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Senate

The Senate met at 9:55 a.m. and was called to order by the Honorable BILL NELSON, a Senator from the State of Florida.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, You have promised leaders who trust You the gift of discernment. We claim that gift today. Give the Senators x-ray penetration into the deeper issues in each decision they must make. Remind them that You are ready to give them the discernment for what is not only good, but Your best, not only expedient, but excellent. Help them to know that the need before them will bring forth the gift of discernment You have inspired within them. You have done this for the great leaders of our history and we claim nothing less today. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable BILL NELSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 26, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BILL NELSON, a Senator from the State of Florida, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. NELSON of Florida thereupon assumed the Chair as Acting President pro tempore.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

SCHEDULE

Mr. REID. Mr. President, we are going to vote in just a minute on the nomination of Julia S. Gibbons to be U.S. Circuit Judge for the Sixth Circuit. There was some question as to whether there would be a vote following that. There will not be. That will be done by voice vote. This will be the first and last vote of today.

Following this vote, we will resume consideration of the prescription drug bill. The minority has an amendment that they are going to offer.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF JULIA SMITH GIBBONS, OF TENNESSEE, TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT—Resumed

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to the cloture vote on Executive Calendar No. 810.

Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Executive Calendar No. 810, the nomination of Julia Smith Gibbons, of Tennessee, to be U.S. Circuit Judge for the Sixth Circuit.

Harry Reid, Tom Daschle, Charles Schumer, Mitch McConnell, Fred Thompson, Bill Frist, Phil Gramm, Jon Kyl, Charles Grassley, Wayne Allard, Trent Lott, Don Nickles, Larry E. Craig, Craig Thomas, Mike Capo, Jeff Sessions, Pat Roberts, Jim Bunning, John Ensign, Orrin G. Hatch.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call under the rule has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 810, the nomination of Julia Smith Gibbons, of Tennessee, to be U.S. Circuit Judge for the Sixth Circuit, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Hawaii (Mr. INOUYE,) the Senator from Georgia (Mr. MILLER), and the Senator from Washington, (Mrs. MURRAY), are necessarily absent.

Mr. NICKLES. I announce that the Senator from Missouri (Mr. BOND), the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. HELMS), the Senator from Texas (Mrs. HUTCHISON) the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 89, nays 0, as follows:

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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[Rollcall Vote No. 193 Exe.]

YEAS—89

Akaka	Dorgan	McCain
Allard	Durbin	McConnell
Allen	Edwards	Mikulski
Baucus	Ensign	Murkowski
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Bingaman	Feinstein	Nickles
Breaux	Fitzgerald	Reed
Brownback	Frist	Reid
Bunning	Graham	Roberts
Burns	Grassley	Rockefeller
Byrd	Gregg	Santorum
Campbell	Hagel	Sarbanes
Cantwell	Harkin	Schumer
Carnahan	Hatch	Sessions
Carper	Hollings	Shelby
Chafee	Inhofe	Smith (NH)
Cleland	Jeffords	Smith (OR)
Clinton	Johnson	Snowe
Cochran	Kennedy	Specter
Collins	Kerry	Stabenow
Conrad	Kohl	Stevens
Corzine	Kyl	Thompson
Craig	Landrieu	Thurmond
Crapo	Leahy	Torricelli
Daschle	Levin	Voinovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wellstone
Dodd	Lott	Wyden
Domenici	Lugar	

NOT VOTING—11

Biden	Helms	Miller
Bond	Hutchinson	Murray
Boxer	Hutchison	Thomas
Gramm	Inouye	

The PRESIDING OFFICER. On this vote, the yeas are 89, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. HATCH. Mr. President, this morning we moved closer to the confirmation of Judge Julia Smith Gibbons of Tennessee to the 6th Circuit Court of Appeals. In so doing, we will bring relief to a Circuit with a 50 percent vacancy rate, with 9 empty seats out of 18, despite the fact that the President nominated 6 fine public servants to fill those seats on May 9, 2001, well over 400 days ago. I look forward to confirming her finally.

I rise this morning to express my most profound concern for the course of judicial confirmations in general and my support for the confirmation of Justice Priscilla Owen of Texas. The Judiciary Committee gave Justice Owen a 5-hour hearing earlier this week, which I am afraid did not do credit to the Committee.

I will comment on Justice Owens' qualifications, and to address some of the deceptions, distortions and demagoguery orchestrated against her nomination, that we have all read in the national and local papers.

I would like first to comment on the two jingos that are being used about her record as if they had substance: namely, that Justice Owen is ''conservative'' and that she is ''out of the mainstream.'' Of course, this comes from the Washington interest groups, in many cases, who think that mainstream thought is more likely found in Paris, France, than Paris, Texas.

I must admit that it's curious to hear it argued that a nominee twice elected by the people of the most populous State in the Circuit for which she is now nominated is ''out of the mainstream.'' Texans are no doubt entertained to hear that.

Listening to some of my colleagues' commentary on judges, I sometimes think that main-stream for them is a northeastern river of thought that travels through New Hampshire early and often, widens in Massachusetts, swells in Vermont, and deposits at New York City. Well, the mainstream that I know, and that most Americans can relate to, runs much broader and further than that.

The other mantra repeated by Justice Owen's detractors is that she is ''conservative.'' I believe that the use of political or ideological labels to distinguish judicial philosophies has become highly misleading and does a disservice to the public's confidence in the independent judiciary, of which the Senate is the steward.

I endorse the words of my friend, and former Chairman of the Judiciary Committee, Senator BIDEN, when he said some years ago that:

''[Judicial confirmation] is not about pro-life or pro-choice, conservative or liberal, it is not about Democrat or Republican. It is about intellectual and professional competence to serve as a member of the third co-equal branch of the Government.''

I believe it is our duty to confirm judges who stand by the Constitution and the law as written, not as they would want to rewrite them. That was George Washington's first criterion for the Federal bench, and it is mine. I also want common sense judges who respect American culture. I believe that is what the American people want.

I believe we do a disservice to the independence of the Federal judiciary by using partisan or ideological terms in referring to judges.

My reason was well stated by Senator BIDEN when he said that: ''it is imperative [not to] compromise the public perception that judges and courts are a forum for the fair, unbiased, and impartial adjudication of disputes.''

We compromise that perception, I believe, when we play partisan or ideological tricks with the judiciary. Surely, we can find other ways to raise money for campaigns and otherwise play at politics, without dragging this nation's trust in the judiciary through the mud, as some of the outside groups continue to do.

All you have to do to see my point is read two or three of the fund-raising letters that have become public over the past couple of weeks that spread mistruths and drag the judiciary branch into the mud, as many recent political campaigns increasingly find themselves.

On a lighter note, while on ideology, let me pause to point out that one of the groups deployed against Justice Owen is the Communist Party of America, but then I don't know that they have come out in favor of any of President Bush's nominees. I suspect after the fall of the Berlin Wall, they must have a lot of time on their hands.

Today I wish to address just why a nominee with such a stellar record, a respected judicial temperament, and as fine an intellect as Justice Owen has, who graduated third in her class from Baylor's law school, a great Baptist institution, when few women attended law school, let alone in the South, who obtained the highest score in the Texas Bar examination, and who has twice been elected by the people of Texas to serve on their Supreme Court, the last time with 83 percent of the votes and the support of every major newspaper of every political stripe, I would like to address just why such a nominee could get as much organized and untruthful opposition from the usual leftist, Washington special interest groups that we see. I will peel through what is at play for those groups. We need to expose and repel what is at play for the benefit and independence of this Senate.

And I would like to address also the reasons why I am confident that she will be confirmed notwithstanding. Not least of which is that, far from being the ''judicial activist'' some would have us believe her to be, she garnered the American Bar Association's unanimous rating of ''well qualified.'' The Judiciary Committee has never voted against a nominee with this highest of ratings.

The first reason for the organized opposition, of course, is plain. Justice Owen is from Texas, and Washington's well paid reputation destroyers could not help but attempt to attack the widely popular President of the United States, at this particular time in an election year, by attacking the judicial nominee most familiar to him. Justice Owen, welcome to Washington.

But as I prepared more deeply for the Hearing earlier this week, the second reason became apparent to me. In my 26 years on the Judiciary Committee I have seen no group of judicial nominees as superb as those that President Bush has sent to us, and he has sent both Democrats and Republicans.

In reading Justice Owen's decisions, one sees a judge working hard to get it right, to get at the legislature's intent and to apply binding authority and rules of judicial construction. It is apparent to me that of all the sitting judges the President has nominated, Justice Owen is the most outstanding nominee. She is, in my estimation, the best, and despite what her detractors say, she is the best judge that any American, any consumer and any parent could hope for.

Her opinions, whether majority, concurrences or dissents, could be used as a law school text book that illustrates exactly how, and not what, an appellate judge should think, how she should write, and just how she should do the people justice by effecting their will through the laws adopted by their elected legislatures. Justice Owen clearly approaches these tasks with both scholarship and mainstream American common sense. She does not

substitute her views for the legislature's, which is precisely the type of judge that the Washington groups who oppose her do not want.

She is precisely the kind of judge that our first two Presidents, George Washington and John Adams, had in mind when they agreed that the justices of the State supreme courts would provide the most learned candidates for the Federal bench.

So in studying her record, the second reason for the militant and deceptive opposition to Justice Owen became quite plain to me. In this world turned upside down, simply put, she is that good.

Another reason for the opposition against Justice Owen is the most demagogic, the issue of campaign contributions and campaign finance reform. Some of her critics are even eager to tie her to the current trouble with Enron.

Well, she clearly has nothing to do with that. Neither Enron nor any other corporation has donated to her campaigns, in fact, they are forbidden by Texas law to make campaign contributions in judicial elections. It was embarrassing to me, as it would be to any American who watched the hearing earlier this week, to see Justice Owen defeat these demagogic allegations, but being a Texas woman, she did so with style, elegance, and grace—and without embarrassing her questioners.

Not that there was even a need for more questions. The Enron and campaign contributions questions were amply clarified in a letter to Chairman LEAHY and the Committee dated April 5 by Alberto Gonzales. I will ask unanimous consent, to place this and other related letters into the RECORD. And I would place into the RECORD a retraction from The New York Times saying that they got their facts wrong on this Enron story. Such retractions don't come often, not as often as the invention of facts by the smear groups. And despite the retraction, CNN was repeating the same wrong facts just this week!

Notably, at the hearing Justice Owen received no questions from my Democrat colleagues on her views on election reform and judicial reform, of which she is a leading advocate in Texas. She is also a leader in Gender Bias Reform in the courts and a reformer on divorce and child support proceedings. But my colleagues seemed to take little interest in this, nor in her acclaimed advocacy to improve legal services and funding for the poor.

All of these are aspects of her record her detractors would have us ignore, I certainly did not read these positive attributes in those fancy documents, or should I say booklets, released prior to the hearing by the Washington radical special interests lobby.

I will also ask unanimous consent, to place into the RECORD letters from leaders of the Legal Society and 14 past presidents of the Texas Bar Association, many of whom are leading Texas Democrats.

The fourth reason for the opposition to Justice Owen is the most disturbing to me. For some months now, a few of my Democrat colleagues have strained to point out when they believe they are voting for judicial nominees that they believe to be pro-life. I have disputed this when they have said it because the record contains no such information of personal views from the judges we have reported favorably out of the Judiciary Committee.

Each time they assert it, my staff has scoured the transcripts of hearings and turned up nothing. What does turn up is that each time my colleagues have asserted this, they have done so only for nominees who are men.

I am afraid that the main reason Justice Owen is being opposed, is not that personal views, namely on the issue of abortion, are being falsely ascribed to her, they are, but rather because she is a woman in public life who is believed to have personal views that some maintain should be unacceptable for a woman in public life to have.

Such penalization is a matter of the greatest concern to me because it represents a new glass ceiling for women jurists. And they have come too far to suffer now having their feet bound up just as they approach the tables of our high courts after long-struggling careers.

I am deeply concerned that such treatment will have a chilling effect on women jurists that will keep them from weighing in on exactly the sorts of cases that most invite their participation and their perspectives as women.

The truth is that Justice Owen has never written or said anything critical of abortion rights. In fact, the cases she is challenged on have everything to do with the rights of parents to be involved in their children's lives, and nothing to do with the right to an abortion.

Ironically, the truth is that the cases that her detractors point to as proof of apparently unacceptable personal views are a series of fictions. This is what I mean about exposing the misstatements of the left-wing activist groups in Washington. I will illustrate just three of these fictions.

The first sample fiction is the now often-cited comment attributed to then Texas Supreme Court Justice Alberto Gonzales, written in a case opinion, that Justice Owen's dissent signified ''an unconscionable act of judicial activism.'' Someone should do a story about how often this little shibboleth has been repeated in the press and in several websites of the professional smear groups. The problem with it is that it isn't true. Justice Gonzales was not referring to Justice Owen's dissent, but rather to the dissent of another colleague in the same case.

The second sample fiction is the smear group's misrepresented portrayal of a case involving buffer zones and abortion clinics. In that case, the majority of the Texas Supreme Court ruled for Planned Parenthood and affirmed a lower court's injunction that protected abortion clinics and doctor's homes and imposed 1.2 million dollars in damages against pro-life protestors. In only a few instances, the court tightened the buffer zones against protestors. Justice Owen joined the majority opinion and was excoriated by dissenting colleagues, who were, by that way, admittedly pro-life.

When describing that decision then, abortion rights leaders hailed the result as a victory for abortion rights in Texas. Planned Parenthood's lawyer said the decision ''isn't a home run, it's a grand slam.''

Of course, that result hasn't changed, but the characterization of it has. This is how Planned Parenthood describes this same case in their fact sheet on Justice Owen: ''[Owen] supports eliminating buffer zones around reproductive health care clinics . . .''

In fact, her decision did exactly the opposite.

The third and most pervasive sample fiction concerns Justice Owen's rulings in a series of Jane Doe cases which first interpreted Texas' then-new parental involvement law. The law, which I think is important to emphasize was passed by the Texas legislature, not by Justice Owen, with bipartisan support, requires that an abortion clinic give notice to just one parent 48 hours prior to a minor's abortion. Unlike States with more restrictive laws such as Massachusetts, Wisconsin, and North Carolina, consent of the parent is not required in Texas. A minor may be exempted from giving such notice if they get court permission.

Since the law went into effect, over 650 notice bypasses have been requested from the courts. Of these 650 cases, only 10 have had facts so difficult that two lower courts denied a notice bypass, only 10 have risen to the Texas Supreme Court.

Justice Owen's detractors would have us believe that in these cases, she would have applied standards of her own choosing. Ironically, in each and every example they cite, whether concurring with the majority or dissenting, Justice Owen was applying not her own standards but the standards enuniciated in the Roe v. Wade line of decisions of the United States Supreme Court, which she followed and recognized as authority.

For example, detractors take pains to tell us that Justice Owen would require that to be sufficiently informed to get an abortion without a parent's knowledge, that the minor show that they are being counseled on religious considerations. They appear to think this is nothing more than opposition to abortion rights. They are so bothered with this religious language that various documents produced by the abortion industry lobby italicize the word religious. But this standard is not Justice Owen's invention, but rather the words of the Supreme Court's pro-choice decision in Casey.

Should she not follow one Supreme Court decision, but be required to follow another? Is that what we want our judges to do, pick and choose which decisions to follow? That appears to be the type of activist judge these groups want, and this Senate should resist all such attempts.

The truth is that rather than altering the Texas law, Justice Owen was trying to effect the legislator's intent. No better evidence of this is the letter of the pro-choice woman Texas Senator stating her ''unequivocal'' support of Justice Owen.

Senator Shapiro says of Justice Owen: ''Her opinions interpreting the Texas [parental involvement law] serve as prime example of her judicial restraint.'' I understand why the Washington left-wing groups don't like that in a judge, but the Senate and the Judiciary Committee should applaud and commend such restraint and temperament.

The truth is that, rather than being an activist foe of Roe, Justice Owen repeatedly cites and follows Roe and its progeny as authority. She has to, it's what the Court has said is the law. Compare this to Justice Ruth Bader Ginsburg who wrote in 1985 that the Roe v. Wade decision represented ''heavy handed judicial intervention'' that was ''difficult to justify.''

In relation to this, I would like briefly to comment on the mounting offensive of some to change the rules of judicial confirmation by asking nominees to share personal views or to ensure that nominees share the personal views of the Senator on certain cases.

To illustrate my view, I'll tell you that many people have recently called on the Judiciary Committee to question nominees as to their views on the pledge of allegiance case. My full-throated answer to this is no, as much as I think that that case was wrongly decided. I also happen to think that the recent School Voucher case is the most important civil rights decision since Brown but I am not going to ask people what they think about that case either.

Such questions threaten the heart of the independent judiciary and attempt to accomplish by hidden indirection what Senators cannot do openly by constitutional amendment. It is an attempt to make the courts a mere extension of the Congress.

I speak against this practice in the strongest terms, and, in my view, any nominee who answers such questions would not be fit for judicial office and would not have my vote.

The truth is that there are many who, like Justice Ginsburg, think that cases like Griswold or Roe were wrongly decided as a constitutional matter even if they agree with the policy result, just as the great liberal Justice Hugo Black did in his dissent in Griswold.

A few weeks ago we heard testimony from Boyden Gray, a former White Counsel and a former Supreme Court clerk, that Chief Justice Warren though that Brown v. Board of Education was his worst ruling as matter of constitutional law, but not his least necessary to end desegregation.

Some of Justice Owen's detractors have made much about the fact that she is not afraid to dissent. Of course, they fail to mention dissents like her opinion in Hyundai Motor v. Alvarado, in which Justice Owens' reasoning was later adopted by the United States Supreme Court on the same difficult issue of law.

They also overlooked here dissent in a repressed memory/sexual abuse case where she took the majority to task with these words: ''This is reminiscent of the days when the crime of rape went unpunished unless corroborating evidence was available. The Court's opinion reflects the attitudes reflected in that era.''

Perhaps, they thought that this dissent showed her too representative of American women. Despite deceptive opposition I think that Justice Owen should be confirmed.

I will ask unanimous consent to place into the RECORD an editorial of earlier this week from The Washington Post, a liberal publication, calling on us to be fair and calling on this Senate to confirm Justice Owen.

I have hope that my Democrat colleagues on the Judiciary Committee will be led by the time-tested standards well-stated by Senator BIDEN, and look again to qualifications and judicial temperament, not base politics. Whether the Biden standard will survive past our time, will be tested now.

If we fail the test we will breach our responsibility as auditors of the Washington special interest groups and the Judiciary's stewards on behalf of all the people, and not just some.

Mr. President, I ask unanimous consent that the documents to which I have referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, April 5, 2002.

Hon. PATRICK J. LEAHY,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: In our recent conversations, you suggested that the White House should examine whether contributions Justice Owen received for her campaigns for the Texas Supreme Court raise any legitimate issue with respect to her fitness to serve on the Fifth Circuit. We have done as you have suggested, and I see no basis to question Justice Owen's fitness to serve on the Fifth Circuit. The record reflects that she has at all times acted properly and in complete compliance with both the letter and the spirit of the rules relating to judicial campaign finance.

I am certain you will agree that it was entirely proper for Justice Owen's campaign to receive contributions. Article 5 of the Texas Constitution provides that candidates for the state judiciary run in contested elections, which are partisan under Texas election law, and Canon 45(1) of the Texas Code of Judicial Conduct provides that the candidates may solicit and accept campaign funds. Like Senators, therefore, candidates for the state judiciary in Texas may receive contributions to finance their campaigns.

To be sure, Justice Owen and many others would prefer a system of appointed rather than elected state judges. In fact, Justice Owen has long advocated appointment of judges (coupled with retention elections). She has written to fellow Texas attorneys on the issue, committed to a new system in League of Women Voters publications, and appeared as a pro-reform witness before the Texas Legislature. She has explained even to partisan groups why judges should be selected on merit. But the people in some states, including Texas, have chosen a system of contested elections for judges. Elected state judges certainly are not barred from future appointment to the federal judiciary; on the contrary, some notable federal appellate judges whom President Clinton nominated and you supported were state judges who had run and been elected in contested elections—Fortunato Benevides and James Dennis, for example, from the Fifth Circuit.

I am also certain you would find nothing inappropriate about the sources from which Justice Owen's campaign received contributions. In her 1994 and 2000 elections, Justice Owen's campaign quite properly received contributions from a large number of entities and individuals, with no single contributor predominating. In the 1994 election cycle, her campaign received approximately $1.2 million in contributions from 3,084 different contributors. Included in that total was $8,800 from employees of Enron and its employee-funded political action committee. Employees of Enron thus contributed less than 1% of the total contributions to her campaign. And Justice Owen's campaign, of course, received no corporate contributions from Enron or any Enron-affiliated corporation, as such corporate contributions are not permissible under Texas law. Notably, in the 1994 election, not only did Justice Owen comply with all campaign laws, she went beyond what the law required and voluntarily limited contributions when many other judicial candidates did not do so.

In the 2000 election cycle, Justice Owen's campaign received approximately $300,000 in contributions from 273 different contributors. In that cycle, her campaign received no contributions from Enron or its affiliates, from employees of Enron, or from Enron's political action committee. In addition, Justice Owen ultimately had no Democratic or Republican opponent in the 2000 election cycle, and she closed her campaign office and returned most of her unspent contributions, an act that I believe is unusual in Texas judicial history.

It was entirely proper for Justice Owen's campaign to receive campaign contributions, including the contributions from Enron employees. Indeed, seven of the nine current Texas Supreme Court Justices received Enron contributions, and several of them received more than Justice Owen's campaign received. As this record demonstrates, elected judges certainly did not act improperly in the past, before anyone knew about Enron's financial situation, by receiving contributions from employees of Enron—any more than it could be said that Members of Congress acted improperly in the past by receiving contributions from Enron.

If, as is evident from the foregoing discussion, there was nothing amiss with the fact that Justice Owen received donations or with the sources from which she received them, the only other possible area of concern with her conduct relating to campaign contributors would be her decisions from the bench. Texas Code of Judicial Conduct Cannon 3(B)(1) provides that a judge ''shall hear and decide matters assigned to the judges except those in which disqualification is required or recusal is appropriate.'' And it is

well-established that judicial recusal is neither necessary nor appropriate in cases involving parties or counsel who contributed to that judge's campaign. See Public Citizen, Inc. v. Bomer, 274 F.3d 212, 215 (5th Cir. 2001); Apex Towing Co., v. Tolin, 997 S.W.2d 903, 907 (Tex. App. 1999), rev'd on other grounds, 41 S.W.3d 118 (Tex. 2001); Aguilar v. Anderson, 855 S.W.2d 799, 802 (Tex. App. 1993); J–IV Invs. v. David Lynn Mach., Inc., 784 S.W.2d 106, 107 (Tex. App. 1990). Indeed, in any state with elected judges, any other rule would be unworkable. The primary protections against inappropriate influence on judges from campaign contributions are disclosure of contributions and adherence to the tradition by which judges explain the reasons for their decisions. If the people of a state deem those protections insufficient, the people may choose a system of appointed judges rather than elected judges, as Justice Owen has advocated for Texas.

Surmising that the concerns you raised would likely focus on her sitting in cases in which Enron had an interest, we have undertaken a review of her decisions in such cases. We have reviewed Texas Supreme Court docket records and Enron's 1994–2000 SEC Form 10Ks to determine the cases in which Enron or affiliates of Enron were parties to proceedings before the Court since January 1995 (when Justice Owen took her seat). The decisions of the Texas Supreme Court since January 1995 in proceedings involving Enron have been ordinary and raise no questions whatsoever.

A judge's decisions are properly assessed by examining their legal reasoning, not by conducting any kind of numerical or statistical calculations. But even those who would attempt to draw conclusions based on such calculations would find nothing in connection with these Enron cases. To begin with, we are aware of no proceeding involving Enron in which Justice Owen cast the deciding vote. In six proceedings in which we know that Enron was a party, Justice Owen's vote can be characterized as favorable to Enron in two cases and adverse in two cases. With respect to the remaining two, one cannot be characterized either way, and she did not participate in the other case because it had been a matter at her law firm when she was a partner. Eight other matters came before the Court in which we know that Enron or an affiliate was a party, but the court declined to hear them. In those matters, the Court's actions could be characterized as favorable to Enron in four cases, adverse in three cases, and one was dismissed by agreement of the parties. We will supply the Judiciary Committee copies of the cases on request.

There has been some media attention on one case involving Enron in which Justice Owen wrote the opinion for the Court. See Enron Corp. v. Spring Creek Independent School District, 922 S.W.2d 931 (Tex. 1996). The issue in that case concerned the constitutionality of an ad valorem tax statute that allowed market value of inventory to be set on one of two different dates. The Court held that the statute did not violate the state constitution—and the decision was unanimous. I understand that two Democratic Justices who sat on the Court at that time (Justice Raul Gonzalez and Rose Spector) have written to you to explain the case, indicating that Justice Owen's participation in the case was entirely proper. Moreover, the lawyer who represented a part opposing Enron in this case (Robert Mott) recently was quoted as saying that criticism of Justice Owen for her role in this case is ''nonsense'' Texas Lawyer (April 1, 2002). In my judgment, this case raises no legitimate issue with respect to Justice Owen's confirmation.

Finally, I am informed that, if confirmed, Justice Owen will donate all of her unspent campaign contributions to qualify tax-exempt charitable and educational institutions, as is contemplated under section 254.205(a)(5) of the Texas Election Code.

I trust that the foregoing will resolve all questions concerning the propriety of Justice Owen's activities in relation to financing her campaigns. As you know, I served with Justice Owen, and I am convinced from my work with her that she is a person of exceptional integrity, character, and intellect. Both Senators from Texas strongly support her nomination. The American Bar Association has unanimously rated Justice Owen ''well qualified,'' and one factor in that rating process is the nominee's integrity.

Despite her superb qualifications and the ''Judicial emergency'' in the Fifth Circuit declared by the Judicial Conference of the United States, Justice Owen has not received a hearing for nearly 11 months since her May 9, 2001, nomination. We respectfully request that the Committee afford this exceptional nominee a prompt hearing and vote.

Sincerely,

ALBERTO R. GONZALES,
Counsel to the President.

APRIL 1, 2002.

Re Justice Priscilla Owen.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: We served on the Texas Supreme Court with Justice Priscilla Owen when the case of Enron Corporation et al. v. Spring Creek Independent School District, 922 S.W.2d 931 (Tex. 1996) was decided. The issue in this case was the constitutionality of an ad valorem tax statute that allowed market value of inventory to be set on two different dates. In a unanimous opinion, all justices, Democrats and Republican alike, agreed with the opinion authored by Justice Owen that the choice of the valuation date in ad valorem tax statute did not violate a provision of the State Constitution requiring uniformity and equality in ad valorem taxation. We found the decision of the United States Supreme Court and other states instructive on this issue.

In our ruling, we agreed with the rulings of the Harris County Appraisal District and the trial court.

Cordially,

RAUL A. GONZALEZ,
Justice, Texas Supreme Court, 1984–1998.
ROSE SPECTOR,
Justice, Texas Supreme Court, 1992–1998.

PERDUE, BRANDON,
FIELDER, COLLINS & MOTT, L.L.P.,
Houston, TX, July 1, 2002.

Re Justice Priscilla Owen.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC

DEAR CHAIRMAN LEAHY: My name is Robert Mott. I was the legal counsel for the Spring Independent School District in the case of Enron Corporation et al. v. Spring Independent School District, 922 S.W.2d 931 (Tex. 1996). We were the losing party in this case.

I have been disturbed by the suggestions that Justice Priscilla Owen's decision in this case was influenced by the campaign contributions she received from Enron employees. I personally believe that such suggestions are nonsense. Justice Owen authored the opinion of a unanimous court consisting of both Democrats and Republican. While my clients and I disagreed with the decision, we were not surprised. The decision of the Court was to uphold an act of the Legislature regarding property valuation. It was based upon United States Supreme Court precedent, of which we were fully aware when we argued the case.

I firmly believe that there is absolutely no reason to question Justice Owen's integrity based upon the decision in this case.

Sincerely,

ROBERT MOTT.

DE LEON, BOGGINS & ICENOGLE,
Austin, TX, June 26, 2002.

Re nomination of the Honorable Priscilla Owen to the U.S. Court of Appeals for the Fifth Circuit.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: This correspondence is sent to you in support of the nomination by President Bush of Texas Supreme Court Justice Priscilla Owen for a seat on the U.S. Court of Appeals for the Fifth Circuit.

As the immediate past President of Legal Aid of Central Texas, it is of particular significance to me that Justice Owen has served as the liaison from the Texas Supreme Court to statewide committees regarding legal services to the poor and pro bono legal services. Undoubtedly, Justice Owen has an understanding of and a commitment to the availability of legal services to those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit.

Additionally, Justice Owen played a major role in organizing a group known as Family Law 2000 which seeks to educate parents about the effect the dissolution of a marriage can have on their children. Family Law 2000 seeks to lessen the adversarial nature of legal proceedings surrounding marriage dissolution. The Fifth Circuit would be well served by having someone with a background in family law serving on the bench.

Justice Owen has also found time to involve herself in community service. Currently Justice Owen serves on the Board of Texas Hearing and Service Dogs. Justice Owen also teaches Sunday School at her Church, St. Barnabas Episcopal Mission in Austin, Texas. In addition to teaching Sunday School Justice Owen serves as head of the altar guild.

Justice Owen is recognized as a well rounded legal scholar. She is a member of the American Law Institute, the American Judicature Society, The American Bar Association, and a Fellow of the American and Houston Bar Foundations. Her stature as a member of the Texas Supreme Court was recognized in 2000 when every major newspaper in Texas endorsed Justice Owen in her bid for re-election to the Texas Supreme Court.

It has been my privilege to have been personally acquainted with various members of the U.S. Court of Appeals for the Fifth Circuit. The late Justice Jerry Williams was my administrative law professor in law school and later became a personal friend. Justice Reavley has been a friend over the years. Justice Johnson is also a friend. In my opinion, Justice Owen will bring to the Fifth Circuit the same intellectual ability and integrity that those gentlemen brought to the Court.

I earnestly solicit your favorable vote on the nomination of Justice Priscilla Owen for a seat on the U.S. Court of Appeals for the Fifth Circuit.

Thank you for your attention to this correspondence.

Very truly yours,

HECTOR DE LEON.

TEXAS ASSOCIATION
OF DEFENSE COUNSEL, INC.,
Austin, TX, June 19, 2001.

Re nomination of Justice Patricia Owen for the United States Fifth Circuit of Appeals.

Senator PATRICK LEAHY,
Senate Judiciary Committee,
Washington, DC.

DEAR SENATOR LEAHY: I have had the privilege of knowing Justice Patricia Owen of the Texas Supreme Court, both personally and professionally, for many years. I cannot imagine a more qualified, ethical, and knowledgeable person to sit on the United States Fifth Circuit Court of Appeals.

I accept the reality that politics is a part of our culture, but I know that when it comes to appointing federal judges, we must transcend politics and look to character and ability. Patricia Owen has the character and ability to make all of us, Democrat and Republican, proud.

I ask that your Committee act swiftly to confirm her nomination to the United States Fifth Circuit Court of Appeals.

Thank you.

Sincerely,

E. THOMAS BISHOP.

HUGHES/LUCE, LLP.,
Dallas, TX, July 15, 2002.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, Russell Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: As past presidents of the State Bar of Texas, we join in this letter to strongly recommend an affirmative vote by the Judiciary Committee and confirmation by the full Senate for Justice Priscilla Owen, nominee to the United States Court of Appeals for the Fifth Circuit.

Although we profess different party affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit. Based on her superb integrity, competence and judicial temperament, Justice Owen earned her *Well Qualified* rating unanimously from the American Bar Association Standing Committee on the Federal Judiciary—the highest rating possible. A fair and bipartisan review of Justice Owen's qualifications by the Judiciary Committee certainly would reach the same conclusion.

Justice Owen's stellar academic achievements include graduating cum laude from both Baylor University and Baylor Law School, thereafter earning the highest score in the Texas Bar Exam in November 1977. Her career accomplishments are also remarkable. Prior to her election to the Supreme Court of Texas in 1994, for 17 years she practiced law specializing in commercial litigation in both the federal and state courts. Since January 1995, Justice Owen has delivered exemplary service on the Texas Supreme Court, as reflected by her receiving endorsements from every major newspaper in Texas during her successful re-election bid in 2000.

The status of our profession in Texas has been significantly enhanced by Justice Owen's advocacy of pro bono service and leadership for the membership of the State Bar of Texas. Justice Owen has served on committees regarding legal services to the poor and diligently worked with others to obtain legislation that provides substantial resources for those delivering legal services to the poor.

Justice Owen also has been a long-time advocate for an updated and reformed system of judicial selection in Texas. Seeking to remove any perception of a threat to judicial impartiality, Justice Owen has encouraged the reform debate and suggested positive changes that would enhance and improve our state judicial branch of government.

While the Fifth Circuit has one of the highest per judge caseloads of any circuit in the country, there are presently two vacancies on the Fifth Circuit bench. Both vacancies have been declared ''judicial emergencies'' by the Administrative Office of the U.S. Courts. Justice Owen's service on the Fifth Circuit is critically important to the administration of justice.

Given her extraordinary legal skills and record of service in Texas, Justice Owen deserves prompt and favorable consideration by the Judiciary Committee. We thank you and look forward to Justice Owen's swift approval.

DARRELL E. JORDAN.

On behalf of former Presidents of the State Bar of Texas: Blake Tartt; James B. Sales; Hon. Tom B. Ramey, Jr.; Lonny D. Morrison; Charles R. Dunn; Richard Pena; Charles L. Smith; Jim D. Bowmer; Travis D. Shelton; M. Colleen McHugh; Lynne Liberato; Gibson Gayle, Jr.; David J. Beck; and Cullen Smith.

[From the Washington Post, July 24, 2002]

THE OWEN NOMINATION

The nomination of Priscilla Owen to the 5th Circuit Court of Appeals creates understandable anxiety among many liberal activists and senators. The Texas Supreme Court justice, who had a hearing yesterday before the Senate Judiciary Committee, is part of the right flank of the conservative court on which she serves. Her opinions have a certain ideological consistency that might cause some senators to vote against her on those grounds. But our own sense is that the case against her is not strong enough to warrant her rejection by the Senate. Justice Owen's nomination may be a close call, but she should be confirmed.

Justice Owen is indisputably well qualified, having served on a state supreme court for seven years and, prior to her election, having had a well-regarded law practice. So rather than attacking her qualifications, opponents have sought to portray her as a conservative judicial activist—that is, to accuse her of substituting her own views for those of policymakers and legislators. In support of this charge, they cite cases in which other Texas justices, including then-Justice Alberto Gonzales—now President Bush's White House Counsel—appear to suggest as much. But the cases they cite, by and large, posed legitimately difficult questions. While some of Justice Owen's opinions—particularly on matters related to abortion—seem rather aggressive, none seems to us beyond the range of reasonable judicial disagreement. And Mr. Gonzales, whatever disagreements they might have had, supports her nomination enthusiastically. Liberals will no doubt disagree with some opinions she would write on the 5th Circuit, but this is not the standard by which a president's lower-court nominees should be judged.

Nor is it reasonable to reject her because of campaign contributions she accepted, including those from people associated with Enron Corp. Texas has a particularly ugly system of judicial elections that taints all who participate in it. State rules permit judges to sit on cases in which parties or lawyers have also been donors—as Justice Owen did with Enron. Judicial elections are a bad idea, and letting judges hear cases from people who have given them money is wrong. But Justice Owen didn't write the rules and has supported a more reasonable system.

Justice Owen was one of President Bush's initial crop of 11 appeals court nominees, sent to the Senate in May of last year. Of these, only three have been confirmed so far, and six have not even had the courtesy of a hearing. The fact that President Clinton's nominees were subjected to similar mistreatment does not excuse it. In Justice Owen's case, the long wait has produced no great surprise. She is still a conservative. And that is still not a good reason to vote her down.

[From the New York Times, January 25, 2002]

CORRECTIONS

An article in Business Day on Tuesday about criticism of Justice Priscilla Owen of the Texas Supreme Court, a nominee for a federal judgeship who accepted campaign donations from Enron, misstated the amount of money saved by the company because of a decision she wrote, dealing with taxes owed to a local school district. It was $224,988.65, not $15 million. The larger sum, cited in her opinion as the district's revenue loss, was the amount by which the value of a piece of the company's land was lowered.

NOMINATION OF CHRISTOPHER C. CONNER, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE

Mr. REID. Mr. President, under the previous order, the Senate will now proceed to the consideration of Executive Calendar No. 826.

The PRESIDING OFFICER. The clerk will state the nomination.

The legislative clerk read the nomination of Christopher C. Conner, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Pennsylvania be recognized for up to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Pennsylvania is recognized for 3 minutes.

Mr. SANTORUM. Mr. President, I thank the Senator from Nevada for agreeing to recognize me.

Now that the nomination has been confirmed by the Senate, I congratulate Kit Conner from outside of Harrisburg, PA, for filling the vacancy in the Middle District. Judge Conner is one of six members from Pennsylvania who are on the Executive Calendar in the Senate. Including him, there are five district judges and one Third Circuit nominee, and I am very gratified we have been able to unlock the logjam on judges and begin the process of moving forward.

Kit Conner is a very distinguished member of the bar in the Middle District in Pennsylvania. He is a tremendous lawyer and advocate, someone who has made substantial contributions to his community and is going to be an excellent Middle District judge. I look forward to his swearing in ceremony very soon.

If we go down the listing of judges in the order in which they appear on the calendar, the next judges to be confirmed are also Pennsylvania judges, at least nominees for judicial vacancies, and they would be Joy Flowers Conti from the Western District of Pennsylvania, John Jones from the Middle District, and then D. Brooks Smith, who is

a judge from the Western District who has been nominated for the Third Circuit. Hopefully next week, maybe as early as Monday or Tuesday, we can get to these nominations in the order in which they appear on the calendar. That seems to be the way the Senate is proceeding, and so we can begin to fill some of these vacancies we have in Pennsylvania, and in particular the Judge Brooks Smith vacancy to the Third Circuit, so we can begin to get the expeditious justice that people in Pennsylvania and the Third Circuit deserve.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Christopher C. Conner, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid upon the table, and the President will be notified of the Senate's action.

Mr. LEAHY. Mr. President, with today's confirmation of Mr. Christopher Conner to the District Court for the Middle District of Pennsylvania, the Democratic-led Senate will have confirmed a total of 60 judicial nominees since the change in Senate majority a little over one year ago and 49 district court nominees.

Today's nominee has not proven to be very controversial and the Senate has acted quickly on this nomination.

Mr. Conner was nominated in March of this year to a relatively recent vacancy and received a hearing in May, shortly after his paperwork was completed.

With today's confirmation, the Judiciary Committee will have held hearings for a total of 10 District Court nominees from Pennsylvania, including Judge Davis, Judge Baylson and Judge Rufe, who were confirmed in April. Those confirmations illustrate the progress being made under Democratic leadership and the fair and expeditious way this President's nominees are being treated.

With today's confirmation, we will have confirmed four nominees to the District Courts in Pennsylvania. I think that the Senate Judiciary Committee and the Senate as a whole have done well by Pennsylvania, despite some of the obstructionist practices during Republican control of the Senate, particularly regarding nominees in the Western half of the State.

Nominees from Philadelphia were not immune from Republican obstructionist tactics, despite the best efforts and diligence of my good friend from Pennsylvania, Senator SPECTER, to secure confirmation of all of the judicial nominees from all parts of his home State, without regard to which party controlled the White House.

