for a strong bill. The bill clearly adds significant additional spending for increased benefits, but will come the closest to mirroring the Health Security Act.

Energy and Commerce: While Chairman Dingell has had a most difficult time, he is stuck only one vote short of reporting a strong bill from committee. There is some talk of reporting two bills -- Cooper and Dingell, which might be a way to break the deadlock there. Even if the committee cannot report out, the legislation could move forward, but progress in other committees should help. In particular, any indication from Senate Finance that an employer mandate is likely will help advance the issue in Energy and Commerce.

Senate Labor and Human Resources: Chairman Kennedy will complete his mark-up shortly after the Memorial Day break. Like the Education and Labor committee's mark, it adds some benefits. Unlike the House counterpart, the Chairman is trying to accommodate some Republican and conservative Democrat interests. Most notably, Senator Kennedy has incorporated provisions providing for a carve-out from the mandate for firms with 5 or fewer employees. It also provides for a voluntary alliance mechanism, as well as an alternative to opt into the Federal Employees Health Benefits Program (FEHBP).

Last week, in an unanimous vote, the committee voted for an amendment to reduce benefits if the costs of the benefits package exceeded the statutorily allowable limits. It is likely that there will be further notable amendments prior to the final vote on the mark, including expanding the firm carve out to 10 and under (by Senator Bingaman and others). Although there is likely to be additional bipartisan support during the amendment process, it is highly unlikely that any Republican (other than Senator Jeffords) will vote for the final package.

**Senate Finance:** Chairman Moynihan has been holding bipartisan and Democrats-only Finance committee meetings for a number of weeks. He announced last week in one of these meetings that he planned on going to mark-up soon after the members returned from the Memorial recess. The uncertainty surrounding the direction the Finance committee will eventually head is making other committees and members quite nervous. It is also fueling rather wild speculation in the press and in the lobbying community.

It seems clear that Senator Chafee is still trying to find a way to get cover to bridge to at least the conservative Democrats on the committees. The conservative Democrats, i.e., Boren, Breaux, and Conrad appear to be trying to do the same. So far, however, neither side has achieved agreement on an acceptable compromise package. Causing the greatest concern of late, however, is an ongoing flirtation with lowering the standard of the definition of universal coverage. Any signal that you are open to modifying your definition will be counterproductive.

## V. PARTICIPANTS

See attached

## VI. PRESS PLAN

Photo-op and very brief Q&A prior to House Caucus meeting

## VII. SEQUENCE OF EVENTS

-- Speaker Foley will introduce President.
-- President will give brief remarks.
-- Majority Leader Mitchell, Majority Leader Gephardt and others follow.

## VIII. TALKING POINTS

* Maintain commitment to getting a health care bill, with universal coverage, enacted into law this year.

* Willingness to do my part in assisting the Leadership and the Chairmen in getting the bills out of the Committees by the July 4th recess and onto the floor in July.

* Desire to reach out in a bipartisan way. Commend all attempts to do so, in particular, Chairman Moynihan (through his bipartisan Members meetings and Finance retreat) and Chairman Kennedy (through his work with Republicans during his mark-up.)

* While bipartisanship is a particularly difficult issue in the House, I know the Chairmen have made every effort to be fair and leave the door open for Republicans to work with them in the future.

* Acknowledge the significant progress that each of the Committees are making. In House, Chairman Rostenkowski has already started his mark-up. Chairman Ford is ready to bring his bill before the full committee right after the break; his subcommittee will be finished by Memorial Day recess. Chairman Dingell has made great progress and remains ready to take whatever steps necessary to move the bill along. Chairman Kennedy expects to complete full committee action right after the Memorial Day break. And Chairman Moynihan has his members focused on starting up their mark-up right after the break.

* I am encouraged that all of you are moving forward. I am particularly pleased that moderate and conservative Democrats are engaged in finding ways to create options that meet my bottom line while still reaching out to moderate Republicans.

* We need to talk this afternoon about how I can be of most assistance to you in our common effort to complete work on health reform.

Participants for the Leadership Meeting:

The Vice President
Majority Leader George Mitchell
Majority Whip Wendell Ford
Chairman Daniel Patrick Moynihan
Chairman Edward Kennedy
Speaker Thomas Foley
Majority Leader Richard Gephardt
Majority Whip David Bonior
Chairman John Dingell
Chairman Bill Ford
Chairman Dan Rostenkowski
White House Staff

6333

THE WHITE HOUSE

WASHINGTON

May 24, 1994

# HOUSE DEMOCRATIC CAUCUS MEETING

DATE: May 25, 1994
LOCATION: 1100 Longworth
(Ways and Means Committee Room)
TIME: 6:10 PM
FROM: Pat Griffin

## I. PURPOSE

The House Democratic leadership requested that you speak to the full Caucus prior to the Memorial Day break to send Members home on an upbeat note. The meeting is really more of a pep rally than a working session. The objective is to report on the progress that the Administration and Congress have made working together -- particularly the success of the economic program -- underscoring your commitment to adding real health care reform to the list of accomplishments this year.

