

## Congressional Closeup by Carl Osgood

### Patients Bill of Rights Soon To Take Center Stage

The Democratic-backed Patients Bill of Rights has gained new momentum, not only from the Democratic takeover of the Senate, but also from the endorsement of the Kennedy-McCain bill by Rep. Charles Norwood (R-Ga.).

Norwood, who co-sponsored similar legislation in the last Congress, had been withholding his endorsement at the behest of the White House, to give the Administration time to develop its own proposal. However, after weeks of rumors, Norwood finally came out in favor of the House version of the Kennedy-McCain bill, co-sponsored by John Dingell (D-Mich.) and Greg Ganske (R-Iowa). Norwood said that the Dingell-Ganske bill is "the only bill that guarantees a patient will find justice if they are injured or killed from improperly denied care."

In the Senate, Majority Leader Tom Daschle (D-S.D.) intends to bring the bill to the floor as soon as the education bill is disposed of. The bill faces not only the stiff opposition of the health maintenance organization (HMO) lobby, but also a GOP alternative sponsored by Bill Frist (R-Tenn.) and John Breaux (D-La.). The primary issue of contention is the right to sue health plans over denial-of-care decisions. The Kennedy-McCain bill would allow lawsuits in state courts involving medically reviewable decisions, whereas benefits-only disputes would be forced into Federal courts. The Breaux-Frist bill would force all lawsuits into Federal court, limit pain-and-suffering awards to \$500,000, and prohibit punitive damages.

Both bills have external review processes, but the Breaux-Frist bill requires the exhaustion of all appeals before a lawsuit can be filed. It also allows the health plan to assign cases to a review panel of its choice. Both

bills provide expanded rights for emergency room treatment, except that the Breaux-Frist bill doesn't cover necessary post-stabilization care.

On June 12, Daschle told reporters that he believes that the votes are there to pass the bill in the Senate. He also said that he'd like to see the debate handled the way the debate on McCain's campaign finance reform bill was handled, that is, with a full debate and an open amendments process. He said that that debate "was a model for how we might consider other pieces of legislation."

### Democrats Take Control of Senate

On June 6, the Senate convened under control of the Democrats for the first time since 1994. The night before, Jim Jeffords' (I-Vt.) desk was moved over to the Democratic side of the aisle, and the new Senate Majority Leader, Tom Daschle (D-S.D.), gavelled the Senate into session. The change-over rapidly expressed itself in the form of changing agendas. However, negotiations over committee makeup have yet to get beyond such sticking points as funding ratios and disposal of Bush Administration nominees.

Daschle told reporters on June 8, that in addition to the Patients Bill of Rights (see below), the Democrats intend to bring to the floor legislation on a Medicare prescription drug benefit, raising the minimum wage, hate crimes, and election reform. Also receiving close scrutiny will be the energy crisis and the Bush national missile defense (NMD) plan. On NMD, Daschle said that to commit "the tens of billions of dollars to deployment of a system that we don't know works just seems backward to most of us."

On the organizational front, how-

ever, little has been said, beyond vague GOP threats to filibuster the resolution if they don't get what they want on nominees. Daschle would only say to reporters, "I do believe that things are moving ahead." Lott, on June 12, indicated that there is no problem, and said, "We're making progress." Both agreed that saying too much in public about it would compromise the negotiations. Daschle did say that with regard to nominees, "I don't believe in payback."

### Bush Nominee Grilled On Treaty Obligations

On June 12, Douglas Feith, nominated to be Undersecretary of Defense for Policy, was grilled by Sens. Carl Levin (D-Mich.) and Max Cleland (D-Ga.) on issues ranging from the Anti-Ballistic Missile (ABM) Treaty to policy toward Iraq. Levin and Cleland challenged Feith, a National Security Council staffer and Pentagon official during the first Reagan Administration, to explain the variance of views between numerous articles he's written since the late 1980s and stated Bush Administration policy.

Levin especially questioned Feith about a legal memorandum he wrote in 1999, which states that any bilateral treaty becomes extinct when one of the parties to the treaty no longer exists. The memorandum was written to address the ABM Treaty, but could well be applied to all treaties that were ratified between the United States and the Soviet Union. "The problem is," Levin said, "you don't think there is an ABM Treaty. . . . You're in sharp difference with the Bush Administration's own view, which is that there is a treaty; in fact, they're seeking to modify that treaty."