For example, Judge Legrome Davis was first nominated to the position of U.S. District Court Judge for the Eastern District of Pennsylvania by President Clinton on July 30, 1998. The Republican-controlled Senate took no action on his nomination and it was returned to the President at the end of 1998. On January 26, 1999, President Clinton renominated Judge Davis for the same vacancy. The Senate again failed to hold a hearing for Judge Davis and his nomination was returned after two more years.

Under Republican leadership, Judge Davis' nomination languished before the Committee for 868 days without a hearing.

Unfortunately, Judge Davis was subjected to the kind of inappropriate partisan rancor that befell so many other nominees to the district courts in Pennsylvania and to the Third Circuit during the Republican control of the Senate. I want to note emphatically, however, that I know personally that the senior Senator from Pennsylvania, strongly supported Judge Davis's nomination and worked hard to get him a hearing and a vote.

The lack of Senate action on Judge Davis's initial nominations are in no way attributable to a lack of support from the senior Senator from Pennsylvania. Far from it.

In fact, I give Senator SPECTER full credit for getting President Bush to renominate Judge Davis earlier this year and commended him publicly for all he has done to support this nomination from the outset.

This year we moved expeditiously to consider Judge Davis, and he was confirmed within a few months of his renomination by President Bush. The saga of Judge Davis recalls for us so many nominees from the period of January 1995 through July 10, 2001, who never received a hearing or a vote and who were the subject of secret anonymous holds by Republicans for reasons that were never explained.

At Judge Davis' recent confirmation hearing Senator SANTORUM testified that Judge Davis did not get a hearing because local Democrats objected. I was the ranking Democrat on the Judiciary Committee during those years and never heard that before. My understanding at the time, from July 1998 until the end of 2000, was that Judge Legrome Davis would have had the support of Senator SPECTER as well as every Democrat on the Judiciary Committee and in the Senate. Despite that bipartisan support, he was not included by the then-Chairman of the Committee in the May 2000 hearing for a few other Pennsylvania nominees.

In contrast, the hearing we had earlier this year for Ms. Conti was the very first hearing on a nominee to the Western District of Pennsylvania since 1994, in almost a decade, despite qualified nominees of President Clinton. No nominee to the Western District of Pennsylvania received a hearing during the entire period that Republicans controlled the Senate in the Clinton Administration. One of the nominees to the Western District, Lynette Norton, waited for almost 1,000 days, and she was never given the courtesy of a hearing or a vote. Unfortunately, Ms. Norton died earlier this year, having never fulfilled her dream of serving on the Federal bench.

Large numbers of vacancies continue to exist, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than 50 of President Clinton's judicial nominees, many of whom waited for years and never received a vote on their nomination. It is the Democrats, not the Republicans, who have broken with that history of inaction from the Republican era of control, delay and obstruction.

With today's confirmations of Mr. Conner to the Federal district courts in Pennsylvania, the Senate will have confirmed 49 district court nominees, meaning that more than 8 percent of the district court nominees confirmed so far are from Pennsylvania.

Mr. HATCH. Mr. President, I rise to support the nomination of Christopher Conner to be U.S. District Judge for the Middle District of Pennsylvania.

I have enjoyed looking over the record of Mr. Conner's broad litigation background, and I have concluded that he will bring to the bench the necessary legal experience and temperament for an effective Federal judge.

Christopher Conner is a native of Harrisburg, PA, and a highly respected civil litigator. Upon graduation from Dickinson School of Law in 1982, Mr. Conner joined the Harrisburg firm today known as Mette, Evans and Woodside. He was named a shareholder in 1988.

He currently serves as chair of his firm's Corporate & Commercial Litigation Practice Group. His practice has focused on civil litigation, primarily business litigation, employment law, mediation, and Federal civil rights litigation. He has handled contract disputes, employment discrimination suits, Lanham Act claims, large-scale class-action cases, sexual harassment cases, and insurance coverage matters.

Mr. Conner is certified as a mediator in Federal and State courts, and he has experience in providing human resources training for businesses and associations, including diversity training.

The ABA has awarded him a unanimous Well Qualified rating, and I rate him highly as well. I strongly believe Mr. Conner will make an excellent Federal judge in Pennsylvania.

The PRESIDING OFFICER. The Senator from Nevada.

NATIONAL DEFENSE AUTHORIZATION ACT, 2003

Mr. REID. Mr. President, as in legislative session, I ask that the Chair lay before the Senate a message from the House with respect to H.R. 4546.

There being no objection, the Presiding Officer (Mr. CARPER) laid before the Senate the following message from the House of Representatives:

JULY 25, 2002.

Resolved, That the House insist upon its amendment to the amendment of the Senate to the bill (H.R. 4546) entitled ''An Act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes'', and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House:

From the Committee on Armed Services, for consideration of the House amendment and the Senate amendment, and modifications committed to conference: Mr. Stump, Mr. Hunter, Mr. Hansen, Mr. Weldon of Pennsylvania, Mr. Hefley, Mr. Saxton, Mr. McHugh, Mr. Everett, Mr. Bartlett of Maryland, Mr. McKeon, Mr. Watts of Oklahoma, Mr. Thornberry, Mr. Hostettler, Mr. Chambliss, Mr. Jones of North Carolina, Mr. Hilleary, Mr. Graham, Mr. Skelton, Mr. Spratt, Mr. Ortiz, Mr. Evans, Mr. Taylor of Mississippi, Mr. Abercrombie, Mr. Meehan, Mr. Underwood, Mr. Allen, Mr. Snyder, Mr. Reyes, Mr. Turner, and Mrs. Tauscher.

From the Permanent Select Committee on Intelligence, for consideration of matters within the jurisdiction of that committee under clause 11 of rule X: Mr. Goss, Mr. Bereuter, and Ms. Pelosi.

From the Committee on Education and the Workforce, for consideration of sections 341–343, and 366 of the House amendment, and sections 331–333, 542, 656, 1064, and 1107 of the Senate amendment, and modifications committed to conference: Mr. Isakson, Mr. Wilson of South Carolina, and Mr. George Miller of California.

From the Committee on Energy and Commerce, for consideration of sections 601 and 3201 of the House amendment, and sections 311, 312, 601, 3135, 3155, 3171–3173, and 3201 of the House amendment, and modifications committed to conference: Mr. Tauzin, Mr. Barton, and Mr. Dingell.

From the Committee on Government Reform, for consideration of sections 323, 804, 805, 1003, 1004, 1101–1106, 2811, and 2813 of the House amendment, and sections 241, 654, 817, 907, 1007–1009, 1061, 1101–1106, 2811, and 3173 of the Senate amendment, and modifications committed to conference: Mr. Burton, Mr. Weldon of Florida, and Mr. Waxman.

From the Committee on International Relations, for consideration of sections 1201, 1202, 1204, title XIII, and section 3142 of the House amendment, and subtitle A of title XII, sections 1212–1216, 3136, 3151, and 3156–3161 of the Senate amendment, and modifications committed to conference: Mr. Hyde, Mr. Gilman, and Mr. Lantos.

From the Committee on the Judiciary, for consideration of sections 811 and 1033 of the House amendment, and sections 1067 and 1070 of the Senate amendment, and modifications committed to conference: Mr. Sensenbrenner, Mr. Smith of Texas, and Mr. Conyers.

From the Committee on Resources, for consideration of sections 311, 312, 601, title XIV, sections 2821, 2832, 2841, and 2863 of the House amendment, and sections 601, 2821, 2823, 2828, and 2841 of the Senate amendment, and modifications committed to conference: Mr. Duncan, Mr. Gibbons, and Mr. Rahall.

From the Committee on Science, for consideration of sections 244, 246, 1216, 3155, and 3163 of the Senate amendment, and modifications committed to conference: Mr. Boehlert, Mr. Smith of Michigan, and Mr. Hall of Texas.

From the Committee on Transportation and Infrastructure, for consideration of section 601 of the House amendment, and sections 601 and 1063 of the Senate amendment, and modifications committed to conference: Mr. Young of Alaska, Mr. LoBiondo, and Ms. Brown of Florida.

From the Committee on Veterans' Affairs, for consideration of sections 641, 651, 721, 723, 724, 726, 727, and 728 of the House amendment, and sections 541 and 641 of the Senate amendment, and modifications committed to conference: Mr. Smith of New Jersey, Mr. Bilirakis, Mr. Jeff Miller of Florida, Mr. Filner, and Ms. Carson of Indiana.

Mr. REID. Mr. President, I ask unanimous consent that the Senate disagree to the House amendment to the Senate amendment, agree to the request for a conference, and that the Chair be authorized to appoint conferees on the part of the Senate, without further intervening action or debate.

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

The Presiding Officer (Mr. CARPER) appointed Mr. LEVIN, Mr. KENNEDY, Mr. BYRD, Mr. LIEBERMAN, Mr. CLELAND, Ms. LANDRIEU, Mr. REED, Mr. AKAKA, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mrs. CARNAHAN, Mr. DAYTON, Mr. BINGAMAN, Mr. WARNER, Mr. THURMOND, Mr. MCCAIN, Mr. SMITH of New Hampshire, Mr. INHOFE, Mr. SANTORUM, Mr. ROBERTS, Mr. ALLARD, Mr. HUTCHINSON, Mr. SESSIONS, Mr. COLLINS, and Mr. BUNNING conferees on the part of the Senate.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session and resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

AMENDMENT NO. 4326 TO AMENDMENT NO. 4299

(Purpose: To provide for health care liability reform)

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I am about to send to the desk an amendment. I understand from discussions with the other side, we will be allowed to vote on or in relation to this amendment sometime Tuesday morning, with the time prior to that equally divided. I say to my friend from Nevada, what was he thinking of, a couple of hours equally divided on Tuesday morning before the vote or in relation thereto?

Mr. REID. I say to my friend, we will probably come in at about 9:30, have an hour of morning business, with the vote to occur around noon, which would allow us to do our party conferences. So I suggest 90 minutes equally divided.

Mr. MCCONNELL. That would certainly be agreeable to me. I thank the assistant majority leader.

Mr. REID. Staff is putting that in writing. Before the day is out, we will try to iron out something like that. We will get it worked out between the two leaders.

Mr. MCCONNELL. I send an amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL] proposes an amendment numbered 4326 to amendment No. 4299.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

Mr. DURBIN. Reserving the right to object, and I will not object, if the Senator could give me a copy of his amendment.

Mr. MCCONNELL. I say to my friend from Illinois, I will be happy to do that. Of course, it will be out there from now until Tuesday morning so people will have ample opportunity to take a look at it. As soon as the clerk can Xerox a copy, I am sure he will be glad to give it to the Senator from Illinois.

Mr. DURBIN. I do not object.

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

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. Who yields time?

The Senator from Kentucky.

Mr. MCCONNELL. The Senate last voted on the issue of medical malpractice back in 1995. It was an amendment I offered at that particular time. There were 53 votes in support of the amendment, including Senators FEINSTEIN and LIEBERMAN on the Democratic side who are still Members of the Senate. In addition, Senator Nunn, Senator Exon, and Senator JEFFORDS also supported that medical malpractice amendment back in 1995, which was, as I said, the last time we had a vote on this issue.

I will briefly describe what the amendment at the desk would do, and then I want to talk for a few minutes about the growing crisis. I know Senator HATCH is anxious to speak on judges, but I do want to at least describe what the amendment does and make a few observations about the growing crisis in the country.

First, let me make it clear that the amendment at the desk is pro-victim and pro-consumer. This amendment does not cap noneconomic—that is, pain and suffering—damages at all, not one penny. So compensatory damages—economic as well as pain and suffering—those kinds of damages are not

in any way adversely impacted by a cap under the McConnell amendment.

We do place reasonable caps on lawyers' fees. By doing so, it ensures that the injured victim, not the victim's lawyer, gets the majority of the award. After all, that is only fair. It is the victim who has suffered the injury and not the lawyer.

This amendment also allows punitive damages, even though we know, all of us who understand punitive damages, that they are not designed to enrich the plaintiff but, rather, to punish the defendant. We allow punitive damages under a cap, a reasonable limit of twice compensatory damages. So no limits on compensation for pain and suffering, but a limit on punitive damages of twice compensatory damages, twice the economic and noneconomic damages.

Essentially, what we are doing is guaranteeing the injured victim full compensation. In addition to guaranteeing the injured victim full compensation, we are also ensuring that they get more of the money to which they are entitled by providing a reasonable cap on the fee for the lawyer. In order to bring some certainty to the system and drive the costs of insurance down, the amendment caps punitive damages at twice the sum of the compensatory damages awarded. It provides some certainty. This is a very pro-victim, pro-consumer amendment.

When we voted on this back in 1995, one of the arguments made, I recall, was that there was no crisis, what is the problem? Frankly, we thought it was a growing crisis at that point. Today, it is a perfectly apparent crisis. The Nevada Governor has called a special session beginning Monday on this very issue. This crisis is sweeping the country.

We have a map that I think is useful. The red States are States that are currently experiencing a medical liability crisis; States such as Nevada that I mentioned, the State of Washington, the States of Oregon, Texas, Mississippi, Georgia, Florida, and the cluster in the Northeast—New York, Pennsylvania, West Virginia, and Ohio. My own State of Kentucky is a State with problem signs.

To give an example, we have doctors moving to Indiana, across the Ohio River, because Indiana has reasonable caps on recovery, and therefore they do not have a medical malpractice crisis and the doctors are not bailing out. In States that have enacted a reasonable approach, the crisis does not exist.

Another interesting chart gives a sense of what has happened since we last voted on this issue in 1995. The median jury award then was around $500,000; today it has gone up to $1 million. I don't think anybody believes that doctors and nurses and health care professionals are any more negligent today than they were then. I don't suppose anyone would suggest there has been some kind of dramatic deterioration in their behavior over the last 7 years, but in fact the awards have gone up dramatically, and of course, as we know, the insurance rates along with it, leading to an exodus from this field across America. The crisis has arrived. It is here.

To give an example from my own State, a few weeks ago in Corbin, KY, the Corbin Family Health Center was forced to shut the doors because the doctors were unable to find an affordable insurance policy. Dr. Richard Carter and his four colleagues deliver about 250 babies a year and have never lost a malpractice claim. Yet when their insurance company, the St. Paul Companies, decided to leave the medical malpractice business, the Corbin Family Health Doctors lost their coverage—a group that had never lost a claim. The remaining few insurance companies that were willing to provide coverage were only willing to do so for $800,000 to $1 million, a whooping 465 percent increase.

This is going on all across America. Tuesday we will have an opportunity to elaborate. There are a number of Senators on my side of the aisle who want to speak to this national crisis.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this amendment has nothing to do with the price of prescription drugs, the cost of health care, or even the insurance premiums of doctors. It has everything to do with the profits of the insurance industry. At a time when Americans want greater corporate accountability, in this time of Enron, WorldCom, and other corporate scandals, it is unbelievable that our Republican friends cozy up to big insurance corporations to give them a break.

Let me remind my colleagues that the legislation before the Senate is about the high price of prescription drugs and providing a Medicare prescription drug benefit. Now the Republican side is trying to divert attention from this important debate by offering this amendment. It is an attack on the very people the underlying legislation was designed to help, those in need of quality medical care.

The McConnell amendment is designed to shield health care providers from the basic accountability for the care they provide. While those across the aisle like to talk about doctors, the real beneficiaries will be the insurance companies. This amendment enriches the insurance industry at the expense of the most seriously injured patients—men and women and children whose entire lives have been devastated by medical negligence and corporate abuse. This proposal also shields HMOs that fail to provide needed care, drug companies with medicine that has toxic side effects, and manufacturers of defective medical equipment.

In recent months, the entire Nation has been focused on the need for greater corporate accountability. The McConnell amendment does the reverse. It dramatically limits the financial responsibility of the entire health care industry to compensate injured patients for the harm they have suffered. When will the Republican Party start worrying about injured patients and stop trying to shield big business from the consequences of its wrongdoing? Less accountability will never lead to better health care.

This amendment places major new restrictions on the right of seriously injured patients to recover fair compensation for their injuries. These restrictions only serve to hurt those patients who have suffered the most severe, life-altering injuries, and to have their cases proven in court. If we were to arbitrarily restrict the compensation which seriously injured patients can receive, as the sponsor proposes, what benefits would result? Certainly, less accountability for health care providers will never improve the quality of health care. It will never even result in less costly care.

The cost of medical malpractice premiums constitutes less than two-thirds of 1 percent. Do we understand that? The cost of medical malpractice premiums constitutes two-thirds of 1 percent of the Nation's health care expenditures each year. Malpractice premiums are not the cause of the high rate of medical inflation.

Over the decade from 1988 to 1998, the cost of medical care rose 13 times faster than the cost of malpractice insurance. This chart reflects that: The growth of health care costs plus 74 percent; and the medical malpractice costs, 5.7 percent.

These restrictions are not only unfair to patients but an effective way to control medical malpractice claims. There is scant evidence to support the claim that enacting limits will lower insurance rates. There is substantial evidence to the contrary. There are other much more direct, effective ways to address the costs of medical malpractice insurance that do not hurt patients.

The supporters of the McConnell amendment have argued that restricting an injured patient's right to recover fair compensation will reduce malpractice premiums. They cite a report released just yesterday by the Department of Health and Human Services. However, that data is neither comprehensive or persuasive. It looks at only 10 of the 27 States that do not currently have a cap on malpractice damages, and it looks at the rate of increase in those States for only 1 year. In essence, that report cherry-picks the data to support a politically preordained conclusion.

Let's look at the facts: 23 States currently have a cap on medical malpractice damages. Most have had those statutes for a substantial number of years. And 27 States do not have a cap on malpractice damages. The best evidence of whether such caps affect the cost of malpractice insurance is to compare the rates in those two groups of States. Based on the data of medical

liability monitored on all 50 States, the average liability premium in 2001 for doctors practicing internal medicine was slightly less, 2.2 percent for doctors in States without caps on malpractice, $7,715; and in States with caps on damages, $7,887. Internists actually pay more for malpractice insurance in the States that have the caps.

The average liability premium in 2001 for general surgeons was also slightly less. For doctors in States without caps, $26,144; in States with caps, it was $26,746. Surgeons are also paying more in States that have caps.

The average liability premium on OB/GYN physicians in 2001 was only 3.3 percent more for doctors in States without caps, $44,485; and States with caps, $43,000—a very small difference.

This evidence clearly demonstrates that capping malpractice damages does not benefit the doctors it purports to help. Their rates remain virtually the same. It only helps the insurance companies earn bigger profits.

This chart over here indicates the States without the cap on damages, States with a cap on damages. I think the proof is in the pudding.

Since malpractice premiums are not affected by the imposition of caps on recovery, it stands to reason that the availability of physicians does not differ between States that have caps and the States that do not. Do we understand that? We are talking about comparing the number of available physicians between the States that do have caps and the States that do not. AMA data show that there are 233 physicians per 100,000 residents in States that do not have medical malpractice caps and 223 physicians per 100,000 residents in States with caps.

Looking at the particularly high cost of obstetrics and gynecology, States without caps have 29 OB/GYNs per 100,000 while States with caps have 27.4 per 100,000. Clearly, there is no correlation.

California, the State that has the lowest caps the longest, set a $250,000 cap on noneconomic damages in the mid-1970s, which has not been adjusted for inflation since. If the tort reformers are correct, you would expect California to have had a smaller percent of growth in premiums since those caps were enacted. Between 1991 and 2000, premiums in California actually grew more quickly, 3.5 percent, than did the premiums nationwide.

The State with the caps shows the malpractice insurance actually went up.

If this amendment were to pass, it would sacrifice fair compensation for injured patients in a vain attempt to reduce medical malpractice premiums. Doctors would not get the relief they are seeking. Only the insurance companies, which created recent market's instability, would benefit.

Even supporters of the industry acknowledge that enacting tort reform will not produce lower insurance premiums.

Sherman Joyce, the president of the American Tort Reform Association, told the Liability Week publication:

> We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.

This is the president of the American Tort Reform Association, telling Liability Week:

> We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.

Victor Schwartz, the association's general counsel, told Business Insurance:

> . . . many tort reform advocates do not contend that restricting litigation will lower insurance rates and ''I've never said that in 30 years.''

The American Insurance Association even released a statement earlier this year, March 13, 2002, acknowledging:

> [T]he insurance industry never promised that tort reform would achieve specific premium savings.

Listen to that. The American Insurance Association even released the statement on March 13:

> [T}he insurance industry never promised that tort reform would achieve specific premium savings.

A National Association of Insurance Commissioners study shows that in 2000, the latest year for which data is available, total insurance industry profits as a percentage of premiums for medical malpractice insurance was nearly twice as high—13.6 percent—as overall casualty and property insurance profits—7.9 percent.

Do we understand that now? The insurance industry commissioners are now saying that the insurance industry profits, as a percentage of premiums for medical malpractice, are twice as high as overall casualty and property insurance profits.

In fact, malpractice was a very lucrative line of insurance for the industry throughout the 1990s. Recent premium increases have been an attempt to maintain high profit margins despite sharply declining investment earnings.

Insurance industry practices are responsible for the sudden, dramatic premium increases which have occurred in some States in recent months. The explanation for these premium spikes can be found, not in legislative halls or in courtrooms, but in the boardrooms of the insurance companies themselves. There have been substantial increases in recent months in a number of insurance lines, not just medical malpractice. In 2001, rates for small commercial accounts have gone up 21 percent, rates for midsize commercial accounts have gone up 32 percent, and rates for large commercial accounts have gone up 36 percent. These increases were attributable to general economic factors and industry practices, not medical liability tort law.

Insurers make much of their money from investment income. During the time when investments offer a high profit, companies compete fiercely with one another for market share. They often do so by underpricing their plans and insuring poor risks. When investment income dries up because interest rates fall, the stock market declines, or cumulative price cuts lower profit, the insurance industry then attempts to increase its premiums and reduce its coverage. This is a familiar cycle which produces a manufactured crisis each time their investments turn downward.

For example, St. Paul, one of the largest medical malpractice insurers, which has been experiencing serious financial difficulties lately, actually released $1.1 billion in reserves between 1992 and 1997 to enhance its bottom line and make those dollars available for investment. Some of the company's investments did not go well. It lost $108 million in the collapse of Enron alone. When claims became due, those reserves were not available to pay them.

A recent study of the Consumer Federation of America, presented at a hearing of the Health Subcommittee of the House Committee on Energy and Commerce last week, documented this industry's trend:

> It is the hard insurance market and the insurance industry's own business practices that are largely to blame for the rate shock that physicians have experienced in recent months.

The Consumer Federation's findings are highly enlightening:

> Medical malpractice rates are not rising in a vacuum. Commercial insurance rates are rising overall. The rate problem is caused by the classic turn in the economic cycle of the industry, sped up—but not caused—by terrorist attacks. Insurers have underpriced malpractice premiums over the last decade. It would take a 50 percent hike to increase inflation-adjusted rates to the same level as 10 years ago. Further limiting patients' right to sue for medical injuries would have virtually no impact on lowering overall health care costs. Medical malpractice insurance costs as a proportion of the national health spending are minuscule, amounting to less than 60 cents per hundred dollars spent. Insurer losses for medical malpractice have risen slowly in the last decade by just over the rate of inflation. Malpractice claims have not exploded in the last decade. Closed claims, which include claims where no payout was made, have remained constant, while paid claims have averaged just over $110,000. Medical malpractice profitability over the last decade has been excellent, at just over 12 percent per year despite a decline in profits in the last 2 years.

That is the profit they have been making over the last decade.

This analysis of why we are seeing a sudden spike in premiums was basically confirmed by a June 24, 2002, Wall Street Journal article describing what happened to the malpractice insurance industry during the 1990s:

> Some of these carriers rushed into malpractice coverage because an accounting practice widely used in the industry made the area seem more profitable in the early 1990s than it really was.

Does that have a ring to it, Mr. President? Carriers rushing in because an accounting practice widely used in

the industry made the area seem more profitable in the early 1990s than it really was? And now we are going to take it out on the individuals who are most vulnerable and most severely hurt in our society?

A decade of shortsighted price slashing led to industry losses of nearly $3 billion last year.

I continue the quote from the Wall Street Journal:

I don't like to hear insurance company executives say it's the tort system—it's self-inflicted—says Donald Zuk, chief executive of SCPIE Holdings, Inc., a leading malpractice insurer in California.

This is what he said:

I don't like to hear insurance companies say it's the tort system—it's self-inflicted. . . .

Zuk then continues:

Then it continues:

The losses were exacerbated by carriers' declining investment returns. Some insurers had come to expect that big gains in the 1990s from their bond and stock portfolios would continue, industry officials say. When the bull market stalled in 2000, investment gains that had patched over inadequate premium rates disappeared.

Let's look back at the type of severely injured patients who would be denied fair compensation under the McConnell amendment. These are the people who are being asked by those across the aisle to pay for the mismanagement of the insurance industry and the wrongdoing of health care providers:

Leyda Uuam—from Massachusetts—underwent surgery to correct a protruding belly button when she was 5 weeks old. Leyda will never walk, talk, move, or have any normal function after she suffered brain injury due to a series of errors by anesthesiologists, nurses, and a transport team.

When Mrs. Oliveira's unborn baby showed fetal distress her doctor failed to perform a timely caesarean birth as common sense would indicate. Instead, he attempted a forceps delivery. When this didn't work, he made three attempts at vacuum extraction, which were also unsuccessful. A different physician then attempted a second forceps delivery, which also failed. Finally, Olivera underwent a caesarean section, yet her son died within an hour of his birth. An autopsy report identified the cause of death asphyxia. The hospital, in an attempt to cover its negligence, amended the report falsely, listing the cause of death as probably fetal sepsis.

Twelve year-old Steven Olsen is blind and brain damaged today because of medical negligence. When he was hiking, he fell on a stick in the woods. The hospital refused his parents' request for a CAT scan, and instead pumped Steven full of steroids and sent him home with a growing brain abscess. The next day, Steven Olson became comatose and wound up back in the hospital. Had he received the $800 CAT scan, which would have detected the brain mass growing in his skull, Steven would be perfectly healthy today. The jury awarded Steven $7.1 million in non-economic damages for his life-sentencing of serious illness and disability.

Harry Jordan, as man from Long Beach, underwent surgery to remove a cancerous kidney. The surgeon took out his healthy kidney instead. Jordan had been living for years on 10 percent kidney function, and he is now no longer able to work.

Elizabeth, a former fashion model, went to the emergency room complaining of nausea, vomiting, and ''the worse headache of her life.'' The doctor misdiagnosed her as having an acute neck sprain and sent her home. Unfortunately, he failed to diagnose her symptoms as the warning leak of a brain aneurysm even though he had written a textbook which included an entire chapter on warning leaks. Ten days after her hospital visit, Elizabeth's aneurysm ruptured and she had a stroke. The bleeding destroyed brain tissue, requiring the removal of ⅓ of the frontal lobe of her brain. Elizabeth was left paralyzed as a result of her misdagnosed aneurysm.

Philip Lucy's nasal cancer was misdiagnosed by doctors as high blood pressure and nerve damage for 2 years, although he continued to complain of pain. It was finally discovered that his left sinus was completely filled with a cancerous mass. This necessitated the removal of his left palate, left cheek, left orbit and his left eye.

LeVern Dostal, a recent retiree, died a slow and painful death after her surgeon failed to give her antibiotics before her gallbladder surgery. She developed sepsis and was hospitalized for a lengthy period of time, during which she underwent 3 more surgeries, as her condition slowly deteriorated.

Ms. Keck, 63, was admitted to the hospital for pneumonia. She sustained brain injuries because a nurse failed to monitor her oxygen level as instructed, and failed to notify the doctors of her worsening condition. She now suffers from paralysis and cannot speak. The hospital was purposefully understaffed to increase profits.

As we debate this amendment, let us all remember that we are dealing with people's lives—many of them have suffered life-altering injuries as a result of substandard medical care. The law is there to protect them, not to shield those who caused their injuries.

I hope the Senate will not accept the McConnell amendment for the reasons I have outlined. As we have seen on so many different occasions, the neediest, the youngest, and the most vulnerable individuals in our society are often those who suffer the greatest kinds of neglect and negligence.

If we are going to have accountability in our society, we ought to have accountability.

One of the extraordinary things I heard was yesterday during the President's statement in North Carolina when he talked about accountability by victims, but not accountability by the insurance companies and not accountability by the others—not accountability by others even in the corporate world but accountability by schoolchildren. If they are not able to learn and be successful, then they are not included in terms of the completion of their studies. And now they are being held accountable. We are not getting the resources for them in order to give them the fair chance.

It seems to me we are being asked to protect the strongest elements in terms of our society. We have seen that during the course of this whole debate. Now we see it with regard to an amendment to protect the insurance companies. When we look at any piece of legislation, we should ask: Who is going to benefit, and who is going to lose? The answer is very simple with this amendment. The people who are going to benefit are going to be the insurance companies themselves, and the people who are going to pay the price are going to be our most vulnerable in our society who need our protection.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I listened with interest to the speech of my good friend from Massachusetts, although I must say that it must have been drafted to address a different amendment other than the one the Senator from Kentucky sent to the desk. None of the victims that Senator KENNEDY recounted would have lost a penny of economic or noneconomic damages under the amendment that is at the desk—not a penny. We don't cap either pain and suffering, or economic damages. There is no cap at all.

I did not hear my friend from Massachusetts talk about the legal fees.

Let us go back and take a look at what this amendment does before yielding to my friend, the only doctor in the Senate, to address this issue.

This is a pro-victim amendment. There are no caps on economic and noneconomic damages in this amendment. Two things are capped: Punitive damages, which are designed to punish the defendant and not enrich the plaintiff, are capped at twice the rest of the damages. There is a very reasonable cap on attorney's fees. And the reason for that is the plaintiffs—the victims—the senior Senator from Massachusetts is talking about are only getting about 52 percent of the money. Those grievously injured parties are not getting enough of the awards.

Let us in this debate talk about the amendment that is before us—not the amendment that might have been before us.

The AMA supports the amendment—frankly, somewhat tepidly. They would like to go further. But the AMA does support my amendment. Obviously, they think it would make a difference in being able to continue to provide health care for our American citizens.

Mr. President, the amendment I offer would make needed reforms to medical malpractice litigation.

There are few challenges facing this body that are more complex than improving the quality and affordability of health care in America. This week, we will have debated competing proposals to expand Medicare and create a prescription drug benefit. Over the past year, the Senate has passed legislation to strengthen our Nation's defenses against the threat of bioterrorism and provide new resources to the researchers at the National Institutes of Health, NIH. While all of these proposals are worthy of this body's consideration, the Senate has not yet addressed one of the fundamental problems limiting the accessability and affordability of quality care: reforming our Nation's flawed medical malpractice system.

These reforms are essential to ensuring that quality health care is available and affordable to all Americans. After all, what good is a Medicare drug benefit if you can't find a doctor to write a prescription or a pharmacist to fill it? Our current medical malpractice system encourages excessive litigation, drives up costs, and literally scares care-givers out of the medical profession. All too often, these lawsuits result in exorbitant judgements that benefit personal injury lawyers more than they compensate injured patients.

Enacting reasonable medical malpractice reforms will reduce health care costs and improve access to care, while allowing legitimate victims full access to the courts. My amendment would take a modest, but important, first step at reforming this flawed medical malpractice system in a manner which I believe will attract significant bipartisan support.

I have long championed strong, medical malpractice reform legislation. I believe debate on the Greater Access to Affordable Pharmaceuticals Act, provides us not only the opportunity, but the obligation, to enact meaningful malpractice reforms.

Much like the issue of a Medicare drug benefit, medical malpractice reform is not a new topic for the Senate. During debate on the Product Liability Fairness Act of 1995, I offered an amendment to enact reasonable reforms to our Nation's medical malpractice laws. After debating the amendment for several days, I was proud to have the support of 53 Senators and my amendment was agreed to by the Senate. Among those 53 supporters were some prominent Democrats and Independents: Senators LIEBERMAN, FEINSTEIN, JEFFORDS, NUNN and Exon.

Today I offer the same amendment the Senate agreed to in 1995. For the benefit of my colleagues who have joined the Senate since we last debated this issue, my amendment would do the following: The McConnell amendment would limit punitive damages to two times the sum of compensatory damages, economic and non-economic. This provision would help end the litigation lottery, where punitive damages are awarded out of all proportion to the underlying conduct. The threat of being unreasonably held responsible for millions and millions of dollars in damages hangs like the sword of Damocles over the heads of our medical professionals.

My amendment would eliminate joint liability for non-economic and punitive damages. As a result, defendants would only be liable for their own proportionate share for the harm that occurred. It is unfair for an injured person to be found 99 percent liable for his injury, and his doctor to responsible for only 1 percent, yet the doctor has to pay for all of the damages.

The amendment places modest limits on attorneys' contingency fees in medical malpractice cases. Specifically, the amendment would only allow personal injury lawyers to collect 33 percent of the first $150,000 of an award and 25 percent of the award on all amounts above $150,000.

My amendment encourages States to develop alternative dispute resolutions mechanisms to help resolve disputes before they go to court.

As I noted earlier, the amendment I offer today is the same one that the Senate agreed to in 1995. Unfortunately, as we all know, it is impossible to pass contentious legislation in this body without the 60 votes necessary to invoke cloture. Therefore, in the interests of preventing a filibuster against the larger product liability bill, I withdrew my medical malpractice amendment, and it has never been signed into law.

In 1995, the Senate considered our medical malpractice system to be so flawed that it required the Federal Government to enact these exact reforms. In the period since then, the system has gotten dramatically worse, not better.

I might not be so passionate about enacting medical malpractice reforms if these lawsuits were an accurate mechanism for compensating patients who had been truly harmed by negligent doctors. Unfortunately, the data shows just the opposite. In 1996, researchers at the Harvard School of Public Health performed a study of 51 malpractice cases which was published in the New England Journal of Medicine. In approximately half of those cases, the patient had not even been harmed, yet in many instances the doctor settled the matter out of court, presumably just to rid themselves of the nuisance. In the report's conclusion, the researchers found that, ''there was no association between the occurrence of an adverse event due to negligence or an adverse event of any type and payment.'' In everyday terms, this means that the patient's injury had no relation to whether or not they received payment in their malpractice case.

While the research showing that litigation's effectiveness at compensating the injured hasn't stopped the personal injury lawyers from rushing to the courthouse to file more lawsuits, the jackpots in the personal injury lawyers' litigation lottery have increased dramatically since we considered this issue in 1995. As my first chart shows, the Jury Verdict Research Service reports that the median award made by a jury has more than doubled since 1996, from $474,000 to $1,000,000 in 2000. Not surprisingly, the increase in jury awards has led to a similar increase in the dollar value of settlements reached out of court. Since 1995, the median settlement has increased from $350,000 to $500,000 in 2000.

These escalating settlements might make one wonder, ''Are our doctors, nurses and hospitals twice as negligent as they were just 6 years ago?'' The answer is, of course, no: the doctors haven't gotten worse, but the system has. In fact, plaintiffs only won 38 percent of the medical malpractice claims that went to trial, essentially the same as it was in 1995, 35 percent.

I think this bears repeating. In 1995, the Senate considered our medical malpractice system to be so flawed that it required the federal government to enact limits on the contingency fees charged by personal injury lawyers and punitive damages. In the period since then, the system has gotten worse, not better.

This litigation explosion is manifested in the premiums which doctors pay for their malpractice insurance. In the 7 years since we last debated medical malpractice reform on the Senate floor, doctors on Main Street USA have seen dramatic increases in their insurance premiums. Since 1995, obstetricans, OB-GYN's, have seen their premiums increase an average of almost 12 percent a year, each and every year. The same is true for the general surgeons who have seen their malpractice premiums increase 13 percent each year. Let me be perfectly clear, I am not talking about a thirteen percent increase over seven years, these premiums are increasing 13 percent EVERY year.

This may make people wonder, ''Why should I care about how much doctors pay for malpractice insurance premiums?'' The answer is access. Doctors are less likely to provide those services for which they are likely to be sued.

This is particularly true in rural areas of this Nation. While many doctors are willing to set up practices in rural areas, they cannot forgo malpractice insurance. Therefore, many doctors are forced to establish practices in more urban and suburban areas where they can earn the fees necessary to cover their malpractice premiums.

This has certainly been the case in Kentucky this year. Just a few weeks ago, the Corbin Family Health Center in Corbin, KY was forced to shut its doors because its doctors were unable to find an affordable insurance policy. Dr. Richard Carter and his four colleagues at Corbin Family Health deliver about 250 babies a year and have never lost a malpractice claim. Yet

when their insurance company, The St. Paul Cos., decided to leave the medical malpractice business, Corbin Family Health's doctors lost their coverage. The remaining few insurance companies that were willing to provide coverage will only do so for $800,000 to $1 million a whopping 465 percent increase.

This is a tragedy. Fifty of the clinic's patients are due to give birth in the next 2 months, and 130 more are due by the end of this year.

Fortunately for the families of Corbin, KY, the clinic's doctors were able to secure coverage last week, and the clinic reopened. However, their premium is twice what they paid previously. In addressing his clinic's predicament, the clinic's director, Steven Sartori, noted, ''Even though you're relieved, it's not over because this malpractice problem is not going to go away . . . There's more doctors who are going to be in the same predicament I was in.''

This problem is not limited to Kentucky. On July 1 of this year, Atmore Community Hospital in Atmore, AL, was forced to close its obstetrics program because it could not afford the 282 percent increase in malpractice insurance from $23,000 to $88,000. Now, expecting mothers must travel either to the hospital in Brewton, AL, 30 miles away, or to the big city hospitals in Mobile or Pensacola. That's more than an hour and a half drive.

Nor is the problem limited to the South. The administrators at Copper Queen Community Hospital in Brisbee, AZ were recently forced to close their maternity ward because their family practitioners were looking at a 500 percent premium increase. Expectant mothers must now travel more than 60 miles to the closest hospital in Sierra Vista or Tucson. According to a recent article in Forbes magazine, four women have since delivered babies en route.

In New Jersey, the director of Obstetrics and Gynecology at Holy Name Hospital was forced to lay off six employees from his practice when his malpractice premiums doubled. He told the New York Times ''The issue is, we can't stay open. It's going to restrict access to care. It's going to change the way OB is delivered to the population, and they're not going to like it.''

While our flawed medical malpractice system may be hitting obstetricians particularly hard, it is negatively impacting nearly every aspect of the medical profession. Many radiologists in Georgia are no longer reading mammograms, Atlanta Business Chronicle, 6/21/2002, because of the liability associated with the service. These lifesaving mammograms may only make up 5 percent of a radiologist's practice, but are responsible for a whopping 75 percent of their insurance liability. Officials at Memorial Hospital and Manor in Bainbridge, GA faced a staggering 600 percent increase in premiums despite a ''nearly spotless claims history,'' Modern Healthcare, 4/1/2002.

However, no one should be fooled into thinking that this medical malpractice crisis is limited to the small hospitals of rural America. Perhaps the most publicized case involves the closure of the trauma unit at the University of Nevada Medical Center, UMC. Trauma centers are frequently referred to as ''super emergency rooms'' because they are staffed with highly trained surgeons and specialists who are qualified to treat the highest risk cases. Nearly all of the highly skilled surgeons and orthopedists who worked in the UMC unit decided they could no longer risk the liability exposure and resigned. UMC's director Dr. John Fildes explained that, ''We want to be here, that's the sad thing. These physicians want to take care of patients, but they are withdrawing from high-risk activities to protect their families and livelihoods'', Washington Post 7/4/2002.

