

members accused of crimes the option of separation from service instead of facing a court-martial.

Removing convening authority from commanders is critical to providing a system that is fair and perceived to be fair by survivors and the accused. Only one-third of survivors of sexual assault in the military are willing to come out of the shadows to report their crime, showing a clear lack of trust in the system. 44% of survivors indicated they would have been more likely to come forward if a prosecutor were in charge of the decision over whether to move forward with their case. With commanders retaining convening authority under the NDAA text, the Special Trial Counsel (“STC”) will still be necessarily reliant on the commander for the prosecution of a case. The perception and reality of commanders influencing the outcome will be unavoidable.

MJIIPA is the only provision that would empower impartial, independent prosecutors to make the vital decisions necessary for a criminal justice system shielded from systemic command influence and other structural defects. It is the only system that uses the UCMJ as it is designed to implement military justice: empowering officers to execute convening authority.

#### NDAA TEXT IS NOT COMMANDER FRIENDLY

Under the Special Trial Counsel program alone, there is a lack of accountability for the system. Commanders remain in charge as the convening authority, but their hands are tied from making key decisions such as the referral of charges. The STC has some of the decision-making authorities, such as referral and the ability to make plea deals, but the commander is ultimately responsible for creating the court-martial, approving witnesses, etc. Thus, there is not one figure who can be held accountable for the military justice process. Just as it would be unfair to send a commander into combat without all the tools at their disposal, it is unfair to commanders to keep them in charge of the court-martial but limit their decision-making in this way. Under MJIIPA, commanders are allowed to focus on warfighting, training, and taking care of service members while independent military lawyers take over the military justice system for serious, non-military crimes.

The STC program continues the risk of unlawful command influence. Every year, appellate courts throw out convictions for serious crimes because the commander oversteps their bounds. If commanders are still in charge under the STC program, but restricted in new ways, this will only increase this risk.

Under the STC program in the NDAA text, the commander will be unable to give non-judicial punishment (“NJP”) to the accused for lower-level conduct. If the STC decides not to prosecute, the commander will be unable to credibly impose NJP. For example, if the STC gets a stalking case and decides not to prosecute it, the commander may want to do non-judicial punishment, but if the accused refuses, the commander will be unable to send the case to court-martial. That takes the teeth out of the NJP. The accused walks away with no punishment.

#### NDAA TEXT CREATES AN EVEN BIGGER JUDICIAL BUREAUCRACY THAT WILL SLOW DOWN JUSTICE FOR SURVIVORS

See Table B below. Some crimes will be prosecuted by Special Trial Counsels while the majority of the crimes will remain within the chain of command. The bifurcated system will create complexity and unfairness due to different processes for different crimes.

Under the NDAA text, responsibilities will be divided between the commander, the Spe-

cial Trial Counsel, the Service Secretaries and the TJAGs (the head Judge Advocate of every Service), which will add layers of bureaucracy, slowing the process down and making it take even longer for survivors to see justice.

#### NDAA LANGUAGE DOES NOT INCLUDE ALL SERIOUS NON-MILITARY CRIMES (INCLUDING SEXUAL HARASSMENT AND CHILD ENDANGERMENT), CREATING A BIFURCATED, UNEQUAL SYSTEM FOR SURVIVORS AND ACCUSED

See Table B. The NDAA also fails to draw a bright line at all serious, non-military crimes. That bright line is critical, because it avoids creating so-called “pink courts” focused solely on sex crimes, which only further stigmatizes survivors—something survivors have specifically asked us to avoid doing. Drawing that bright line also avoids creating an inherent inequality in the military justice system.

The crimes chosen for the STC program are seemingly random. Although sexual assault and kidnapping are included, sexual harassment (which was in both the House and Senate versions of the NDAA), child endangerment, murder of a pregnant woman, and obscene mailing are not (to name a few). How does a commander have more expertise on the prosecution of child endangerment than an independent military prosecutor?

Every victim and every accused offender in these serious cases should be treated equally and have access to a system that is professional and unbiased. It is unrealistic and untenable to leave these complex legal decisions to commanders whose expertise relates to warfighting, not the minutiae of the law.