## II. BACKGROUND

The focus in recent weeks has been heavily concentrated on the progress of health care reform in the Committees, and the leadership felt that before the Memorial Day break it is necessary to reach out more broadly to the Democratic membership with a positive message generally, and in particular on health care.

This meeting will follow immediately the leadership meeting, and you will be walking over from the Capitol accompanied by Speaker Foley, Majority Leader Gephardt, House Whip David Bonior, and Chairmen Rostenkowski, Dingell and Ford.

## III. AGENDA ITEMS

Remarks for the Caucus are attached.

There is considerable fear among House Democrats that a bipartisan deal will be struck after they cast difficult votes. Any impression that this is likely would have a negative impact and the leadership strongly advises that you avoid references to bipartisanship at the Caucus. Similarly, any indication that you are softening your position on key health care issues, particularly universal coverage, employer responsibility and cost containment, would be given very significant weight.

The crime bill is on the list of accomplishments as well. It is now in conference and you have urged Chairmen Brooks and Biden to resolve the differences quickly. The conferees are now working on funding issues, and the differences should be resolved by July 4.

## IV. PARTICIPANTS

All House Democrats are invited to the Caucus.

The Vice President

White House Staff

## V. SEQUENCE OF EVENTS

Caucus Chairman Steny Hoyer will introduce the Vice President. The Vice President will introduce you. After brief remarks you are likely to be asked to take questions.

## VI. PRESS PLAN

Walking in and out of the Longworth Building there will be stake outs. You will have the option of stopping or not.

The Caucus meeting itself will be closed press.

# Withdrawal/Redaction Sheet
## Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001. memo | Patrick Griffin to the President (2 pages) | 07/13/1994 | P6/b(6) |
| 002. memo | From: Patrick Griffin re: Meeting with Senator Conrad (2 pages) | 07/14/1994 | P5 6334 |

**COLLECTION:**

Clinton Presidential Records
Domestic Policy Council
Chris Jennings (Subject Files)
OA/Box Number: 21536

**FOLDER TITLE:**

POTUS Memos 1st Term [3]

Racheal Carter
2011-0747-S
rc688

**RESTRICTION CODES**

**Presidential Records Act - [44 U.S.C. 2204(a)]**

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

6334

THE WHITE HOUSE

WASHINGTON

July 14, 1994

# MEETING WITH SENATOR CONRAD

| | |
|---|---|
| DATE: | July 15, 1994 |
| LOCATION: | Oval Office |
| TIME: | 9:45 – 10:15 AM |
| FROM: | Patrick Griffin |

## I. PURPOSE

- To acknowledge the difficulties that Senator Conrad faces in his home state in supporting a health reform initiative closely associated with the Administration.

- To illustrate great flexibility and willingness to compromise to achieve a bill that assures universal coverage.

- To enlist his assistance in doing outreach to other moderates in the Senate.

- To urge him to be a positive force for the Democratic effort rather than inadvertently giving assistance to the Republicans.

## II. BACKGROUND

As one of the "rump group 7," Senator Conrad plays a significant role in the development in the Senate Finance Committee passed bill. He is extremely nervous about the health care issue and believes that any bill that can be labeled as a "Clinton bill" is poison in North Dakota. Just yesterday in a Democratic Members Finance Committee Meeting with Senator Mitchell, he was very negative about the prospects of health reform efforts. He will require an extraordinary amount of hand holding, "pork"–giving and hard–nose lobbying to attract and retain his support. In short, Senator Conrad will be one of our most difficult votes and someone who has potential to influence other votes, in particular Senator Dorgan.

## III. PARTICIPANTS

The President
Senator Conrad
Leon Panetta
Patrick Griffin
Harold Ickes
Steve Ricchetti

## IV. SEQUENCE OF EVENTS

Closed meeting with Senator Conrad in the Oval Office.

## V. PRESS PLAN

Closed Press. (White House Photographer will be present.)