What does the closing of UMC's Trauma Center mean to the people of southern Nevada? It means that those patients who are most seriously injured in car accidents must either be treated at less prepared emergency rooms or transferred out of state to the nearest trauma center. Fortunately, UMC has reached a temporary arrangement that will allow the unit to re-open by classifying its physicians as State employees for the next 45 days.

Pennsylvania has faced a similar crisis. I would like to read from a recent article that appeared in the Allentown Morning Call:

Thomas DiBenedetto is a marked man.

He feels the bull's-eye on his back every time someone is wheeled into Lehigh Valley Hospital's emergency room with broken, mangled bones.

It's his job to put people back together. DiBenedetto is an orthopedic surgeon in the Level One trauma center, and he loves what he does. Or, at least, he did.

Large medical malpractice awards and increasingly litigious patients have made it difficult for him to enjoy the job he's been doing for 13 years. He has been sued four times.

He won all four cases. Yet, his malpractice insurance costs this year went up nearly a third, to $44,000. Even though his record is clean, he expects the bill to continue to climb.

Now, I am tempted to take issue with the AMA's finding in that I think some of these States have crossed the line from having serious problems to being in a crisis. I know how bad the situation is in Kentucky, and I think Kentucky ought to be listed as a crisis State. I noted the closure of the Corbin Family Health Center earlier, and we see daily reports of how Kentucky physicians are packing their medical bags and heading to Indiana, which has more reasonable tort laws.

For those doctors who choose to stick with the profession they love, they will inevitably be forced to pass these higher malpractice costs along to consumers in the form of higher fees. Several years ago the Hudson Institute conducted a study in which it estimated that liability costs added $450 to the cost of each patient admission to a hospital and accounted for 5.3 percent of their medical expenditures. In 1994, the Towers-Perrin Research firm estimated that malpractice expenses added $12.7 billion to the cost of health care in America. To put that into terms many Senators can understand, that is more money that Medicare spent on nursing home care in 1994 and almost as much as was spent on the Medicare Home Health benefit. I don't think anyone would argue that these dollars would be better spent improving patient care rather than lining the pockets of the personal injury lawyers.

I will be the first person to admit that the reforms I propose today are modest. As many of my colleagues know, I have authored even stronger reforms contained in free-standing legislation, the Common Sense Medical Malpractice Reform Act of 2001. Our Nation's health care is staring down the barrel of a medical malpractice crisis, and it must be addressed soon. Therefore, I have chosen to offer this amendment which the Senate already agreed to in 1995. At its heart, this amendment merely assures that patients, not personal injury lawyers, receive the vast majority of any jury award or settlement. By establishing proportional liability, the amendment ensures that damages are paid by those parties who actually inflict the harm. I believe these are common sense steps the Senate can take to address, and I urge my colleagues to support it.

I yield 20 minutes to the distinguished Senator from Tennessee, the only physician in the Senate who is well versed on this issue. I yield 20 minutes to the Senator from Tennessee.

Mr. DURBIN. Mr. President, parliamentary inquiry: As I understand it, we have a time agreement in terms of the allocation of time.

The PRESIDING OFFICER. We are under a time agreement. The time is limited and under the control of the Senator from Kentucky and the Senator from Massachusetts.

The Senator from Tennessee.

Mr. KENNEDY. Mr. President, I think we were trying to go back and forth. I know the Senator has to leave. I don't know what the Senator's time limitation is. Could he take 7 minutes?

Mr. FRIST. Mr. President, I have a time constraint. I have been on the floor since last night waiting to make my opening statement.

I would be happy to yield 3 minutes, if the Senator has to make an airplane or something.

Mr. KENNEDY. Mr. President, I want the record very clear—then we are not going from side to side? I thought we were going from side to side. I withdraw that.

(Laughter)

Senator MCCONNELL had two speeches.

We have followed the side-to-side rule. Now we are making it clear that on this legislation we no longer have to follow it. If that is the way it is going to be—we have respected that since the start of this debate. This is the first time I have been on the floor for 7 days that we have not done that.

I am prepared to yield to the Senator.

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. FRIST. How much time has been used by each side?

The PRESIDING OFFICER. The Senator from Massachusetts has used 23 minutes. The Senator from Kentucky has used 11 minutes.

The Senator from Tennessee.

Mr. FRIST. Mr. President, I want to change the topic and focus where I believe the impact is most being felt today. It really has not been discussed on the floor thus far; and that is, at the level of the doctor-patient relationship, at the level where care is actually delivered. We heard a lot about the budget numbers and the insurance companies and the like, but what I would like to do is focus on where the impact actually is.

Yesterday, I was at a hospital, not as a physician, but I was there with someone in my family. I was in an emergency room 2 nights ago and then yesterday. Again, I was not there as a doctor or as a U.S. Senator. It was a local hospital, George Washington University Hospital.

On a side table, I picked up a newsletter. Again, it was not intended for me. The newsletter is called the ''GW Medicine Notes.'' I have it in my hand. It is written by their medical staff for their medical staff and, I guess, for people in the hospital. The letter is from the chairman, Dr. Alan G. Wasserman. The whole front page really tells the story that much of the debate will be about today and on Tuesday.

I will open with just one sentence or two sentences from this letter, again not intended for me, but to really express the sentiment, the impact of what is happening all across America because what we are seeing today is, indeed, a crisis.

The words, again, from Dr. Wasserman, in what is called the ''GW Medicine Notes,'' a monthly publication of GW, the George Washington Department of Medicine:

What we have is a runaway train that isn't stopping. The malpractice problem is not just a physician problem. It is beginning to affect the ability of patients to get proper care in a timely manner.

I may refer back to this letter because I found it fascinating, sitting there yesterday waiting for an MRI scan, just to see the sentiment that patients are actually being hurt. When I saw the words: ''What we have is a runaway train that isn't stopping,'' the imagery, I think, is very appropriate.

We cannot do little things. This train is barreling through, and patients are being hurt. Forget all the rhetoric, the dollars and cents, the bad insurance companies and the profits. Patients are being hurt by the current tort system that we have in effect today. The good news is, there is something we can do about it, and it starts right here with the McConnell amendment that is on the floor today.

I want my colleagues to listen very carefully. I hope, in the expanded reach, people are listening, because we have an opportunity, in this amendment, to improve patient care, and to reverse this runaway train, which is hurting patients today.

How can I say so definitively that patients are being hurt? You can look in the media. You can go into hospitals. I encourage everybody to ask their doctor. The next time you see your doctor or see a nurse or go into a hospital or interact with your health care system, just ask: What are these malpractice premiums doing?

We will talk a little bit about why premiums are going up.

What is being said around the country? Pick up the newspaper any day all across the country. Allentown, PA; Beckley, WV; New York, NY; Kansas City, KS; Jackson, MS.

Jackson, MS, November 23, 2001:

Costs Lead Rural Doctors to Drop Obstetrics.

That is because of the cost of the malpractice insurance. OB/GYNs are refusing to deliver babies and are dropping obstetrics.

Allentown, PA:

CARE CRISIS: Malpractice premiums crippling doctors. The emergency has stricken physicians in southeastern Pennsylvania, forcing some to leave their practices and patients behind.

Beckley, WV:

The situation may be more acute in West Virginia than anyplace else, but doctors across the board and around the country are facing double-digit hikes in malpractice premiums, something many hadn't seen since the 1980s.

Kansas City, KA:

Insurance rates reach crisis level for doctors. Some physicians have been forced to leave practices.

Again, we are talking about access to health care and costs of health care.

Dayton, OH:

WOMEN'S HEALTH CARE CRISIS LOOMS. . . . Rising malpractice premiums may force some doctors to stop delivering babies.

Buffalo, NY:

Soaring costs of medical malpractice insurance have caused fears among doctors that they will be forced to either quit their profession or practice in another state.

We all recognize this problem. I think both sides are going to state, again and again, that medical liability insurance premiums are skyrocketing. Why? The facts are there. We know it. We see it. Our physicians tell us why. We can look at what our insurance companies are having to charge today. The question is, why?

Medical liability claims and damage awards are exploding, and when they explode, that ends up being translated into increased premiums. People think those increased premiums are paid for by the doctor. When the doctor pays $50,000 or $100,000 in malpractice insurance, it is not really paid by the doctor, because the doctor is going to pass that straight back to the patients.

When you go to a doctor for a particular procedure part of that procedure is going just to buy the insurance. These costs ultimately increase premiums. First of all, increased jury awards increase premiums. They are eventually passed back to the patient.

We saw a chart earlier today. Let me just show it again. It is not just in George Washington Hospital, where I happened to find this newsletter and talked to the doctors and nurses there, and not just at Vanderbilt but all throughout the local and national medical community. The problem is all over the United States of America.

This is from the AMA. Basically, it outlines, in red, those States that are in crisis. You can see, it is not just on the east coast, and it is not just in the South, and it is not just in the Northwest. Shown in red are States in crisis: New York, Pennsylvania, Texas, Nevada, and Washington. Shown in yellow, including my home State, are States with problem signs. As these rates increase 15, 16, 17 percent, sometimes 20 percent, sometimes 30 percent, they will force more states into the red, unless we act.

The end product of all this, all those articles, the end product of the newsletter—this is what is circulating in hospitals and clinics all over the United States of America—is that patients are suffering.

Why do I say that? No. 1, access to care. It is not just a matter of the costs, but it is access to care. If you are in a motor vehicle accident and you need a trauma center, we have seen trauma centers close because of these escalating, out-of-sight, skyrocketing premiums, which no longer can be tolerated. If you are one of those individuals who needs that care, the access is not there, and you are going to be hurt.

If you need an obstetrician—in many ways, it is a woman's issue—and your former gynecologist-obstetrician is one who gave up that interest in delivering babies because the malpractice insurance was so high, your access to obstetrics care, the delivery of babies, and the prenatal and perinatal care all of a sudden disappears.

Why? Ask your obstetrician. It is because the malpractice insurance has gone sky-high, from $10,000, $20,000, $30,000, $50,000, $100,000 up to $150,000, and it can no longer be sustained over time.

So physicians are dropping services. They have no choice. They are moving away from procedures that have a higher challenge rate because of the risk of the procedures. But if you are one who needs that procedure, you suffer from a lack of access to care. Those procedures that are a little bit higher

risk, physicians are beginning to leave and not do them.

We have had letters read about malpractice insurance. All of us understand that malpractice insurance needs to be addressed. It is the only way to improve the system itself. Malpractice does occur. There is nothing in the McConnell amendment that in any way lowers the standards on malpractice. You will have the other side reading a whole series of letters from people who have been injured. And as the Senator from Kentucky pointed out, there is nothing in his amendment that lowers the standards in any way in addressing true malpractice.

My colleagues who are physicians are now demanding action by Congress. Why? Because they took that Hippocratic oath to take care of patients, to do no harm. To illustrate this runaway train concept that Dr. Wasserman mentioned in his newsletter, things are at a crisis, we have level 1 trauma centers closing. Thank goodness they are not closing permanently but closing for this very reason—not for a whole broad range of reasons of cost increases but for this very reason—the high costs of liability insurance.

A level 1 trauma center is a big deal. It is not just an emergency room, and emergency rooms are terribly important, but it is not just an emergency room that sutures cuts or takes care of serious headaches. This is where you go if you are in a severe motor vehicle accident, have severe head trauma, multiple injuries, bleeding in the abdomen. This is where you go where you have trained specialists 24 hours a day to save your life. That is what a level 1 trauma center is.

The only level 1 trauma center facility at the University of Nevada Medical Center closed on July 3 after 57 orthopedic surgeons basically resigned because medical malpractice insurance rates made it too costly for them to treat high-risk patients.

Luckily, fortunately, the trauma center reopened when the surgeons agreed to return for at least 45 days. People can look at that case and say it was for this reason or that. The bottom line is, we have a group of people in a community who took an oath to take care of patients, but basically said this is such a severe, fast-moving, heavy, runaway train that we can't sustain what we do professionally because of this crisis.

This particular trauma center is one of the 10 busiest in the country and is the only one in Las Vegas. When it closed, the nearest trauma center was roughly an hour and 20 minutes away.

Therefore, when we talk dollars and cents and insurance companies making money, we need to address all of that. But let's recognize that we have to fix the system which has now gotten so bad, so severe that premiums are skyrocketing. That increase is passed on to patients. Patients cannot afford increases in health care costs. We have known that for a long time.

Now what is happening, the actual care expected by the American people and that the American people deserve is less available. We call it less access. But whether it is a trauma center closing, whether it is a woman who wants to keep her obstetrician, but the obstetrician says he can't afford to keep delivering babies because of these premiums, because of these excessive lawsuits, these frivolous lawsuits today, he can't afford his old specialty that he was trained to do. Then there is the third component of access. You have physicians leaving parts of the country. Basically, some parts of the country, these red areas where you have this crisis level, malpractice insurance has gotten so high that a physician can either quit—and they are doing that; they have no choice. Ask your physicians.

Mr. MCCONNELL. Will the Senator yield?

Mr. FRIST. I am happy to yield.

Mr. MCCONNELL. In response to his observation, what is happening in my State is they are going across the river to Indiana which, as you will note, is a State which has modest caps on recovery; therefore, affordable rates.

Mr. FRIST. I thank the Senator from Kentucky. He is exactly right. We have people moving from a yellow State, such as Kentucky, to a white State. The white means States that are currently OK. You see California. I will come back to California and comment on that. We have people from Mississippi, that already has fewer physicians, moving up to Tennessee. And who knows, they may end up moving to Wisconsin or Indiana or out to California for the same reason.

What is important, in response to the Senator from Kentucky's question, is that physicians are making decisions not on places they either like to practice to deliver the care they are trained to do, but now they are making decisions because of this exorbitant, runaway train. It is almost like a litigation lottery, malpractice lawsuit premiums that they are having to pay. They tell you that. That is the reason they are moving.

So we have the cost issue. We have the specialty issue. We have physicians changing specialties, not because of their individual practice, what kind of care they are giving, but because the premiums are that higher for obstetricians versus gynecologists. Obstetricians deliver the baby; the gynecologists takes care of many other women's issues. Then you have the geographic movement to other States.

There is a reason for all of this. It is a litigation problem. We need to fix the problem, and it can be fixed. The numbers are staggering. Between 1995 and the year 2000, the average injury award jumped over a 5-year period more than 70 percent to $3.5 million. That is the average. More than half of all injury awards today top $1 million of all the awards. The payouts aren't the only problem.

Simply defending a malpractice claim, whatever the claim is, is more than $20,000, whether or not the doctor is at fault or the hospital is at fault. So there is an incentive through these exorbitant contingency fees where the trial lawyers, the personal injury lawyers, may make 40 percent. If there is a jury award, the trial lawyer, the personal injury lawyer gets 40 percent of the cut. Thus the personal injury lawyer has the incentive, the economic incentive to go out and engage in lawsuits, in frivolous lawsuits.

Each one of those which comes forward, no matter what, just to defend costs at least $20,000. In 2001, physicians in many States saw their liability premiums for these frivolous lawsuits, excessive lawsuits that go to the millions and millions of dollars, with the trial lawyers taking off 40 percent—and Senator MCCONNELL's amendment addresses this contingency fee very directly to put some sort of control on the incentive that trial lawyers have to dig up these cases, then the physicians, because of the tremendous cost, whether the case is frivolous or not, they tell their insurance company to settle the case. They don't want to be tied up in a court. They want to deliver care. That is what physicians are trained to do. That is what they are obligated to do.

The solution: Intelligent, reasonable tort reform, sensible reform with fair and equitable compensation for those negligently injured. California has addressed this. Hopefully, over the next several days or hours we will address their experience. We have seen California put very reasonable controls and caps and incentives addressing things broadly, and they have been able to control their costs. So we know it can be done.

I see my time is about over. I look forward to coming back Monday to talk a little bit more about this issue. The bottom line is, the McConnell amendment will help patients. That is what it is about. Patients are suffering today. We know sensible tort reform works. We have seen it in California, in those States that have been progressive enough to do that. Now we have a duty to make sure these red States become yellow States and eventually become white States where we don't have this crisis today.

Sensible tort reform works. Let's act now to protect patients, their accessibility to quality care, the premiums that physicians have to pay which are ultimately translated down to cost to that individual patient.

I urge support of the underlying amendment.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I thank the Senator from Tennessee. He has a unique perspective as the only physician in the Senate for lending his voice to this most important cause. I might say to my friend, to those on the other side of the aisle, we may or may not win Tuesday morning, but this is not going

away. We will be back, and we will some day address this problem because it is a national problem. Some on the other side will argue for States rights, which I always find interesting coming from very liberal Members of the Senate, that somehow this is not a Federal problem. I intend to outline in my full remarks exactly why it is a national problem and can only be corrected at the national level. I thank my friend for his outstanding comments this morning and look forward to continued discussion next week.

Mr. FRIST. Mr. President, I ask the Senator from Kentucky to allow me to enter three sentences in the RECORD, and then I will close.

First, I thank the Senator for his comments. This does give us an opportunity to point to the fact that this is a national crisis that has to be addressed. We have an obligation to address this crisis.

Dr. Frank Boehm, who is a good friend of mine, writes a newspaper article in the Nashville Tennessean. Though I do not have one of his articles, he keeps a really good feel of what is going on around the State of Tennessee and around the country and is also one of the preeminent high-risk obstetrical doctors in the United States of America. I communicated with him the other day.

I close with two or three sentences of what he said. He sees a lot of these high-risk cases coming through and reviews a lot of cases. He says:

> What this has taught me is that doctors, hospitals and nurses are being sued in large numbers, in large part because of the possibility of a settlement or trial judgment of a large amount of money.

Then he talks about some of the things we can do, many of which are in the underlying McConnell amendment.

He closes with this:

> Doctors need tort reform and so do our patients. With many physicians leaving States to practice elsewhere, or just closing up shop, patients are suffering from a lack of access to medical care in many parts of our country.

That was in an e-mail in response to my question of what is the lay of the land.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from Tennessee particularly for his fine observation. There has been an effort on the part of some—and I am sure we will hear it again Tuesday—to say this is about insurance companies. This is not about insurance companies. It is about doctors, and it is about patients.

The AMA does support the McConnell amendment. I ask unanimous consent that a letter indicating their support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL ASSOCIATION,
Chicago, Illinois, July 25, 2002.

Re Medical Liability Reform Amendment

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: The American Medical Association (AMA) commends you for your leadership and initiative in offering an amendment to S. 812 (''Greater Access to Affordable Pharmaceuticals Act of 2001'') that would bring several common-sense reforms to our nation's broken medical liability litigation system.

Many states in our nation are experiencing an emerging medical liability insurance crisis. Due to large jury awards and the burgeoning costs of defending against lawsuits (including frivolous claims), medical liability insurance premiums are skyrocketing. In many cases, physicians are finding that liability insurance is no longer available or affordable. The media now reports on almost a daily basis that the situation has become so critical in some states that physicians are forced to limit services, retire early, or move to another state where the medical liability system is more stable.

The most troubling aspect of our unrestrained medical liability system is the effect on patients. Access to care is seriously threatened in states such as Florida, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington, and West Virginia. In other states, including Kentucky, a crisis is looming. Emergency departments are losing staff and scaling back certain services such as trauma care. Many OB/GYN's have stopped delivering babies, and some advanced and high-risk procedures are being postponed because surgeons cannot find or afford insurance.

Your amendment includes key building blocks to effective reforms, such as allowing injured patients unlimited economic damages (e.g., past and future medical expenses, loss of past and future earnings, cost of domestic services, etc.), establishing a ''fair share'' rule that allocates damage awards fairly and in proportion to a party's degree of fault, preventing double recovery of damages, allowing periodic payment of future damages, and preventing excessive attorney contingent fees (thereby maximizing the recovery of patients).

In addition to these necessary reforms, we urge you to include a reasonable limit of $250,000 for non-economic (e.g., pain and suffering) damage awards, while allowing states the flexibility to establish or maintain their own laws limiting damage awards that have proven effective as stabilizing the medical liability insurance market. Multiple studies have shown that a limit on non-economic damages is the most effective reform to contain run-away medical liability costs. Such reform has also been proven effective at the state level. We also urge you to include a reasonable cap on punitive damages, such as the greater of 2 times economic damages or $250,000.

By enacting meaningful medical liability reforms, Congress has the opportunity to increase access to medical services, eliminate much of the need for medical treatment motivated primarily as a precaution against lawsuits, improve the patient-physician relationship, help prevent avoidable patient injury, improve patient safety, and curb the single most wasteful use of precious health care dollars—the costs, both financial and emotional, of health care liability litigation.

The proposals in your amendment are an important step in the right direction to strengthen our health care system. The AMA looks forward to working with you regarding a reasonable reform on non-economic damages.

Sincerely,
MICHAEL D. MAVES, MD, MBA.

Mr. MCCONNELL. Mr. President, I see the Senator from Ohio in the Chamber. I will be happy to yield him such time as he may need.

Mr. VOINOVICH. Mr. President, about 10 minutes will do it.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise today as a Senator from a State that is on the edge of becoming one of those red areas on that national map. This Senator does not want his State to become one of those red States. I rise in strong support of Senator MCCONNELL's medical liability amendment.

The litigation tornado that continues to sweep the Nation does not seem to be losing strength. In fact, at the rate lawsuits continue to be filed, the only entity that stands to lose strength is our economy.

The cost of malpractice insurance has had an enormous impact on the rising costs of health care and the cost of health care insurance to the extent that more and more of my constituents are complaining that the cost of insurance is so high that they can no longer afford to buy it.

In particular, the effect of rampant litigation has really had a disastrous impact on the health care industry. When a pharmaceutical company decides not to develop and produce a new drug because the cost of possible litigation could erase any profit, who really loses?

When physicians choose not to perform certain procedures, such as delivering babies, because malpractice insurance rates are too high, who loses?

Even worse, when a physician stops practicing medicine because he or she no longer can afford the insurance premiums or is so fearful of malpractice being filed against them, who loses?

Recently, the American Medical Association released an analysis which found that medical liability has reached crisis proportion—I underscore ''crisis proportion''—in 12 States. One of those 12 States is Ohio.

In addition, the American College of Obstetrics and Gynecology, the ACOG, issued a red alert and warned that without State and Federal reforms, chronic problems in the Nation's medical liability system could severely jeopardize the availability of physicians to deliver babies in the United States of America.

The good news for Ohioans is that Ohio did not make the ACOG's list of nine hot States, those in which a liability insurance crisis currently threatens the number of physicians available to deliver babies.

The bad news is that Ohio is only one step short of that mark. It is one of three States where a crisis is brewing. In fact, signs of the crisis are already beginning to show.

Currently, in Hancock County in northwest Ohio, they have only one physician to deliver babies. Think about it, a county with a population of

over 70,000 people has 1 physician to deliver babies. He has indicated that if his insurance premiums continue to climb at the current rate, he will have to close up shop.

That sounds like a crisis to me, and I am sure it sounds like a crisis to the women in Hancock County who need someone there to deliver their babies.

I believe this amendment that Senator MCCONNELL has before us gets us on our way to enacting meaningful medical liability reform. It limits attorney's fees so that the money awarded in court goes to the injured parties, who are the people who really need the money. It also allows physicians to pay any large judgments against them over a period of time to avoid bankruptcy and requires all parties to participate in alternative dispute resolution proceedings, such as mediation or arbitration, before going to court. It limits punitive damages to twice the sum of compensatory damages. These are all reasonable limitations.

One of the growing areas in the legal profession is mediation and arbitration. In fact, the Michael Moritz School of Law at Ohio State University, of which I am a graduate, is one of the leaders of that initiative in the legal profession.

When I was Governor of Ohio, I joined the chief justice of the supreme court and wrote to all the businesses in our State encouraging them to agree to a mediation and arbitration in order to reduce litigation costs and, frankly, improve the economic environment in our State.

Why shouldn't we do this in medical malpractice cases? Doesn't it make sense? Providing a commonsense approach to our medical liability problems is certainly a win-win situation. Patients would not have to give away large portions of their judgments to their attorneys and physicians could focus on doing what they do best: practicing medicine and providing health care.

I know there are differences of opinion about how to approach this, but we do have a crisis in this country. If those who are opposed to Senator MCCONNELL'S amendment are concerned about this problem, then it would serve us well to sit down and figure out some way we can address this problem. We need to do it now, not tomorrow, not next month. I can tell you, if we do not do something about this problem, we are going to see more and more people in this country do without medical care. We are going to see a lot more of our physicians dropping out of the practice of medicine. And we truly will have something we never experienced in this great country, and that is a health care crisis.

I thank the Chair. I yield back any time to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from Ohio, who represents one of those red States in crisis, for his important contribution to this debate. I thank him so much.

Mr. President, I ask unanimous consent that Senator FRIST be allowed to control the remainder of the time we have for the morning on this issue.

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

The Senator from Tennessee.

Mr. FRIST. Mr. President, how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 50 minutes under his control.

Mr. FRIST. And the other side?

The PRESIDING OFFICER. Sixty-seven minutes.

Mr. FRIST. Mr. President, I mentioned in comments a few minutes ago the fact that I was in the hospital yesterday and two nights ago with a family member and I will go there in a few minutes. Being there as a patient's family is a different perspective than being there as a physician or Senator.

As one walks those halls and sees people working hard, day in and day out, 24 hours a day, as one watches the shift change at 7 or 8 at night, fresh people coming in and starting, and see physicians coming in at 9, 10 at night, starting early in the morning, seeing the emergency room and trauma centers going on around-the-clock, when one sees that and recognizes that we can do something that will make that better when the trends, especially in the last 3 to 4 years, are getting worse, it makes one feel very passionately about that.

When I see doctors leaving the practice of medicine for this reason, these exorbitant, skyrocketing, out of control—this runaway train which I mentioned earlier, such good imagery—it makes me want to passionately come to this body and make sure that people understand, make sure that my colleagues understand, that physicians are leaving the practice of medicine because of these exorbitant malpractice suits.

A physician who gets up every morning to take care of patients who come through that door is being charged $100,000 not for what they do but to cover the legal system and these out-of-control malpractice suits, which I will say are in many cases driven by the trial lawyers, there is no question in my mind, and if you talk to people broadly they will say lawyers have the incentive.

When one sees that happening and sees that patients are going to suffer, they want to act. That is what this McConnell amendment allows us to do, to do something that does not solve the problem; it does not go as far as I want to go. As the Senator from Kentucky said, does not go so far as the American Medical Association, which represents so many tens of thousands of doctors, would go, but it is a first step. It puts the issue back on the table, and we ought to talk about this issue in this body.

It has been 7 years since we have actually addressed this issue, an issue that patients are being hurt by, that is driving physicians out of the practice of medicine, that is driving physicians from Kentucky to Indiana, from Mississippi to Tennessee, out of New York City, out of New York, out of Texas, out of Florida, that is driving the price of health care up unnecessarily. It is unnecessary. In fact, it is hurting patients unnecessarily; it is not helping patients.

If there is malpractice, there needs to be appropriate punishment. There needs to be appropriate economic compensation. It needs to be fair. It needs to be equitable. But these skyrocketing lawsuits, many of them frivolous, need to be brought under some sort of moderation and some sort of control.

I mentioned that Dr. Wasserman, who is chairman of the Department of Medicine at George Washington University, who is in the hospital working right now—we did not even really talk about this specifically in any detail, but in the newsletter that I quoted earlier, which is pretty good reflection of what is going on in every hospital around the country, it is important for my colleagues to know that sentiment.

In that same newsletter, I read one sentence earlier saying that what we are facing, in terms of this lack of tort reform, a medical liability crisis being a runaway train, a beautiful analogy. He said, and I quote from the second paragraph of the letter:

> Malpractice rates are increasing at a rapid rate across this nation. Insurance companies are going out of business, refusing to write new policies, or raising rates 50 to 200 percent.

People say, why? Some say it is the bad insurance companies that are making profits and taking advantage of people broadly, and that is where the problem is. Well, I disagree. It may be part of the problem that may need to be addressed, but the fundamental problem is the frivolous lawsuits, with no sort of restraint, with out-of-control incentives for the personal injury lawyers to take a 40 percent cut, to increase the number of cases, to bring these suits, again with no limits, no caps, not a $100,000 cap, a $500,000 cap, a $1 million cap, $5 million cap or $10 million—it does not matter what it is, they take away 40 percent of whatever it is so they are going to drive it high.

The McConnell amendment stops short of what I would really like to do, and it does not have any sort of limitation of payments. It looks at limits on attorney's fees, establishes proportional liability, looks at both scopes, such as collateral service reform, which we will be able to talk about, but it is a good first step.

Dr. Wasserman, in his newsletter—and this will be the last time I will quote from it, but it captures it—says: Be patient. There is a coming crisis. Already, there is a shortage of physicians in certain medical specialties in certain areas. Do not try to have a baby in Las Vegas. There are no obstetricians. Try to find a rheumatologist

in Florida in the winter with less than a 3-month wait.

At some point, this will be politically important when more people are denied immediate access to health care, and then maybe change will come.

That hurts me in many ways, because it basically says we do not have the guts to face an issue that is not just dollars and cents and profits and all of this class warfare that we hear about, but an issue that is hurting patients, where the patients suffer.

The example is right before our eyes, and I do not see how we cannot address it. The example I mentioned earlier in the great State of Nevada, where physicians actually had to close down a trauma center, a level-1 trauma center, which is sophisticated care that can be delivered adequately in no other way, and if you are in that automobile accident, your care is in jeopardy. It does not have to be this way if we can pass this amendment, continue the discussion, again, hopefully improve and strengthen this amendment in the future.

This is not going to go away. It is getting worse. It is getting worse before our eyes. We last talked about it on this floor 7 years ago. This is the first time since then. That is inexcusable. I mentioned the level 1 trauma center having to close, leaving patients for that period of time if they were in an accident having to go an additional hour and a half for proper care.

Let's look at the obstetricians and gynecologists. Again, as I mentioned earlier, an obstetrician/gynecologist is trained to do gynecology, women's health issues. An obstetrician's practice is to deliver babies. It is a good example because as these doctors' insurance premiums go sky high, and when they go sky high, the obstetricians are saying: I cannot deliver babies anymore. I am going to change to the field of gynecology.

Then the mom, who has been going to that obstetrician for 5 years, 10 years or 15 years, goes to see their physician who says: I am not delivering babies anymore, and the reason I am not is because I cannot afford that malpractice insurance. So then all of a sudden there is this problem with access to care affecting the individual. We talked a little bit about costs; we talked about physicians moving.

I again ask women all over this country to ask their obstetrician what is happening to obstetrics care today because of malpractice insurance.

Nationwide, 1 out of 10 OB/GYNs no longer deliver babies because of this high cost of liability insurance. Obstetricians are not just geographically moving but are leaving the practice altogether. Again, I can say that. I can go to a hospital and say that. I can say that as a Senator and as a physician. The best thing is for people to talk to their obstetricians and ask how this malpractice insurance impacts on them.

Earlier today we heard some comments about insurance companies, and I think on Tuesday we will have the opportunity to come back to that as well. Much of my focus is on the individual patient and on the impact on the practice of medicine, which is very real. I do want to at least introduce the fact that these insurance companies, many of which are not-for-profit in the sense that they are mutual funds—and I will use the example of the State Volunteer Mutual Insurance Company in Tennessee. It is owned by the physicians in Tennessee.

Again, it is not a red State yet. It is on the verge of being a crisis State. Eighty percent of the physicians in Tennessee come together and have a mutual insurance company because they can have the input and they can try to keep the rates down in the very best way possible.

I will read from a letter, and I ask unanimous consent to have this printed in the RECORD, dated July 25, from the State Volunteer Mutual Insurance Company.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE VOLUNTEER MUTUAL INSURANCE COMPANY,

Brentwood, Tennessee, July 25, 2002.

Hon. WILLIAM H. FRIST, MD,
U.S. Senate,
Washington, DC.

DEAR SENATOR FRIST: I am writing to urge you to support tort reform legislation currently being considered by the Congress.

According to recent news reports, doctors and hospitals in a number of states are currently facing a true crisis in the cost and availability of professional liability insurance. These states include West Virginia, Pennsylvania, New Jersey, Florida, Nevada and Mississippi and several other states. Access to patient care in those states is being adversely impacted, especially in the area of pre-natal and obstetrical care.

While our situation in Tennessee has not yet reached the crisis experienced in those states, there are many indications that our state could well face the same sort of problems in coming years if we do not act now to make some changes in our civil justice system.

St. Paul Insurance Company, the nation's largest writer of health care professional liability insurance, experienced such losses that it announced last December that it was completely withdrawing from the market, adversely affecting tens of thousands of physicians who carried coverage with that company, some of whom were in Tennessee.

Professional liability premiums for doctors in Tennessee have been steadily rising in recent years. According to State Volunteer Mutual Insurance Company, which covers most practitioners in Tennessee, premiums have increased by 45 percent over the past three years, in order to keep up with rapidly escalating losses in medical malpractice lawsuits. Only approximately 4 percent of this 45 percent increase was related to lower investment yield, with the remainder being due to increasing medical malpractice losses. State Volunteer Mutual Insurance Company is a policyholder owned mutual company with no outside investors.

In recent years both juries and judges in Tennessee have made multi-million dollar awards for non-economic type damages, over and above a plaintiff's actual economic losses. (According to State Volunteer, in one recent case a jury awarded only $25,000 in economic damages but awarded non-economic damages of $1,600,000. Another case resulted in a jury award of $100,000 economic loss and $1,900,000 non-economic damages. A judge in another case awarded $1,062,080 in economic loss and gave $4,500,000 non-economic damages. Another judge awarded $687,691 economic loss and gave $3,000,000 in non-economic damages. One jury awarded $7,811 in economic loss but gave $2,650,000 non-economic damages.)

Awards in personal injury and wrongful death cases in Tennessee are dramatically increasing, according to the latest statistical report of the state's Administrative Office of the Courts. In fiscal year 2001, even though fewer cases were disposed of in our courts than in the previous year, damages awarded statewide were more than $94 million. This represented an increase of more than $51 million over the previous year. The total was the largest since the courts began reporting these statistics. According to the same report, the average award for fiscal year 2001 was $209,284, up $95,064 from the previous year, the largest average since awards have been reported.

Senator Frist, doctors and hospitals in Tennessee are dedicated to providing excellent care to our state's population but at a time when health care reimbursements are shrinking, and professional inability costs are dramatically increasing, doctors in Tennessee believe that the Congress should enact some common sense tort reform that will preserve citizens' access to health care and compensate them for their actual economic damages caused by negligence, while modifying the current system of unlimited liability that doctors and other health care professionals and institutions currently face. Reforms modeled after California's ''MICRA'' law make sense to me. California passed legislation in 1975 that helped solve a crisis in that state. It is my understanding that key provisions in California's civil justice reform included the following:

$250,000 cap on non-economic damages;

reasonable sliding scale for lawyers' contingency fees;

collateral source payment offsets;

periodic payment of future damages.

I believe similar reforms on a national basis will go far toward alleviating the health care crisis now facing much of the country and will help avoid such a crisis from coming to pass in Tennessee.

Thank you for your attention and concern regarding this important issue.

Sincerely,

STEVEN C. WILLIAMS,
President and Chief Executive Officer.

Mr. FRIST. The State Volunteer Mutual Insurance Company is a policyholder owned mutual company with no outside investors.

So I think they don't have a huge incentive to go out and gouge the communities or patients. It is mutually owned by physicians throughout the State.

In the letter to me, I read further:

Senator FRIST, doctors and hospitals in Tennessee are dedicated to providing excellent care to our state's population. But at a time when health care reimbursements are shrinking, and professional liability costs are dramatically increasing, doctors in Tennessee believe that Congress should enact some common sense tort reform that will preserve citizens' access to health care and compensate them for their actual economic damages caused by negligence, while modifying the current system of unlimited liability that doctors and other health care professionals and institutions currently face.

This letter was written by Steven C. Williams, president and CEO of the insurance company, but also representing 80 percent of the physicians in Tennessee, calling for sensible reform, for moderate reform, reform that does not go overboard. That is what the McConnell medical malpractice amendment indeed does.

What is most important is what is happening to patients. Patients are suffering under the current system. It is a runaway train. We all know it is a problem. We have seen it in Las Vegas at the trauma center. We see it in various States. We go in our physician's offices and hear it. The problem is getting worse. It is increasing in its impact and not getting better. That is why we call for action now.

The Tennessee Medical Association, in a letter dated July 24, 2002, to me:

> We have a storm brewing here in Tennessee. While the waves are not yet crashing in on us, as in many states, including our next-door-neighbor, Mississippi, it most certainly is coming. Over the last two years, medical malpractice insurance rates have gone up 32 percent.

Of additional concern is that in Tennessee there is a very clear trend of increasing awards in medical malpractice cases. This, we believe, is fueled in large part by a growing public perception and environment that likens the courtroom to a casino where there appears to be no limit.

That was Michael A. McAdoo, president, Tennessee Medical Association.

The medical liability premiums are skyrocketing. It is because the medical liability claims are exploding. It is because the awards are exploding. The problem is not limited to just the Northeast or the Southeast. But as you can see from this map, the medical liability crisis is all over the United States of America. It has to do with cost and access to care and physicians leaving their profession.

The response to what we do means we have to identify the underlying problem and not just worry around the edges or tinker around the edges. I mentioned earlier, an average jury award over a 5-year period jumped more than 70 percent on average. When more than half of all jury awards top $1 million, we have this field of defensive medicine. That means physicians in the emergency room that I was in two nights ago, attending to a patient, are going to err in going a little bit too far in terms of tests. Why? Because if that headache, which to your exam is just a routine frontal headache treatable by a doctor, if you do not get the CAT scan or MRI scan, the risk, although it is beyond the normal bounds of routine accepted medical practice, a physician, a nurse, or a hospital is going to err on getting the expensive tests, although in your clinical judgment and using the practiced guidelines out there today, you do not need the tests. But you will get that series of more expensive tests that unnecessary testing.

Again, the American people pay for it. Those costs are unnecessary. They are there because of the fear of skyrocketing lawsuits, numbers of lawsuits, awards themselves. No one wants to be in that category. The best protection is to get the range of tests, although you may think they are unnecessary.

What is the effect on the doctor? In 2001, physicians in many States saw their rates rise by 30 percent, and even more. That is just physicians, generally. If you look at the specialists, such as obstetricians or possibly neurosurgeons or neonatal specialists, malpractice insurance is rising by as much as 200 percent, and in some cases 300 percent.

In New York and in Florida, obstetricians—the ones who deliver babies—gynecologists, and surgeons pay more than $100,000 for $1 million in coverage. That $100,000 they pay comes out of their pocket initially, but for them to stay in business and continue what they do, they take that $100,000 and pass it on to the people who are listening to me, the people all across America. That is why this issue is so powerful today.

People for the first time realize one doctor out there, who took an oath to do no harm, to help patients, who trained 4 years in medical school, a year in internship, 5 years in surgical residency, 2 years in specialty training, and a year of fellowship, just to be able to help people, are having to pay $100,000, not to help people, but to protect themselves. That is absurd.

Ultimately, for them to stay in business it gets passed all the way back through the system to that individual patient. It may come in taxes. It may come for those who do not have insurance, and pay retail, who do not have any insurance when the overall prices in health care go up. If you do not have insurance, you are in trouble today because the overall price of health care has skyrocketed. This is an area where through commonsense tort reform we can lower this escalating cost of health care across the board.

For annual premiums, some doctors in Florida and New York pay, again, above $100,000. That is one individual doctor. This is not a big corporation that pays this. It is not a big hospital paying it. These are individual doctors paying this money so they can fulfill that Hippocratic oath of doing no harm.

