

President Clinton overrode Army opposition and granted a unique burial waiver at Arlington National Cemetery to C. Everett Koop at a time when First Lady Hillary Rodham Clinton had enlisted the former Surgeon General to support her national health care plan, internal documents showed yesterday.

The story goes on to talk about not just the dynamics of an implied deal, but it is far more serious than just an implied deal in my opinion, Mr. President, because what we are talking about here is giving sacred resting spots of our Nation's veterans away as deals, as rewards, as bargaining chips, as thank yous, as awards, as quid pro quos.

Mr. President, this is not only a bad precedent and very dangerous for the future of our country, but it flies in the face of the honor and the trust that America has always placed in its veterans and their service to our country. This is hallowed ground, Mr. President, this is sacred ground. Arlington National Cemetery is a national shrine. It should be a national shrine. We have very strict regulations and limitations as to who is allowed the great and distinct honor to be laid to rest at Arlington.

Mr. President, I have no quarrel with Dr. Koop. He was a very successful and important Surgeon General, a renowned doctor, and he has done many good things for his profession and our country and our Government. But someone has to talk about this because, you see, there is a connection; there is a connection between what obviously was done and what is not being done today for our active military men and women in uniform and for our retirees. I would like to read just two lines from one of Rudyard Kipling's finest poems. This poem, Mr. Kipling wrote is called "Tommy." Many veterans will know this poem. Two of the last lines go like this:

For it's Tommy this an' Tommy that, an' chuck him out the brute!

But it's "savior of 'is country" when the guns begin to shoot.

Mr. President, this is a time when this body will debate and vote on shortly—in the next few weeks—whether we are going to ask our military, our men and women in uniform, who we call on every day to protect our liberties around the world, and we are going to commit them to more responsibility in Bosnia, NATO expansion, Iraq, maybe, yet we are now in a position to be giving away burial spots that were originally always intended for the man and the woman who put on America's military uniform and serve our country with great honor and great distinction. This is also a time, Mr. President, when veterans are having difficulty using the veterans' preference in getting jobs in the Federal Government. We are asking them constantly, especially over the last few years, as we have cut more and more of our defense budget, to do more with less. We are asking them to go on longer deployments and more deployments.

The state of our military housing is embarrassing. Yet, the President is very proud to submit a military budget that has no increases. I watched this morning the President's news conference, bragging about this small, limited little Government we have, that we have cut Government. Well, again, as I said last week, I don't know how he measures the cutting of Government, but the fact is we are going to spend \$1.7 trillion on this Government this year. The Defense Department budget continually gets hammered and hammered. There has been no increase, but a 40 percent reduction in the last 10 years.

Health care. What have we done about health care for our retirees? We have done nothing. We have essentially taken away the promise that we made to these men and women in uniform, who served our country in time of war and peace, and now we are saying you need to get into the Medicare queue. I am sorry we cut back on military hospitals and on military personnel. Don't we understand that this may well inhibit readiness, retention, recruitment, and the best people for the military? Of course, it will.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. HAGEL. I thank the Chair.

In closing, Mr. President, this is a bad signal and a bad symptom. I hope that the Congress of the United States addresses this issue.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

#### THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT

Mr. BYRD. Mr. President, the provisions of ISTEA, the Intermodal Surface Transportation Efficiency Act, expired on September 30, 1997. The Senate took up the ISTEA reauthorization bill on October 8, 1997, but between that date and October 29, the Senate was unable to adopt even one substantive amendment due to the impasse over Senate consideration of campaign finance reform legislation. As a consequence, the six-year ISTEA Bill was taken down and returned to the calendar.

Finally, on November 10, the Senate passed a short-term extension of our existing highway and transit programs, thus delaying the completion of Senate action on our nation's surface transportation policy until the second session of the 105th Congress, the first week of which has now passed into history. Despite the stated intentions last November of the distinguished Majority Leader to take up the ISTEA reauthorization bill, S. 1173, at the beginning of this session, the bill has not been taken up, it is not before the Senate, and we are still operating on the short-term extension.

With each passing day, I am increasingly concerned that the Senate may not return to the ISTEA reauthoriza-

tion bill until after action is completed on the fiscal year 1999 budget resolution, which may not occur until late spring.