Cleland questioned Feith on a vari-

ety of issues, including arms control treaties, but was most concerned about Iraq. Cleland asked Feith if he favored a strategy of “supporting the Iraqi opposition, including protection by the United States Air Force, and necessary U.S. ground troops.” Feith answered that “the United States has a strong interest, which I know is shared widely on this committee and throughout the Congress, in facilitating as best we can, the liberation of Iraq.” Cleland replied, “That’s the most disturbing answer of all. As somebody who was committed to a ground force effort in Vietnam with no particular strategy for winning and no particular exit strategy, your answer disturbs me greatly.”

## **W**ill Democrats Revisit President Bush’s Tax Cut?

On June 7, President Bush signed into law the tax cut bill, but the controversy generated by the bill didn’t end there. Within hours, news analyses had dubbed the bill “The Tax Accountant Relief Act of 2001,” because it introduces new complexities into tax law. As Democrats were making an issue out of the new complexities, the GOP was vowing to make the changes permanent.

Shortly after Bush signed the bill, Senate Budget Committee Chairman Kent Conrad (D-N.D.), along with several other Democrats, appeared before reporters to denounce the bill as “full of gimmicks.” Conrad said that under the new bill, 35 million people are going to be hit with the Alternative Minimum Tax, up from the current 2 million. The result will be that their taxes will actually increase, not decrease.

Then, there’s the issue of the nine-year decade. In order to get the bill

passed in the Senate (with a simple majority, instead of a filibuster-proof 60 votes), the GOP ran it through as a reconciliation bill, for which a different set of rules applies: Under the reconciliation rules, tax changes can’t be made permanent, so that the changes will “sunset” on Dec. 31, 2010, cutting off the last year of the decade in order to keep the cost of the bill at the \$1.35 trillion set by the budget resolution. Jack Reed (D-R.I.) declared that these “gimmicks hide the true cost of the tax cut, and it’s very unlikely that they’ll survive public scrutiny. We will have to respond and fix these defects in the tax bill.”

That’s not likely to happen right away, however, given that 12 Democrats voted for the bill. “We’re trying to highlight what’s happened, here,” Conrad said, “so that as we go ahead, people will understand what our views were, what we saw as the deficiencies of this bill, and they’ll be able to make a judgment who is responsible for this fiasco.”

House Republicans are unfazed, however. Majority Leader Dick Armey (R-Tex.) declared on June 6, “This tax bill is the beginning, not the end.” Armey not only supports making the tax cuts permanent, but also supports cutting the capital gains tax. The Democrats aren’t interested in any new tax cuts.

## **S**chool Vouchers Are Defeated in Senate

On June 12, the Senate voted 58-41 against an amendment to the education bill that would have set up a \$50 million school vouchers demonstration program. The program would have been voluntary, and limited to families with less than \$32,000 a year income whose children were in schools de-

finied as “failing” for three years in a row. It also would have been available only in ten school districts in three states.

Judd Gregg (R-N.H.), who sponsored the amendment, admitted that the underlying premise of the amendment is that “there will continue to be [public] schools that fail,” despite the many attempts in the bill to address failing schools. Gregg argued, therefore, that “one option that should be given to parents of those children is to allow them . . . to have other options,” including sending their children to private schools.

The Democrats argued that vouchers pull resources out of public school systems. Edward M. Kennedy (D-Mass.) said that voucher programs, where they’ve been tried, have never worked, and there’s no guarantee that private schools have to take any students from public schools under the program. He pointed out that, under the amendment, it’s not the parents who have the choice, but rather the public school systems. “The idea that this is going to open doors for parents whose children are in failing schools as a way out,” he said, “raises a false hope, and it is one that should be rejected.”

Chris Dodd (D-Conn.) said that the real idea behind the amendment, “is to get \$50 million in the door to demonstrate . . . that we ought to try this as a national scheme and underwrite people’s desires to send their children to private or parochial schools.” What ought to be done, instead, is provide resources for “better qualified teachers, smaller class size,” and so forth.

The debate over vouchers may not be quite over yet, however. John McCain (R-Ariz.) is reportedly waiting in the wings to bring out an amendment to establish some kind of vouchers program for Washington, D.C.