In Tennessee, which is not yet in the crisis mode, and is not considered to be in crisis, but it has problem signs today, the premiums rose 17.3 percent last year in 1 year. They will rise anywhere from 15 percent to 17 percent this year. What we need to do is ask why. Is there more malpractice today? Are physicians not as well trained today as they were a year ago, or 5 years ago, or 10 years ago? Are they not using the tests appropriately today in order to take care of patients?

If so, we need to debate that issue and look at it and look at the data that is out there.

No, I think the dynamics are because of frivolous lawsuits, because the personal injury trial lawyers have a huge incentive, a huge financial incentive for themselves in order to bring cases forward, which puts physicians in a position where it is easier to settle these cases rather than to spend a year or 2 years, if you have the insurance. So there is this huge settlement, even if you don't have malpractice, even if you know that you are absolutely innocent. It is easier to settle for $1 million or $2 million so you can go back to the practice of medicine.

The system is broken, and it is getting worse.

Can it be fixed? Yes. The McConnell amendment makes a first step there—intelligent, reasonable, balanced tort reform. It will help address it, but it will not solve the entire problem. It is not going to make it go away, but I can tell you, it will help patients because they will not have to be driven to the ranks of the uninsured; because that obstetrician, with whom they have the first baby and second baby, will not have left practice because of that malpractice insurance; because they will be able to see the neurosurgeon for their brain tumor in their region because he or she did not move from Texas to Wisconsin because of these exorbitant malpractice rates.

I mentioned earlier that today is different than 6 years ago when we last addressed it. It is in a lot of different ways because the problem is getting worse. Ask the physicians, ask the people in the hospitals who are working there every day. Read the newspaper, and you will see that every newspaper is going to address this in a direct way. I think we need to go back and look at hard data that is out there today, in terms of what certain States have done and been able to accomplish and what other States have tried, and learn from that.

In California there is what is called MICRA, which is the Medical Injury and Compensation Reform Act. It became law in the mid-1970s. It is a good example of what works. When you look at States, other big States, you see a lot of them are in trouble. You see New York City is in trouble. If you are in New York City, talk to the physicians, talk to the medical community, ask them what has happened in terms of these tort issues recently.

Look at Pennsylvania; it is in trouble. Look at Florida, look at Texas, where there is trouble. This is California in white, meaning they do not have a huge problem there. You do not hear it. I was in California this past weekend and probably talked to six or seven people in the medical profession at academic health care centers, and it is not No. 1 on their list for reform because they say it is not a big issue there.

Why? In the 1970s, California passed MICRA—Medical Injury and Compensation Reform Act. California doctors and patients have been spared much of

the medical liability crisis that we see across the country today. I think it is a good surrogate measure, that California's premium, the premiums they are paying today, are among the lowest medical malpractice insurance premiums in the country. MICRA is the reason.

I have used this example of obstetricians and gynecologists, so I will keep going back to that. It is the reason that the obstetrician, the one who delivers babies in California, may pay about $40,000 for medical liability insurance where, if you took that same obstetrician—same training, same medical school, had done the same number of procedures, delivered the same number of babies—and you put them in, let's say Florida or let's say New Jersey, or you put them in New York, the premiums—here, say, $40,000 for that insurance—it will be above $100,000, maybe up as high as $150,000. The same person, same training, same number of babies, same Hippocratic Oath—''Do no harm''—here paying around $40,000; in these red States, paying upwards to $150,000.

My colleagues have to ask why, but more important, the American people have to ask why. Is there less malpractice in California? I don't think so. Better trained doctors in California? I don't think so. The reason goes back to the tort system, the liability system.

In other States it has been allowed to run out of control, and that is why this McConnell amendment comes in. Again, we have not really talked about all the things that are in the amendment. We will have the opportunity to do that. But that is why it is important to go back and look at what is in the amendment. It doesn't go very far. It doesn't go far enough for me or, I think, for most of my colleagues in the medical profession.

But why does MICRA work? Why does this doctor with the same training pay so much less than these other States?

Let's look at MICRA. What does MICRA do? This is not the McConnell amendment. I don't want to confuse the two, but it shows what commonsense reform in a State that was way ahead of the curve can accomplish. MICRA does limit attorney's contingency fees to a sliding fee scale. This allows the patient, when there is an award, to keep the money.

If it is malpractice and you are trying to compensate the patient, to have the lawyer walk away with 40 percent of the money doesn't make sense to me. I don't think it makes sense to the American people once they really understand that. With this limiting of how much the attorney can take out of what is sent home by the jury to the patient, by limiting that in some way, you have some element of control of this runaway train which is hurting patients.

It is pretty simple. In my mind it is simple. If you look at how much a lot of these personal injury trial lawyers make today, especially in the environment where we are looking a lot more at the corporate world, the numbers are incredible. Ask, if you take the top 50 personal injury trial lawyers in America, what is their take? What do they make? The incentive is there.

If you are in the field of law, you would like to say, I am out just to save the world and do good. But when you take 40 percent of the take after a multimillion malpractice injury—first of all, the patient doesn't get it. That is who it is really about—or that is who it is about in the medical profession. It needs to be about the patient. That is whom you take the oath to serve.

It is hard for me to understand how you could have the huge contingency fees today when you hear physicians are leaving, they are not taking care of patients, they are being forced to close down trauma centers.

MICRA places a statute of limitations on bringing a suit 1 year from discovery or 3 years. This is the California law. This ensures that a suit would be brought in a reasonable amount of time. It protects evidence, and it also keeps people from sort of searching in the bowels of a hospital or advertising for cases 5 years ago, or 20 years ago, or 30 years ago. Again, malpractice occurs at a certain point in time, and we need to punish it, and punish it hard. But to go out and stir up these cases so you can be paid for it, I think is inappropriate.

What MICRA does—and again this is not in the McConnell legislation, and this I hope will come back to the floor again and again and again until we fix it—MICRA, California law, caps future noneconomic damages at $250,000. These are not the economic damages. There is full compensation there. So, under MICRA, patients are fully compensated for their economic loss due to medical malpractice, and they are compensated for lost wages, and they are compensated for the medical care and the future costs of medical care.

I use California as an example because we have not talked about it on the floor of the Senate. We haven't talked about it in committee, because this whole issue has not been addressed. The bottom line is you can have reforms—which the majority of States do not have today, and that is the reason there is a role for this body to act—because the problem is well identified, and the problem is getting worse. The problem has not been adequately addressed by States—California and a handful of others have addressed it—so that we have an obligation to the patients.

The reforms in California have helped the patients. Injured patients receive a larger share of whatever award. If there is malpractice and there is an award, the patient can walk—hopefully, can walk—home with more of that award. In addition, these reforms have helped slow down the overall rising cost of medicine.

There is no question in my mind that physicians are practicing defensive medicine, which the physicians have to practice, and this drives up the overall cost of health care today.

We talk a lot about prescription drugs, about the importance of generics, about the importance of coverage within Medicare, and about having a competitive system—all of which we hope will actually slow down the skyrocketing costs of medical care today. Indeed, the cost of health care in California has been slowed by the slowing and the restraining of these out-of-control, skyrocketing, runaway train costs in liability that other States have.

Mr. EDWARDS. Mr. President, will the Senator yield for a time question?

Mr. FRIST. I would be happy to yield.

Mr. EDWARDS. Does the Senator have an idea how much more time he will take?

Mr. FRIST. Probably 5 minutes, and then I would be happy to yield the floor.

Madam President, how much time do we have on either side?

The PRESIDING OFFICER (Ms. STABENOW). Eighteen and one-half minutes.

Mr. FRIST. Madam President, let me take a couple of minutes, and then I would be happy to sit down and look forward to the opportunity to talk about all of this on Tuesday, which I believe is when we will come back to this.

The McConnell medical malpractice amendment does the following:

It limits punitive damages. It limits punitive damages to two times the sum of what are called compensatory damages. Again, this gets sort of technical. We talk about economic damages and noneconomic damages. It allows punitive damages in those cases where the award has been proven by clear evidence and by convincing evidence.

I mentioned attorney fees. I am critical of that because I don't understand in this day and time why personal injury trial lawyers walk away with so much money that has been awarded to the person who has been injured. But it does limit attorney fees.

The McConnell amendment places very modest limits on attorney's contingency fees and medical malpractice cases. Specifically, the amendment allows personal injury lawyers to collect 33 percent, or a third, of a $150,000 award, and about $25 percent of the award on all amounts above $150,000.

Again, that is pretty modest from my standpoint. The fact that an award to somebody who has been injured is $150,000, it was malpractice, and the fact that a trial lawyer will take away a third of that for their pocket, again, to me—that is what is in the amendment—that is an improvement over today. But, again, in the future I hope we come back and address that.

The statute of limitations—I mentioned California's law—the amendment requires that a medical malpractice complaint must be filed within 2 years of discovering the injury and

the cause. Again, that is when it should be filed.

The McConnell amendment is modest. It identifies the problem. It gives us the opportunity to talk about the problem on both sides of the aisle. It does not include all of the measures I think are necessary to address this problem eventually. But it is a good first step in the right direction.

We have evidence that reasonable tort reform—and we can debate what reasonable tort reform is. I think, again, the McConnell amendment is the first step. It doesn't go quite far enough, but it is a good first step.

We know that by addressing this we are going to hold down health care costs which are skyrocketing. The premiums are going up 15 percent, 17 percent, and 20 percent—last year, this year and next year. That translates down to the patient. Those premiums are eventually going to be passed down to the patient. To my mind, there is no question but that we will put them in the ranks of the uninsured.

On the access issue, the McConnell amendment is a simple amendment. I am convinced. Ask your physician, if you have the opportunity over the weekend. I am absolutely convinced it will improve access when we know that access overall is deteriorating.

We need to look at Las Vegas, and we need to look at the many examples which are in newspapers all across the country of physicians leaving a specialty practice because of malpractice insurance, or leaving a State.

We have an opportunity to do something which protects patients and which improves their access and clearly stops the deteriorating access to quality care before this problem gets worse.

I urge support of this amendment and look forward to coming back to it over the next several days.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Madam President, I yield myself such time as I may use.

Let me say, first, from the discussion that we have been having all over America, and on the floor of the Senate for the last few weeks about trying to reinsert some responsibility and accountability because of the fundamental notion we believe in this country that everybody—every person, every company, big business, small business, and everybody in America—should be responsible and accountable for what they do, one of the reasons we have had such a downslide in Wall Street lately is people have lost confidence in the responsibility of people who run some—I emphasize ''some''—of the companies that have been on the front pages of the newspapers for the last several months. What they want us to do is reimpose some of that corporate responsibility. So we work very hard on that.

At a time when the focus is on trying to make sure we have real responsibility and real accountability in this country, the President yesterday went to my home State to do exactly the opposite. The President went to North Carolina to say: I am going to side with big insurance companies and against victims. I am going to say if a child who has been severely hurt as a result of bad care is trying to get some help for him and his family over a long period of time, I am going to put a limit on that. I am going to put a limit for a very simple reason: The big insurance companies of America will have to pay.

Unfortunately, there is a pattern with this administration. Every time they have a choice between the interests of average Americans, kids, families, and people who do not have lobbyists in Washington, DC, representing them, on the one hand, and on the other hand, the interests of big HMOs, big oil companies, big energy companies, the drug industry, the pharmaceutical drug industry, and big insurance industry in this case—whenever those interests come into conflict with the interests of ordinary Americans, this administration consistently sides with the big interests. They have done it on the Patients' Bill of Rights.

They have prevented us from having a real and meaningful Patients' Bill of Rights. While we try to protect families and patients, they side with the big HMOs. I think we are going to overcome it.

On preventing us from having a meaningful prescription drug benefit for senior citizens and doing something about the costs of prescription drugs in this country, on which the Presiding Officer has worked so hard, we know that is a fight between ordinary Americans and ordinary families who need these prescription drugs and the pharmaceutical industry. The President has stood with the big pharmaceutical industry.

On trying to do something about clean air in this country, the President and his administration have proposed weakening our clean air law—all in the interest of protecting his friends in the oil industry, in the energy industry, and against the interests of ordinary Americans.

So now he adds to that list, going to my home State of North Carolina, to say to the victims: I am going to make sure the big insurance companies of America are protected. At the end of the day, that is all this is about.

The proposal the President made is different from this amendment—which I will talk about in a minute—which is to impose a limit of $250,000 on some of the damages for children can be recovered against these big insurance companies.

For example, in the case of a child who may be born blind or crippled for life or a child who has to be taken care of by his or her parents every single day, 7 days a week, every day of the year for the rest of their lives, the President says: I am going to make sure the insurance companies don't have to pay what they are obligated to pay to that family, to that child.

It is wrong. It is no more complicated than that. And the children and the families, who have been the victims, know it is wrong.

The President held a roundtable yesterday in North Carolina on this subject. How many victims participated in that roundtable? How many people whose lives have been destroyed and who need the help that the insurance company is obligated to provide for them participated? Everybody else was well represented. What about the people who don't have lobbyists? What about the people who aren't represented here in Washington by lobbyists? The families, the kids who are hurt by all this, were they at the roundtable? Were their voices heard?

I invite the President to come back to North Carolina, and this time, instead of talking to these powerful interests, I hope he will sit down with regular folks who have been the victims and listen to what they have to say, listen to what their lives are like.

One of the phrases that was used in the administration proposal was: You have these families who have won the lottery.

Well, I can tell you what the parents of a child who was a victim said yesterday from North Carolina. I know these people because I represent them. The parents said: Our little girl was born, and because of the type of care she got, she couldn't see, she couldn't hear, she couldn't walk. Every day of her life—7 days a week, 24 hours a day—we took care of her. And we loved her so much. There is nothing we wouldn't have done for her. And then she died. And when we go to visit her at her grave, we don't feel much like we won the lottery.

These are the people whom these kinds of proposals affect. These are real people with real lives. We have to look at the consequences, even though they are not up here with powerful, fancy lobbyists representing them. They are the people we have to look out for. And they are the people who expect their President to look out for them. Unfortunately, he continues to stand with big insurance companies, with big pharmaceutical companies, with big HMOs. These people need his help. It is no more complicated than that.

Now, as to this amendment and the purpose of it, first, medical malpractice premiums constitute less than 1 percent of health care costs in this country. So think about the logic. The argument is, we are going to do something about health care costs in this country, and the way we are going to do it is to try to do something misguided—we are going to try to do something about medical malpractice premiums, which constitute about two-thirds of 1 percent of health care costs in this country.

First of all, it is the wrong place to start if you are going to do something

about health care costs in this country. If you want to do something about health care costs, you ought to do what the Presiding Officer and I and so many of us have tried to do—bring the cost of prescription drugs under control in this country, because that will have a real effect on health care costs. They are a driving force in rising health care costs in this country.

This is minuscule by comparison. So, No. 1, it is a misguided effort in terms of what it is focused on. No. 2, it will not work because these kinds of proposals—the President's proposal yesterday in North Carolina, and this amendment, which is different—are proposals that impose limitations on recoveries for victims, for families, to try to get rid of some concepts in the law. They have been used in many places around the country. They do not work. They do not, in fact, have the kind of impact on insurance premiums that these people who are proposing them say they have.

If you look at medical malpractice premiums in this country, and you look at the States that have these provisions that impose limits on the families, and then you look at the States that do not have them, the costs of medical malpractice insurance—I am looking for the year 2001 for internal medicine, for general surgery, for obstetrics and gynecology—are virtually identical.

This all sounds logical. If you impose limits on what the victims and the families can recover, why does that not help bring the cost of the insurance down? Why does it not have an effect on premiums? Because logic would tell you it would because insurance companies have to pay less, theoretically. So as a result, why don't they lower the premiums? Because the insurance company premiums have nothing to do with this. That is the reason.

The insurance company takes the money that they receive in premiums, and they invest it. Where do they invest it? They invest it in that same stock market in which most of the people in America are invested.

You can look at every time they start raising premiums. They come to Washington and say: There is a crisis; we have to do something about this; this is a serious problem; we have these outrageous awards for children and families; we have to stop it. And the way to stop it is to cut off the rights of the victims. That is the way to stop it.

So why? Because they are not doing well in their investments. Every single time, when the stock market falls, and the insurance companies' money that is invested is not bringing back a good return—in fact, they are losing money—they raise premiums.

Who has to pay those higher premiums? The health care providers. They are just as much a victim of this as the kids and the families who are victims of the bad medical care. The insurance companies are the ones that are responsible. You can look at it. It is as sure as the Sun is going to come up tomorrow, if they are doing well on their investments, the premiums stay relatively stable. When they are not doing well on their investments, the premiums go up. That is what this is all about.

While these kinds of proposals are aimed at reducing the rights of victims—which is what they are—instead, what we ought to be doing is looking at what the big insurance companies are doing when they get unhappy with the results of their own investments. That is what drives this.

If you look at what has happened in these States—the Senator from Tennessee talked about California at great length. California has some of the most severe limitations in the country on what victims can recover—severe limitations. They have been in place a long time.

So let's look at what has happened in California.

Between 1991 and 2000, over that about 10 years—a little less than 10 years—the premiums in California went up more than the national premiums. Why? Why in the world, if they have got these serious limitations on recoveries—and they have been in place for years in California—why would their premiums go up? And why would they go up faster than in the rest of the country, many places which do not have these kinds of limitations? Because the rise in premiums, and what is happening in what insurance companies charge people around the country, is in direct relation to how they are doing in their own investments.

In some cases, it is an insurance company or the insurance industry that exists in a region, in some cases it is national, and in many cases, of course, it is connected to the international and the reinsurance markets, but it is clear as day that it is directly related to how they are doing in their investments in the stock market.

So this effort is misguided. Besides that, I do want to point out, though, that the Senators who are proposing this amendment to put limits on what victims can receive, even they are not willing to go as far as the administration is. The administration proposes a $250,000 limit on some damages for children, among others, who have a lifelong disability as a result of bad medical care.

This amendment does not make that proposal. They are not willing to go that far. They know that when you put a limit on those kinds of recoveries, on those kinds of damages, it is like a laser directed at the most severely injured, and usually the youngest, because young children who have severe injuries for life, which they and their parents are going to have to carry for the rest of their lives—and you are limiting them to $250,000 in those kinds of damages—$250,000—nobody in America thinks that makes sense. That is why that is not part, I suspect, of this proposal.

Instead, this proposal goes about it in a different kind of way. What this proposal suggests is a couple things: One, that we get rid of something called joint and several liability. Without going into too much detail about this, we believe in this country—and it has been the law of the land for many years—that if you have a victim, whether it is a victim of criminal conduct or bad medical care, or somebody who has behaved wrongly, and you have a victim, the victim should not be the one held responsible. If you have several people who caused it, they share the responsibility.

What this proposal says is, all right, somebody got hurt as a result of the bad behavior of a group of people. Always remember, you have an amount that has been lost by the victim. Let's say it is $100,000 that has been lost by the victim. If that money has been lost, it is shared among the defendants. What we have always said in America is, as part of our law, the victim should never be the one held responsible for that loss. The loss doesn't go away. The loss is always there; the damages are always there.

This proposal says, if you have five people who are responsible, then among those five people, none of them can be required to pay more than whatever a jury determines is their percentage responsibility. But remember, these are all wrongdoers. So on one side of the equation you have a child who is innocent. On the other side of the equation you have the group of wrongdoers. The amount that has been lost does not change. Somebody has to be responsible for that. So are we going to say that the wrongdoers are responsible or are we going to shift some of that responsibility to the innocent victim?

That is what this proposal does. It says we are going to get rid of what is called joint and several liability, which means you can collect against any one or all of the wrongdoers, and says instead, if there is a wrongdoer you can't get to, for whatever reason, that part of the responsibility goes back to the victim. It violates what we believe in this country. It violates our fundamental notion of responsibility and accountability that the people who ought to be held accountable for they are the people who did wrong, not the innocent victim. That is what is wrong with this specific proposal.

There are other proposals. The next proposal says if there is an award of something called punitive damages, then half of that money will go to the Government. Now, let's talk about that in a real case. Let's explain what the effect of that is.

To get punitive damages, the conduct has to be either criminal or very close to criminal. That is what is required in order for punitive damages to be awarded. So let's say you have a teenage girl who is the victim of this kind of criminal conduct. The jury awards these damages to that young girl. This is what this amendment says to that

victim of essentially criminal conduct: We are going to impose a 50 percent tax on you. That is what we are going to do. We are going to say to the victim of this conduct: There is a 50 percent tax on the damages that a jury, after hearing the whole case, has decided you are entitled to, 50 percent. That is going to go to the Government.

Is that the signal we want to send as a Congress, as the U.S. Senate? Do we want to say to the American people that we as a body want to impose a 50 percent tax on a child who has been the victim of what is essentially criminal conduct? This is crazy. It doesn't make any sense. It also violates our basic notions of fairness and responsibility and accountability.

We have talked a great deal on the floor about doing things about the victims of criminal conduct. This essentially falls in the same category. It makes no sense for the government to impose a 50 percent tax on a child who has been the victim of what amounts to criminal conduct.

These provisions—and there are others—are wrong: getting rid of what is called joint and several liability, which means the wrongdoers don't necessarily have to pay for all of what has happened, while some of it gets shifted to the victim. That is wrong.

Second, to say we are going to impose a 50 percent tax on a victim, a child who has been essentially the victim of criminal conduct, that is wrong.

More important than all of that, this whole effort is misguided. If what we want to do is do something about health care costs, we should not focus on what is well less than 1 percent of health care costs. We ought to focus on the things that really make a difference, such as the rising cost of prescription drugs.

More importantly, the people who need us to look out for them are the very people that this amendment is aimed at—the kids, the families, the victims. We need to stand up for them. They need us to be willing to stand up for them no matter who is outside the floor of the Senate representing the most powerful interests in America.

No matter how many lobbyists the insurance industry has, no matter how many lobbyists the HMOs have, the big energy companies, the big oil companies, who is going to stand up for these kids and these families? If they don't have us to stand up for them, they have nobody.

On all of these fronts, whether we are talking about doing something about the high cost of prescription drugs for people, whether we are talking about kids and families who are the victims of bad medical care, whether we are talking about trying to protect our air for our children and for our families, on all these fronts, we have to stand up for them. The people who voted for us and sent us to the Congress are counting on us because they don't have lobbyists up there. They have nobody here outside the halls of Congress representing them. They count on us to stand up for them.

As we go through these fights, we will stand up for them. This is one of them.

How much time do we have remaining?

The PRESIDING OFFICER. Forty-five and a half minutes.

Mr. EDWARDS. Madam President, I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before the Senator from North Carolina leaves, I would like to ask him a question or two. I am sorry I was not able to hear all of his remarks. Having tried a few cases in my day, one of the concerns I have about this tort debate is the fact that the insurance industry is the only one that I know of, other than baseball, that can sit down in a restaurant in sight of everybody or in some dark room, wherever they want, and knowingly and openly conspire to set prices. There is nothing wrong with that. That is because of the McCarran-Ferguson law passed during the depths of the Depression. They can do this.

Let me say to my friend, to show how unnecessary the debate is here in the Senate, first of all, this is something the States should be doing, as is happening in Nevada.

This coming Monday, the Nevada State legislature is convening in a special session to deal with medical malpractice. I may not agree with what the State legislature does or doesn't do, but that is where this should be settled.

The State of Nevada is different than the State of North Carolina. We have all kinds of different problems with our torts than the Senator does.

I have two questions for my friend. First of all, do you think it would be a good idea for the Congress, after some 70 years, to take a look at McCarran-Ferguson to find out if insurance companies should be exempt from fixing prices, be exempt from the Sherman Antitrust Act? That is my first question.

The second question is, don't you think that tort liability, whether it is medical devices, medical malpractice, or products liability, should be settled by State legislatures?

Mr. EDWARDS. The Senator asked two very good questions. First, I think it is a terrific idea for us to look at the insurance industry, its practices in general, and what effect McCarran-Ferguson has on those practices. The Senator describes a large part of the problem.

The Senator knows as well as I do, you can't move in Washington without bumping into some lobbyist representing the insurance industry. They are so well heard and so well represented. I think it is a very good idea.

As to the second question, we have differences between North Carolina, my State, and the State of Nevada, and differences between us and California. These are the kinds of issues that ought to be resolved at the State level. We have always believed that. There is a little bit of an inconsistency for the administration that normally says these are matters that ought to be left to the States, we trust the States to make these decisions; but in the case where they want to do something on behalf of the insurance industry, which is what this is, they want to take it away from the States; they want to do it at the national level.

What has historically been done in this area is the way it should be done, which is these are matters about State courts, how State courts handle these kinds of cases. They are in touch with it. They know what is happening in their individual States, what the problems are, and they can address them in a responsible and equitable way.

I thank the Senator for his questions.

We reserve the remainder of our time, Madam President.

The PRESIDING OFFICER. Who yields time?

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. REID). In my capacity as a Senator from the State of Nevada, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

In my capacity as a Senator from the State of Nevada, I ask unanimous consent that the quorum call that will shortly be called for be charged equally against both sides for the time remaining.

Without objection, it is so ordered.

I suggest the absence of a quorum, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SARBANES). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BENNETT. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business.

The PRESIDING OFFICER. The Chair would inform the Senator that it is the Chair's understanding there is running time off of the allocated time on this amendment. I suggest to the Senator that he may want to use the time that has been allocated to his side on the amendment.

Mr. BENNETT. Mr. President, I ask unanimous consent that that be the case, that I be allowed to speak with the time being charged.

The PRESIDING OFFICER. The Senator will be recognized and the time remaining on the amendment will be

charged to his side of the aisle, which is 6½ minutes.

Mr. BENNETT. May I inquire, Mr. President, if the time would be running even if we were in a quorum call?

Mr. SARBANES. Yes, it would.

Mr. BENNETT. Mr. President, I ask unanimous consent that I be allowed to proceed for the next 6½ minutes, with the time charged, as in morning business.

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

STOCK MARKET VOLATILITY

Mr. BENNETT. Mr. President, I have been reading the popular press, as have most of us. As we watched the gyrations that occur in the stock market at the moment, I have been interested at the way people in the press have been portraying what has been happening.

We have been told in the last few weeks that the market went down because President Bush's speech was not tough enough when he spoke to Wall Street. We have been told that the market went up because Chairman Greenspan's presentation to the Banking Committee was encouraging. We have been told that the market went down because the Banking Committee's bill on corporate governance was too tough and was frightening people. Then we were told that the market went up dramatically because the same bill was passed and people were reassured.

The consequence of all of this is to demonstrate to me that the popular press does not have a clue as to why the market does what it does. They do not understand market forces, and they are looking for reasons with little or nothing to do with what happens in the market.

I will make a few comments about the market and what it is we might really do in Congress if we want to have an impact on the market and the economy.

In the short-term, there are two factors that we know about investors in the stock market. No. 1, they hate uncertainty. They hate a situation where they do not know what is going on. This is one of the reasons why they reacted to the recent scandals with respect to accounting: They did not have the certainty that they could depend on the numbers.

Now, as they are beginning to sort through some of the information we have, they are beginning to feel a slight increase in certainty in their reaction to the numbers. That is showing up in some of the stabilization in the market. It has nothing to do with what kind of a speech the President gives or how eloquent we are in the Senate.

No. 2, the market has a herd mentality in the short-term. If everyone is selling, we ought to sell. That is the reaction in many brokerage houses. There are those who say: We are contrarians; if everyone is selling, we are going to buy; we are out of the herd mentality. But they are in a herd mentality among the contrarians.

So there is no careful analysis of what is going on but a flight from uncertainty and a herd mentality, both of which rule the market in the short-term.

In the long term, however, which is what really matters, there are also two factors in the market we must pay attention to. No. 1, in the long term, the market is self-correcting. Errors of judgment that are made on one side of a trade are compensated for by intelligent decisions on the other side of the trade. One brokerage house or one fund manager who overreacts and makes a serious mistake is offset by another fund manager who serendipitously makes the right decision. Over time, the markets are self-corrected so that the frantic headlines we see in Time Magazine or on the front pages of the New York Times, the market this or the market that, on the basis of the President's speech or the Congress's actions, over time they have no relevance to reality whatever. The market over time is self-correcting, goes in the right direction, and rewards people who do the right thing and punishes people who do the wrong thing.

Second, over time, the market depends on fundamentals. There are periods of time when we have froth. There are periods that I call ''tulip time''—remembering the tulip mania of the Netherlands. Over time, these periods of froth are squeezed out, and the market makes its decision on fundamentals.

I say to my friends in the popular press who are trying to sell air time or newspapers: Stop trying to frighten the American people one way or the other. Come back to an understanding that fundamentals in the economy are the things that really matter—not speeches by the President, not actions necessarily by the Congress.

I think we had to act on the corporate governance area, but we didn't drive the market up or down by the action that we took. We added to the question of fundamentals.

How well the Sarbanes-Oxley bill works will play itself out in the fundamentals. If it works in a solidly fundamental way, it will benefit the markets. If it turns out it has flaws, it will hurt the market. But the speeches we imagine as we pass the bill have little or no impact.

One final comment. If we were serious about doing something to change the culture in corporate America, we ought to consider removing taxation on dividends. We have had a lot of conversation about options and managing earnings. If dividends become a reason why people buy stocks, as they once were, that would change the nature of corporate governance fairly fundamentally.

If a CEO knew his stock price would go up if his dividend were increased and if his investors knew if they get an increase in dividends it would not be eaten up in taxes, there would be a change in the corporate boardrooms of this country that would be salutary.

I don't have the time to go into this, but at some future time I will explore it. I raised this with Chairman Greenspan when he testified before the Banking Committee and asked him about the propriety of removing taxation from dividends. That was the beginning of a conversation that I want to have over time.

As we go through the experience of the present economic difficulties and the gyrations of the market, it is time to reflect on fundamental things we can do that will change the nature of the corporate culture. Addressing stock options and expensing stock options is something we can talk about. Dealing with corporate compensation is something we can talk about.

Back to my earlier point. Over time, the market responds to fundamentals, and, over time, we ought to look at some fundamental changes. That means we have to look at the tax laws. There is nothing that government does that affects corporate activity more than the Tax Code. That is where we ought to look for serious cultural changes.

I yield the floor.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I ask to speak on another subject.

The PRESIDING OFFICER. The time would be charged against the time remaining on this side for debate on the amendment. There are 32 minutes remaining. I suggest the Senator speak as in morning business but we continue to charge the time against the time remaining on the pending amendment.

Mr. CORZINE. I ask unanimous consent to speak in morning business and that the time I use be charged against the time allocated for debate on the amendment. I expect to use up to 15 minutes.

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

SOCIAL SECURITY

Mr. CORZINE. Mr. President, I bring up a subject that I have been speaking about frequently. That is our Social Security system, one that I believe the American people deserve to have a debate about before the election in November.

There have been many attempts to put off this debate until after the election so we can decide policy that will truly impact the American people for many, many years and decades to come. It is extremely disappointing we have had a hard time engaging in that debate. This week we actually made some progress, at least with regard to debate, not necessarily with regard to the content of the debate.

I express my great disappointment and, frankly, my utter amazement

about comments made this past week by the President's press secretary, Mr. Ari Fleischer, with respect to the privatization of Social Security. I will read the beginning of an article from the Washington Post on Thursday on the press secretary's remarks, and I will ask unanimous consent to have this article printed in the RECORD.

The article is titled: ''Bush Continues to Back Privatized Social Security.''

It reads:

The White House yesterday stood firmly behind President Bush's plan for workers to divert some of their social security payroll taxes into the stock market, despite the dramatic drops suffered in recent months.

Basically, for the past 2½ years.

White House Press Secretary Ari Fleischer took a swing at the existing Social Security Program, calling it ''dangerous'' to let the people pay a lifetime of high taxes for a Social Security benefit that under current projections they'll never receive.

Let me repeat:

. . . calling it ''dangerous'' to let people pay a lifetime of high taxes for a Social Security benefit that under current projections they'll never receive.

Often we hear people talking about trying to scare seniors and all kinds of hyperbolic commentary about Social Security, but this tops it.

Yesterday, the Congress, under your leadership, took the leadership with regard to corporate reform to help make sure corporate America, the Nation's accounting profession, those who are responsible for managing corporate America, are more responsible. But after reading Mr. Fleischer's remarks, I think we should consider a similar initiative to make the administration's statements on Social Security equally responsible.

It is inconceivable that we would be talking to the American people in terms that, under current projections, they will never receive their benefits.

Let me take a moment to review where things stand on this issue of Social Security, which I do believe truly needs a full debate—maybe not in context that Mr. Fleischer is talking about, but we do need a debate in front of the election.

Last December, President Bush's Social Security Commission proposed plans to privatize Social Security that would require deep cuts in guaranteed benefits—not eliminate, deep cuts. For workers now in their twenties, those cuts would exceed 25 percent. From younger workers and future generations, those cuts could be much deeper, up to and beyond 45 percent.

Unfairly, and in my view inappropriately, these cuts would apply to everyone, even those who choose not to risk their Social Security benefits in privatized accounts. For those who do participate in privatized accounts, the cuts in their guaranteed benefits would even be larger than those I just mentioned.

Incredibly, for the disabled and for surviving children and family members, the cuts in their benefits would be especially disastrous, more extreme than the numbers that are cited for retirees.

These deep cuts would undermine the fundamental purpose of Social Security, which is about providing a basic level of security to those who have worked hard, contributed to our Nation, paid into the Social Security system, and they did it in good faith that the system would be available, and those resources would be available for their retirement. Social Security promises Americans a basic level of security on which they can count. It is the bedrock of a social insurance program that our Nation overwhelmingly supports, has for generations—70 years—and that retirees can depend on for a rock solid guarantee regardless of what the stock market does or what asset markets of all kinds do, regardless of inflation and regardless of one's lifespan. Social Security will be there and that fundamental guarantee is what the program is all about.

By contrast, privatizing Social Security would shred, would break that guarantee, and in my view we must not let that happen. It is one of the most important issues our Nation should be debating as we face this election this fall. The lines are very clearly drawn. Mr. Fleischer suggested they stand firm in their belief that the privatization of Social Security is the direction we should take.

The huge volatility in the stock market over the past several months should make clear to all Americans that equity investments by their nature cannot offer the same security that Social Security provides. Being an old market hand, markets go up, they go down, they go sideways. They are volatile through time. Sometimes they have serious erosions in value.

In the past 2½ years, stocks have lost nearly $8 trillion in value. The S&P index has declined by about 45 percent. This year alone, stocks have lost close to $3 trillion. That translates to real undermining of retirement security for those who were dependent on it, primarily focused on a 401(k) in the stock market. Many of those losses have been suffered in our pension systems. They have been suffered in IRAs, 401(k)s, personal savings accounts. Those have truly undermined the security that one might draw from them.

But through all of that, Social Security stands firm. The guaranteed benefits are in place. One doesn't have to wonder whether those resources for one's retirement security are going to be available. Basic, critical benefits will be there for the beneficiaries, regardless of the state of the stock market.

In light of that dramatic volatility, I had hoped that President Bush would reconsider his support for privatizing Social Security. As I said, Mr. Fleischer was crystal clear. The President's position had not changed.

For me, this is extremely disappointing, and I certainly call on the President to rethink his position. On these matters of great national import—whether it was the corporate reform activity that we had a debate about for 3 or 4 months, leading up to yesterday's successful passage of corporate reform; whether it is with regard to the fiscal policy that has seen us move from substantial surpluses, 3 years of surpluses into substantial deficit; and now, on Social Security—we see this continual sense of inflexibility.

Leadership is about thoughtful respect for the facts, changing realities that might require a change in one's position. I hope the President will consider that in the context of Social Security, taking into account the kind of market volatility we have seen, taking into consideration the kind of risk that might be brought to bear on those who have had their investments in the stock market over long periods of time.

Having said that, my concern about Mr. Fleischer's statement Wednesday goes beyond his reaffirmation of this administration's continuing support for privatizing Social Security. He went much further. Let me just read again from the story I cited from the Washington Post. Mr. Fleischer claimed that Social Security was ''going bankrupt,'' and that it was dangerous to:

. . . let people pay a lifetime of high taxes for a Social Security benefit that under current projections they'll never receive.

''Going bankrupt,'' if that is not scare language, I can't imagine how one could otherwise categorize it.

This statement is simply outrageous. It is simply outrageous to suggest that people now paying into the system will never receive a Social Security benefit. It is not just misleading, it is absolutely factually wrong. I am afraid it is part of a concerted effort by those advocates of privatization to scare Americans, especially younger Americans, into believing that the only way they are ever going to get a retirement benefit out of Social Security is to invest it in personal accounts, to invest it in privatized accounts, to invest it in the stock market.

I am not against investing private funds beyond Social Security in all kinds of assets. But we are talking about a guaranteed benefit for all of Americans. In the 1930s, before we had Social Security, or before 1930, almost 50 percent of senior Americans lived in poverty. Because of the benefit of Social Security, now we are down to about 10 percent. It is a fundamental, solid program. People know that our Government has created a situation where they can have security in their retirement. It is a sacred trust with the American people. It is based on a promise that if you work hard and contribute to your country, you will enjoy a very basic level of security in retirement.

By the way, this is not exactly a princely sum that people get out of Social Security. I wish we could make it better.

Last year, the average retiree benefit was about $10,000—not exactly what

some of the salaries of big corporate executives are about—and about $9,000 for women. That is not exactly a princely sum, as I suggested, in my part of the country. In New Jersey, the average rental payment for an individual is about $1,200 a month. I don't think $10,000 matches up with what you even have to pay for rent in many parts of the country. It is not exactly as if our Social Security system is providing excessive amounts of resources for individuals in their retirement. But it does provide that bedrock safety.

Unfortunately, I guess there are those who seem to think $10,000 is too much. They want to break Social Security's promise to seniors in the future by cutting those benefits by 25 percent, or 45 percent. Those are big numbers. That is hard to put together against the cost of retirement for most Americans.

One way they justify such claims is by arguing that the current system will leave today's workers high and dry. We heard Mr. Fleischer's remarks. They seem to be hoping that will be a self-fulfilling prophecy, that somehow or another they can scare people into believing we ought to undermine Social Security. I stand here today quite confident that folks on this side of the aisle, if we have anything to say on the matter, are not going to let that happen.

That is why we need to have this debate about Social Security privatization before people go to the polls this November. It is one of those defining issues for the American people to express themselves about. It is very clear: Do you want privatization of Social Security that puts the responsibility and the risk on the shoulders of Americans or do you want a guaranteed system that provides benefits if you have paid into that system when you retire? It is very clear, it is not a complicated concept—guaranteed benefits versus risk.

For those concerned about the future of Social Security, let me remind my colleagues that Social Security benefits are established in the United States Code and represent a legal commitment—I think we call it an entitlement—by the Federal Government and with the full faith and credit of the United States.

Unlike many other programs, Social Security is not subject to a yearly appropriations process. The entitlement and benefit is not dependent on future congressional action. Mr. Fleischer is just flat out wrong.

As a purely legal matter, this entitlement would remain a binding obligation of the Government even if Congress were to allow the Social Security trust fund to become insolvent. However, as a practical matter, the point is moot. First, the nonpartisan actuaries at the Social Security Administration project that the trust fund will be fully solvent for 40 years; that is, 2041. After that, there still would be enough funding for three-quarters of the benefits to the actuarial life on which they are making the calculations.

But there is nothing in the law to prohibit Congress from replenishing the funds or changing some of the terms and conditions. We can do a number of things to establish the security of that trust fund.

We ought to start by balancing our budget so we are not spending the Social Security trust fund on everything under the Sun other than for what it is intended. But we could take actions here on the floor of the Senate with the Congress and the President working together to flush that up. As a matter of fact, we have a legal obligation to do that.