#### OTHER PROBLEMS WITH THE NDAA TEXT

Implementing the requirement that the senior STC be an O-7 will take years because there are few generals or admirals with significant litigation experience. There is a very limited number of military lawyers in the ranks of Admiral and General, and most, if not all, of them are generalists rather than military justice experts. It will take years for the services to develop the officers necessary to fill this role. MJIIPA on the other hand allows O-6s to fill these roles. There are sufficient O-6s with military justice experience currently in the services.

#### SENATOR GILLIBRAND IS CALLING FOR AN UP OR DOWN VOTE ON MJIIPA

The process is broken: MJIIPA was included in the Senate Armed Services NDAA bill and passed out of committee 23 to 3. It has 66 cosponsors in the Senate and 220 in the House. And yet without a vote or debate on the floor, this bipartisan, bicameral bill was gutted from the NDAA.

MJIIPA and the new STC system can work well together, with MJIIPA acting as the overall structure and STCs prosecuting special victim cases.

A good overall explainer: <https://www.justsecurity.org/79481/ndaa-a-missed-opportunity/>

Mrs. GILLIBRAND. I yield the floor. The PRESIDING OFFICER. The Senator from Louisiana.

#### UNANIMOUS CONSENT REQUEST—S. 3344

Mr. KENNEDY. Madam President, I want to talk about the American Taxpayer and Medicare Act, of which I am a sponsor. Cosponsoring this legislation with me are Senator GRAHAM, Senator HAGERTY, Senator TIM SCOTT, Senator RICK SCOTT, Senator BLACKBURN, Senator HAWLEY, Senator COTTON, Senator BOOZMAN, and others who are likely to join.

I am going to make a few remarks about the bill, and a number of my col-

leagues would also like to comment about my bill, so I will be yielding to them. At the end of my colleagues' remarks, I will have a motion to make.

As a result of the American Rescue Plan, working in conjunction with the Budget Control Act of 2011, there are cuts scheduled to take effect in 2022 with respect to Medicare and with respect to our farmers.

Medicare specifically, unless my bill passes and unless this body takes action, will be cut \$36 billion. Those Medicare cuts will include—but they are not limited to—they will include cuts to cancer treatments for our elderly. Those cuts would reduce laboratory fees and analyses that our seniors depend on every single day.

For the reasons I just referenced, our farmers are also going to get cut unless we take action—specifically, the crop insurance programs on which our farmers rely.

We are recovering from a pandemic, as we all know. Now is not the time, in my judgment, to put this burden on our seniors and on our farmers. Our seniors, part of the “greatest generation,” don’t deserve them, and our farmers, the backbone of America, don’t deserve these cuts either. In fact, America was born on the farm, and I think we ought to keep that in mind.

At this time, I would yield to the senior Senator from Arkansas, Senator BOOZMAN.

Mr. BOOZMAN. Madam President, I want to thank Senator KENNEDY for his help and his leadership in this effort. We simply have to support America’s healthcare providers, farmers, and ranchers. Doctors and the entire medical community are still struggling after being unable to perform non-emergency procedures during the pandemic.

With an aging population and more physicians not accepting Medicare because of insufficient payment, Medicare beneficiaries would face a reality of less access to quality care. That is why I introduced my own legislation to prevent these damaging cuts from harming our physicians, our providers. Our agriculture community is also struggling, and we must protect our farmers and ranchers by ensuring their operations can stay afloat and keep producing the most abundant and safest food supply in the world.

For all of these reasons, I support Senator KENNEDY’s bill.

I understand that my fellow Senator from Missouri also has some concerns, and so I yield to him.

Mr. HAWLEY. Madam President, I rise to make a very simple point, which is that Medicare is too important to be held hostage to political games, and that is what is going on here now. We need to have a clean bill to fully fund and protect Medicare for the millions of Americans who rely on it, including over 1 million just in the State of Missouri.

And that is why I am supporting Senator KENNEDY’s bill to fully protect and

secure Medicare, and I will support every amendment and bill and clean amendment and bill to fully protect and secure Medicare, including, I think, Senator GRAHAM's that he's going to be offering shortly, which I am also privileged to cosponsor.