# Withdrawal/Redaction Sheet
## Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001. memo | From: Partrick Griffin re: Recommended Telephone Call (partial) (1 page) | 08/08/1994 | P6/b(6) |
| 002. memo | From Patrick Griffin re: Meeting with Senator Lieberman (2 pages) | 08/02/1994 | P5 6335 |
| 003. memo | From Patrick Griffin re: Meeting with Senator Feinstein (2 pages) | 08/03/1994 | P5 6336 |
| 004. memo | From Patrick Griffin re: Meeting with Senator Feinstein (2 pages) | 08/05/1994 | P5 6336 Dup |
| 005. memo | From Patrick Griffin re: Meeting with Senator Feinstein (2 pages) | 08/08/1994 | P5 6336 Dup |
| 006. memo | From Patrick Griffin re: Meeting with Senator Nunn (2 pages) | 08/08/1994 | P5 6337 |

**COLLECTION:**

Clinton Presidential Records
Domestic Policy Council
Chris Jennings (Subject Files)
OA/Box Number: 21536

**FOLDER TITLE:**

POTUS Memos 1st Term [4]

Racheal Carter
2011-0747-S
rc689

**RESTRICTION CODES**

**Presidential Records Act - [44 U.S.C. 2204(a)]**

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6335

THE WHITE HOUSE

WASHINGTON

August 2, 1994

# MEETING WITH SENATOR LIEBERMAN

Date: August 2, 1994
Location: Oval Office
Time: 5:50 - 6:20 PM
From: Patrick J. Griffin

## I. PURPOSE

- To strongly emphasize how his recent comments suggesting his opposition to any employer contribution has been extremely unhelpful and unappreciated.
- To assert that his recent actions have not made it easier to reach consensus on a moderate package, but rather just the opposite.
- To strongly push Senator Lieberman to agree to be supportive of Senator Mitchell and his very modest trigger employer/employee requirement.

## II. BACKGROUND

In recent weeks, Senator Lieberman has been distinguishing himself as a thorn in the side of Senator Mitchell's efforts to achieve a consensus around a compromise health reform initiative. Although he has repeatedly told you and other Administration officials that he is only trying to be helpful, his comments have slowed momentum towards reaching a sufficient number of votes in the Senate to achieve an employer/employee mandate. Just last Thursday, for example, he distinguished himself among five other colleagues when raising his hand when Senator Mitchell asked who would support his employer/employee contribution.

Senator Lieberman has been meeting with the so called "rump/mainstream group" over the last few months. He is attempting to distinguish himself as a moderate member, seeking a bipartisan compromise. The most frustrating part of Senator Lieberman's objections relate to the employer requirement, a provision which he previously indicated he could support. Despite all efforts to try to attract him in the direction of Senator Mitchell's product, Senator Lieberman refuses to sign up. It may be time to raise other issues of equal or greater importance to him and to suggest that his recent efforts have not been appreciated or will be forgotten if he does not vote for Senator Mitchell's modest proposal. (Parenthetically, the issue that should cause the greatest concern to Connecticut members-- premium caps are not being included in the Mitchell bill, and rate setting provisions included in the House bill-- which are much more objectionable to the insurance industry-- have not been nor will be included in the Senate Majority Leader's proposal.)

## III. PARTICIPANTS

The President
Senator Lieberman
Patrick Griffin

## IV. SEQUENCE OF EVENTS

Closed meeting with Lieberman in the Oval Office.

## V. PRESS PLAN

Closed Press. (White House photographer will be present.)

6336

Cancelled

THE WHITE HOUSE

WASHINGTON

August 3, 1994

# MEETING WITH SENATOR FEINSTEIN

Date: August 4, 1994
Location: Oval Office
Time: 2:45 – 3:15 PM
From: Patrick J. Griffin

## I. PURPOSE

- To lock in Senator Feinstein's commitment to oppose any motion on the Senate floor to eliminate the fail-safe employer mandate provision.

- To impress upon her how important this vote is to your Presidency and the Democratic party and to strongly hint that a vote against the President on this issue will not be soon forgotten.

## II. BACKGROUND

Senator Feinstein's reelection campaign in combination with the influential opinion of her businessman husband has raised great nervousness in Senator Feinstein perspective on health reform. In recent months, she has raise serious reservations about voting any bill that is closely associated with the Clinton health reform proposal. In fact, she went so far as to remove her name as a cosponsor of the Health Security Act.

Most recently, her strongest supporters, including women's groups, the actors guild union and others have started to turn her opinion around in a positive way. At your most recent meeting with her, she indicated that she could support a 50/50 mandate, although she stated she still had concerns. Senator Feinstein has reiterated this position in a number of even more recent meetings with groups, lobbyists and members of Congress—–most recently with Congressman Waxman on August 3, 1994. Having said this, she also been reported saying to other groups that she retains serious enough objects to still oppose something like what Senator Mitchell has proposed.