I think it is absolutely essential that Mr. Fleischer review the context in which he says we are going to have a bankruptcy because we have written into law that that is not going to happen. I am confident that long before 2041, the Congress and the White House will come together in a bipartisan way, as they have in history in different periods of time, move beyond privatization proposals which would actually worsen the Social Security financial system, and work together to solve the program's long-term funding needs. It can be done. It is not beyond the realm of a lot of reasonable people. We ought to talk to the American public about that.

But the reality is that privatization is not the direction that is going to provide the kind of security that I think most Americans are looking for in their retirement.

I think we ought to get away from giving blatantly false and misleading arguments and scaring people about the solvency of Social Security, as Mr. Fleischer did on Wednesday. I think we need to stop the scare tactics for young people and talk about real solutions for a real problem, that I think can be addressed if we are thoughtful, in the way we have addressed a number of issues in the Senate.

I conclude by again urging the Bush administration to reconsider their position on privatization, particularly in light of the dramatic events of recent weeks. Just as September 11 led to fundamental changes in Americans' perceptions about the risks of terrorism, I think the recent volatility of this market has captured the reality of what markets can provide as far as undermining security is concerned, and we have developed a much greater appreciation as a nation about the uncertainties of the market. I hope the Bush administration will face up to that reality and readjust its attitude and its views on its policies accordingly.

Mr. President, I ask unanimous consent the article to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 25, 2002]

BUSH CONTINUES TO BACK PRIVATIZED SOCIAL SECURITY

(By Amy Goldstein)

The White House yesterday stood firmly behind President Bush's plan for workers to divert some of their Social Security payroll taxes into the stock market, despite the dramatic drops Wall Street has suffered in recent months.

White House press secretary Ari Fleischer took a swing at the existing Social Security program, calling it ''dangerous'' to ''let people pay a lifetime of high taxes for a Social Security benefit that under current projections they'll never receive.''

Fleischer made clear that Bush continues to favor permitting Americans to take a portion of the taxes they ordinarily contribute to Social Security trust fund and invest it on their own. ''That would include markets,'' Fleischer said. ''Nothing has changed his views about allowing younger workers to have those options.''

However, Fleischer recalibrated his sale pitch for private retirement accounts, deemphasizing earlier arguments that such investments would generate more retirement savings through higher rates of return. Instead, he said that the current system is ''going bankrupt'' and that the government should grant people more control over their money. He used the word ''options'' a dozen times.

The White House's reminder that Bush wants to overhaul Social Security comes as the administration is redoubling its efforts to draw attention to strong points in the economy. The remarks about the retirement system, on a day when the stock market rose after nine weeks of historic declines, typify an administration that has prized consistency in its policy positions, rather than shifting with changed circumstances.

Bush's position on Social Security was a major tenet of his 2000 campaign. Last year, he assigned a commission to recommend such a system, and the panel responded in December with three proposals. Each would require at least $2 trillion to convert to the new approach, the commission found. It also concluded that the program, destined to face enormous economic strains by the middle of the next decade as the baby boom generation retires, will require reductions in benefits, money from elsewhere in the federal budget—or both.

For now, the White House essentially is speaking into a legislative vacuum. Republicans, fearing that the volatile issue could prove damaging in the elections this fall, persuaded Bush last winter that Congress should not consider any Social Security reforms until 2003. Now some in the party are suggesting that debate should be deferred until after the 2004 presidential election.

House Republicans have distanced themselves from Bush's ideas—at least rhetorically—by passing a bill that promised not to ''privatize'' the retirement system, although many in the party still favor what they now call ''individual investments.'' House Democrats are trying to force a vote on the president's proposal, believing that a debate may prove politically advantageous during a season of investment losses and corporate scandals.

In the absence of legislation, the most ardent proponents of individual accounts continue to press their cause. This week, the Cato Institute, a libertarian think tank, issued a poll it sponsored suggesting that two-thirds of voters support that arrangement. Andrew Biggs, who works on Social Security at Cato and was a staff member of the White House commission, said the findings are striking because the survey was conducted during an interval earlier this month

when the stock market fell 700 points. ''Nobody can claim we had the environment stacked in our favor,' he said.

A Washington Post-ABC News poll this month found that about half the public supports investing some of their Social Security contributions in the stock market, significantly less than two years ago, but about the same proportion as last year.

Democrats and other opponents of the change have been raising the issue particularly in congressional campaigns. ''There is a link between the rising crisis of confidence in corporate America and the scheme to privatize Social Security and cut Social Security benefits as Republicans are still seeking to do,'' House Minority Leader Richard A. Gephardt (D–Mo.) said this month.

Mr. CORZINE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CORZINE). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. SARBANES. Mr. President, I ask unanimous consent to be able to proceed as if in morning business, with the time to be charged against the time that was allocated for debate on the pending amendment.

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

SOCIAL SECURITY

Mr. SARBANES. Mr. President, I want to take the floor for a moment or two to commend the able Senator from New Jersey for the statement that was just made about Social Security privatization, and for focusing on this absolutely outrageous statement made by the White House Press Secretary earlier this week. To terrify people with that kind of statement is absolutely irresponsible. I think it is very important that be put on the RECORD.

I thank the Senator from New Jersey for the analysis and focus he is bringing to this issue of privatizing Social Security. It is an extraordinarily important issue. I agree with the Senator that it ought to be fully debated.

The President and his advisers apparently have not abandoned their bad idea of privatizing Social Security. If that is the case, then we need to lay out in front of the country exactly what is involved. The biggest thing involved, in my judgment, is the very point which the able Senator from New Jersey was making just a few moments ago; that is, the question of the guaranteed benefit.

Under the existing Social Security system, we seek to provide an assured benefit level in Social Security. So when someone stops working, and they start drawing their Social Security, they are told, you will get X amount of dollars per month in your Social Security check. In addition, of course, we also provide for a cost-of-living adjustment in that check.

So the beneficiary, in planning their retirement, and their standard of living under retirement, knows that each month the Social Security check will come, and it will be in this amount—a guaranteed benefit—and that they can count on that.

The privatization, first of all, undercuts the guaranteed benefit concept, and carries with it the risk that your monthly benefit check may be far less. It also carries the risk it may be far more. But who knows? Who knows?

Can you imagine the trauma of senior citizens all across the country if the amount of their Social Security check had been linked to the movement of the stock market in recent months? You would have some elderly person, for whom Social Security is their only source of income, reading stories about the drop in the Dow Jones and the Nasdaq and all the rest of it, thinking to themselves: How much is going to be in my next monthly check? How am I just going to get through the necessities of life if the amount of my Social Security check is going to drop, because of it now being tied to the movements in the market?

Any responsible discussion about this has been that you would have an add-on over and above Social Security that might then be placed in the market, so at least you would guarantee to the person sort of the minimum retirement upon which they could absolutely plan and absolutely count. And that is what needs to be laid out and debated.

The Senator from New Jersey has pinpointed that concern. I commend him for doing it. It is very important. People need to focus on this issue. We need to have this debate. We ought not to be in a situation where the White House Press Secretary can make the kind of statements he is making, seek to undercut confidence in the system, and then use that as an argument for some fundamental change which would jeopardize the guaranteed benefit aspect of the Social Security system which is an extremely important part of it.

I thank the Senator for the excellent job he is doing in bringing this issue to the attention of the Nation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SARBANES). Without objection, it is so ordered.

REVISED ALLOCATION TO SUBCOMMITTEES FOR FISCAL YEAR 2003

Mr. BYRD. Mr. President, on Thursday, June 27, the Senate Committee on Appropriations, by a unanimous roll-call vote of 29 to 0, approved the allocation to subcommittees for fiscal year 2003.

On Wednesday, July 24—just this past Wednesday—Congress adopted the conference report to accompany H.R. 4775, the fiscal year 2002 supplemental appropriations bill.

Today, I submit a revised allocation which has been modified, primarily, to conform outlays for each subcommittee with the outcome on the supplemental.

These revised allocations were prepared in consultation with my colleague, Senator STEVENS, the distinguished ranking member of the committee, who stands with me committee to presenting bills to the Senate consistent with the allocations.

Furthermore, we stand committed to oppose any amendments that would breach the allocations.

I ask unanimous consent that a table setting forth the revised allocation to subcommittees be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE COMMITTEE ON APPROPRIATIONS—REVISED FY 2003 SUBCOMMITTEE ALLOCATIONS DISCRETIONARY SPENDING

[In millions of dollars]

Subcommittee	Budget authority	Outlays
Agriculture	17,980	18,273
Commerce	43,475	43,174
Defense	355,139	350,549
District of Columbia	517	586
Energy & Water	26,300	26,060
Foreign Operations	16,350	16,657
Interior	18,926	18,610
Labor-HHS-Education	134,132	126,373
Legislative Branch	3,413	3,467
Military Construction	10,622	10,127
Transportation	21,300	62,101
Treasury, General Gov't	18,501	18,231
VA, HUD	91,434	97,314
Deficiencies	10,000	12,369
Total	768,089	803,891

Revised on July 25, 2002.

Mr. BYRD. Mr. President, I thank the Chair and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. WYDEN). Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed more than 5 minutes each.

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

LEGISLATIVE HISTORY OF TITLE VIII OF HR 2673: THE SARBANES-OXLEY ACT OF 2002

Mr. LEAHY. Mr. President, yesterday during my floor remarks on the final passage of H.R. 2673, the Sarbanes-Oxley Act, I requested unanimous consent that a section by section analysis and discussion of Title VIII, the Corporate and Criminal Fraud Accountability Act, which I authored, be included in the CONGRESSIONAL RECORD as part of the official legislative history of those provisions of H.R. 2673. That unanimous consent request was granted, but due to a clerical error, this essential legislative history was not printed in yesterday's CONGRESSIONAL RECORD.

It is my understanding that this document will appear in yesterday's CONGRESSIONAL RECORD when the historical volume is compiled. However, in order to provide guidance in the legal interpretation of these provisions of Title VIII of H.R. 2673 before that volume is issued, I ask unanimous consent that the same document be printed in today's CONGRESSIONAL RECORD and be treated as legislative history for Title VIII, offered by the sponsor of these provisions, as if it had been printed yesterday.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS AND DISCUSSION OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT (TITLE VIII OF H.R. 2673)

Title VIII has three major components that will enhance corporate accountability. Its terms track almost exactly the provisions of S. 2010, introduced by Senator Leahy and reported unanimously from the Committee on the Judiciary. Following is a brief section by section and a legal analysis regarding its provisions.

SECTION-BY-SECTION ANALYSIS

Section 801.—Title. ''Corporate and Criminal Fraud Accountability Act.''

Section 802. Criminal penalties for altering documents

This section provides two new criminal statutes which would clarify and plug holes in the current criminal laws relating to the destruction or fabrication of evidence and the preservation of financial and audit records.

First, this section would create a new 20–year felony which could be effectively used in a wide array of cases where a person destroys or creates evidence with the intent to obstruct an investigation or matter that is, as a factual matter, within the jurisdiction of any federal agency or any bankruptcy. It also covers acts either in contemplation of or in relation to such matters.

Second, the section creates a new 10-year felony which applies specifically to the willful failure to preserve audit papers of companies that issue securities. Section (a) of the statute has two sections which apply to accountants who conduct audits under the provisions of the Securities and Exchange Act of 1934. Subsection (a)(1) is an independent criminal prohibition on the destruction of audit or review work papers for five years, as that term is widely understood by regulators and in the accounting industry. Subsection (a)(2) requires the SEC to promulgate reasonable and necessary regulations within 180 days, after the opportunity for public comment, regarding the retention of categories of electronic and non-electronic audit records which contain opinions, conclusions, analysis or financial data, in addition to the actual work papers. Willful violation of such regulations would be a crime. Neither the statute nor any regulations promulgated under it would relieve any person of any independent legal obligation under state or federal law to maintain or refrain from destroying such records. In Conference language was added that further clarified that the rulemaking called for under the (b) provision was mandatory, and gave the SEC authority to amend and supplement such rules in the future, after proper notice and comment.

Section 803.—Debts nondischargeable if incurred in violation of securities fraud laws

This provision would amend the federal bankruptcy code to make judgments and settlements arising from state and federal securities law violations brought by state or federal regulators and private individuals nondischargeable. Current bankruptcy law may permit wrongdoers to discharge their obligations under court judgments or settlements based on securities fraud and securities law violations. The section, by its terms, applies to both regulatory and more traditional fraud matters, so long as they arise under the securities laws, whether federal, state, or local.

This provision is meant to prevent wrongdoers from using the bankruptcy laws as a shield and to allow defrauded investors to recover as much as possible. To the maximum extent possible, this provision should be applied to existing bankruptcies. The provision applies to all judgments and settlements arising from state and federal securities laws violations entered in the future regardless of when the case was filed.

Section 804.—Statute of limitations

This section would set the statute of limitations in private securities fraud cases to the earlier of two years after the discovery of the facts constituting the violation or five years after such violation. The current statute of limitations for most private securities fraud cases is the earlier of three years from the date of the fraud or one year from the date of discovery. This provision states that it is not meant to create any new private cause of action, but only to govern all the already existing private causes of action under the various federal securities laws that have been held to support private causes of action. This provision is intended to lengthen any statute of limitations under federal securities law, and to shorten none. The section, by its plain terms, applies to any and all cases filed after the effective date of the Act, regardless of when the underlying conduct occurred.

Section 805.—Review and enhancement of criminal sentences in cases of fraud and evidence destruction

This section would require the United States Sentencing Commission (''Commission'') to review and consider enhancing, as appropriate, criminal penalties in cases involving obstruction of justice and in serious fraud cases. The Commission is also directed to generally review the U.S.S.G. Chapter 8 guidelines relating to sentencing organizations for criminal misconduct, to ensure that such guidelines are sufficient to punish and deter criminal misconduct by corporations. The Commission is asked to perform such reviews and make such enhancements as soon as practicable, but within 180 days at the most.

Subsection 1 requires that the Commission generally review all the base offense level and sentencing enhancements under U.S.S.G. §2J1.2. Subsection 2 specifically directs the Commission to consider including enhancements or specific offense characteristics for cases based on various factors including the destruction, alteration, or fabrication of physical evidence, the amount of evidence destroyed, the number of participants, or otherwise extensive nature of the destruction, the selection of evidence that is particularly probative or essential to the investigation, and whether the offense involved more than minimal planning or the abuse of a special skill or position of trust. Subsection 3 requires the Commission to establish appropriate punishments for the new obstruction of justice offenses created in this Act.

Subsections 4 and former subsection 5 of the Senate passed bill, which was moved to Title 11 in Conference, require the Commission to review guideline offense levels and enhancements under U.S.S.G. §2B1.1, relating to fraud. Specifically, the Commission is requested to review the fraud guidelines and consider enhancements for cases involving significantly greater than 50 victims and cases in which the solvency or financial security of a substantial number of victims is endangered. New Subsection 5 requires a comprehensive review of Chapter 8 guidelines relating to sentencing organizations. It is specifically intended that the Commission's review of Section 8 be comprehensive, and cover areas in addition to monetary penalties, additional punishments such as supervision, compliance programs, probation and administrative action, which are often extremely important in deterring corporate misconduct.

Section 806.—Whistleblower protection for employees of publicly traded companies

This section would provide whistleblower protection to employees of publicly traded companies. It specifically protects them when they take lawful acts to disclose information or otherwise assist criminal investigators, federal regulators, Congress, supervisors (or other proper people within a corporation), or parties in a judicial proceeding in detecting and stopping fraud. If the employer does take illegal action in retaliation for lawful and protected conduct, subsection (b) allows the employee to file a complaint with the Department of Labor, to be governed by the same procedures and burdens of proof now applicable in the whistleblower law in the aviation industry. The employee can bring the matter to federal court only if the Department of Labor does not resolve the matter in 180 days (and there is no showing that such delay is due to the bad faith of the claimant) as a normal case in law or equity, with no amount in controversy requirement. Subsection (c) governs remedies and provides for the reinstatement of the whistleblower, backpay, and compensatory damages to make a victim whole, including reasonable attorney fees and costs, as remedies if the claimant prevails. A 90 day statute of limitations for the bringing of the initial administrative action before the Department of Labor is also included.

Section 807.—Criminal penalties for securities fraud

This provision would create a new 10–year felony for defrauding shareholders of publicly traded companies. The provision would supplement the patchwork of existing technical securities law violations with a more general and less technical provision, with elements and intent requirements comparable to current bank fraud and health care fraud statutes. It is meant to cover any scheme or artifice to defraud any person in connection with a publicly traded company. The acts terms are not intended to encompass technical definition in the securities

laws, but rather are intended to provide a flexible tool to allow prosecutors to address the wide array of potential fraud and misconduct which can occur in companies that are publicly traded. Attempted frauds are also specifically included.

DISCUSSION

Following is a discussion and analysis of the Act's Title 8 provisions.

Section 802 creates two new felonies to clarify and close loopholes in the existing criminal laws relating to the destruction or fabrication of evidence and the preservation of financial and audit records. First, it creates a new general anti shredding provision, 18 U.S.C. §1519, with a 10–year maximum prison sentence. Currently, provisions governing the destruction or fabrication of evidence are a patchwork that have been interpreted, often very narrowly, by federal courts. For instance, certain current provisions make it a crime to persuade another person to destroy documents, but not a crime to actually destroy the same documents yourself. Other provisions, such as 18 U.S.C. §1503, have been narrowly interpreted by courts, including the Supreme Court in United States v. Aguillar, 115 S. Ct. 593 (1995), to apply only to situations where the obstruction of justice can be closely tied to a pending judicial proceeding. Still other statutes have been interpreted to draw distinctions between what type of government function is obstructed. Still other provisions, such as sections 152(8), 1517 and 1518 apply to obstruction in certain limited types of cases, such as bankruptcy fraud, examinations of financial institutions, and healthcare fraud. In short, the current laws regarding destruction of evidence are full of ambiguities and technical limitations that should be corrected. This provision is meant to accomplish those ends.

Section 1519 is meant to apply broadly to any acts to destroy or fabricate physical evidence so long as they are done with the intent to obstruct, impede or influence the investigation or proper administration of any matter, and such matter is within the jurisdiction of an agency of the United States, or such acts done either in relation to or in contemplation of such a matter or investigation. The fact that a matter is within the jurisdiction of a federal agency is intended to be a jurisdictional matter, and not in any way linked to the intent of the defendant. Rather, the intent required is the intent to obstruct, not some level of knowledge about the agency processes of the precise nature of the agency of court's jurisdiction. This statute is specifically meant not to include any technical requirement, which some courts have read into other obstruction of justice statutes, to tie the obstructive conduct to a pending or imminent proceeding or matter by intent or otherwise. It is also sufficient that the act is done ''in contemplation'' of or in relation to a matter or investigation. It is also meant to do away with the distinctions, which some courts have read into obstruction statutes, between court proceedings, investigations, regulatory or administrative proceedings (whether formal or not), and less formal government inquiries, regardless of their title. Destroying or falsifying documents to obstruct any of these types of matters or investigations, which in fact are proved to be within the jurisdiction of any federal agency are covered by this statute. Questions of criminal intent are, as in all cases, appropriately decided by a jury on a case-by-cases basis. It also extends to acts done in contemplation of such federal matters, so that the timing of the act in relation to the beginning of the matter or investigation is also not a bar to prosecution. The intent of the provision is simple; people should not be destroying, altering, or falsifying documents to obstruct any government function. Finally, this section could also be used to prosecute a person who actually destroys the records himself in addition to one who persuades another to do so, ending yet another technical distinction which burdens successful prosecution of wrongdoers.1 6

Second, Section 802 also creates a 10 year felony, 18 U.S.C. §1520, to punish the willful failure to preserve financial audit papers of companies that issue securities as defined in the Securities Exchange Act of 1934. The new statute, in subsection (a)(1), would independently require that accountants preserve audit work papers for five years from the conclusion of the audit. Subsection (b) would make it a felony to knowingly and willfully violate the five-year audit retention period in (1)(a) or any of the rules that the SEC must issue under (1)(b). The materials covered in subsection (1)(b), which contains a mandatory requirement for the SEC to issues reasonable rules and regulations, are intended to include additional records which contain conclusions, opinions, analysis, and financial data relevant to an audit or review. Specifically included in such materials are electronic communications such as emails and other electronic records. The Conference added the ability of the SEC to update its rules to specifically allow it to capture additional types of records that could become important in the future as technologies and practices of the accounting industry change. The regulations are intended to cover the retention of all such substantive material, whether or not the conclusions, opinions, analyses or data in such records support the final conclusions reached by the auditor or expressed in the final audit or review so that state and federal law enforcement officials and regulators and victims can conduct more effective inquiries into the decisions and determinations made by accountants in auditing public corporations. Non-substantive materials, however, such as administrative records, which are not relevant to the conclusions or opinions expressed (or not expressed), need not be included in such retention regulations. The language of the provision is clear. The SEC ''shall'' and ''is required'' to promulgate regulations relating to the retention of the categories of items which are specifically enumerated in the statutory provision. ''Reviews,'' as well as audits are also recovered by both (a) and (b). When a publicly traded company is involved, the precise name which the auditor chooses to give to an engagement is not important. Documents pertinent to the substance of such financial audits or review should be preserved. Willful violation of these regulations will also be a crime under this section.

In light of the apparent massive document destruction by Andersen, and the company's apparently misleading document retention policy, even in light of its prior SEC violations, it is intended that the SEC promulgate rules and regulations that require the retention of such substantive material, including material which casts doubt on the views expressed in the audit of review, for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws, most of which have a five-year statute of limitations. It should also be noted that criminal tax violations, which many of these documents relate to, have a six-year statute of limitations and the regulatory portion of the Act requires a 7 year retention period. By granting the SEC the power to issue such regulations, it is not intended that the SEC be prohibited from consulting with other government agencies, such as the Department of Justice, which has primary authority regarding enforcement of federal criminal law or pertinent state regulatory agencies. Nor is it the intention of this provision that the general public, private or institutional investors, or other investor or consumer protection groups be excluded from the SEC rulemaking process. These views of these groups, who often represent the victims of fraud, should be considered at least on an equal footing with ''industry experts'' and others who participate in the rulemaking process at the SEC.

This section not only penalizes the willful failure to maintain specified audit records, but also will result in clear and reasonable rules that will require accountants to put strong safeguards in place to ensure that such corporate audit records are retained. Had such clear requirements and policies been established at the time Andersen was considering what to do with its audit documents, countless documents might have been saved from the shredder. The idea behind the statute is not only to provide for prosecution of those who obstruct justice, but to ensure that important financial evidence is retained so that law enforcement officials, regulators, and victims can assess whether the law was broken to begin with and, if so, whether or not such was done intentionally, or with or without the knowledge or assistance of an auditor.

Section 803 amends the Bankruptcy Code to make judgments and settlements based upon securities law violations non-dischargeable, protecting victims' ability to recover their losses. Current bankruptcy law may permit such wrongdoers to discharge their obligations under court judgments or settlements based on securities fraud and other securities violations. This loophole in the law should be closed to help defrauded investors recoup their losses and to hold accountable those who violate securities laws after a government unit or private suit results in a judgment or settlement against the wrongdoer. This provision is meant to prevent wrongdoers from using the bankruptcy laws as a shield and to allow defrauded investors to recover as much as possible. To the maximum extent possible, this provision should be applied to existing bankruptcies. The provision applies to all judgments and settlements arising from state and federal securities laws violations entered in the future regardless of when the case was filed.

State securities regulators have indicated their strong support for this change in the bankruptcy law. Under current laws, state regulators are often forced to ''reprove'' their fraud cases in bankruptcy court to prevent discharge because remedial statutes often have different technical elements than the analogous common law causes of action. Moreover, settlements may not have the same collateral estoppel effect as judgments obtained through fully litigated legal proceedings. In short, with their resources already stretched to the breaking point, state regulators must plow the same ground twice in securities fraud cases. By ensuring securities law judgments and settlements in state cases are non-dischargeable, precious state enforcement resources will be preserved and directed at preventing fraud in the first place.

Section 804 protects victims by extending the statute of limitations in private securities fraud cases. It would set the statute of limitations in private securities fraud cases to the earlier of five years after the date of the fraud or two years after the fraud was discovered. The current statute of limitations for most such fraud cases is three years from the date of the fraud or one year after discovery, which can unfairly limit recovery for defrauded investors in some cases. It applies to all private securities fraud actions for which private causes of actions are permitted and applies to any case filed after the

date of enactment, no matter when the conduct occurred. As Attorney General Gregoire testified at the Committee hearing, in the Enron state pension fund litigation the current short statute of limitations has forced some states to forgo claims against Enron based on alleged securities fraud in 1997 and 1998. In Washington state alone, the short statute of limitations may cost hard-working state employees, firefighters and police officers nearly $50 million in lost Enron investments which they can never recover.

Especially in complex securities fraud cases, the current short statute of limitations may insulate the worst offenders from accountability. As Justices O'Connor and Kennedy said in their dissent in Lampf, Pleva. Lipkind, Prupis, & Petigrow v. Gilbertson, 111 S. Ct. 2773 (1991), the 5–4 decision upholding this short statute of limitations in most securities fraud cases, the current ''one and three'' limitations period makes securities fraud actions ''all but a dead letter for injured investors who by no conceivable standard of fairness or practicality can be expected to file suit within three years after the violation occurred.'' The Consumers Union and Consumer Federation of America, along with the AFL-CIO and other institutional investors, strongly support the bill, and views this section in particular as a needed measure to protect investors.

The experts agree with that view. In fact, the last two SEC Chairmen supported extending the statute of limitations in securities fraud cases. Former Chairman Arthur Levitt testified before a Senate Subcommittee in 1995 that ''extending the statute of limitations is warranted because many securities frauds are inherently complex, and the law should not reward the perpetrator of a fraud, who successfully conceals its existence for more than three years.'' Before Chairman Levitt, in the last Bush administration, then SEC Chairman Richard Breeden also testified before Congress in favor of extending the statute of limitations in securities fraud cases. Reacting to the Lampf opinion, Breeden stated in 1991 that ''[e]vents only come to light years after the original distribution of securities, and the Lampf cases could well mean that by the time investors discover they have a case, they are already barred from the courthouse.'' Both the FDIC and the State securities regulators joined the SEC in calling for a legislative reversal of the Lampf decisions at that time.

In fraud cases the short limitations period under current law is an invitation to take sophisticated steps to conceal the deceit. The experts have long agreed on that point, but unfortunately they have been proven right again. As recent experience shows, it only takes a few seconds to warm up the shredder, but unfortunately it will take years for victims to put this complex case back together again. It is time that the law is changed to give victims the time they need to prove their fraud cases.

Section 805 of the Act ensures that those who destroy evidence or perpetrate fraud are appropriately punished. It would require the Commission to consider enhancing criminal penalties in cases involving obstruction of justice and serious fraud cases where a large number of victims are injured or when the victims face financial ruin.

The Act is not intended as criticism of the current guidelines, which were based on the hard work of the Commission to conform with the goals of prior existing law. Rather, it is intended to join the provisions of the Act which substantially raise current statutory maximums in the law as a policy expression that the former penalties were insufficient to deter financial misconduct and to request the Commission to review and enhance its penalties as appropriate in that light.

Currently, the U.S.S.G. recognize that a wide variety of conduct falls under the offense of ''obstruction of justice.'' For obstruction cases involving the murder of a witness or another crime, the U.S.S.G. allow, by cross reference, significant enhancements based on the underlying crimes, such as murder or attempted murder. For cases when obstruction is the only offense, however, they provide little guidance on differentiating between different types of obstruction. This provision requests that the Commission consider raising the penalties for obstruction where no cross reference is available and defining meaningful specific enhancements and adjustments for cases where evidence and records are actually destroyed or fabricated (and for more serious cases even within that category of case) so as to thwart investigators, a serious form of obstruction.

This provision and Title 11, also require that the Commission consider enhancing the penalties in fraud cases which are particularly extensive or serious, even in addition to the recent amendments to the Chapter 2 guidelines for fraud cases. The current fraud guidelines require that the sentencing judge take the number of victims into account, but only to a very limited degree in small and medium-sized cases. Specifically, once there are more than 50 victims, the guidelines do not require any further enhancement of the sentence. A case with 51 victims, therefore, may be treated the same as a case with 5,000 victims. As the Enron matter demonstrates, serious frauds, especially in cases where publicly traded securities are involved, can affect thousands of victims.

In addition, current guidelines allow only very limited consideration of the extent of devastation that a fraud offense causes its victims. Judges may only consider whether a fraud endangers the ''solvency or financial security'' of a victim to impose an upward departure from the recommended sentencing range. This is not a factor in establishing the range itself unless the victim is a financial institution. Subsection (5) requires the Commission to consider requiring judges to consider the extent of such devastation in setting the actual recommended sentencing range in cases such as the Enron matter, when many private victims, including individual investors, have lost their life savings. Finally this provision requires a complete review of the Chapter 8 corporate misconduct guidelines, which should include not only monetary penalties but other actions designed to deter organizational crime, such as probation and compliance enforcement schemes.

Section 806 of the Act would provide whistleblower protection to employees of publicly traded companies who report acts of fraud to federal officials with the authority to remedy the wrongdoing or to supervisors or appropriate individuals within their company. Although current law protects many government employees who act in the public interest by reporting wrongdoing, there is no similar protection for employees of publicly traded companies who blow the whistle on fraud and protect investors. With an unprecedented portion of the American public investing in these companies and depending upon their honesty, this distinction does not serve the public good.

In addition, corporate employees who report fraud are subject to the patchwork and vagaries of current state laws, even though most publicly traded companies do business nationwide. Thus, a whistleblowing employee in one state (e.g., Texas, see supra) may be far more vulnerable to retaliation than a fellow employee in another state who takes the same actions. Unfortunately, companies with a corporate culture that punishes whistleblowers for being ''disloyal'' and ''litigation risks'' often transcend state lines, and most corporate employers, with help from their lawyers, know exactly what they can do to a whistleblowing employee under the law. U.S. laws need to encourage and protect those who report fraudulent activity that can damage innocent investors in publicly traded companies. The Act is supported by groups such as the National Whistleblower Center, the Government Accountability Project, and Taxpayers Against Fraud, all of whom have written a letter placed in the Committee record calling this bill ''the single most effective measure possible to prevent recurrences of the Enron debacle and similar threats to the nation's financial markets.''

This provision would create a new provision protecting employees when they take lawful acts to disclose information or otherwise assist criminal investigators, federal regulators, Congress, their supervisors (or other proper people within a corporation), or parties in a judicial proceeding in detecting and stopping actions which they reasonably believe to be fraudulent. Since the only acts protected are ''lawful'' ones, the provision would not protect illegal actions, such as the improper public disclosure of trade secret information. In addition, a reasonableness test is also provided under the subsection (a)(1), which is intended to impose the normal reasonable person standard used and interpreted in a wide variety of legal contexts (See generally Passaic Valley Sewerage Commissioners v. Department of Labor, 992 F. 2d 474, 478). Certainly, although not exclusively, any type of corporate or agency action taken based on the information, or the information constituting admissible evidence at any later proceeding would be strong indicia that it could support such a reasonable belief. The threshold is intended to include all good faith and reasonable reporting of fraud, and there should be no presumption that reporting is otherwise, absent specific evidence.

Under new protections provided by the Act, if the employer does take illegal action in retaliation for such lawful and protected conduct, subsection (b) allows the employee to elect to file an administrative complaint at the Department of Labor, as is the case for employees who provide assistance in aviation safety. Only if there is not final agency decision within 180 days of the complaint (and such delay is not shown to be due to the bad faith of the claimant) may he or she may bring a de novo case in federal court with a jury trial available (See United States Constitution, Amendment VII; Title 42 United States Code, Section 1983). Should such a case be brought in federal court, it is intended that the same burdens of proof which would have governed in the Department of Labor will continue to govern the action. Subsection (c) of this section requires both reinstatement of the whistleblower, backpay, and all compensatory damages needed to make a victim whole should the claimant prevail. The Act does not supplant or replace state law, but sets a national floor for employee protections in the context of publicly traded companies.

Section 807 creates a new 25 year felony under Title 18 for defrauding shareholders of publicly traded companies. Currently, unlike bank fraud or health care fraud, there is no generally accessible statute that deals with the specific problem of securities fraud. In these cases, federal investigators and prosecutors are forced either to resort to a patchwork of technical Title 15 offenses and regulations, which may criminalize particular violations of securities law, or to treat the cases as generic mail or wire fraud cases and to meet the technical elements of

those statutes, with their five year maximum penalties.

This bill, then, would create a new 25 year felony for securities fraud—a more general and less technical provision comparable to the bank fraud and health care fraud statutes in Title 18. It adds a provision to Chapter 63 of Title 18 at section 1348 which would criminalize the execution or attempted execution of any scheme or artifice to defraud persons in connection with securities of publicly traded companies or obtain their money or property. The provision should not be read to require proof of technical elements from the securities laws, and is intended to provide needed enforcement flexibility in the context of publicly traded companies to protect shareholders and prospective shareholders against all the types schemes and frauds which inventive criminals may devise in the future. The intent requirements are to be applied consistently with those found in 18 U.S.C. §§1341, 1343, 1344, 1347.

By covering all ''schemes and artifices to defraud'' (see 18 U.S.C. §§1344, 1341, 1343, 1347), new §1348 will be more accessible to investigators and prosecutors and will provide needed enforcement flexibility and, in the context of publicly traded companies, protection against all the types schemes and frauds which inventive criminals may devise in the future.

VOTE EXPLANATION

Mr. BIDEN: Mr. President, I arrived in Washington this morning after the vote to invoke cloture on the nomination of Julia Smith Gibbons, to be United States Circuit Judge for the Sixth Circuit.

It was my intention to be here in time to vote in favor of this cloture motion.

Unfortunately, the catenary wire providing power for Amtrak was knocked down in Elkton, MD. This delayed the train on which I was traveling and regrettably prevented me from being present to vote.

THE FEDERALIST SOCIETY: SETTING THE RECORD STRAIGHT

Mr. HATCH. Mr. President, I also take this opportunity today to right a wrong. Over the past 2 years, members of The Federalist Society have been much maligned by some of my Democrat colleagues, no doubt because they see political advantage in doing so. The Federalist Society has even been presented as an 'evil cabal' of conservative lawyers. Its members have been subjected to questions which remind one of the McCarthy hearings of the early 1950's. Detractors have painted a picture which is surreal, twisted and untrue.

The truth is that liberal orthodoxies reign rampant and often unchecked in a majority of this countries law schools and in the legal profession, and that the left is shocked that an association of constitutionalist lawyers would exist, much less include the notable legal minds it does.

During the mid-1990's, Professor James Lindgren of Northwestern University Law School conducted a survey of law school professors and came to the fallowing conclusion. At the faculties of the top 100 law schools 80 percent of law professors were Democrats, or leaned left, and only 13 percent were Republicans, or leaned right. These liberal professors promulgate their ideology in and outside the classroom.

Anyone associated with America's campuses or law schools knows that nonliberal views are regularly stifled and those espousing those views are often publicly shunned and ridiculed. It was this environment of hostility to freedom of expression and the exchange of ideas in universities that set the stage for the formation of the Federalist Society. And given my Democrat colleagues' reaction to the Society, it appears to be fighting against liberal narrow-mindedness still.

In 1982, the Federalist Society was organized, not to foster any political agenda, but to encourage debate and public discourse on social and legal issues. Over the past 20 years the Federalist Society has accomplished just that. It has served to open the channels of discourse and debate in many of America's law schools.

The Federalist Society espouses no official dogma. Its members share acceptance of three universal ideas: 1. that government's essential purpose is the preservation of freedom; 2. that our Constitution embraces and requires separation of governmental powers; and 3. that judges should interpret the law, not write it.

For the vast majority of Americans, these are not controversial issues. Rather, they are basic Constitutional assertions that are essential to the survival of our republic. They are truths that have united Americans for more than two centuries. Recently we have seen the emergence of some groups that seek to undermine the third of these ideas—that judges should not write laws. These groups have attempted to use the judiciary to circumvent the democratic process and impose their minority views on the American people.

This judicial activism is a nefarious practice that seeks to undermine the principle of democratic rule. It results in an unelected oligarchy, government by a small elite. Judicial activism imposes the will of a small group of politicized lawyers upon the American people and undermines the work of the people's representatives.

Indeed, if the radical left is successful, if we continue to appoint judges that are committed to writing law and not interpreting it, than all of us can just go home. We can resign ourselves to live under the oligarchical rule of lawyers. I happen to know a few lawyers, and please trust me when I say, this is not a good idea.

Beyond acceptance to its three key ideas, freedom, separation of powers, and that judges should not write laws, it is challenging, if not impossible, to find consensus among Federalist Society members. Its members hold a wide array of differing views. They are so diverse that it is impossible to describe a Federalist Society philosophy.

The assertion that members are ideological carbon copies of each other is ludicrous. The Society revels in open, thoughtful, and rigorous debate on all issues. It rests on the premise that public policy and social issues should not be accepted as part of a party-line but rather warrant much thought and dialogue. Any organization that sponsors debate on issues of public importance, as opposed to self-serving indoctrination, is healthy for us all.

Now, how does the Federalist Society accomplish its goal? Not by lobbying Congress, writing amicus briefs, or issuing press releases. The Federalist Society seeks only to sponsor fair, serious, and open debate about the need to enhance individual freedom and the role of the courts in saying what the law is rather than what it should be. The Society believes that debate is the best way to ensure that legal principles that have not been the subject of sufficient attention for the past several decades receive a fair hearing.

The Federalist Society's commitment to fair and open debate can be seen by a small sampling of some participants in its meetings and symposiums. They have included scores of liberals like Justices Ruth Bader Ginsburg and Stephen Bryer, Michael Dukakis, Barney Frank, Abner Mikva, Alan Dershowitz, Laurence Tribe, Steve Shapiro, Christopher Hitchins and Ralph Nader, just to name a few.

I would like to include for the RECORD a list of 60 participants in Federalist Society events that demonstrates the remarkable diversity of thought of Federalist Society events. One of them is Nadine Strossen, President of the ACLU, who has participated in Federalist Society functions regularly and constantly since its founding. She has praised its fundamental principle of individual liberty, its high-profile on law school campuses, and its intellectual diversity, noting that there is frequently strenuous disagreement among members about the role of the courts. Strossen has even said that she cannot draw any firm conclusion about a potential judicial nominee's views based on the fact that he is a Federalist Society member.

It seems to me that an organization that includes such a wide array of opinion serves this nation well and does not deserve the vilification it gets from the usual suspects.

There are many notable conservatives that also affiliate with the Federalist Society. But as the members of the Senate demonstrate, even amongst those that are often labeled ''conservatives'' there is a much disagreement on most social and political issues. Some often portray the Federalist Society as a tightly-knit, well-organized coalition of conservative lawyers who are united by their right-wing ideology. This is far from true. Allow me to illustrate further.

Two years ago the Washington Monthly published an article entitled ''The Conservative Cabal That's Transforming American Law,'' which cited a 1999 decision by a panel of the D.C. Circuit's Court of Appeals as the ''network's most far-reaching victory in recent years''. The decision overturned some of the EPA's clean-air standards on the grounds that it was unconstitutional for Congress to delegate legislative authority to the executive branch. C. Boyden Gray, a former White House Counsel for the first President Bush and a member of the Federalist Society's Board of Visitors, filed an amicus brief making the winning argument.