And I would just say this: I call on the Members of both parties—both parties—to stop using Medicare as a pawn in a political game. Let's fund Medicare. Let's do it on its own. Let's not hold it hostage to other agendas. Let's not hold it hostage to other programs. Let's not hold it hostage to others' individual ambitions, whatever they may be.

But let's take the opportunity now with this bill to fully protect Medicare for our seniors all across this country. That should be something that we can all get behind, and for those reasons I am proud to support Senator KENNEDY's legislation.

And now I yield to Senator HOEVEN.

Mr. HOEVEN. I would like to thank my colleague from Missouri. As my colleagues have pointed out, we rise to support Senator KENNEDY's UC—unanimous consent request—his legislation, because we have consistently supported funding for Medicare and funding for our farmers and our ranchers who work hard to provide food, fuel, and fiber for our Nation.

That is why I support both the UC request and the amendment that Senator GRAHAM is sponsoring. I am cosponsoring that amendment as well. That would ensure that we fund these priorities.

I do not support linking these funds with an increase in the debt ceiling, as the bill from the House would do, without our amendment.

We should not be tying the debt ceiling to important legislation that ensures healthcare providers can continue to care for our seniors and protect our farmers who produce the highest quality, lowest cost food supply in the world.

So I strongly support and have cosponsored the Graham amendment which would strike the fast-track debt ceiling process from this bill. As we are saying very clearly, we support the funding for Medicare. We support the funding for our farmers and ranchers.

Now, Democrats, who control the White House, the Senate, and the House, are trying to use reconciliation to pass a trillion-plus tax-and-spending bill on a purely partisan basis. Given that, they obviously can use reconciliation to pass a debt ceiling increase on their own. They do not need this House legislation to do it.

And with that, I will yield to my colleague from Kansas.

Mr. MARSHALL: I thank the Senator for yielding. I am honored to be here this evening to support my colleague from Louisiana. I want to take this Nation back to a year ago, a year ago this spring in April 2020. COVID was on the rise—our first variant, our first wave ripping through this country. Our ERs

were overflowing; the ICU beds were full; and doctors and nurses across this Nation ran to the sound of the battle.

We didn't have vaccines. There weren't therapeutics, but we took an oath to take care of our fellow man. I joined those doctors. I went to an ICU in Southwest Kansas where we had 8 beds, 12 patients, and 9 ventilators.

So how are we going to reward those doctors today? We are going to cut their pay. We are going to cut most doctors' pay 2 to 11 percent. Even before COVID, there was a doctor shortage. There was doctor burnout. Because of this pay cut, even more doctors will quit. More doctors are going to stop taking Medicare.

Yesterday, the leadership on the other side of the aisle just wanted to kick doctors, but today I found out they are kicking farmers in the shins as well. Holding doctors and farmers hostage is no way to run a government. I, too, am tired of seeing doctors and farmers used as pawns for political gain.

I support Senator KENNEDY's bill, and I am honored to turn it back to him.

Mr. KENNEDY. Madam President, Americans may be poor since President Biden took office, but they are not stupid.

They look around Washington, DC, and they see liars and they see frauds in every direction. Now, I don't think a single member of this body supports cutting Medicare or hurting our farmers, especially not at this moment. I don't. I don't.

And I don't think any of my Republican colleagues or any of my Democratic colleagues do as well. But a deal has been made. A deal has been made to give us—some of us see it this way anyway—a choice between voting for a heart attack or cancer.

You either have to give up your principles on the debt limit or you have to vote to cut Medicare and hurt our farmers, and no one wants to do that. I understand that people disagree over the debt limit, but there is no disagreement in this body over not cutting Medicare and not hurting our farmers.

Now, I am labor. I am not part of management. I don't want to be part of management because I don't always fit in. It is not one of my best qualities. In fact, it is my best quality, and that is why I brought this bill.

As Senator HAWLEY said, much more eloquently than I could, the disagreement that reasonable people are having over the debt limit has been conflated in a cynical attempt to fool the American people by putting them both in a bill that we are going to shortly be asked to vote on. And we are going to be asked to give the American people either a heart attack or cancer. You have to choose. And I don't want to make that choice, and I am not going to make that choice. And that is why I brought this bill.