III. PARTICIPANTS

The President
Senator Feinstein
Patrick Griffin

IV. SEQUENCE OF EVENTS

Closed meeting with Senator Feinstein in the Oval Office.

V. PRESS PLAN

Closed Press. (White House photographer will be present.)

6337

THE WHITE HOUSE

WASHINGTON

August 8, 1994

# MEETING WITH SENATOR NUNN

Date: August 9, 1994
Location: Oval Office
Time: 4:50 – 5:20 PM
From: Patrick J. Griffin

## I. PURPOSE

- To strongly urge him to support the Administration's position against a motion to strike the employer/employee fallback 50/50 mandate, which is likely to be offered to Senator Mitchell's bill later this week.

- To reiterate how important this vote is to your Presidency and any hope of getting a health care bill out of the Congress this year.

- To explain how the proposal that Senator Mitchell has designed gives cover on the mandate, since CBO says it will achieve 95% coverage without a mandate––and the employer requirement is simply a back–up safety net.

## II. BACKGROUND

Up until now, Senator Nunn, a cosponsor of the Breaux bill, has been rather quiet on health reform. Last year he and Senator Domenici served as co–chairmen of a Center for Strategic and International Studies Task Force on Health Care Reform on which Senator Rockefeller also served. They recommended a minimalist managed care approach.

In the deliberations now underway in Congress, his preference remains a bipartisan incremental approach. He fears overly optimistic fiscal projections and potential damage to small business. The press has reported Nunn to be so opposed to the employer mandate that he will vote against any reform bill in which it is included. Local groups report that Nunn opposes a comprehensive benefits package.

The First Lady believes that the way to approach the Chairman of the Armed Services Committee is by using the effect of base closing and defense conversion on local communities's health facilities.

III. PARTICIPANTS

The President
The Vice President
Senator Nunn
Patrick Griffin
Steve Ricchetti
Harold Ickes

IV. SEQUENCE OF EVENTS

Closed Meeting with Senator Nunn in the Oval Office.

V. PRESS PLAN

Closed Press. (White House photographer will be present.)

# Withdrawal/Redaction Sheet
## Clinton Library

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001. memo | From: Patrick Griffin and Harold Ickes re: Meeting with Senator Mitchell (3 pages) | 09/04/1994 | P5 6338 |

**COLLECTION:**
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## RESTRICTION CODES

**Presidential Records Act - [44 U.S.C. 2204(a)]**

**P1** National Security Classified Information [(a)(1) of the PRA]
**P2** Relating to the appointment to Federal office [(a)(2) of the PRA]
**P3** Release would violate a Federal statute [(a)(3) of the PRA]
**P4** Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
**P5** Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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**b(7)** Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
**b(8)** Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
**b(9)** Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

6338

THE WHITE HOUSE

WASHINGTON

September 4, 1994

## MEETING WITH SENATOR MITCHELL

Date: September 5, 1994
Location: Maine
From: Patrick J. Griffin and Harold Ickes

## I. PURPOSE

* To reiterate your appreciation for all the hard work Senator Mitchell has done on behalf of Administration throughout the Congress.

* To illustrate how you recognize the difficult political position he is in with regard to crafting a compromise health reform bill that works -- both in terms of substance and in attracting a sufficient amount of votes.

* To raise real concern about the type of policy Senator Mitchell might have to settle for in order to get enough support from the moderate Republicans (who are apparently trying to reach out to Dole) and to indicate your nervousness that going too far towards the right might produce a bill that could do more harm than good.

* To share with him our perception that the House Leadership (particularly Gephardt and the Committee and Subcommittee Chairs) is <u>unlikely</u> to to be receptive to a significant (but in their minds flawed) health reform initiative that they either thought (and frankly hoped) was dead OR have little or no control over shaping. (Interestingly -- and not surpisingly -- the one exception to this position may well be the Speaker.)

* To find out where Senator Mitchell currently stands on the feasibility and advisability of pivoting off his current negotiating effort with Senator Chafee et al (if it is not going well) into a much more incremental bill that uses smaller Medicare cuts and the tobacco tax to pay for benefits for kids and the elderly.

## II. BACKGROUND

Although it remains very difficult to envision how any overly substantive legislation will emerge from the Congress this year, recent developments make clear that it is at least conceivable. It is even easier to imagine how an agreement between Senator Mitchell and the "mainstream" group could be achieved.

The Majority Leader's exceptional negotiating skills and his great desire to obtain a compromise that succeeds in getting the bill off the Senate floor, combined with the "mainstream" group's determination to remain in the limelight and in the driver's seat, could well produce a "deal."