However, this is not the smoking gun case that opponents of the Federalist Society would have us believe it to be to prove that it is part of the vast right wing conservative conspiracy. First, the case was overturned on appeal by the Supreme Court, in a decision written by Justice Antonin Scalia, a frequent participant in Federalist Society activities who was the faculty advisor to the organization when he taught at the University of Chicago.

Second, the Washington Monthly piece also attacked Boyden Gray as a water carrier for the Federalist Society for advancing Microsoft's effort against antitrust enforcement. Of course, Mr. Gray serves on the Society's Board of Visitors with Robert Bork, who has been Microsoft's chief intellectual adversary.

Not quite the vast right wing conspiracy hobgoblin some of my colleagues would have the American people believe in.

A close examination of the Federalist Society reveals not a tight-knit organization that demands ideological unity, but an association of lawyers, much like the early bar associations that first appeared in this country in the late 19th century, made up of individuals from across the political spectrum who are committed to the principles of freedom and the rule of law according to the Constitution. As a former co-chairman myself, I applaud that the President has sought out its members to fill the federal bench.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

60 DIVERSE PARTICIPANTS IN FEDERALIST SOCIETY EVENTS

SUPREME COURT JUSTICES

1. Justice Stephen Breyer
2. Justice Ruth Bader Ginsburg
3. Justice Anthony Kennedy
4. Justice Antonin Scalia
5. Justice Clarence Thomas

CABINET MEMBERS

6. Griffin Bell
7. Abner Mikva
8. Bernard Nussbaum
9. Zbigniew Brezinski
10. Alan Keyes

ELECTED

11. Barney Frank
12. Michael Dukakis
13. George Pataki
14. Eugene McCarthy
15. Charles Robb
16. Jim Wright
17. Mayor Willie Brown

JUDGES

18. Robert Bork
19. Guido Calabrasi
20. Richard Posner
21. Alex Kozinski
22. Pat Wald
23. Stephen Williams

LAW SCHOOL DEANS

24. Robert Clark—Harvard
25. Anthony Kronman—Yale
26. Paul Brest—Stanford
27. John Sexton—NYU
28. Geoffrey Stone—Chicago

LAW SCHOOL PROFESSORS

29. Alan Dershowitz—Harvard
30. Laurence Tribe—Harvard
31. Cass Sunstein—Chicago

INTEREST GROUPS

32. Nadine Strossen—President, ACLU
33. Steve Shapiro—General Counsel, ACLU
34. Ralph Nader—Public Citizen Litigation Group
35. Patricia Ireland—Fmr. President, NOW
36. Anthony Podesta—People for the American Way
37. Martha Barnett—Fmr. President, ABA
38. George Bushnell—Fmr. President, ABA
39. Robert Raven—Fmr. President, ABA
40. Talbot ''Sandy'' D'Alemberte—Fmr. President, ABA
41. Larry Gold—Assc. General Counsel, AFL–CIO
42. Damon Silvers—Assc. General Counsel, AFL–CIO
43. Nan Aron—Exec. Dir., Alliance for Justice
44. Richard Sincere—Pres., Gays and Lesbians for Individual Liberty
45. Michael Myers—NY Civil Rights Commission
46. Samuel Jordan—Fmr. Dir., Program to Abolish the Death Penalty—Amnesty Int'l
47. Marcia Greenburger—Co. Pres., National Women's Law Center
48. Victor Schwartz—Gen. Cnsl., American Tort Reform Assoc.
49. Linda Chavez—Pres., Center for Equal Opportunity
50. Ward Connerly—Founder/Chairman, American Civil Rights Initiative
51. Thomas Sowell—Hoover Institute
52. Michael Horowitz—Hudson Institute
53. Clint Bolick—VP, Institute for Justice

COLUMNISTS

54. Christopher Hitchins—The Nation
55. Michael Kinsley—Slate/The New Republic
56. Juan Williams—NPR/The Washington Post
57. George Will—ABC News
58. Bill Kristol—The Weekly Standard
59. Nat Hentoff—The Village Voice
60. Richard Cohen—The Washington Post

FURTHER EVIDENCE THAT ONE DAY IS NOT ENOUGH TIME

Mr. LEVIN. Mr. President, yesterday a report was released by the General Accounting Office, Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records. The report provides evidence that one day is simply not enough time for law enforcement agencies to complete thorough and accurate analysis of purchase records. Under current National Instant Criminal Background Check System regulations, records of allowed firearms sales can be retained for up to 90 days, after which the records must be destroyed. On July 6, 2001, the Department of Justice published proposed changes to the NICS regulations that would reduce the maximum retention period from 90 days to only one day.

Yesterday's GAO report found that during the first 6 months in which the 90-day retention policy was in effect, the Federal Bureau of Investigation used the records to launch 235 firearm-retrieval actions, an investigation and coordinated attempt to retrieve a firearm with state or local law enforcement assistance. Of the 235 firearm-retrieval actions, 228 or 97 percent could have not been initiated under the one-day record destruction policy. An additional 179 firearm-retrieval actions could have been initiated under the 90-day record retention policy, according to records, but the firearm had not yet been transferred to the buyer. The one-day destruction policy, according to the report, would make it difficult for the FBI to assist law enforcement agencies in gun-related investigations, and ultimately, compromise public safety. Internal Department of Justice memos further indicate that the FBI's 90-day retention policy is within the scope of the Brady Law.

The retention of NICS Background Check Records for a 90-day period of time is critical, and I am greatly concerned by the Attorney General's action. I support the ''Use NICS in Terrorist Investigations Act'' introduced by Senators KENNEDY and SCHUMER. This legislation would simply codify the 90-day period for law enforcement to retain and review NICS data. The GAO report provides further evidence that the Schumer-Kennedy bill is good policy. I urge my colleagues to support this common sense piece of gun-safety legislation.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred May 14, 1994 in National City, CA. A gay man was beaten

by four men who yelled anti-gay slurs. The assailants, Juan Gonzales and Maico Amon, both 20, were charged in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

CORRECTION OF THE RECORD REGARDING RESOURCES FOR MEDICARE PRESCRIPTION DRUGS AND TAX RELIEF

Mr. GRASSLEY. Mr. President, yesterday some on the other side attacked last year's bipartisan tax relief legislation. They were led by the distinguished Majority Leader, Senator TOM DASCHLE. As an example of these claims, I ask unanimous consent to place in the RECORD an article from yesterday's edition of Roll Call Daily.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Roll Call Daily, July 25, 2002]

DASCHLE BLAMES BUSH TAX CUT FOR FAILURE ON PRESCRIPTION DRUG REFORM

(By Polly Forster)

Senate Majority Leader Thomas Daschle (D-S.D.) expressed frustration with the chamber's failure to enact a sweeping Medicare prescription drug benefit and blamed President' Bush's $1.35 trillion tax cut for ''starving'' the opportunity to pass substantial reform.

Daschle also expressed doubt that a conference committee will be able to work out the differences in the House and Senate versions of trade legislation before the Houses recesses this week.

Daschle charged that House Ways and Means Chairman Bill Thomas (R-Calif.) was possibly undermining a key component of the Senate trade bill by revisiting the details of the Trade Adjustment Assistance bill and thereby delaying a final result.

''It sounds like he's trying to undermine the TAA package,'' Daschle said. ''If that's the case, we'll wait until September.''

Legislation on prescription drug benefits appeared similarly in flux. Daschle said Democrats were forced to revise their priorities because last year's tax cut shrunk the possibilities available to them.

''We don't have the resources because, in large measure, the tax cut precludes it,'' Daschle said.'' Because of the tax cut and the deficits we are now facing, we've got to be concerned about the overall cost.''

But a Senate GOP leadership aide dismissed the validity of that argument, saying that Democrats now find themselves in a corner and are ''grasping at straws'' to avoid the blame.

''Because Democrats stopped the bipartisan Finance Committee from doing its work, they've caused every possible drug proposal to fail in the Senate,'' said the GOP aid.

Since none of the proposals for drug benefit reform passed through the Finance Committee, all measures are subject to a 60-vote threshold.

Senate Finance Chairman Max Baucus (D-Mont.) has spent the last several days in meetings with key lawmakers from both sides in an effort to craft something most Senators could agree to.

Daschle said the goal of the talks is to find a proposal broad enough to win over at least 10 Republicans. ''We only got 52'' for a Democratic bill, he said, ''and we need the other eight. That means we've got to scale back and to broaden our level of support.''

Daschle said Democrats will not be offering any more proposals but instead will be looking to craft a bipartisan measure.

Baucus spokesman Michael Siegel said the Senator was looking at two approaches to the issue: using Medicare as the channel to deliver drug benefits and where unavailable using private companies, and also to extending a ''catastrophic'' coverage bill that was short of nine votes Wednesday.

Daschle said the Senate will stay on the issue as long as it takes,including the early part of September after the recess, until there is a result—possibly forestalling consideration of a bill to create the federal department of Homeland Security.

''It means our highest priority is to get the bill done and we don't do other things until we get it done,'' he said.

Daschle vowed an equal commitment to retaining the worker protection element in the trade package now in conference.

''We're in no hurry,'' he said. ''It's more important to me to have a good package even if that means we have to wait until October.''

A top Senate Democratic aide said negotiations broke down Thursday morning over the TAA element, which would provide health coverage for workers displaced by international trade.

Senate Democrats expected Thomas to concede ground on that part as the House was only just able to pass their bill on the floor.

The breakdown left at least one Senate Democratic leadership aid frustrated. ''It's ridiculous for Thomas to be stuck on this because it's his chamber that needs to attract the votes to pass the bill, not the Senate,'' said the aide.

Mr. GRASSLEY. There is a very sophisticated, well-coordinated campaign on the part of the Democratic Leadership to derail last year's bipartisan tax relief. It seems that everything that ails us as a nation is laid at the feet of the tax cut. I'm sure that the next attack will be that tax relief causes the Decline of Western Civilization. Or, perhaps, the Democratic Leadership would twist a phrase from Justice Oliver Wendell Holmes and claim that ''record high taxes are the price we must pay for a civilized society.''

Many in the media agree with this concept and rarely, if ever, challenge the factual basis for these attacks on last year's tax cut bill. Well, let me tell my friends in the Democratic Leadership, I'm going to correct the record every time. It's fine to attack tax relief, if you must, on ideological grounds. If the Democratic Leadership thinks we need to maintain record levels of taxation and keep growing government. That's something on which we can disagree.

On facts, however. I'm going to correct the use of incorrect data. I'm also going to compare the record of the Democratic Leadership against the specific attack on the tax cut.

A couple days ago, I corrected the record on incorrect data used with respect to the scoring of permanent death tax relief. Today, I'm going to take the latest attack and compare it with the record of the Democratic Leadership.

The Roll Call Daily article is entitled ''Daschle blames Bush Tax Cut for Failure on Prescription Drug Reform.'' According to the article, the Distinguished Majority Leader said and I quote:

> We don't have the resources, because, in large measure, the tax cut precludes it. Because of the tax cut and the deficits we are now facing, we've got to be concerned about the overall cost.

Now, I noticed this same point being made by others in the Democratic Leadership. I must say the Democratic Leadership spends a lot of time coordinating messages. They are very good at it. Perhaps, though, if less time were spent on perfecting partisan attacks on the President and Congressional Republicans, we might resolve more problems. After all, isn't that what we're paid to do? That is, do the People's business.

So, the charge is the tax cut ate the surplus and there's not enough money left for a Medicare prescription drug benefit. It's all the President's fault. It's the fault of the bipartisan budget resolution, Boy, do I get tired of hearing this stuff. It gets very old.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMPARISON OF BUSH, DEMOCRATIC, AND SENATE PASSED BUDGETS

(Fiscal year 2002 through 2011)

	Bush budget	Democratic alternative	Senate passed
Project Surplus	5.6 T	5.6 T	5.6 T
• Social Security Trust Fund (for debt paydown)*	2.0 T	2.5 T	2.5 T
• Medicare Trust Fund (for debt paydown)*	.....	0.4 T	**0.4 T
Projected Available Surplus	3.6 T	2.7 T	2.7 T
Tax Cuts	1.6 T	745 B	1.2 T
High Priority Needs	212 B	744 B	849 B
• Education	13 B	139 B	308 B
• Prescription Drugs	153 B	311 B	300 B
• Defense	62 B	100 B	69 B
• Agriculture	−1 B	88 B	58 B

COMPARISON OF BUSH, DEMOCRATIC, AND SENATE PASSED BUDGETS—Continued

(Fiscal year 2002 through 2011)

	Bush budget	Democratic alternative	Senate passed
• Health Coverage		80 B	36 B
• Enforcement	−48 B	18 B	−41 B
• Other	33 B	8 B	119 B
Strengthen Social Security:			
• Using Social Security Trust Fund Surplus	600 B		
• Using non-Social Security, Non-Medicare Surplus		750 B	
Interest	461 B	490 B	572 B
Unallocated	***845B		129 B

*Because these trust funds are not needed in short term to pay benefits, these amounts are used to pay down publicly-held debt.
**Senate passed GOP resolution raids Medicare Trust Fund in 2002, 2005, 2006, 2007.
***Includes $526 B from Medicare Trust Fund (OMB scoring).

Mr. GRASSLEY. Under that Democratic Alternative, ''resources,'' that's the term Senator DASCHLE used, set aside for a Medicare prescription drug benefit were $311 billion. Under the bipartisan budget resolution, guess what, it's about the same number, $300 billion. That's right, both sides allocated basically the same resources, $311 billion versus $300 billion for Medicare improvements and a prescription drug benefit. So, the Democratic budget had prevailed, we'd basically be where we are today.

There's another part of the record we have to examine. It's last year's Democratic Alternative tax relief package. The Democratic alternative was supported by all members of the Democratic Leadership and all but three members of the Democratic Caucus. Well, guess what. All of those Senators voted for a $1.260 trillion tax cut. That's 93 percent of the cost of the bipartisan tax relief. So, apparently 7 percent is a big difference. It's a big enough difference for the Democratic Leadership to blame President Bush and the bipartisan group of Senators that supported the tax relief package.

I make this statement for one basic reason. The issues of budgeting, prescription drugs, and tax relief are important matters. Certainly everyone of us hears about these issues when we are back home. They are issues that our constituents expect us to resolve. Folks back home expect us to be intellectually honest in debating these important matters. When we debate these issues, we ought to be consistent in what we're saying.

TAKING OUR STAND AGAINST HIV/AIDS

Mr. FRIST. Mr. President, I spent the first 20 years of my career studying and working in medicine. I graduated from medical school in 1978. After that, I trained as a surgical resident for eight years. I then worked as a heart and lung transplant surgeon until I was elected to the United States Senate in 1994. During that time, HIV/AIDS went from a disease without a name to a global pandemic claiming nearly 20 million people infected.

It's hard to imagine an organism that cannot survive outside the human body can take such an immense toll on human life. But HIV/AIDS has done just that—already killing thirteen million people. Today more than 40 million people—including three million children—are infected with HIV/AIDS. HIV/AIDS is a plague of biblical proportions.

And it has only begun to wreak its destruction upon humanity. Though one person dies from AIDS every ten seconds, two people are infected with HIV in that same period of time. If we continue to fight HIV/AIDS in the future as we have in the past, it will kill 68 million people in the 45 most affected countries between 2000 and 2020. We are losing the battle against this disease

There is neither a cure nor a vaccine for HIV/AIDS. But we do have reliable and inexpensive means to test for it. Also, because we know how the disease is spread, we know how to prevent it from being spread. We even have treatments that can suppress the virus to almost undetectable levels and significantly reduce the risk of mothers infected with HIV/AIDS from passing the disease to their children.

We have many tools at our disposal to fight the spread of HIV/AIDS. But are we using those tools as effectively as possible? The gloomy statistics prove overwhelming that we are not. What we must do is focus on what is truly needed and what is proven to work and marshal resources towards those solutions. We have beaten deadly diseases on a global scale before; we can win the battle against HIV/AIDS too.

More than 70 percent of people infected with HIV/AIDS worldwide live in Sub-Saharan Africa. But the devastation of the disease—and its potential to devastate in the future—is by no means limited to Africa. HIV/AIDS is global and lapping against the shores of even the most advanced and developed nations in the world.

Asia and the Pacific are home to 6.6 million people infected with HIV/AIDS—including 1 million of the five million people infected last year. Infections are rising sharply—especially among the young and injecting drug users—in Russia and other Eastern European countries. And the Americas are not immune. Six percent of adults in Haiti and four percent of adults in the Bahamas are infected with HIV/AIDS.

I believe the United States must lead the global community in the battle against HIV/AIDS. As Sir Elton John said in testimony before a committee on which I serve in the United States Senate, ''What America has done for its people has made America strong. What America has done for others has made America great.'' Perhaps in no better way can the United States show its greatness in the 21st century—and show its true selflessness to other nations—than leading a victorious effort to halt the spread of HIV/AIDS.

But solving a global problem requires global leadership. International organizations, national governments, faith-based organizations and the private sector must coordinate with each other and work together toward common goals. And, most importantly, we must make communities the focus of our efforts. Though global leadership must come from places like Washington, New York and Brussels, resources must be directed to where they are needed the most—to the men and women in the villages and clinics and schools fighting HIV/AIDS on the front lines.

Adequate funding is and will remain crucial to winning the battle against HIV/AIDS. But just as crucial as the amount of funding is how it is spent. Should we spend on programs that prevent or lower the rate of infection? Should we spend on treatments that may prolong the life of those who are already infected? Should we spend on the research and development of a vaccine? The answer is yes . . . to all three questions.

We can only win the battle against HIV/AIDS with a balanced approach of prevention, care and treatment, and the research and development of an effective vaccine. HIV/AIDS has already infected tens of millions of people and will infect tens of millions more. We need to support proven strategies that will slow the spread of the virus and offer those already infected with the opportunity to live as normal lives as possible. And if our goal is to eradicate HIV/AIDS—and I believe that is an eminently achievable goal—then we must develop a highly effective vaccine.

But even with proven education programs or free access to anti-retroviral drugs or a vaccine that is 80 to 90 percent effective, our ability to slow the spread of HIV/AIDS and treat those already infected would be hampered. The infrastructure to battle HIV/AIDS in the most affected areas is limited at best. We need to train healthcare workers, help build adequate health facilities, and distribute basic lab and computer equipment to make significant

and sustainable progress over the long-term.

To win the battle against HIV/AIDS, we must not only fight the disease itself, but also underlying conditions that contribute to its spread—poverty, starvation, civil unrest, limited access to healthcare, meager education systems and reemerging infectious diseases. Stronger societies, stronger economies and stronger democracies will facilitate a stronger response to HIV/AIDS and ensure a higher quality of life in the nations most affected by and most vulnerable to the disease and its continued spread.

And we can make significant progress without vast sums of money and burgeoning new programs. Take, for example, providing something as basic and essential as access to clean water. 300 million or 45 percent of people in Sub-Saharan Africa don't have access to clean water. And those who are fortunate enough to have access sometimes spend hours walking to and from a well or spring.

It costs only $1,000 to build a ''spring box'' that provides access to natural springs and protects against animal waste run-off and other elements that may cause or spread disease. 85 percent of the 10 million people who live in Uganda don't have access to a nearby supply of clean water. It would cost only $25 million to build enough ''spring boxes'' to provide most of the people living in rural Uganda with nearby access to clean water.

Providing access to clean water is just one of the many ways in which the global community can empower the people most affected by and most vulnerable to HIV/AIDS. In some cases, such efforts—like supporting democracy and encouraging free markets—may cost little or take a long time, but they will make a significant difference in the battle against HIV/AIDS and the quality of life of billions of people throughout the world.

We have defeated infectious diseases before—sometimes on an even larger scale. Smallpox, for example, killed 300 million people in the 20th century. And as late as the 1950's, it afflicted up to 50 million people per year. But by 1979 smallpox was officially eradicated thanks to an aggressive and concerted global effort.

What if we had not launched that effort in 1967? What if we had waited another 35 years? Smallpox likely would have infected 350 million and killed 40 million more people. That is a hefty price for inaction—a price that we should be grateful we did not pay then, and we should not want to pay now.

Right now we are losing the battle against HIV/AIDS. But that doesn't mean we can't win it in the end. Indeed, I believe we will ultimately eradicate HIV/AIDS. We have the tools to slow the spread of the disease and provide treatment to those already infected. And we have the scientific knowledge to develop an effective vaccine. But we need to focus our resources on what is truly needed and what is proven to work. And we need global leadership to meet a global challenge.

In 2020, when it is estimated that more than 85 million people will have died from HIV/AIDS, how will we look back upon this day? Will we have proven the experts right with inaction? Or will we have proven them wrong with initiative? I hope that we will be able to say that in the year 2002 we took our stand against HIV/AIDS and began to turn back what could have been, but never became the most deadly disease in the history of the world.

CBO ESTIMATE OF THE TAX SHELTER TRANSPARENCY ACT

Mr. BAUCUS. Mr. President, the Committee on Finance filed a legislative report on S. 2498, the Tax Shelter Transparency Act of June 28, 2002. At the time the report was filed, the Congressional Budget Office cost estimate was not available. The cost estimate has been finalized by the CBO and is attached for public review.

I ask unanimous consent that the enclosed cost estimate for S. 2498 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, July 15, 2002.

Hon. MAX BAUCUS,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2498, the Tax Shelter Transparency Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Erin Whitaker and Annie Bartsch, who may be reached at 226–2720.

Sincerely,

BARRY B. ANDERSON
(FOR DAN L. CRIPPEN.)

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE—S. 2498

SUMMARY

S. 2498 would create new penalties and expand existing penalties that may be applied to taxpayers who fail to disclose certain types of information on their tax returns. In particular, the bill would allow the Department of the Treasury to impose penalties, on taxpayers who failed to report certain information for reportable transactions, modify the penalties for inaccurate returns if the inaccuracies had a significant tax avoidance purpose, and modify the definition of ''substantial understatement'' of tax for corporate taxpayers for purposes of imposing a penalty. It also would repeal the current rules regarding registration of tax shelters and instead require persons who assist with transactions in such shelters (''material advisors'') to report certain information to the Secretary of the Treasury. The bill would impose a penalty on those material advisors who fail to file the information completely and accurately.

The Congressional Budge Office (CBO) and the Joint Committee on Taxation (JCT) estimate that enacting the bill would increase governmental receipts by $17 million in 2002, by $601 million over the 2002–2007 period, and by about $1.5 billion over the 2002–2012 period. Since S. 2498 would affect receipts, pay-as-you-go procedures would apply.

JCT has determined that the bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. JCT has determined that the provision of the bill relating to reportable transactions and tax shelters contain private-sector mandates, and that the cost of complying with these mandates would exceed the threshold established by UNRA ($115 million in 2002 adjusted annually for inflation) in 2005 and 2006.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the bill is shown in the following table.

	By Fiscal Year, in Millions of Dollars					
	2002	2003	2004	2005	2006	2007
Changes in Revenues						
Estimated Revenues	17	59	102	134	140	147

BASIS OF ESTIMATE

All estimates were provided by JCT. The provisions relating to reportable transactions and tax shelters would compose a significant portion of the effect on revenues if enacted. These provisions would increase revenues by $17 million in 2002, $547 million over the 2002–2007 period, and about $1.3 billion over the 2002–2012 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects through 2006 are counted.

	By Fiscal Year, in Millions of Dollars										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in receipts	17	59	102	134	140	147	155	163	174	187	203
Changes in outlays	Not applicable										

IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

JCT has determined that the bill contains no intergovernmetnal mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

IMPACT ON THE PRIVATE SECTOR

JCT has determined that sections 101, 102, 104, 201–203, and 215 of the bill contain private-sector mandates. JCT has determined that the cost of complying with these mandates would exceed the threshold established by UMRA ($115 million in 2002, adjusted annually for inflation) in 2005 and 2006.

ESTIMATE PREPARED BY:

Erin Whitaker and Annie Bartsch (226–2720).

ESTIMATE APPROVED BY:

G. Thomas Woodward, Assistant Director for Tax Analysis.

ACCOUNTING REFORM

Mr. BIDEN. Mr. President, I rise today to voice my support for H.R. 3764, the Sarbanes-Oxley bill. While not perfect, this is important legislation. I commend my friend and colleague, Senator SARBANES, the distinguished chairman of the Senate Banking Committee, for his relentless effort to usher this landmark legislation through the Senate. I am proud to have worked with him on such an important cause.

To restore some level of confidence, the accounting reform legislation we have passed is critical to stem the corporate greed threatening our economy. Over the last several months the market has lost considerable value. The dollar is at a 2-year low. Investors are questioning the strength of our financial markets. Each day seems to bring new revelation of corporate excess—some horrific story about unabashed corporate greed and malfeasance. It is a seemingly endless onslaught. We don't know where it will end. And, frankly, we fear how deep it might go.

There is a crisis of confidence in American business. It runs deep, with revelations about cooked books, fraudulent numbers, inflated values, and stock options that make the average working American—who earns about $31,000 a year and fears for his or her pension and health care benefits—sick. In fact, a Pew Forum survey conducted in March, long before the recent revelations, said the esteem in which business executives are held is falling by the day. I shudder to think what those numbers would be now.

Something is clearly wrong with the way corporate America is doing business. Everyone here knows that—and—if you follow the money—you will see that investors also know it. They are registering their concern by pulling out of the market. Some have lost their retirement savings. Others have to postpone their retirement. They are unable to pay college tuition. Surely they have a right to expect a little truth in accounting.

The accounting reform legislation we approve today goes a long way to restore their confidence and stem the tide of market uncertainty. It will bring accountability and transparency to corporations, their officials, and their accountants. We should insist on nothing less.

In addition, the Sarbanes-Oxley bill includes significant new criminal laws for white collar offenses, and raises penalties for a number of existing ones.

I am proud to have sponsored, along with my good friend from Utah, Senator HATCH, S. 2717, the White-Collar Penalty Enhancement Act of 2002. It grew out of a series of hearings I held this year in the Judiciary Subcommittee on Crime and Drugs in which we heard about the ''penalty gap'' between white collar offenses and other serious Federal criminal offenses. The Senate unanimously adopted our bill as an amendment to the Sarbanes bill several weeks ago, and we are pleased that its key provisions are in the legislation approved by the House-Senate conference. Let me briefly summarize those provisions which will become law once the President signs this legislation.

Our bill significantly raised penalties for wire and mail fraud, two common offenses committed by white collar crooks in defrauding financial victims. It also created a new 10-year felony for criminal violations under the Employee Retirement Security Act of 1974 (ERISA). Under current law, a car thief who committed interstate auto theft was subject to 10 years in prison, while a pension thief who committed a criminal violation of ERISA was subject to up to 1 year in prison. Our bill now treats pension theft under ERISA like other serious financial frauds by raising the penalties to 10 years.

Our bill also amended the Federal conspiracy statute which currently carries a maximum penalty of 5 years in prison. In contrast, in our Federal drug statutes, a drug kingpin convicted of conspiracy is subject to the maximum penalty contained in the predicate offense which is the subject of the conspiracy—a penalty which can be much higher than 5 years. I say what is good for the drug kingpin is good for the white collar crook. Thus, our bill harmonized conspiracy for white collar fraud offenses with our drug statutes. Now, executives who conspire to defraud investors will be subject to the same tough penalties—up to 20 years—as codefendants who actually carry out the fraud.

Our bill also directed the U.S. Sentencing Commission to review our existing Federal sentencing guidelines. As you know, the sentencing guidelines carefully track the statutory maximum penalties that Congress sets for specific criminal offenses. Our bill requires the sentencing commission to go back and recalibrate the sentencing guidelines to raise penalties for the white collar offenses affected by this legislation.

Finally, and most significantly, our bill required top corporate officials to certify the accuracy of their companies' financial reports filed with the Securities and Exchange Commission.

Incredibly, under current law, there is no requirement that corporate officials certify the accuracy of these reports. As we have seen in the cases of WorldCom and others, this is no small matter. Willful misstatements about the financial health of a company—once uncovered—can lead, almost overnight, to a company's bankruptcy, wholesale loss of jobs for its employees, and a total collapse in the value of the company's pension funds.

That is why Federal Reserve Board Chairman Alan Greenspan last week testified before the Senate Banking Committee that imposing criminal sanctions on CEOs who knowingly misrepresent the financial health of their company is the key to real reform of corporate wrongdoing.

I am pleased that this centerpiece of the Senate-passed accounting bill is retained in the final legislation. Our provision is simple: corporate officials who cook the books and then lie about their companies' financial health will go to jail. Our bill says that all CEOs and CFOs of publicly traded companies must certify that their financial reports filed with the SEC are accurate. If they ''knowingly'' certify a false report, they are subject to a 10-year felony; if they ''willfully'' certify a false report, they are subject to a 20-year felony.

But we may have left one stone unturned. I regret that this final bill makes a small but significant change from the original Biden-Hatch amendment put the chairman of the board on the hook, along with the CEO and CFO. This final bill removed the board chairman from the group of corporate officials who are required to certify the accuracy of the reports. I think that is a mistake. Contrary to what some in the business community argued, requiring the board chairman to certify the accuracy of these financial reports would not have threatened the management of a corporation or the integrity of its executives.

Rather, our bill merely would have formalized what should be normal procedure—and what every American thinks is plain old common sense—namely that corporate executives certify that their books are not cooked

and their numbers are truthful. I do not see—and I am sure the American people fail to see—what is wrong with demanding truthfulness in the valuation of a publicly traded company. It would seem to me that those in positions of responsibility in the business community, at every level—from the chairman of the board on down—should embrace the notion of truth in accounting.

Why would they demand anything less after what we have seen in the last few weeks with a $4 billion discrepancy in WorldCom's books? After all, ''the buck stops'' with the chairman of the board—to whom the CEO and CFO report. It strikes me as crazy that we will now hold the CEO and CFO responsible, but not their boss. Indeed, as many have recently pointed out, in most American corporations, the CEO is the chairman of the board. To let board chairs off the hook could create a loophole where crooked CEO's simply change their title to escape accountability for their corporate filings.

Some naysayers have suggested that the certification requirement would undermine the ability of the chair to oversee and act independently of the chief executive officer. It is absurd that a requirement that merely prohibits top corporate officers from lying about the company's financial health would sacrifice board independence. If anything, it ensures proper oversight by fostering a healthy division of responsibility between management and the board of directors, by encouraging the board chair to be actively engaged in the periodic process of checking the accuracy of financial statements; and by recognizing that the board chair has a vital role in ''stopping corporate debacles'' by not knowingly or willfully contributing to the filing of false financial reports.

Other opponents suggested that the certification requirement would likely drive independent chairmen out of business and discourage otherwise good business leaders from serving on boards of directors. This is the same old ''sky is falling'' claim that Wall Street uttered during consideration of the original securities legislation in the 1930s, and it has repeated this mantra with virtually every congressional reform offered ever since.

Truth be told, the certification requirement only imposes criminal sanctions for top corporate officials who lie about their financial records. Specifically, it only applies to ''knowing'' and ''willful failures to certify financial statements—a very high standard. It would be one thing if the requirement applied criminal sanctions on a ''strict liability'' or ''neglience'' standard to board chairs who certify false reports. I could even understand their concern under the original ''reckless'' standard—that is, that the board chair ''should have known'' that the statements were false. But our requirement is only triggered where top corporate officials knowingly or willfully certify financial statements that they know to be false. So, only top corporate officers who are consciously aware of a false statement—and not those who act out of ignorance, mistake, accident or even sloppiness—would conceivably be subject to criminal sanctions. It is troubling, but quite revealing, that even this relatively meek certification would alarm some in the business community.

Regrettably, that is the stone that was left unturned. I wish we had turned it. I wish we had, in our infinite wisdom, included board chairmen in our legislation.

Nevertheless, this bill represents a huge step forward. It will strengthen accountability. It will tell CEOs and CFOs—we expect you to watch your books, and not bury your heads in the sand!'' It will given prosecutors important new tools to fight white collar crime. It will give judges the ability to impose meaningful sentences for white collar crooks.

In closing, a common theme I have heard at our Crime Subcommittee hearings is that white collar crimes are not ''crimes of passion,'' as a general rule. Rather, they are the result of a careful, ''cost-benefit'' analysis in which the crook considers his chance of being caught; and his chances of actually going to prison. To date, it was a pretty safe bet for the white collar crook to assume he would avoid detection, and, even if he was detected, he would not go to jail.

I have a message today for white collar crooks: ''We are deadly serious. We will prosecute you to fullest extent of the law. And we will put you in jail for your crimes.''

ADDITIONAL STATEMENTS

INFESTED PIÑONS

• Mr. DOMENICI. Mr. President, I rise today to continue my efforts to raise awareness of the dire situation we are facing in the western United States due to the ongoing drought.

I have been speaking on the Senate floor repeatedly emphasizing the impact the drought is having on the west, and especially its impact on New Mexico. The water situation has affected businesses and the livestock industry, and it has turned forests into tinderboxes.

Now, it appears that there is another problem arising from the lack of water. A recent article by the Albuquerque Journal highlights the fact that ''hundreds of thousands of bark beetles [are] killing Piñon pines all over New Mexico.'' These are ''trees that have survived New Mexico's arid climate for 75 or 100 years [and] are [now] succumbing to the beetles.''

Under normal conditions, stressed trees would use internal sap pressure to fend off an infestation. However, under current conditions, the trees do not have enough moisture to adequately fight back, and they are overwhelmed by the beetles and devastated. They have to be cut down, stacked, and covered with plastic to prevent the escape of the beetles.

If New Mexico's Piñon trees suffer, so too will some area economies. New Mexico is known for its unique food flavors and its native art. Piñon nuts are a true New Mexico treat which can be harvested and eaten as a snack. Roasted nuts can sell for around $9 a pound and bring much needed tourism dollars to our state. In addition, Piñon pitch can be used as a glaze for Navajo pottery providing the finishing touches to their beautiful designs. Prolonged damage to the Piñon trees will create further hardships for New Mexico's economy.

With each passing day, the conditions in New Mexico will continue to become worse. At some point or another, every individual in New Mexico will feel the impact of this drought and continue to face hardships until we take proper action to alleviate the situation.

I ask that the July 24, 2002, Albuquerque Journal article entitled, ''Parched Piñon Under Deadly Attack'' be printed in the RECORD.

The article follows.

[From the Albuquerque Journal, July 24, 2002]

PARCHED PIÑONS UNDER DEADLY ATTACK

(By Tania Soussan)

First came the fires. Then withered crops. Now the drought's latest plague: hundreds of thousands of bark beetles killing piñon pines all over New Mexico.

''In many areas, they're taking out all of the trees,'' said Bob Cain, a New Mexico State University forest entomologist.'' . . . It's going to be a long time before there's many piñon in there again.''

Even before the drought of 2002, the trees faced still competition for water because forests have grown overly dense during decades of human fire suppression.

The drought has made the situation even worse. Without adequate water, the piñons can't repel the bark beetles that burrow into vital tissues, lay eggs and munch away.

''It's been something that's been building the last several years, especially since 2000,'' Cain said, adding that the bark beetles are one of nature's ways of thinning a forest.

Carol Sutherland, the New Mexico Department of Agriculture's top bug expert, agreed.

''Trees that are under stress are getting hammered badly by all manner of bark beetles,'' she said recently.

The worst infestations are in the area between Magdalena and Quemado in the western part of the state, around Ojo Caliente in northern New Mexico, in the Sacramento Mountains and Ruidoso.

Near Silver City, ponderosa pines also are being hit hard.

Even trees that have survived New Mexico's arid climate for 75 or 100 years are succumbing to the beetles this year, said Terry Rogers, forest entomologist for the U.S. Forest Service in New Mexico.

On a hillside outside of Santa Fe, Cain recently examined a pocket of piñons fighting a hopeless battle for life. The pine needles on one tree were turning a pale, whitish green. Another tree already had gone reddish brown.

''There's nothing you can do to save this tree,'' Cain said. ''This drought has been so

severe that even trees that should have enough resources around them are getting hit.''

Pencil lead-sized holes in the trunk marked where the beetles entered, and small piles of fine sawdust on the branches and the ground were signs of their success.

In addition, there were several ''pitch tubes'' on the broad trunk. The tree had spurted out resin, or sap, in an attempt to eject the beetles. A healthy tree can fight off beetles that way, but drought means the trees don't have enough moisture to produce the needed sap.

Bark beetles are efficient killers.

Once a few successfully bore into a piñon or ponderosa pine, they send out a chemical signal that attracts thousands of other beetles.

They invade the phloem tissue right under the bark, the tissue that carries sugars from the pine needles to the tree's roots. The beetles also carry pockets of fungus on their bodies. The fungus attacks the water-conducting tissues of the tree.

Once the signs of beetle infestation are clear, it's too late to save the tree.

''You really have no good evidence of beetles in the tree until the tree is fading,'' Cain said. ''Insecticides are not efficient at that point.''

The only solution is to cut down the tree and get rid of it—and the beetles inside—to stop the beetle invasion from spreading to other trees. To use it for firewood, first stack the logs in the sun and cover them with plastic for several days to kill the beetles.

The insecticide Sevin can be used to protect high-value trees that are at risk, but Cain does not recommend it for general use. Watering trees so they are able to fight off an attack also can help.

''The good news is if we get these monsoons, the trees will become more resistant,'' he said.

Drought also has increased populations of spider mites in corn crops in eastern New Mexico.

''It can be quite severe,'' said Mike English, head of the NMSU Extension Service's Agricultural Science Center in Los Lunas. ''It can lose half your crop.''

The drought could be making blood-sucking kissing bugs a problem in the southern part of the state, Sutherland said.

The bugs' usual prey, small rodents and birds, probably are in shorter supply so they are biting people and leaving behind big, itchy welts, she said.

''You've seen mosquito bites but you ain't seen nothing yet,''she said. ''These are a lot worse.''

Still, the situation in New Mexico could be worse.

Grasshoppers and Mormon crickets are ravaging crops and pastures in Nebraska and other Western states in what could be the biggest such infestation since World War II, according to agricultural officials.

There were early reports of a few pockets of grasshopper problems in New Mexico, in Lea and Eddy counties and near Silver City, English said. But Sutherland said there were no reports of major problems in the state as of mid-July.●

THE OREGON RED CROSS

● Mr. SMITH of Oregon. Mr. President, as I am sure many of my colleagues are aware, as I speak here today on the floor, fire continues to rage across the state of Oregon. At last count, there were no fewer than fifteen fires burning throughout the state, leaving behind hundreds of thousands of charred acres and a sobering path of destruction. As such, I stand here to salute and pay tribute to the benevolent Oregonians of the Red Cross who, throughout this tragedy, have responded with remarkable compassion and service to their communities.

When fire first broke out near my own home in Pendleton, OR, the Umatilla Chapter of the Red Cross was there and opened an emergency shelter for residents of fire threatened homes. More than twenty paid and volunteer staff enlisted for what fortunately became a substantial ''cold start'' exercise.

In Lake County, Oregon, where the Winter, Toolbox Complex, and Grizzly Complex fires have combined to form a 115,000 acre inferno, the Red Cross has been on the ground, organizing local residents and setting up a shelter to disseminate information and to provide aid to affected families. That shelter remains on standby status today, pending containment of the fire, which is not expected for another week.

There are similar examples throughout the state and throughout the country of local Red Cross chapters responding to help friends and neighbors in need. For as tragic as this fire season has been to date, the staff and volunteers of the Red Cross have responded with an equal level of kindness and selflessness.