I supported the enactment of the short-term extension bill back in November, but, as I said then, it was only a stopgap measure, and it provided only for one-half year of funding for our existing highway program, the highway safety programs, and the transit programs. Meanwhile, the various highway departments in the 50 states cannot establish a budget for the current fiscal year because they do not know the final level of federal resources they will receive even for this fiscal year which ends on September 30. The short-term extension bill will expire at the end of March, when the advent of spring will have made its appearance. Whether a new short-term extension of our highway programs will occur by the end of March is highly questionable. Meantime, how can the Governors and the highway departments of 50 states plan for the construction season that will soon be opening throughout the country? It is a classic case of dawdling and indecision in Washington which is throwing our states into highway planning and budget limbo!

Dante, the author of "The Divine Comedy", in Canto IV, described Limbo, as the "first circle of Hell." This, it seems to me, is a very apt description of the situation in which the Governors and heads of highway departments throughout the states now find themselves as they attempt to budget and plan for the upcoming construction season, and their situation may very well become worse than hell as, more and more, they find themselves unable to do any long-term budgeting and planning in respect to highway construction.

They cannot develop and implement any long-term financing plan because they do not know the level of federal resources that will be available to them over the five years following the current fiscal year. This is an impossible situation for our state highway departments. Given the costs and the duration of major highway projects, and the complexities associated with short construction seasons in our cold weather states, planning and predictability are essential to the logical functioning of our Federal-Aid Highway program. That kind of rational planning is precisely what our states cannot do at this time because of the inaction of Congress regarding the highway bill. This is not how our state and local transportation agencies should have to do business. It is, nonetheless, the precise circumstance in which our transportation agencies are being placed due to the failure of Congress to enact a multiyear ISTEA reauthorization bill in a timely manner.

It is not only unreasonable, it is also very unfair, for Congress—because of inaction—to place this burden upon the Governors, the Mayors, and the highway agencies throughout the country.

Plainly speaking, Congress is shirking its responsibility!

Meantime, while Congress sits on its hands, Americans who buy gasoline are continuing to pay a 4.3 cents-per-gallon gas tax every time they drive up to the pump. That gas tax previously went to deficit reduction, but it is now being deposited in the highway trust fund, and Congress should pass legislation to authorize that it be spent on our nation's considerable highway needs. The money from these gas taxes is accumulating in the highway trust fund, but Congress has passed no legislation authorizing it to be spent for surface transportation needs. The American people have been told by the Congress that monies in the highway trust fund would be spent for highways and other surface transportation needs.

And as long as Congress fails to live up to its commitment the American people are being misled. As long as Congress fails to live up to its commitment, the American people are being duped into believing that the gas taxes in the highway trust fund will be spent on highway construction and other transportation needs, but Congress, meanwhile, dillydallies, sits on its hands, and lets these tax revenues build up in the highway trust fund. It amounts to an abuse of the trust which the American people have placed in us. Meanwhile, the potholes deepen, the asphalt chasms open wider, and danger stalks our nation's highways.

By the end of this fiscal year, more than seven billion dollars in additional new revenues will have been deposited into the highway trust fund, not one penny of which is, as of this moment, authorized to be spent on highway construction and other surface transportation needs under the committee reported ISTEA bill.

Instead, these funds will continue to sit in the highway trust fund, earning interest, and being used as an offset to the federal deficits—if, indeed, they are not siphoned off, in the meantime, and used for purposes other than highway and other surface transportation needs.

The time to act on the highway bill is now! The first week of the second session has gone with the wind. We are now into the second week. The clock is ticking and the calendar is running. The highway construction seasons will soon be upon us, and yet, as of this moment, there is no indication that Congress will return to the highway bill.

I hope that the Governors, who will soon be meeting in the Nation's Capital, will contact the leadership in both Houses and request that the highway bill be taken up immediately. I hope that the Mayors and the state highway departments will do the same. The first day of spring is only seven weeks away, and Congress must begin promptly to debate the highway bill in both houses if we are even to hope that the bill can be enacted by the time that "the lark's on the wing" and "the snail's on the thorn." It should be done. But it can be done only if the leadership will bring

up the bill. I respectfully urge the Senate leadership to do that promptly.