I do not agree with my Democratic friends about the debt limit. I don't

support Build Back Better. I understand many of my Democratic friends do. I understand President Biden does. I understand Senator SCHUMER does. I understand Speaker PELOSI does. And I respect that, but I don't support it.

Now, they are going to try to pass Build Back Better, and they are going to try to implement it. But they can't do it without raising the debt ceiling. Now, if I don't support the Build Back Better bill, why would I want to allow them to borrow the money to implement the Build Back Better bill? I don't, and I am not going to break my word and vote to do that.

If my colleagues want to do that, that is their business. I don't tell people how to vote. If I am ever asked how to vote, I rarely—I almost always say, follow your heart, but just take your brain with you. And that is why I brought this bill. And I want to make it very clear, and you can write this down and take it home to mama, I do not support cutting Medicare, and I do not support cutting farmers.

I do support keeping my word to the American people. When I tell them I am going to do something, by God, I am going to stick. And I am not going to be scared away by some cynical deal that was made in Washington, DC.

Now, Madam President, as in legislative session, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3344—the bill about which I have been speaking, and my colleagues, Protecting the American Taxpayer and Medicare Act—at this time, it is at the desk. I further ask that the bill be considered read a third time and passed and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. WYDEN. Reserving the right to object, Madam President.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President and colleagues, I yield to no Senator in my support of this country's senior citizens. My background, colleagues, I was codirector of the Oregon Gray Panthers, the senior citizens group, for almost 7 years before I went into public life.

And I know that there is no Senator here who doesn't support senior citizens, farmers, the extraordinarily important Americans that my colleagues have been talking about.

But what really has not been explained here—because we all kind of talk this special lingo around here—is what my colleagues really seek to do in the Kennedy amendment.

What my colleague from Louisiana wishes to do is rip up an agreement reached between Democrats and Republicans. Specifically, colleagues, Senators Schumer and McConnell. So what they did is reach a bipartisan agreement to defuse an economic timebomb by creating a process to avoid default.

Senator KENNEDY's proposal sticks a flame right back under that fuse. Now,

the two parties obviously have different approaches when it comes to gamesmanship around this country's financial commitments. Setting all of that aside, the fact is our country is now way too close to default for the Senate to be playing games.

This debate is almost entirely about financial commitments made under past Presidents. It doesn't have anything to do with legislation that is still in the works. That is a fact. The reality is my colleague from Louisiana seeks to bring the country closer to default. The Senate ought to be clear on the consequences if that were to come to pass.

Default would be an economic disaster for our country as well as for individual families and businesses. And, again, colleagues, since senior citizens came up so frequently, this has been my particular passion. It is why I went into public service. Social Security stops going out. Military could stop getting paid. Interest rates go into the stratosphere, making existing Federal debt even more expensive, if you go forward with this proposal.

Costs go up for families who want to buy homes or buy cars. Getting a small business loan becomes more expensive. Jobs across the country are wiped out amid this turmoil. And all of that would happen right in the middle of the holidays, when Americans are simply trying to enjoy their time with families, go out and shop for presents, and enjoy their time together.

My view is, after almost 2 years of pandemic and economic chaos, people have had it hard enough. And two leaders—a Democrat and a Republican—have come together because they understand the Senate doesn't need to add another catastrophe to their financial challenges, the challenges I just described—one, by the way, that would be entirely self-made.

There is an agreement before the Senate, colleagues; an agreement between the Republican leader and the Democratic leader. That agreement brought the two sides together. My colleagues must not throw that agreement away. And I respect all my colleagues—all of them—but I just believe that this proposal from the Senator from Louisiana is misguided. It brings our country closer to default.

Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Louisiana.

Mr. KENNEDY. Madam President, I really appreciate my colleague's remarks, I do. I don't agree with his objection, but I appreciate it.

I just want to say a couple more words. I didn't make a deal. Now, let me say it again. Let me say it a different way.

I don't hate anybody. Lord knows I look for grace wherever I can find it. I like every one of my colleagues; I really do. The Senate is the most interesting group of people I have ever been around.

I am not part of management. I am labor, and I meant what I said. I belong in labor because I don't always fit in, and I do believe it is one of my best qualities.