This has been a very emotionally charged past few months. As a U.S. Senator and as an Oregonian, I am deeply proud of how the people in my state have responded to life-threatening crises. The generosity shown by so many truly reaffirms one's faith in the goodness of people. Today, I salute the workers and the volunteers who gave and continue to give of themselves to help our communities in need.●

TRIBUTE TO ROSELLA FRENCH PORTERFIELD

● Mr. BUNNING. Mr. President, I rise today to honor a truly amazing and admirable individual, Mrs. Rosella French Porterfield. This Saturday, the Elsmere Park Board will be rededicating the Rosella French Porterfield Park to honor the retired educator, who played such a vital part in the successful integration of the Erlanger-Elsmere Independent School System.

A bronze plaque depicting Mrs. Porterfield holding the hands of a young Debbie Onkst of Erlanger, a white student who later followed in Mrs. Porterfield's footsteps as a librarian for the school system, and Elsmere Mayor Bill Bradford, northern Kentucky's first African-American Mayor, will be unveiled.

Looking back on Rosella Porterfields' life and her many accomplishments, I am impressed the positive strides one African-American woman was able to make in a nearly all-white community during the 1950s. But once you hear people talk of Rosella, you understand the simple fact that amazing people can do amazing things.

A Daviess County native, Rosella received a graduate degree during a time when African-American women did not accomplish such things due to institutional and personal biases. Her first job as an educator was at Barnes Temple Church on Elsmere's Fox Street. After 7 years at Barnes Temple, Rosella moved to Wilkins Heights School in Elsmere, where she successfully transformed the one depleted school library into a place that fostered and encouraged educational excellence. But even as hard as Rosella worked, the segregated school system constantly worked to her disadvantage.

In 1955, 1 year after the U.S. Supreme Court abolished segregated schools, Rosella Porterfield approached Superintendent Edgar Arnett. She told him the time was right to bring white and black together in an educational atmosphere. She firmly believed that if the kids could be brought together in an effort to achieve common goals, they could learn to live together in peace and harmony. Mr. Arnett listened to Rosella and promptly took her proposal to the school board. In turn, the school board unanimously approved a phased-in integration starting in the lower grades.

Erlanger-Elsmere schools integrated in what Time magazine recognized as a very smooth and peaceful manner, a very uncommon phenomenon at the time. The schools were not forced to action by any outside factors such as government officials or military personnel. It was a voluntary and rational approach to a community's educational needs. This happened largely because of the efforts of individuals like Rosella Porterfield.

I kindly ask that my fellow colleagues join me in paying tribute to Mrs. Porterfield for her vision, persistence, and patience. When I think of Rosella's actions and the effect she had on her community, I recall the words of Winston Churchill, who said, in reference to the heroic efforts of Great Britain's RAF, ''Never have so many owed so much to so few.''●

TRIBUTE TO TONY TURNER

● Mr. McCONNELL. Mr. President, I rise today to pay tribute to my dear friend, the late Tony Turner. On June 30, 2002, Tony passed away after succumbing to injuries suffered in a tragic car accident. He was only 40 years old.

I want to take this opportunity to extend my heartfelt condolences to his wife Geraldine, his two children, Courtney and Cameron, and the rest of his family and friends. Tony made it easy for people to remember him, leaving behind a legacy as a loving husband and father, loyal friend, successful broadcaster, and community leader. He was a spirited individual who cherished life and enjoyed helping others. He was

famous for his self-deprecating sense of humor and brightened the lives of many people with his light-hearted jokes. Tony will be remembered for many reasons, not the least of which is his dedication to his family and friends.

Born and raised in eastern Kentucky, Tony was a widely respected broadcaster. Over the course of his 26-year career, he worked his way from the position of radio disc jockey to television news anchor and station manager. Tony's passion for broadcasting developed at an early age. He landed his first job at WFSR radio in Harlan, and was general manager of that station from 1976 to 1986. After 10 years in radio, Tony moved to television and worked as a reporter and general assignment editor at WYMT-TV in Hazard. Tony was an outstanding journalist and had the ability to connect with just about everyone. His unique skills were quickly realized and he went on to become the station's news director and 6 p.m. news anchor. In 2001, he was named general manager and vice president of WYMT-TV.

Anyone who knows Tony can attest to the fact that he absolutely loved politics. His fair and balanced approach to the subject was widely respected in eastern Kentucky and he often was asked to moderate political debates. During his 16 years at WYMT-TV, he anchored a number of highly acclaimed political talk shows, including ''Issues and Answers . . . The Mountain Edition'' and ''Point Counterpoint.'' I had the pleasure of appearing on Tony's shows a number of times, and I always enjoyed talking politics with him. Tony was an engaging interviewer and never shied away from asking tough questions. At the same time, he was always honest and fair. Tony Turner was a one-of-a-kind journalist and he will be sorely missed.

As much as he is recognized for his professional life, Tony is also well known for his kind heart and commitment to public service. He was involved in a variety of good causes and actively used his high profile to better the lives of others. Tony was a longtime supporter and cohost of the annual Children's Miracle Network Telethon, which helped raise money for the University of Kentucky's Children's Hospital. He also was chairman of the board of directors of the Pride Program, and served on the boards of the Center for Rural Development and the Eastern Kentucky Leadership Foundation. Additionally, he was an active member of the Loyall First Baptist Church.

At times like these, I am reminded of the frailty of life and the importance of friends and family. Tony understood and valued these things and has left a legacy of excellence for all to remember. Although his passing leaves a great void in the hearts of many, I hope it will be a comfort to his family and friends to know that he was loved and admired by countless people in his community and throughout the State of Kentucky. On behalf of myself and my colleagues, we offer our deepest condolences to his loved ones and express our gratitude for his many contributions.●

HONORING GUNNERY SERGEANT STEPHANIE K. MURPHY, UNITED STATES MARINE CORPS, ON BECOMING THE FIRST FEMALE DRILL INSTRUCTOR AT NAVAL OFFICER CANDIDATE SCHOOL

● Mrs. LINCOLN. Mr. President, at this time of great challenge to our Nation, it is with immense pride that we take a moment to recognize the efforts of the men and women in our armed forces. I rise today to honor one woman in particular who will be making history next week. On Friday, August 2, 2002, the United States Navy's Officer Candidate School will graduate its first class trained by a female drill instructor. Although women have played a vital role in our armed forces, and specifically in the Navy and Marine Corps, for many years, Gunnery Sergeant Stephanie K. Murphy is the first Class Drill Instructor to train future Naval officers.

A native of Pine Bluff, AR, Gunnery Sergeant Murphy has served in the Marine Corps since 1988. In 1996, Murphy graduated from Drill Instructor School in Parris Island, SC where she completed six cycles training Marine enlisted recruits. After receiving an accelerated promotion to Gunnery Sergeant, Murphy requested to go to Pensacola, FL in September 2001 to train Naval Officer Candidates.

Gunnery Sergeant Murphy follows in the proud tradition of trail-blazing women in the military, women such as Opha Mae Johnson, who became one of the first 305 women accepted for duty in the Marine Corps Reserve on August 12, 1918. During World War II, women returned to the Corps to ''free a man to fight.'' By the end of World War II, a total of 23,145 officer and enlisted women reservists served in the Marine Corps. Unlike their predecessors, women Marines in World War II performed over 200 military assignments. In addition to clerical work, their numbers included parachute riggers, mechanics, radio operators, map makers, motor transport support, and welders. Women Marines became a permanent part of the regular Marine Corps on June 12, 1948 when Congress passed the Women's Armed Services Integration Act.

Today, women account for over four percent of all Marine officers and over five percent of the active duty enlisted force. Like their distinguished predecessors, women in the Marine Corps today continue to serve proudly and capably in whatever capacity their country and Corps require.

Marine Corps drill instructors have helped train Naval Officer Candidates since the days of the Navy's World War II Pre-Flight Training Schools. This link was reaffirmed following World War II to strengthen the bond that connects the Navy/Marine Corps Team.

In an uncertain world, Americans know that we can count on our men and women in uniform. It is with overwhelming pride that we recognize their tremendous sacrifice and determination. We ask that you join us today in honoring Gunnery Sergeant Stephanie Murphy and all the courageous individuals serving in the military.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 10:14 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S.J. Res. 13. A joint resolution conferring honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette.

H.R. 3763. An act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calender:

H.R. 4965. An act to prohibit the procedure commonly known as partial-birth abortion.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, July 26, 2002, she had presented to the President of the United States the following enrolled bill:

S.J. Res. 13. A joint resolution conferring honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. MURRAY, from the Committee on Appropriations, without amendment:

S. 2808: An original bill making appropriations for the Department of Transportation

and related agencies for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107–224).

By Ms. LANDRIEU, from the Committee on Appropriations, without amendment:

S. 2809: An original bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107–225).

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1992: A bill to amend the Employee Retirement Income Security Act of 1974 to improve diversification of plan assets for participants in individual account plans, to improve disclosure, account access, and accountability under individual account plans, and for other purposes. (Rept. No. 107–226).

S. 1115: A bill to amend the Public Health Service Act with respect to making progress toward the goal of eliminating tuberculosis, and for other purposes. (Rept. No. 107–227).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, without amendment:

S. 2771: A bill to amend the John F. Kennedy Center Act to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CLELAND:

S. 2802. A bill to amend the Internal Revenue Code of 1986 to provide tax fairness for military families; to the Committee on Finance.

By Mr. HARKIN (for himself and Mr. CONRAD):

S. 2803. A bill to amend the Federal Meat Inspection Act, the Poultry Producers Inspection Act, and the Federal Food, Drug, and Cosmetic Act to provide for improved public health and food safety through enhanced enforcement, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. COLLINS (for herself, Mr. SANTORUM, Mr. SARBANES, Mr. EDWARDS, Mr. FEINGOLD, Mr. KENNEDY, Mr. SCHUMER, Mr. SMITH of Oregon, and Mrs. CLINTON):

S. 2804. A bill to amend the National Maritime Heritage Act of 1994 to reaffirm and revise the designation of America's National Maritime Museum, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CORZINE (for himself and Mr. TORRICELLI):

S. 2805. A bill to amend title 23, United States Code, to provide for criminal and civil liability for permitting an intoxicated arrestee to operate a motor vehicle; to the Committee on Environment and Public Works.

By Ms. LANDRIEU:

S. 2806. A bill to provide that members of the Armed Forces performing services on the Island of Diego Garcia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes; to the Committee on Finance.

By Ms. LANDRIEU:

S. 2807. A bill to amend the Internal Revenue Code of 1986 to clarify the treatment of dependent care assistance programs sponsored by the Department of Defense for members of the Armed Forces of the United States; to the Committee on Finance.

By Mrs. MURRAY:

S. 2808. An original bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Ms. LANDRIEU:

S. 2809. An original bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. BURNS, and Mr. ENSIGN):

S. 2810. A bill to amend the Communications Satellite Act of 1962 to extend the deadline for the INTELSAT initial public offering; considered and passed.

By Mr. ENZI:

S. 2811. A bill to direct the Secretary of Agriculture and the Secretary of the Interior to designate certain Federal forest lands at risk for catastrophic wildfires as emergency mitigation areas, to authorize the use of alternative arrangements in those areas, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. TORRICELLI:

S. Res. 307. A resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003; to the Committee on the Judiciary.

By Mrs. CLINTON:

S. Res. 308. A resolution expressing the sense of the Senate regarding the ''Once-a-Day'' program to promote local farm products; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BIDEN (for himself, Mr. MCCAIN, and Mrs. FEINSTEIN):

S. Res. 309. A resolution expressing the sense of the Senate that Bosnia and Herzegovina should be congratulated on the 10th anniversary of its recognition by the United States; to the Committee on Foreign Relations.

By Mr. HARKIN (for himself, Mr. KENNEDY, Mr. HATCH, and Mr. GREGG):

S. Res. 310. A resolution honoring Justin W. Dart, Jr. as a champion of the rights of individuals with disabilities; considered and agreed to.

By Mr. DASCHLE:

S. Con. Res. 132. A concurrent resolution providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives; considered and agreed to.

ADDITIONAL COSPONSORS

S. 321

At the request of Mr. GRASSLEY, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 321, a bill to amend title XIX of the Social Security Act to provide families of disabled children with the opportunity to purchase coverage under the medicaid program for such children, and for other purposes.

S. 1456

At the request of Mr. BENNETT, the name of the Senator from New York (Mr. SCHUMER) was withdrawn as a cosponsor of S. 1456, a bill to facilitate the security of the critical infrastructure of the United States, to encourage the secure disclosure and protected exchange of critical infrastructure information, to enhance the analysis, prevention, and detection of attacks on critical infrastructure, to enhance the recovery from such attacks, and for other purposes.

S. 2013

At the request of Mr. HARKIN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 2013, a bill to clarify the authority of the Secretary of Agriculture to prescribe performance standards for the reduction of pathogens in meat, meat products, poultry, and poultry products processed by establishments receiving inspection services.

S. 2035

At the request of Mr. JEFFORDS, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 2035, a bill to provide for the establishment of health plan purchasing alliances.

S. 2108

At the request of Ms. STABENOW, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 2108, a bill to amend the Agriculture and Consumer Protection Act of 1973 to assist the neediest of senior citizens by modifying the eligibility criteria for supplemental foods provided under the commodity supplemental food program to take into account the extraordinarily high out-of-pocket medical expenses that senior citizens pay, and for other purposes.

S. 2184

At the request of Mr. BREAUX, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 2184, a bill to provide for the reissuance of a rule relating to ergonomics.

S. 2210

At the request of Mr. BIDEN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2210, a bill to amend the International Financial Institutions Act to provide for modification of the Enhanced Heavily Indebted Poor Countries (HIPC) Initiative.

S. 2246

At the request of Mr. DODD, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2246, a bill to improve access to printed instructional materials used by blind or other persons with print disabilities

in elementary and secondary schools, and for other purposes.

S. 2268

At the request of Mr. MILLER, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 2268, a bill to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

S. 2489

At the request of Mrs. CLINTON, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 2489, a bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes.

S. 2512

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 2512, a bill to provide grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 2528

At the request of Mr. DOMENICI, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 2528, a bill to establish a National Drought Council within the Federal Emergency Management Agency, to improve national drought preparedness, mitigation, and response efforts, and for other purposes.

S. 2570

At the request of Ms. COLLINS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2570, a bill to temporarily increase the Federal medical assistance percentage for the medicaid program, and for other purposes.

S. 2602

At the request of Mrs. CLINTON, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 2602, a bill to amend title 38, United States Code, to provide that remarriage of the surviving spouse of a veteran after age 55 shall not result in termination of dependency and indemnity compensation.

S. 2626

At the request of Mr. KENNEDY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2626, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2674

At the request of Mr. BROWNBACK, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2674, a bill to improve access to health care medically underserved areas.

S. 2800

At the request of Mr. BINGAMAN, his name was added as a cosponsor of S. 2800, a bill to provide emergency disaster assistance to agricultural producers.

At the request of Mr. BAUCUS, the names of the Senator from North Dakota (Mr. CONRAD), the Senator from Minnesota (Mr. DAYTON), the Senator from Michigan (Mr. LEVIN), the Senator from Michigan (Ms. STABENOW) and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 2800, supra.

S. J. RES. 40

At the request of Mrs. LINCOLN, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from North Carolina (Mr. EDWARDS), the Senator from Oregon (Mr. WYDEN), the Senator from North Dakota (Mr. DORGAN) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S.J. Res. 40, a joint resolution designating August as ''National Missing Adult Awareness Month''.

S. J. RES. 41

At the request of Mr. SPECTER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S.J. Res. 41, a joint resolution calling for Congress to consider and vote on a resolution for the use of force by the United States Armed Forces against Iraq before such force is deployed.

S. RES. 239

At the request of Mr. ALLEN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. Res. 239, a resolution recognizing the lack of historical recognition of the gallant exploits of the officers and crew of the *S.S. Henry Bacon*, a Liberty ship that was sunk February 23, 1945, in the waning days of World War II.

S. RES. 306

At the request of Mr. BROWNBACK, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. Res. 306, a resolution expressing the sense of the Senate concerning the continuous repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. COLLINS (for herself, Mr. SANTORUM, Mr. SARBANES, Mr. EDWARDS, Mr. FEINGOLD, Mr. KENNEDY, Mr. SCHUMER, Mr. SMITH of Oregon, and Mrs. CLINTON):

S. 2804. A bill to amend the National Maritime Heritage Act of 1994 to reaffirm and revise the designation of America's National Maritime Museum, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. COLLINS. Mr. President, I am pleased to be introducing America's National Maritime Museums Act of 2002. This legislation would designate an additional 19 maritime museums as ''American National Maritime Museums'' nationwide. Maritime Museums are dedicated to advancing maritime and nautical science by fostering the exchange of maritime information and experience and by promoting advances in nautical education.

The America National Maritime Museum designation would include a commitment on the part of each institution toward accomplishing a coordinated education initiative, resources management program, awareness campaign, and heritage grants program. Maritime museums in America will be dedicated to illuminating humankind's experience with the sea and the events that shaped the course and progress of civilization.

Museum collections are composed of hundreds of thousands of maritime items, including ship models, scrimshaw, maritime paintings, decorative arts, intricately carved figureheads, working steam engines, and much more. Maritime museums offer a variety of learning experiences for children and adults through hands-on workshops and programs that focus on maritime history.

Maritime lecture series presentations offer an opportunity to learn about the history and lore of the sea from some of the nation's leading maritime experts. Visitors learn the broad concept of sea power, the historic and modern importance of the sea in matters commercial, military, economic, political, artistic, and social.

The legislation that I am proposing would help museums better interpret maritime and social history to the public using their extensive collections of artifacts, exhibits and expertise. These programs and facilities are used by schools, civic organizations, genealogists, maritime scholars, and the visiting public, thus, serving students of all ages.

I urge all members of the Senate to join me in support of the America's National Maritime Museums Act of 2002.

By Mr. CORZINE (for himself and Mr. TORRICELLI):

S. 2805. A bill to amend title 23, United States Code, to provide for criminal and civil liability for permitting an intoxicated arrestee to operate a motor vehicle; to the Committee on Environment and Public Works.

Mr. CORZINE. Mr. President, today I am introducing legislation to address the serious national problem of drunk driving. The bill, entitled ''John's Law of 2002,'' would help ensure that when drunken drivers are arrested, they cannot simply get back into the car and put the lives of others in jeopardy.

On July 22, 2000, Navy Ensign John Elliott was driving home from the United States Naval Academy in Annapolis for his mother's birthday when his car was struck by another car. Both Ensign Elliott and the driver of that car were killed. The driver of the car that caused the collision had a blood alcohol level that exceeded twice the legal limit.

What makes this tragedy especially distressing is that this same driver had

been arrested and charged with driving under the influence of alcohol, DUI, just three hours before the crash. After being processed for that offense, he had been released into the custody of a friend who drove him back to his car and allowed him to get behind the wheel, with tragic results.

We need to ensure that drunken drivers do not get back behind the wheel before they sober up. New Jersey took steps to do this when they enacted John's Law at the State level. I am pleased to offer a Federal version of this legislation today.

This bill would require States to impound the vehicle of an offender for a period of at least 12 hours after the offense. This would ensure that the arrestee cannot get back behind the wheel of his car until he is sober.

Further, the bill would require States to ensure that if a DUI offender arrestee is released into the custody of another, that person must be provided with notice of his or her potential civil or criminal liability for permitting the arrestee's operation of a motor vehicle while intoxicated. While this bill does not create new liability under Federal law, notifying such individuals of their prospective liability under State law should encourage them to act responsibly.

John's Law of 2002 is structured in a manner similar to other Federal laws designed to promote highway safety, such as laws that encourage states to enact tough drunk driving standards. Under the legislation, a portion of Federal highway funds would be withheld from States that do not comply. Initially, this funding could be restored if States move into compliance. Later, the highway funding forfeited by one State would be distributed to other States that are in compliance. Experience has shown that the threat of losing highway funding is very effective in ensuring that States comply.

I believe that this legislation would help make our roads safer and save many lives. I hope my colleagues will support it, and I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2805

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''John's Law of 2002''.

SEC. 2. LIABILITY FOR PERMITTING AN INTOXICATED ARRESTEE TO OPERATE A MOTOR VEHICLE.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''§ 165. Liability for permitting an intoxicated arrestee to operate a motor vehicle

''(a) DEFINITION OF MOTOR VEHICLE.—In this section, the term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated only on a rail.

''(b) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

''(1) FISCAL YEAR 2005.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2004, if the State does not meet the requirements of paragraph (3) on that date.

''(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2005, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

''(3) REQUIREMENTS.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law that is substantially as follows:

''(A) WRITTEN STATEMENT.—If a person is summoned by or on behalf of a person who has been arrested for public intoxication in order to transport or accompany the arrestee from the premises of a law enforcement agency, the law enforcement agency shall provide that person with a written statement advising him of his potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated. The person to whom the statement is issued shall acknowledge, in writing, receipt of the statement, or the law enforcement agency shall record the fact that the written statement was provided, but the person refused to sign an acknowledgment. The State shall establish the content and form of the written statement and acknowledgment to be used by law enforcement agencies throughout the State and may issue directives to ensure the uniform implementation of this subparagraph. Nothing in this subparagraph shall impose any obligation on a physician or other health care provider involved in the treatment or evaluation of the arrestee.

''(B) IMPOUNDMENT OF VEHICLE OPERATED BY ARRESTEE; CONDITIONS OF RELEASE; FEE FOR TOWING, STORAGE.—

''(i) If a person has been arrested for public intoxication, the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of arrest.

''(ii) A vehicle impounded pursuant to this subparagraph shall be impounded for a period of at least 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release in clause (iv).

''(iii) A vehicle impounded pursuant to this subparagraph may be released to a person other than the arrestee prior to the end of the impoundment period only if—

''(I) the vehicle is not owned or leased by the person under arrest and the person who owns or leases the vehicle claims the vehicle and meets the conditions for release in clause (iv); or

''(II) the vehicle is owned or leased by the arrestee, the arrestee gives permission to another person, who has acknowledged in writing receipt of the statement to operate the vehicle and the conditions for release in clause (iv).

''(iv) A vehicle impounded pursuant to this subparagraph shall not be released unless the person claiming the vehicle—

''(I) presents a valid operator's license, proof of ownership or lawful authority to operate the vehicle, and proof of valid motor vehicle insurance for that vehicle;

''(II) is able to operate the vehicle in a safe manner and would not be in violation of driving while intoxicated laws; and

''(III) meets any other conditions for release established by the law enforcement agency.

''(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

''(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—Any funds withheld under subsection (b) from apportionment to any State shall remain available until the end of the fourth fiscal year following the fiscal year for which the funds are authorized to be appropriated.

''(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (b) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (b) that remain available for apportionment to the State.

''(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

''(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

''(B) TREATMENT OF CERTAIN FUNDS.—Any funds apportioned under paragraph (2) that are not obligated at the end of the period referred to in subparagraph (A) shall be allocated equally among the States that meet the requirements of subsection (a)(3).

''(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (b) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), the funds shall be allocated equally among the States that meet the requirements of subsection (a)(3).''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''165. Liability for permitting an intoxicated arrestee to operate a motor vehicle.''.

By Ms. LANDRIEU:

S. 2806. A bill to provide that members of the Armed Forces performing services on the Island of Diego Gracia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes; to the Committee on Finance.

By Ms. LANDRIEU:

S. 2807. A bill to amend the Internal Revenue Code of 1986 to clarify the treatment of dependent care assistance programs sponsored by the Department of Defense for members of the Armed Forces of the United States; to the Committee on Finance.

Ms. LANDRIEU. Mr. President, I rise today to introduce two bills. One will give tax relief to a small group of men and women in our armed services stationed on the island of Diego Garcia in the Indian Ocean, supporting the war on terrorism in Afghanistan. The second bill will exclude from gross income childcare benefits paid to members of our armed forces. These are small measures,but both will be of great benefit to the men and women serving our country.

Diego Garcia is a British Territory lying seven degrees South Latitude off

the coast of India, in the middle of the Indian Ocean. The island is 40 miles around and encompasses an area of 6,720 acres, most of it dominated by a large lagoon. The land mass is actually very small. It is home to a joint British-United States Naval Support Facility, and while there are only a small handful of British Royal Navy personnel on the island, there is a larger, tight-knit team of American Air Force, Navy, and Army personnel on the island. These men and women serving on Diego Garcia are supporting B–52 bombing missions and other operations over Afghanistan. Many of them are from the 2nd Bomb Wing and the 917th Wing. Both units call Barksdale Air Force Base in Louisiana their home.

As a Nation, we provide members of our armed forces with a variety of benefits, all of them deserve. They receive hardship duty pay of $150 per monthly for serving in austere regions of the World. They get imminent danger pay of $150 per month as compensation for being in physical danger. One of the most generous benefits for those serving in the war on terrorism is the combat zone tax exclusion. Members of the armed services do not pay Federal tax on compensation they for any month of service inside a combat one. They only have to serve on day in the combat zone to get this benefit. The exclusion only applies to personnel who receive imminent danger pay.

On Diego Garcia, the pilots and flight crews who fly the missions over Afghanistan are eligible for the income tax exclusion because they receive imminent danger pay. But the men and women who load the bombers, fuel them, and maintain them are not eligible because they do not enter the combat zone. My office was contacted by the officers who fly the bombing missions about this discrepancy. They asked me to help out their support crews, a gesture of selflessness that I want to honor.

I recognize that the support crews may not receive imminent danger pay, but their situation is not too different from Naval personnel performing the same tasks on ships in the Arabian Sea. Naval support crews receive imminent danger pay and are eligible for the tax exclusion, but they do not enter Afghanistan.

Diego Garcia is a beautiful place, but it is a long way from home. The least we could do is treat everyone who has served on the island the same. That is what my bill will do.

My second bill will correct an omission in the Tax Reform Act of 1986. That Act contained a provision consolidating the laws regarding the tax treatment of certain military benefits. The Conference Report to that Act contains a long list of benefits to be excluded from gross income of military personnel. According to the report, this list was to be exhaustive. The problem is that child car benefits are not on that list.

I do not know if this omission was intentional. Perhaps at that time, child care benefits were relatively unknown in the military. The Conference Report gives the Treasury Secretary the authority to expand the list of eligible benefits, but so far the Secretary has not provided any guidance to the Department of Defense as to how these benefits should be treated for tax purposes. While military families are not currently being taxed for child care benefits, the Department of Defense has indicated that it would like Congress to clarify that child care benefits are not subject to tax. My bill will give our military families and the Department of Defense a greater degree of certainty.

Throughout our history, in time of war we have worked to make sure that our armed forces have everything they need and we have spared no expense in meeting that need. But the men and women on the ground often have families back at home. We should make sure that we support them as well. I urge my colleagues to support this legislation.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 307—REAFFIRMING SUPPORT OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE AND ANTICIPATING THE COMMEMORATION OF THE 15TH ANNIVERSARY OF THE ENACTMENT OF THE GENOCIDE CONVENTION IMPLEMENTATION ACT OF 1987 (THE PROXMIRE ACT) ON NOVEMBER 4, 2003

Mr. TORRICELLI submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 307

Whereas, in 1948, in the shadow of the Holocaust, the international community responded to Nazi Germany's methodically orchestrated acts of genocide by approving the Convention on the Prevention and Punishment of the Crime of Genocide;

Whereas the Convention on the Prevention and Punishment of the Crime of Genocide confirms that genocide is a crime under international law, defines genocide as certain acts committed with intent to destroy a national, ethnical, racial or religious group, and provides that parties to the Convention undertake to enact domestic legislation to provide effective penalties for persons who are guilty of genocide;

Whereas the United States, under President Harry Truman, stood as the first nation to sign the Convention on the Prevention and Punishment of the Crime of Genocide;

Whereas the United States Senate ratified the Convention on the Prevention and Punishment of the Crime of Genocide on February 19, 1986;

Whereas the Genocide Convention Implementation Act of 1987 (the Proxmire Act) (Public Law 100–606), signed into law by President Ronald Reagan on November 4, 1988, amended the United States Code (18 U.S.C. 1091) to criminalize genocide under the United States law;

Whereas the enactment of the Genocide Convention Implementation Act marked a principled stand by the United States against the crime of genocide and an important step toward ensuring that the lessons of the Holocaust, the Armenian Genocide, the genocides in Cambodia and Rwanda, among others, will be used to help prevent future genocides;

Whereas, despite the international community's consensus against genocide, as demonstrated by the fact that 133 nations are party to the Convention on the Prevention and Punishment of the Crime of Genocide and through other instruments and actions, denial of past instances of genocide continues and many thousands of innocent people continue to be victims of genocide; and

Whereas November 4, 2003 is the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act): Now, therefore, be it

Resolved, That the Senate—

(1) reaffirms its support of the Convention on the Prevention and Punishment of the Crime of Genocide;

(2) anticipates the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003; and

(3) encourages the people and Government of the United States to rededicate themselves to the cause of bringing an end to the crime of genocide.

SENATE RESOLUTION 308—EXPRESSING THE SENSE OF THE SENATE REGARDING THE ''ONCE-A-DAY'' PROGRAM TO PROMOTE LOCAL FARM PRODUCTS

Mrs. CLINTON submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. RES. 308

Whereas agriculture is a major industry in the United States, contributing $82,000,000,000 to the gross domestic product of the United States in 2000;

Whereas the farmers in every State produce a wide variety of local foods;

Whereas locally-grown, seasonal foods are fresh and wholesome, with superior taste and nutrition;

Whereas eating fresh foods in season is vital to a healthy diet, promotes health, and supports an active lifestyle;

Whereas reduced time from field to table allows farmers to harvest fully-ripened produce;

Whereas this flavorful produce can be prepared with less fat, sugar, and salt;

Whereas during the months of August, September, and October there is a tremendous selection of fresh, locally-grown produce;

Whereas local farms provide jobs, attract tourists, and recirculate dollars into the local economy of our Nation;

Whereas local produce can be found at many locations such as farmers' markets, community-supported agriculture farms, farm stands, local stores, and restaurants;

Whereas if citizens of the United States would eat 1 item of local produce each day, every dollar spent on the produce would support independent family farms that contribute to the economic health of the United States; and

Whereas Dutchess County, New York, has already begun a ''Once-a-Day'' program to encourage local residents to buy local produce in support of their local farmers and their own health: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) all Americans are encouraged to buy local farm products; and

(2) anyone selling local agricultural products is encouraged to promote the products as ''Once-a-Day'' to support the local economy and the health of our Nation.

SENATE RESOLUTION 309—EXPRESSING THE SENSE OF THE SENATE THAT BOSNIA AND HERZEGOVINA SHOULD BE CONGRATULATED ON THE 10TH ANNIVERSARY OF ITS RECOGNITION BY THE UNITED STATES

Mr. BIDEN (for himself, Mr. MCCAIN, and Mrs. FEINSTEIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 309

Whereas the United States reaffirms its support for the sovereignty, legal continuity, and territorial integrity of Bosnia and Herzegovina within its internationally recognized borders and also reaffirms its support for the equality of the three constituent peoples and others in Bosnia and Herzegovina in a united multiethnic country, according to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Whereas, during the 10 years since its recognition, Bosnia and Herzegovina has made significant progress in overcoming the legacy of the internecine conflict of 1992–1995 instigated by ultranationalist forces hostile to a multiethnic society, and has persevered in building a multiethnic democracy based on the rule of law, respect for human rights, and a free market economy, as shown by the results of the elections held in November 2000;

Whereas most citizens and the national authorities of Bosnia and Herzegovina share the democratic values of the international community and feel the responsibility to uphold them;

Whereas the Government of Bosnia and Herzegovina is committed to international security and democratic stability and in that spirit has begun the process of qualifying for membership in the Partnership for Peace; and

Whereas, after the attacks of September 11, 2001 on the United States, Bosnia and Herzegovina, as a reliable friend of the United States, immediately positioned itself within the anti-terrorism coalition of nations, sharing the common interests and values of the free and democratic world: Now, therefore, be it

Resolved, That the Senate—

(1) commends Bosnia and Herzegovina for the significant progress it has made during the past decade on the implementation of the Dayton Peace Agreement and on the implementation of the Constituent Peoples' Decision of the Constitutional Court of Bosnia and Herzegovina;

(2) applauds the democratic orientation of Bosnia and Herzegovina and urges the further strengthening by its government and people of respect for human rights, of the rule of law, and of its free market economy;

(3) urges Bosnia and Herzegovina as rapidly as possible to make fully operational all national institutions and state-level governmental bodies mandated by the Dayton Peace Agreement;

(4) welcomes and supports the aspiration of Bosnia and Herzegovina to become a member of the Partnership for Peace and, pursuant thereto, underscores the importance of creating a joint military command as soon as possible;

(5) urges the Government of Bosnia and Herzegovina to accelerate the return of refugees and displaced persons and to intensify its cooperation with the International Criminal Tribunal for the former Yugoslavia at The Hague, in particular with regard to surrendering to the Court individuals indicted for war crimes;

(6) reaffirms the importance for the future of Bosnia and Herzegovina of that country's participation in the European integration process and, in that context, welcomes the notable improvement in mutual cooperation among the successor states of the former Yugoslavia and the strengthening of cooperation within the region as a whole, developments which are essential for long-lasting peace and stability in Southeastern Europe; and

(7) recognizes the important role of the Bosnian-Herzegovinian-American community in the further improving of bilateral relations between the United States and Bosnia and Herzegovina.

Mr. BIDEN. Mr. President, I rise today to submit a Resolution congratulating Bosnia and Herzegovina on the tenth anniversary of its recognition by the United States.

During the decade since its recognition, Bosnia and Herzegovina has made significant progress in overcoming the legacy of the bloody conflict of 1992–95, which was instigated by ultra-nationalist forces and claimed more than two hundred thousand lives and made millions more homeless.

The NATO-led peacekeeping force, known originally as IFOR, now as SFOR, has provided the security umbrella that has allowed the slow, difficult process of reconciliation and democracy-building to take place.

The international community under the direction of a resident High Representative, the United Nations, the Organization for Security and Cooperation in Europe, the European Union, and many individual countries have joined the United States in providing and delivering economic and technical assistance to the citizens of Bosnia and Herzegovina.

Last year for the first time democratic, non-nationalist parties gained control of the national and Federation governments, and the government of the Republika Srpska is considerably more democratic than it was under the infamous Radovan Karadzic.

Elections will be held this coming October, which will determine whether the country will continue on a democratic, multi-ethnic, and free market path. Obviously, it is in the interest of the people of Bosnia and Herzegovina, Bosniaks, Serbs, Croats, and others, that it do so. Equally obviously, it is in the interest of the United States that Bosnia and Herzegovina become a normal, peaceful, democratic country.

My Resolution commends Bosnia and Herzegovina for the progress it has made and urges it to take several steps to continue the process. They include: further strengthening of respect for human rights, of the rule of law, and of its free market economy; as rapidly as possible making fully operational all national institutions and state-level governmental bodies mandated by the Dayton Peace Agreement; creating a joint military command as soon as possible; accelerating the return of refugees and displaced persons; and intensifying its cooperation with the International Criminal Tribunal for the former Yugoslavia at The Hague, in particular surrendering to the Court individuals indicted for war crimes.

The stability of the Balkans is essential for European stability. And stability in Europe is of fundamental importance to the United States of America. A peaceful, democratic, multi-ethnic Bosnia and Herzegovina can be an important element in the new Balkans.

I urge my colleagues to vote for this Resolution, which makes clear our support for just such a Bosnia and Herzegovina.

SENATE RESOLUTION 310—HONORING JUSTIN W. DART, JR., AS A CHAMPION OF THE RIGHTS OF INDIVIDUALS WITH DISABILITIES

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. HATCH, and Mr. GREGG) submitted the following resolution; which was considered and agreed to:

S. RES. 310

Whereas Justin W. Dart, Jr. was born in Chicago, Illinois in 1930;

Whereas Justin Dart, Jr. has been recognized as a pioneer and leader in the disability rights movement;

Whereas Justin Dart, Jr. operated successful businesses in the United States and Japan;

Whereas 5 Presidents, 5 Governors, and Congress have seen fit to appoint Justin Dart, Jr. to leadership positions within the area of disability policy, including Vice Chairman of the National Council on Disability, Commissioner of the Rehabilitation Services Administration, Chairperson of the President's Committee on Employment of People with Disabilities, and Chairperson of the Congressional Task Force on the Rights and Empowerment of Americans with Disabilities;

Whereas Justin Dart, Jr. was a civil rights activist for individuals with disabilities since he was stricken with polio in 1948 and played a leadership role in numerous civil rights marches across the country;

Whereas Justin Dart, Jr. worked tirelessly to secure passage of the Americans with Disabilities Act of 1990, which was signed into law by President Bush, and is often recognized as a major driving force behind the disability rights movement and that landmark legislation;

Whereas on January 15, 1998, President Clinton awarded the Presidential Medal of Freedom, our Nation's highest civilian award, to Justin Dart, Jr.

Whereas Justin Dart, Jr. has left a powerful legacy as a civil rights advocate and his actions have benefited the people of the United States;

Whereas Justin Dart, Jr. is not only remembered for his advocacy efforts on behalf of individuals with disabilities, but also for his energetic spirit and for the formal and informal independent living skills programs for individuals with disabilities that he supported; and

Whereas Justin Dart, Jr. passed away at his home on June 22, 2002, and is survived by his wife, Yoshiko Dart, 5 daughters, 11 grandchildren, and 2 great-grandchildren: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes Justin W. Dart, Jr. as one of the true champions of the rights of individuals with disabilities and for his many contributions to the Nation throughout his lifetime;

(2) honors Justin W. Dart, Jr. for his tireless efforts to improve the lives of individuals with disabilities; and

(3) recognizes that the achievements of Justin W. Dart, Jr. have inspired and encouraged millions of individuals with disabilities in the United States to overcome obstacles and barriers so that the individuals can lead more independent and successful lives.

SENATE CONCURRENT RESOLUTION 132—PROVIDING FOR A CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND A CONDITIONAL ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

Mr. DASCHLE submitted the following concurrent resolution; which was considered and agreed to.

S. CON. RES. 132

Resolved by the Senate (the House of Representatives concurring), That, in consonance with section 132(a) of the Legislative Reorganization Act of 1946, when the Senate recesses or adjourns at the close of business on Thursday, August 1, 2002, Friday, August 2, 2002, or Saturday, August 3, 2002, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until 12:00 noon on Tuesday, September 3, 2002, or until such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Friday, July 26, 2002, on a motion offered by its Majority Leader or his designee pursuant to this concurrent resolution, it stand adjourned until 2:00 p.m. on Wednesday, September 4, 2002, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4326. Mr. MCCONNELL (for himself and Mr. FRIST) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

TEXT OF AMENDMENTS

SA 4326. Mr. MCCONNELL (for himself and Mr. FRIST) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN. Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN), to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; as follows:

Strike the first word and insert the following:

TITLE ____—HEALTH CARE LIABILITY REFORM

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Health Care Liability Reform and Quality Assurance Act of 2002''.

Subtitle A—Health Care Liability Reform

SEC. ___11. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—The civil justice system of the United States is a costly and inefficient mechanism for resolving claims of health care liability and compensating injured patients and the problems associated with the current system are having an adverse impact on the availability of, and access to, health care services and the cost of health care in the United States.

(2) EFFECT ON INTERSTATE COMMERCE.—The health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States affect interstate commerce by contributing to the high cost of health care and premiums for health care liability insurance purchased by participants in the health care system.

(3) EFFECT ON FEDERAL SPENDING.—The health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide such individuals with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this title to implement reasonable, comprehensive, and effective health care liability reform that is designed to—

(1) ensure that individuals with meritorious health care injury claims receive fair and adequate compensation;

(2) improve the availability of health care service in cases in which health care liability actions have been shown to be a factor in the decreased availability of services; and

(3) improve the fairness and cost-effectiveness of the current health care liability system of the United States to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty and unpredictability in the amount of compensation provided to injured individuals.