A Mitchell/"mainstream" agreement has the potential to be extremely problematic. Drafted in the current "compromise" and "moving to the right" environment, the product could raise premiums of the currently working insured by unacceptable levels, while still leaving large numbers of Americans without insurance. Should such a package become law, we (and the Democratic party) would be very vulnerable to being blamed for this and other problems that ensued. Such an outcome would also further erode the public's confidence in the Government and would make it very difficult to build on the reforms that we did pass.

Of additional concern is the fact that the "mainstream" group has every reason to delay a final agreement as long as possible. It is clear the Republicans want to avoid a House/Senate conference and are contemplating a strategy that would lay the bill on the House's doorstep for a "take it or leave it" vote.

Delay strengthens the bargaining hand of the Republicans and enhances their ability to cast Democrats as obstructionists. Moreover, it gives even more time for the "mainstream" Republicans to attempt (as they are apparently now doing) to reunite with Dole. Obviously, the worst outcome for us would be for the Republicans to force the Democrats to kill bad legislation that has been successfully sold as "good" and "moderate"to the elite media.

The House is definitely divided on the health reform issue, with the Speaker clearly more inclined towards a minimalist approach than Majority Leader Gephardt. Not surprisingly, the House continues to be in a reactive (to the Senate's actions) mode. They do not want to join this issue until the Senate's package becomes clear. The risk with this approach is that a delayed Senate bill is likely to leave the House with nowhere to go other than the Senate position, as much as some will object.

Even if the House initiated its own alternative health reform initiative, it is not altogether clear it would be a package we would be comfortable with. In fact, the staffs of Gephardt and the Committee Chairs think it would be at least as likely -- if not more -- to be just the opposite. As such, the House environment underlies the extraordinary importance of any product emerging from the Senate.

With the above in mind, it is advisable to make Senator Mitchell clearly aware of our concerns. It is also advisable to get a sense of where he thinks he might go (or be forced to go) in his negotiations. It appears that this also would be an opportune time to, once again, briefly kick around the concept of a fall-back package of modest but politically and substantively attractive provisions. (You started this conversation during your last meeting, but Senator Mitchell did not focus.) Such a substitute could be used at any strategically appropriate time.

We may also want to engage the House Leadership in discussions about the advisability of a House fall–back package. Despite the risks mentioned previously, pushing something proactively -- rather than simply reacting to whatever the Senate and House Republicans and conservative Democrats might produce -- might better protect the Democrats against the charge of being obstructionists. Moreover, it could give the Party the opportunity to highlight the Republicans true, obstructionists colors.

Attached is the latest version of the package that Ira and others are developing. In many ways, this alternative (which is similar to one being advocated by Senators' Harkin, Levin and Pryor) could be an easier sell because it is much more modest, should not harm the current market, has limited Medicare cuts and provides coverage to sympathetic groups -- kids and the elderly. It is clear, however, that our close association with it could do more harm than good; in other words, we do this package no favor by claiming it as ours -- it must remain a package authored by the Congress.

We strongly advise that our version of the alternative NOT be handed to Senator Mitchell at this time. In addition, the discussion around it should not get overly detailed. This conversation should be used merely to gauge his openness to such an alternative. It is important to remember that the only way for this back–up to succeed is for Senator Mitchell to have ownership over and investment in it.

It is certainly possible that Senator Mitchell's bottom line may have a lower threshold for acceptability than the Administration's. **It is therefore critical that the Administration be clear and direct with Senator Mitchell on any major concerns we have with where the Senate bill is or may be headed.**

## POLITICAL CONCLUSION

This memo has been particularly focused on our fears about the type of flawed policy that could emerge from the legislative process if we do not engage. It is equally important to point out that engaging the Congress at any level also carries risks.

No matter how careful we are in assuring that it is the Congress, and not the Administration, who is the lead sponsor of any alternative, we should not fool ourselves into thinking that we can extricate ourselves entirely from such a package. The perception, if not the reality, is that we are bonded at the hip with the Leadership -- particularly on the Senate side. As a result, a failure to pass any alternative carries with it a risk that the Administration will be labeled as a two–time failure. Therefore, an argument could be made for completely extricating ourselves from the legislative process now and laying the blame on the Congress.

Having said the above, even if a minimalist effort fails, we believe it would likely achieve two important ends: (1) it should stop a potentially flawed policy from being passed (and then possibly vetoed by you) and (2) it would enable us to better defend ourselves against being labeled obstructionists and better lay the more appropriate blame on the Republicans doorstep. With this in mind, we believe this course of action is worth the risk.