I thank the Chair. I yield the floor.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Thank you, Mr. President.

#### MEDICARE BENEFICIARIES FREEDOM TO CONTRACT ACT

Mr. KYL. Mr. President, I want to provide a brief update for my colleagues this morning on the Medicare Beneficiaries Freedom To Contract Act.

This is the bill which has 46 cosponsors in the Senate, 150-some cosponsors in the House, led by the chairman of the House Ways and Means committee, BILL ARCHER, to restore the freedom to America's senior citizens to seek the medical care they desire rather than to be dictated to by the Medicare Program to only receive that care under Medicare that they may desire.

Here is the situation as it evolved. Mr. President, up until January 1st of this year, senior citizens in this country had always had the right under Medicare to go to the doctor of their choice, and if they wanted to be treated outside of Medicare they could do that. Of course, Medicare couldn't pay the bill. But that freedom always existed. As of a couple of years ago, the administration began to threaten physicians saying that they had to submit all bills for senior citizens to Medicare. The rationale was that anybody over 65 was "Medicare eligible" because they were 65, and if they were "Medicare eligible" then a doctor had to submit the bill to Medicare. So physicians began being concerned that they couldn't treat people outside of Medicare even though that had always been the patient's right and the physician's right.

To ensure that situation wouldn't continue, I introduced an amendment last year during the negotiations—during the time we were negotiating the balanced budget amendment—and it passed here under a vote of 64 to 35 to ensure that patients had the right to "privately contract," as it is called, and go to the doctor of their choice; not necessarily to go to Medicare, if they didn't want to. That amendment passed. It became part of the Medicare portion of the balanced budget amendment. But in the middle of the night some negotiators from the House and Senate caved in to the President's demands that if the Kyl amendment stayed in then the entire balanced budget amendment would be vetoed and, therefore, caved into his demands that a special limitation be placed on any physician providing this care; namely, that the physician had to get rid of all of his or her Medicare patients for a 2-year period in advance or you couldn't treat the person outside of Medicare. That is what went into effect January 1st.

This legislation that I just reported on will remove that 2-year requirement

so that the patient has the freedom to go to the doctor of his or her choice. Even though you are over 65 years old, you don't have to be treated under the Medicare system if you do not want to be, and the physician has the right to take care of you without getting rid of his or her other Medicare patients.

When did this situation arise? There are a lot of different situations. Take for example the psychiatric patient who doesn't want the records in Medicare to reveal the kind of treatment that patient has been receiving. Under the current administration plan—Medicare or no care—you either do it under Medicare or you don't get the treatment. No doctor can take care of you. Our bill would say no. You can go outside of Medicare and be treated. Again, you have to pay the bill—not the taxpayer. But you can do it.

Another case: You are in a small town. There are not that many specialists. You need specialty care. You go to a doctor who says, "I am not taking any more Medicare patients. The President and the Congress have cut our payments so much that it don't pay me anymore. In fact, I lose money on every one. I will take care of the ones that I have, but I am not going to see any more new Medicare patients." This enables the patient to say, "Fine. Just bill me. I will pay you. We will save Medicare the money." And that will be the end of it.

Another situation: You want to go to that specialist. Maybe it is a person who is on a university faculty who is not taking Medicare patients, and you want to be treated by that person because it is the one person that can save your life or your spouse's life. You ought to have the right to do that in this country. Under the current law that wouldn't be possible.

So our legislation restores the right of senior citizens—and all the rest of us have this right—to go to the doctor of their choice, and if they want to be treated outside of the Medicare system have the right to do that. It does not enable the doctor to charge more money to Medicare. Whatever the doctor charges they have to pay outside of the Medicare Program.

So this is not going to be used very often, I suspect. But in those situations where people really want to take advantage of their freedom in contract they ought to have the right to so.

Mr. President, in conclusion, this is not something that is just of concern for America's senior citizens, because all of us should be concerned about a fundamental right being taken away from us—the right to provide the health care that we want for ourselves or our families.

As the President is talking about making Medicare available to more and more people at younger and younger ages, I would have to ask them: Is it such a good deal to buy into Medicare when the first thing that happens when you do that is you give up a basic right that you have today—that every one of