The truth of the matter is—and this is what we are disagreeing over—President Biden, Senator SCHUMER, Speaker PELOSI, my other Democratic friends have proposed the Build Back Better bill.

Now, any economist with a pulse will tell you that it is going to cost about \$5 trillion without the gimmicks. It is going to raise taxes a couple of trillion. We will probably end up having to borrow another 3 trillion to pay for it. We will have to borrow the money. We don't have the 3 trillion. We don't even have 5 percent of it.

Now, I think that the bill represents a spending taxation and borrowing orgy that we don't need, but I understand my Democratic colleagues disagree. I get that.

My Democratic friends can't pass and implement the bill without raising the debt limit. That is just a fact, because they won't be able to borrow the money.

Now, if I don't support the bill, why do I want to support allowing them to borrow the money, especially when Senator SCHUMER—my friend Senator SCHUMER—can do it on his own?

He can do it before the weekend is out. All he has got to do is do a simple amendment to the budget resolution.

What am I missing here?

And I know a deal has been made and some people are going to vote for it. You are not looking at one of them. And I respect their right to make a deal, but I didn't make a deal. But I have been put in the position of saying: OK, Kennedy, we are going to show you. You have got to choose between keeping your word to your people or cutting Medicare.

And we wonder why Congress polls right up there with skim milk. That is why they look around, they see frauds and liars in every direction.

I really regret that my bill didn't pass because it would have protected our elderly, and I do support protecting our elderly. And it would have protected our farmers, and I do support protecting our farmers. And this so-called deal puts them both at risk.

The PRESIDING OFFICER. The Senator from South Carolina.

UNANIMOUS CONSENT REQUEST

Mr. GRAHAM. Madam President, I have a different approach that will get the same result.

But to my colleagues here, we are playing the Medicare card in a very dangerous fashion. Senator HAWLEY said it pretty well. Medicare is something people depend upon, and all of us understand the need to keep Medicare solvent. We need to reform it to save it.

But this idea puts all of us in a box, and I don't appreciate it and I won't forget it.

Now, this is a problem on our side. You don't even have to listen, Senator

WYDEN. For 4 months, we have been saying, as a party, our Democratic colleagues are spending all this money by themselves through reconciliation; they should choose that path to raise the debt ceiling.

Because what are we talking about? A \$1.9 trillion spending bill without one Republican vote through reconciliation.

We have pending next week another reconciliation proposal that scores at 1.7 trillion, if you assume every program goes away in a year. I will be in the NBA before that assumption. I don't like my chances.

Ronald Reagan said the closest thing to immortality on Earth is a government program.

So they have written the bill for the 17 big spending items to expire within 1, 2 or 3 years, and not one of them want them to expire.

So the whole bill is a fraud. And the Congressional Budget Office is going to give to me Friday what the bill would cost if the sunset clauses actually went away—did go away; what would it cost if the programs survive, which it will.

And I anticipate, Senator KENNEDY, it will be at least twice what we are talking about.

The effect on the debt is 367 billion only because they limited the programs to last for a year or two rather than the 10 years they are actually going to last.

So the deficit is going to go from 367 billion to probably close to 2 trillion. We are going to expose that Friday. They are playing a game. They are creating gimmicks.

And Senator MANCHIN, to his credit, said: "I believe Build Back Better is full of gimmicks."

We will know Friday exactly what the bill would look like without gimmicks.

This is the ultimate gimmick. If you had asked me 4 months ago, "How does this movie end?" I will be reading in the paper about a rules change to the Senate made by the House, where I have got to pick between Medicare and abandoning what I said I would do for 4 months.

This is a deal that led to Donald Trump. If you wonder why there is a Donald Trump, it is moments like this, where everybody starts down a road that makes perfect sense, you panic, and you throw everybody over.

They would raise the debt ceiling through reconciliation because they should, and we want to do it that way to deter spending in the future. We want to make it harder to use reconciliation to spend more money than World War II cost.

If you look at the cost of World War II in present dollars, it was 4.7 trillion. When you look at all the money we spent and going to spend, it is going to be 5.4 trillion. Literally, we have spent more money in the last year and a half than we did to win World War II.

I think they should raise the debt ceiling, Senator KENNEDY, through the