SEC. ___12. DEFINITIONS.

In this subtitle:

(1) CLAIMANT.—The term ''claimant'' means any person who commences a health care liability action, and any person on whose behalf such an action is commenced, including the decedent in the case of an action brought through or on behalf of an estate.

(2) CLEAR AND CONVINCING EVIDENCE.—The term ''clear and convincing evidence'' means that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, except that such measure or degree of proof is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(3) COLLATERAL SOURCE RULE.—The term ''collateral source rule'' means a rule, either statutorily established or established at common law, that prevents the introduction of evidence regarding collateral source benefits or that prohibits the deduction of collateral source benefits from an award of damages in a health care liability action.

(4) ECONOMIC LOSSES.—The term ''economic losses'' means objectively verifiable monetary losses incurred as a result of the provision of (or failure to provide or pay for) health care services or the use of a medical product, including past and future medical expenses, loss of past and future earnings, cost of obtaining replacement services in the home (including child care, transportation, food preparation, and household care), cost of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities. Economic losses are neither noneconomic losses nor punitive damages.

(5) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action against a health care provider, health care professional, health plan, or other defendant, including a right to legal or equitable contribution, indemnity, subrogation, third-party claims, cross claims, or counter-claims, in which the claimant alleges injury related to the provision of, payment for, or the failure to provide or pay for, health care services or medical products, regardless of the theory of liability on which the action is based. Such term does not include a product liability action, except where such an action is brought as part of a broader health care liability action.

(6) HEALTH PLAN.—The term ''health plan'' means any person or entity which is obligated to provide or pay for health benefits under any health insurance arrangement, including any person or entity acting under a contract or arrangement to provide, arrange for, or administer any health benefit.

(7) HEALTH CARE PROFESSIONAL.—The term ''health care professional'' means any individual who provides health care services in a State and who is required by Federal or State laws or regulations to be licensed, registered or certified to provide such services or who is certified to provide health care services pursuant to a program of education, training and examination by an accredited institution, professional board, or professional organization.

(8) HEALTH CARE PROVIDER.—The term ''health care provider'' means any organization or institution that is engaged in the delivery of health care items or services in a State and that is required by Federal or State laws or regulations to be licensed, registered or certified to engage in the delivery of such items or services.

(9) HEALTH CARE SERVICES.—The term ''health care services'' means any services provided by a health care professional, health care provider, or health plan or any individual working under the supervision of a health care professional, that relate to the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

(10) INJURY.—The term ''injury'' means any illness, disease, or other harm that is the subject of a health care liability action.

(11) MEDICAL PRODUCT.—The term ''medical product'' means a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or a medical device as defined in section 201(h) of such Act (21 U.S.C. 321(h)), including any component or raw material used therein, but excluding health care services, as defined in paragraph (9).

(12) NONECONOMIC LOSSES.—The term ''noneconomic losses'' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, loss of society or companionship (other than loss of domestic services), and other nonpecuniary losses incurred by an individual with respect to which a health care liability action is brought. Noneconomic losses are neither economic losses nor punitive damages.

(13) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not for compensatory purposes, against a health care professional, health care provider, or other defendant in a health care liability action. Punitive damages are neither economic nor noneconomic damages.

(14) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(15) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. ___13. APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (c), this subtitle shall apply with respect to any health care liability action brought in any Federal or State court, except that this subtitle shall not apply to an action for damages arising from a vaccine-related injury or death to the extent that title XXI of the Public Health Service Act applies to the action.

(b) PREEMPTION.—

(1) IN GENERAL.—The provisions of this subtitle shall preempt State law only to the extent that such law is inconsistent with the limitations contained in such provisions and shall not preempt State law to the extent that such law—

(A) places greater restrictions on the amount of or standards for awarding noneconomic or punitive damages;

(B) places greater limitations on the awarding of attorneys fees for awards in excess of $150,000;

(C) permits a lower threshold for the periodic payment of future damages;

(D) establishes a shorter period during which a health care liability action may be initiated or a more restrictive rule with respect to the time at which the period of limitations begins to run; or

(E) implements collateral source rule reform that either permits the introduction of evidence of collateral source benefits or provides for the mandatory offset of collateral source benefits from damage awards.

(2) RULES OF CONSTRUCTION.—The provisions of this subtitle shall not be construed to preempt any State law that—

(A) permits State officials to commence health care liability actions as a representative of an individual;

(B) permits provider-based dispute resolution;

(C) places a maximum limit on the total damages in a health care liability action;

(D) places a maximum limit on the time in which a health care liability action may be initiated; or

(E) provides for defenses in addition to those contained in this title.

(c) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in this subtitle shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(4) preempt State choice-of-law rules with respect to actions brought by a foreign nation or a citizen of a foreign nation;

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss an action of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(6) supersede any provision of Federal law.

(d) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this subtitle shall be construed to establish any jurisdiction in the district courts of the United States over health care liability actions on the basis of section 1331 or 1337 of title 28, United States Code.

SEC. ___14. STATUTE OF LIMITATIONS.

A health care liability action that is subject to this title may not be initiated unless a complaint with respect to such action is filed within the 2-year period beginning on the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered the injury and its cause, except that such an action relating to a claimant under legal disability may be filed within 2 years after the date on which the disability ceases. If the commencement of a health care liability action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

SEC. ___15. REFORM OF PUNITIVE DAMAGES.

(a) LIMITATION.—With respect to a health care liability action, an award for punitive damages may only be made, if otherwise permitted by applicable law, if it is proven by clear and convincing evidence that the defendant—

(1) intended to injure the claimant for a reason unrelated to the provision of health care services;

(2) understood the claimant was substantially certain to suffer unnecessary injury, and in providing or failing to provide health care services, the defendant deliberately failed to avoid such injury; or

(3) acted with a conscious, flagrant disregard of a substantial and unjustifiable risk of unnecessary injury which the defendant failed to avoid in a manner which constitutes a gross deviation from the normal standard of conduct in such circumstances.

(b) PUNITIVE DAMAGES NOT PERMITTED.—Notwithstanding the provisions of subsection (a), punitive damages may not be awarded against a defendant with respect to any health care liability action if no judgment for compensatory damages, including nominal damages (under $500), is rendered against the defendant.

(c) SEPARATE PROCEEDING.—

(1) IN GENERAL.—At the request of any defendant in a health care liability action, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; or

(B) the amount of punitive damages following a determination of punitive liability.

(2) ONLY RELEVANT EVIDENCE ADMISSIBLE.—If a defendant requests a separate proceeding under paragraph (1), evidence relevant only to the claim of punitive damages in a health care liability action, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(d) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—In determining the amount of punitive damages in a health care liability action, the trier of fact shall consider only the following:

(1) The severity of the harm caused by the conduct of the defendant.

(2) The duration of the conduct or any concealment of such conduct by the defendant.

(3) The profitability of the conduct of the defendant.

(4) The number of products sold or medical procedures rendered for compensation, as the case may be, by the defendant of the kind causing the harm complained of by the claimant.

(5) Evidence with respect to awards of punitive or exemplary damages to persons similarly situated to the claimant, when offered by the defendant.

(6) Prospective awards of compensatory damages to persons similarly situated to the claimant.

(7) Evidence with respect to any criminal or administrative penalties imposed on the defendant as a result of the conduct complained of by the claimant, when offered by the defendant.

(8) Evidence with respect to the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant, when offered by the defendant.

(e) LIMITATION AMOUNT.—

(1) IN GENERAL.—The amount of damages that may be awarded as punitive damages in any health care liability action shall not exceed 2 times the sum of—

(A) the amount awarded to the claimant for the economic loss; and

(B) the amount awarded to the claimant for noneconomic loss.

(2) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(f) RESTRICTIONS PERMITTED.—Nothing in this title shall be construed to imply a right to seek punitive damages where none exists under Federal or State law.

SEC. ___16. PERIODIC PAYMENTS.

With respect to a health care liability action, if the award of future damages exceeds $100,000, the adjudicating body shall, at the request of either party, enter a judgment ordering that future damages be paid on a periodic basis in accordance with the guidelines contained in the Uniform Periodic Payments of Judgments Act, as promulgated by the National Conference of Commissioners on Uniform State Laws in July of 1990. The adjudicating body may waive the requirements of this section if such body determines that such a waiver is in the interests of justice.

SEC. ___17. SCOPE OF LIABILITY.

(a) IN GENERAL.—With respect to punitive and noneconomic damages, the liability of each defendant in a health care liability action shall be several only and may not be joint. Such a defendant shall be liable only for the amount of punitive or noneconomic damages allocated to the defendant in direct proportion to such defendant's percentage of fault or responsibility for the injury suffered by the claimant.

(b) DETERMINATION OF PERCENTAGE OF LIABILITY.—With respect to punitive or noneconomic damages, the trier of fact in a health care liability action shall determine the extent of each party's fault or responsibility for injury suffered by the claimant, and shall assign a percentage of responsibility for such injury to each such party.

SEC. ___18. MANDATORY OFFSETS FOR DAMAGES PAID BY A COLLATERAL SOURCE.

(a) IN GENERAL.—With respect to a health care liability action, the total amount of

damages received by an individual under such action shall be reduced, in accordance with subsection (b), by any other payment that has been, or will be, made to an individual to compensate such individual for the injury that was the subject of such action.

(b) AMOUNT OF REDUCTION.—The amount by which an award of damages to an individual for an injury shall be reduced under subsection (a) shall be—

(1) the total amount of any payments (other than such award) that have been made or that will be made to such individual to pay costs of or compensate such individual for the injury that was the subject of the action; minus

(2) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in paragraph (1).

(c) DETERMINATION OF AMOUNTS FROM COLLATERAL SERVICES.—The reductions required under subsection (b) shall be determined by the court in a pretrial proceeding. At the subsequent trial—

(1) no evidence shall be admitted as to the amount of any charge, payments, or damage for which a claimant—

(A) has received payment from a collateral source or the obligation for which has been assured by a third party; or

(B) is, or with reasonable certainty, will be eligible to receive payment from a collateral source of the obligation which will, with reasonable certainty be assumed by a third party; and

(2) the jury, if any, shall be advised that—

(A) except for damages as to which the court permits the introduction of evidence, the claimant's medical expenses and lost income have been or will be paid by a collateral source or third party; and

(B) the claimant shall receive no award for any damages that have been or will be paid by a collateral source or third party.

SEC. ____19. TREATMENT OF ATTORNEYS' FEES AND OTHER COSTS.

(a) LIMITATION ON AMOUNT OF CONTINGENCY FEES.—

(1) IN GENERAL.—An attorney who represents, on a contingency fee basis, a claimant in a health care liability action may not charge, demand, receive, or collect for services rendered in connection with such action in excess of the following amount recovered by judgment or settlement under such action:

(A) 33⅓ percent of the first $150,000 (or portion thereof) recovered, based on after-tax recovery, plus

(B) 25 percent of any amount in excess of $150,000 recovered, based on after-tax recovery.

(2) CALCULATION OF PERIODIC PAYMENTS.—In the event that a judgment or settlement includes periodic or future payments of damages, the amount recovered for purposes of computing the limitation on the contingency fee under paragraph (1) shall be based on the cost of the annuity or trust established to make the payments. In any case in which an annuity or trust is not established to make such payments, such amount shall be based on the present value of the payments.

(b) CONTINGENCY FEE DEFINED.—As used in this section, the term ''contingency fee'' means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of damages, whether through judgment or settlement.

SEC. ____20. STATE-BASED ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

(a) ESTABLISHMENT BY STATES.—Each State is encouraged to establish or maintain alternative dispute resolution mechanisms that promote the resolution of health care liability claims in a manner that—

(1) is affordable for the parties involved in the claims;

(2) provides for the timely resolution of claims; and

(3) provides the parties with convenient access to the dispute resolution process.

(b) GUIDELINES.—The Attorney General, in consultation with the Secretary and the Administrative Conference of the United States, shall develop guidelines with respect to alternative dispute resolution mechanisms that may be established by States for the resolution of health care liability claims. Such guidelines shall include procedures with respect to the following methods of alternative dispute resolution:

(1) ARBITRATION.—The use of arbitration, a nonjury adversarial dispute resolution process which may, subject to subsection (c), result in a final decision as to facts, law, liability or damages. The parties may elect binding arbitration.

(2) MEDIATION.—The use of mediation, a settlement process coordinated by a neutral third party without the ultimate rendering of a formal opinion as to factual or legal findings.

(3) EARLY NEUTRAL EVALUATION.—The use of early neutral evaluation, in which the parties make a presentation to a neutral attorney or other neutral evaluator for an assessment of the merits, to encourage settlement. If the parties do not settle as a result of assessment and proceed to trial, the neutral evaluator's opinion shall be kept confidential.

(4) EARLY OFFER AND RECOVERY MECHANISM.—The use of early offer and recovery mechanisms under which a health care provider, health care organization, or any other alleged responsible defendant may offer to compensate a claimant for his or her reasonable economic damages, including future economic damages, less amounts available from collateral sources.

(5) CERTIFICATE OF MERIT.—The requirement that a claimant in a health care liability action submit to the court before trial a written report by a qualified specialist that includes the specialist's determination that, after a review of the available medical record and other relevant material, there is a reasonable and meritorious cause for the filing of the action against the defendant.

(6) NO FAULT.—The use of a no-fault statute under which certain health care liability actions are barred and claimants are compensated for injuries through their health plans or through other appropriate mechanisms.

(c) FURTHER REDRESS.—The extent to which any party may seek further redress (subsequent to a decision of an alternative dispute resolution method) concerning a health care liability claim in a Federal or State court shall be dependent upon the methods of alternative dispute resolution adopted by the State.

(d) TECHNICAL ASSISTANCE AND EVALUATIONS.—

(1) TECHNICAL ASSISTANCE.—The Attorney General may provide States with technical assistance in establishing or maintaining alternative dispute resolution mechanisms under this section.

(2) EVALUATIONS.—The Attorney General, in consultation with the Secretary and the Administrative Conference of the United States, shall monitor and evaluate the effectiveness of State alternative dispute resolution mechanisms established or maintained under this section.

SEC. ____21. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this title, including any such action with respect to which the harm asserted in the action or the conduct that caused the injury occurred before the date of enactment of this title.

Subtitle B—Protection of the Health and Safety of Patients

SEC. ____31. ADDITIONAL RESOURCES FOR STATE HEALTH CARE QUALITY ASSURANCE AND ACCESS ACTIVITIES.

Each State shall require that not less than 50 percent of all awards of punitive damages resulting from all health care liability actions in that State, if punitive damages are otherwise permitted by applicable law, be used for activities relating to—

(1) the licensing, investigating, disciplining, and certification of health care professionals in the State; and

(2) the reduction of malpractice-related costs for health care providers volunteering to provide health care services in medically underserved areas.

Subtitle C—Obstetric Services

SEC. ____41. SPECIAL PROVISION FOR CERTAIN OBSTETRIC SERVICES.

(a) IN GENERAL.—In the case of a health care liability action relating to services provided during labor or the delivery of a baby, if the health care professional or health care provider against whom the action is brought did not previously treat the claimant for the pregnancy, the trier of the fact may not find that such professional or provider committed malpractice and may not assess damages against such professional or provider unless the malpractice is proven by clear and convincing evidence.

(b) APPLICABILITY TO GROUP PRACTICES OR AGREEMENTS AMONG PROVIDERS.—For purposes of subsection (a), a health care professional shall be considered to have previously treated an individual for a pregnancy if the professional is a member of a group practice in which any of whose members previously treated the individual for the pregnancy or is providing services to the individual during labor or the delivery of a baby pursuant to an agreement with another professional.

Subtitle D—Severability

SEC. ____51. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a field hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, August 8, from 9:00 a.m. until 11:00 a.m. It will be held at the Albuquerque City Council Chambers, Albuquerque, NM.

The purpose of the hearing is to receive testimony on recent developments in advanced fuel cell and lighting technology, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit testimony for the hearing record should send two copies

of their testimony to the Committee on Energy and Natural Resources, United States Senate, 312 Dirksen Senate Office Building, Washington, DC 20510, or to Senator BINGAMAN's office in Albuquerque, Suite 130, 625 Silver, SW, Albuquerque, NM 87102.

For further information please contact John Kotek at 202–224–6385, Jonathan Epstein at 202–224–3357, or Amanda Goldman at 202–224–6836.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED FORCES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on July 26, 2002, at 9:30 a.m., in both open and executive sessions to consider the nominations of Lieutenant General James T. Hill, USA for appointment to the grade of General and assignment as Commander in Chief, United States Southern Command; and Vice Admiral Edmund P. Giambastiani, Jr., USN for appointment to the grade of Admiral and assignment as Commander in Chief, United States Joint Forces Command.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Children and Families, be authorized to meet for a hearing on Birth Defects: Strategies for Prevention and Ensuring Quality of Life during the session of the Senate on Friday, July 26, 2002, at 9:30 a.m.

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

MEASURE PLACED ON THE CALENDAR—H.R. 4965

Mr. REID. Mr. President, it is my understanding that H.R. 4965 is at the desk and due for its second reading.

The PRESIDING OFFICER. As in legislative session, the clerk will read the bill by title for the second time.

The legislative clerk read as follows:

A bill (H.R. 4965) to prohibit the procedure commonly known as partial-birth abortion.

Mr. REID. I object to any further proceedings at this time.

The PRESIDING OFFICER. The objection having been heard, the bill will be placed on the calendar.

MEETING OF CONGRESS IN NEW YORK, NEW YORK, ON FRIDAY, SEPTEMBER 6, 2002

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of H. Con. Res. 448, received from the House and now at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A resolution (H. Con. Res. 448) providing for a special meeting for the Congress in New York, New York, on Friday, September 6, 2002, in remembrance of the victims and the heroes of September 11, 2001, in recognition of the courage and spirit of the City of New York, and for other purposes.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. I ask unanimous consent the resolution and preamble be agreed to en bloc and the motion to reconsider be laid upon the table without any intervening action or debate.

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

The concurrent resolution (H. Con. Res. 448) was agreed to.

The preamble was agreed to.

PROVIDING REPRESENTATION BY CONGRESS AT MEETING IN NEW YORK, NEW YORK

Mr. REID. I ask unanimous consent the Senate now proceed to the consideration of H. Con. Res. 449, received from the House and now at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A bill (H. Con. Res. 449) providing for representation by Congress at a special meeting in New York, New York on Friday, September 6, 2002.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent the resolution be agreed to and the motion to reconsider be laid upon the table, without any intervening action or debate.

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

The concurrent resolution (H. Con. Res. 449) was agreed to.

HONORING JUSTIN W. DART, JR.

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of S. Res. 310, submitted earlier today by Senators HARKIN, HATCH, KENNEDY, and GREGG.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A bill (S. Res. 310) honoring Justin W. Dart, as a champion of the rights of individuals with disabilities.

There being no objection, the Senate proceeded to consider the resolution.

Mr. HARKIN. Mr. President, on Saturday, June 22, our Nation lost one of its great heroes: My good friend, Justin Dart, Jr. Today, my colleagues Senator KENNEDY, Senator HATCH, and Senator GREGG, and I are introducing a bipartisan resolution to honor Justin Dart. His memorial service will occur tomorrow, July 26, the 12th anniversary of the Americans with Disabilities Act.

Justin Dart was the godfather of the disability rights movement. For 30 years he fought to end prejudice against people with disabilities, to strengthen the disabilities right movement, to protect the rights of people with disabilities. Millions of Americans with disabilities never knew his name but they owe him so much.

Justin was instrumental to the passage of the ADA and many other policies of interest to individuals with disabilities. When President Bush signed the Americans With Disabilities Act, he gave the first pen to Justin Dart. He truly was the one who brought us together and give the inspiration and guidance to get this wonderful, magnificent bill through. I was proud to be at his side when he received the Medal of Freedom from President Clinton. Today we are proud to introduce this resolution to honor him and commemorate his tremendous contribution to the lives of Americans with disabilities across this country.

Mr. REID. Mr. President, I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statements related thereto be printed in the RECORD at the appropriate place.

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

The resolution (S. Res. 310) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 310

Whereas Justin W. Dart, Jr. was born in Chicago, Illinois in 1930;

Whereas Justin Dart, Jr. has been recognized as a pioneer and leader in the disability rights movement;

Whereas Justin Dart, Jr. operated successful businesses in the United States and Japan;

Whereas 5 Presidents, 5 Governors, and Congress have seen fit to appoint Justin Dart, Jr. to leadership positions within the area of disability policy, including Vice Chairman of the National Council on Disability, Commissioner of the Rehabilitation Services Administration, Chairperson of the President's Committee on Employment of People with Disabilities, and Chairperson of the Congressional Task Force on the Rights and Empowerment of Americans with Disabilities;

Whereas Justin Dart, Jr. was a civil rights activist for individuals with disabilities since he was stricken with polio in 1948 and played a leadership role in numerous civil rights marches across the country;

Whereas Justin Dart, Jr. worked tirelessly to secure passage of the Americans with Disabilities Act of 1990, which was signed into law by President Bush, and is often recognized as a major driving force behind the disability rights movement and that landmark legislation;

Whereas on January 15, 1998, President Clinton awarded the Presidential Medal of Freedom, our Nation's highest civilian award, to Justin Dart, Jr.

Whereas Justin Dart, Jr. has left a powerful legacy as a civil rights advocate and his actions have benefited the people of the United States;

Whereas Justin Dart, Jr. is not only remembered for his advocacy efforts on the behalf of individuals with disabilities, but also

for his energetic spirit and for the formal and informal independent living skills programs for individuals with disabilities that he supported; and

Whereas Justin Dart, Jr. passed away at his home on June 22, 2002, and is survived by his wife, Yoshiko Dart, 5 daughters, 11 grandchildren, and 2 great-grandchildren: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes Justin W. Dart, Jr. as 1 of the true champions of the rights of individuals with disabilities and for his many contributions to the Nation throughout his lifetime;

(2) honors Justin W. Dart, Jr. for his tireless efforts to improve the lives of individuals with disabilities; and

(3) recognizes that the achievements of Justin W. Dart, Jr. have inspired and encouraged millions of individuals with disabilities in the United States to overcome obstacles and barriers so that the individuals can lead more independent and successful lives.

TO AMEND THE COMMUNICATIONS SATELLITE ACT OF 1962

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of S. 2810 submitted earlier by Senators HOLLINGS, MCCAIN, BURNS, and ENSIGN.

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 2810) to amend the Communications Satellite Act of 1962 to extend the deadline for INTELSAT initial public offering.

There being no objection, the Senate proceeded to consider the bill.

Mr. HOLLINGS. Mr. President, I rise today, along with my Commerce Committee colleagues to speak to legislation that would extend the deadline for Intelsat to conduct the initial public offering required of it by the ORBIT satellite privatization law.

Under ORBIT, Intelsat must conduct an IPO by December 31, 2002. Intelsat has made substantial preparations to do just that. Recent disastrous events in the telecommunications market, however, now make this statutory deadline unrealistic and potentially contrary to the policy objectives of ORBIT. This bill would therefore give Intelsat another year in which to conduct its IPO and also provides the FCC authority to allow an additional extension of time if warranted by market conditions.

The goal of ORBIT's IPO requirement was to substantially dilute the ownership of the privatized Intelsat by its former owners, many of which are foreign government entities. I continue to support this goal. The Commerce Committee has been provided with significant evidence that this goal is already in the process of being achieved. For example:

July 18, 2001: Intelsat privatized in a transaction that resulted in 14 percent of the new entity being held by non-signatory investing entities;

April 26, 2002; Intelsat filed its IPO registration statement with the SEC;

May 2002: Natural dilution of Intelsat signatories continued as foreign governments privatized their telecom operations: Intelsat non-signatory ownership increased to 22 percent;

June 14, 2002: The FCC issued its ORBIT Act report, finding that, ''On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the Act.''

June 21, 2002: Intelsat received clearance from the New York Stock Exchange to file a listing application to trade its ordinary shares on that exchange.

This is a good start. More remains to be done, but it appears that Intelsat has been proceeding in a manner consistent with launching its IPO prior to the December 31, 2002 ORBIT deadline. Recently, however, uncontrollable external events overtook all of us. WorldCom's bankruptcy is but the latest financial debate in the telecommunications industry, which has been unstable. Capital markets are extremely unsupportive of additional investment at this time. There arguably could not be a worse time for a satellite communications company to consider an IPO.

If forced to move ahead with an IPO before the end of 2002, Intelsat will probably receive a reduced price for its shares offered. Foreign entities that still own significant portions of Intelsat are aware of this likelihood and would therefore be discouraged from offering their ownership interests for sale. Instead of the substantial dilution of prior owners contemplated by the ORBIT Act, a year—2002 IPO might not achieve much dilution whatsoever. In that instance, Intelsat would have complied with the procedural requirement of ORBIT without the substantive result that we in Congress sought: dilution of previous owners. Given the current adverse conditions in the stock market in general and the telecommunications sector in particular, the only way to ensure the dilution results sought by ORBIT may be to allow Intelsat to further delay its IPO. That result is good public policy that is also good for the long-term health of the satellite communications industry.

Mr. President, this bill needs to be enacted this year. I thank my colleagues for their support and I urge the prompt passage of this legislation.

Mr. REID. Mr. President, I ask unanimous consent the bill be read three times and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD at the appropriate place with no intervening action or debate.

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

The bill (S. 2810) was read the third time and passed, as follows:

S. 2810

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF IPO DEADLINE.

Section 621(5)(A)(i) of the Communications Satellite Act of 1962 (47 U.S.C. 763(5)(A)(i)) is amended—

(1) by striking ''October 1, 2001,'' and inserting ''December 31, 2003,''; and

(2) by striking ''December 31, 2002;'' and inserting ''June 30, 2004;''.

PROVIDING FOR CONDITIONAL ADJOURNMENT OR RECESS OF BOTH HOUSES OF CONGRESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the adjournment resolution, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 132) providing for a conditional adjournment or recess of the Senate and conditional adjournment of the House of Representatives.

There being no objection, the Senate proceeded to the consideration of the concurrent resolution.

Mr. REID. I ask unanimous consent the concurrent resolution be agreed to and the motion to reconsider be laid on the table, with no intervening action or debate.

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

The concurrent resolution (S. Con. Res. 132) was agreed to, as follows:

S. CON. RES. 132

Resolved by the Senate (the House of Representatives concurring), That, no consonance with section 132(a) of the Legislative Reorganization Act of 1946, when the Senate recesses or adjourns at the close of business on Thursday, August 1, 2002, Friday, August 2, 2002, or Saturday, August 3, 2002, on a motion offered pursuant to this concurrent resolution by its Minority Leader or his designee, it stand recessed or adjourned until 12:00 noon on Tuesday, September 3, 2002, or until such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Friday, July 26, 2002, on a motion offered by its Majority Leader or his designee pursuant to this concurrent resolution, it stand adjourned until 2:00 p.m. on Wednesday, September 4, 2002, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

WORK OF THE SENATE

Mr. DASCHLE. Mr. President, in just a few minutes, the Republican leader will be joining me on the Senate floor.

Before he gets here, I rise to thank my colleagues for the good work we have been able to complete this week. It has been a very productive week. We were able to pass unanimously the new Corporate Accountability Act after a great deal of effort on all sides. I complimented the distinguished Senator from Maryland, the chairman of the Banking Committee, Mr. SARBANES, on a number of occasions, but I want to complete our week this week by recognizing again his contribution.

The Appropriations Committee deserves commendation. They have reported out all the appropriations bills now.

In many ways, they are actually ahead of schedule, even though we have had somewhat of a late start.

We finished the military construction appropriations bill this week. We also finished the legislative branch appropriations bill and set up an opportunity to complete our work on the DOD appropriations bill next week. There may be other appropriations bills that may be ready for consideration next week as well. On the appropriations front, secondly, I thought we had quite a good week.

At long last we were able to move to conference on terrorism insurance. I am hopeful in the not too distant future we will complete our work on that measure, as we did the Corporate Accountability Act. We have done a number of nominations. We are now on track with regard to nominations. We confirmed a circuit court judge today, filed cloture Wednesday and got cloture today on second one. That vote will occur on Monday night. It is currently my plan to move forward additional judicial nominees on Monday night as well.

In addition to the judicial nominees, we were able to complete our work on nominations on some very important commissions. The SEC, for example, had four outstanding vacancies. As a result of our work this week, we were able to complete work on the SEC nominations. There is now a full complement of SEC Commissioners. That, too, was an important aspect of the work of the Senate.

Off the floor, there were a couple of other important matters that we addressed. The bankruptcy reform conference report is soon to be filed. It was completed, the work was completed, as was the trade promotion authority—not only trade promotion authority but the Andean Trade Promotion Act, as well as the Trade Adjustment Assistance Act, the package of bills, late last night. The conference report to that package of bills was agreed to.

We are in a very good position now to move into the final week of this work period. Senator LOTT and I have had a number of constructive discussions about next week. Our purpose in coming to the floor is to outline for our colleagues what our expectations are, and I will do that when he arrives.

I will also say, the confirmation of the district judge this morning brings to a total of 61 the number of confirmations since we took the majority a little over a year ago. That includes 49 district judges and 12 circuit judges.

On Monday, as I noted, we intend to take up at least 1 more, if not additional judges, and that would then bring to a total anywhere from 62 to 64 judges in the time that we have had the majority.

We are making progress on judicial nominations. We are determined to attempt to clear the calendar with regard to those judicial nominations over the course of the next few days, if it is at all possible.

Whether we clear the calendar, I must say, depends on whether we get all the other work done as well. There has to be an understanding that we do not have the luxury of focusing solely on nominations, as much as that would be a good thing to do. We have to complete our work on the prescription drug benefit and generic drug benefit legislation. We want to call up the fast-track conference report and file cloture. We want to complete our work on the Defense appropriations bill, if that is possible. We want to work to proceed to the homeland security legislation and file cloture on the motion to proceed to that bill.

We have a lot of work we need to complete before the end of next week. Given the fact we will get a late start on Monday afternoon, Senators should be aware that we could be involved in late nights, and we will certainly be here a week from this coming Friday.

I wanted to be sure my colleagues were made aware of our expectations for the schedule for that period of time.

I yield the floor and suggest the absence of a quorum until the arrival of the distinguished Republican leader.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. I ask unanimous consent that the Senate recess subject to the call of the Chair.

There being no objection, the Senate, at 3:23 p.m., recessed subject to the call of the Chair and reassembled at 3:36 p.m. when called to order by the Presiding Officer (Mr. REID.)

NEXT WEEK'S SCHEDULE

Mr. DASCHLE. Mr. President, the distinguished Republican leader and I have been discussing the schedule for next week, as I noted a few moments ago. We know there are many obstacles and many challenges we will have to face next week. I believe it is important we come to the floor to share with our colleagues at least what our intentions are and indicate that, on a bileadership basis, it is our desire to work through each of these priorities in an effort to get as much done as we can and complete this work period as successfully as possible.

In keeping with that spirit, let me say it was our intention to attempt to complete our work on the prescription drug benefit by Tuesday night. We, of course, will take up additional nominations on Monday, three judges, and additional Executive Calendar nominees. We will chip away at that each day. We will be doing another block of nominations today. As we noted earlier this week, we are working under a unanimous consent agreement to take up the DOD appropriations bill no later than Wednesday. Now, it does not, of course, stipulate when on Wednesday, so in keeping with that request and that consent, we are obligated to bring it up.

It is my expectation that certainly if the prescription drug benefit bill has been completed, we will be able to come to the DOD bill and stay on it until it has been finished. We recognize there are those who are in opposition to both the trade promotion authority as well as to Homeland Security. Yet it is our desire to complete work on the trade promotion authority bill, the conference report, next week. So we will file cloture on the motion to proceed to the conference report in an effort to complete our work.

We also have a need to begin work on the homeland security legislation. It was reported out of committee on a bipartisan basis, out of the Governmental Affairs Committee this week, so we will file cloture, recognizing that there will be a need to do so. We will file cloture on the homeland defense bill and have a vote on the motion to proceed to that bill prior to the end of the week.

So that clearly will require cooperation and a good deal of effort on everyone's part. I think there is a mutual interest in getting this work done. Many of the issues that we will be taking up next week are high priorities for the administration, as they are for us. So I appreciate very much the distinguished Republican leader's interest in working together to accommodate that schedule. I thank him for coming to the floor.

I yield the floor at this time for whatever remarks he may want to make.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. LOTT. Mr. President, I thank the distinguished majority leader for his comments and for the effort that he has put into a number of these issues this week. For every small agreement

that is entered into on the floor it quite often represents hours of effort on our part, many times having had to go to Members repeatedly and work through concerns and legitimate disagreements. Then we finally get an agreement on the floor, and it moves quickly and it looks like it was a piece of cake, but it was not that way at all, as the distinguished Senator in the chair knows because he is here on the floor working these issues day in and day out.

As is always the case, this next week has the potential to be a very productive week. One of the two busiest weeks and most productive weeks each year is the one right before the August recess and the one right before we go out at the end of the year. I remember one day, the last day of a session, we moved over 50 bills at the last half of the day when most Members had gone. But we had worked through a number of agreements.

Next week we have a chance to do a lot. I want to look back, though, just a moment, to this week because there were some significant achievements this week. It looked as if at times we were not reaching agreement—we weren't. But sometimes before you reach an agreement you have to be clearly in disagreement. Maybe that is where we were this week.

But we did finally start to break the deadlock and had a thaw on nominations. We had reached almost a record high of 90-something nominations pending on the calendar. But efforts were made to work through that. Senator DASCHLE and I had worked through it twice, only to be met with a different hold. But the White House worked out concerns with Senator MCCAIN and we started moving nominations, including, I think, some 15 last night. We are beginning to make a little progress on the judges.

We have some 204 nominations still pending in committees, but if everything goes according to normal practice around here, a lot of those nominations will be coming out next week and we will be moving them, hopefully, as fast as we can once we get them cleared.

We are doing some judges. It is difficult, but we are going to get action on one more circuit judge completed on Monday. We moved one other district judge last night and voted on that, I believe—this morning, actually. We are going to do two more, I believe Senator DASCHLE said. So we are beginning to thaw that issue, and that is good.

On the accounting reform, I want to emphasize once again we not only got an agreement on the conference, we got the conference done and sent to the President, and I believe that was a positive factor in beginning to restore confidence in our corporate world and accounting procedures.

The House is in the process, or has by now completed homeland security legislation. The Senate committee completed markup and we are ready to go forward. That was a very big achievement by the committee. Even though you disagree with some of what was done, they did get their work completed and they reported it to the Senate, and we did the legislative appropriations bill and we got an agreement to do the Department of Defense appropriations bill.

For our colleagues on my side of the aisle, they have been calling for this. In fact, we are going to get it done, we are going to call it up next Wednesday, and we will complete it if it takes 2 hours a day or 2 days, as Senator DASCHLE said. So those things we did, after a lot of work, seeing some agreement reached.

On prescription drugs, we don't have agreement. It is obvious we had concerns about the way it was brought to the floor and about some of the legislation that was offered. But efforts are still underway to see if we can find common ground. We will continue to try to do that.

There is pending an amendment on medical malpractice. That is an issue that is very important to a lot of people of my State. There has developed a real problem with tort reform and with doctors losing their insurance coverage or leaving the State because there is no limit on punitive damages. No matter how this turns out in this debate, this is a debate that we and the States of America are going to have to deal with in some way.

We will have an opportunity late Monday afternoon and Tuesday to see what can be done on prescription drugs. I know there are conversations going on today between Members of the Senate and House, Republican and Democrat, and also with the administration to see maybe what can be done there. Senator DASCHLE has indicated that he would begin action to get a vote on at least cloture on a motion to proceed on homeland security. I had hoped and he had hoped, and had stated, that we would do our best to get homeland security completed before the August recess. But there is a physical limit to what we can do in a limited period of time, especially if we have Senators who are going to exercise to their fullest their rights to have debate.

The trade conference report, I think the whole city was shocked this morning when they got up and found out that there had basically been an agreement on the trade conference report. As I look at it, it sounds as if they have done a good job. I would probably change parts of it, and so would Senator DASCHLE, but I do think they probably have made a very wise move. Instead of subjecting themselves to 6 weeks of pressures and counterpressures, they went ahead and addressed the issue and had the bill ready.

We are going to work together next week to take the early action necessary to get cloture on fast track and complete action on that bill. This is a very important bill for the economy of our country and for our ability to be involved in trade promotion and trade, fair trade and open trade, all over the world. We have kind of fallen behind in that area with some other countries.

The bankruptcy conference report finally worked out, too. I would like to see us even try to deal with that. If we cannot get that done next week, we will be ready to go to it shortly after we return.

I do want to say to Senator DASCHLE and to others, I am working to try—I discussed concerns about getting agreement to go ahead with the energy and water appropriations bill. If we could add that to our list next week, that would be very big. I don't find a lot of resistance to it, but we have had to clear it with some people who did have some potential amendments. There is one other concern related to that bill that I am trying to work through.

We have just given a litany of bills. It will not be easy to get all that done. We may not get it all done next week. But by working together and by asking our colleagues to cooperate with us, I think we can produce an awful lot of good legislation next week. I would like to be able to have a press conference next week as we go home and say: The Senate has done well. I haven't said that a lot lately, but I am prepared to do so when it is merited. I think there is a chance for that to occur next week. We could have a really important legislative achievement next week with a little extra work and a little extra input from all of our colleagues.

I thank Senator DASCHLE for working with us to move these nominations. There are a lot of people who try to view every bill, every nomination, as leverage on some other issue. At some point we have to stop that and move them forward in order to do what the American people expect us to do. I am going to be involved next week to try to help in every way I can.

Quite often, Senator DASCHLE and I get accused of being on both sides of the same issue, by many different forces. It amazes me sometimes what I am supposed to have done. In fact, I saw yesterday where somebody had put out that there was a Daschle-Lott agreement on prescription drugs. It came as a shock to Senator DASCHLE and me, but it was actually something in writing. Somebody downtown had a brilliant idea. Maybe we ought to look at it.

I am thankful for the comments of Senator DASCHLE, and I will work with him next week to do everything we can to produce a good result. I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I compliment the distinguished Republican leader for the spirit of his comments, and indicate that he is so correct. There are so many times when there are rumors and there are allegations of all kinds, sometimes positive and

sometimes negative, about things that he and I are doing, which is why I thought having a colloquy at the end of the week might be helpful.

With regard to the schedule, with regard to our intentions, let me be clear. It is my hope, based on the cooperative spirit that we both have attempted to articulate this afternoon, that we can get a lot done.

I have indicated to the President this week that it is my hope we can clear the calendar of all of the noncontroversial nominations, both judicial as well as executive appointments. That is what we will continue to try to chip away at. I don't see any reason why, at the end of the week, all noncontroversial nominations could not have been successfully addressed. We will do that.

I appreciate very much Senator LOTT's willingness to come to the floor to restate our intentions to try to achieve this ambitious agenda.

THE CALENDAR

Mr. DASCHLE. Mr. President, I have a number of matters to address prior to the time we adjourn for the day.

All of these matters have been reviewed by the distinguished Republican leader. He is here, and he is now in a position to express himself if he has any additional comments. But I will begin.

UNANIMOUS CONSENT AGREEMENT—THE EXECUTIVE CALENDAR

Mr. REID. Mr. President, as if in executive session, I ask unanimous consent that on Monday, July 29, immediately following the disposition of the nomination of Executive Calendar No. 810, the nomination of Julia Smith Gibbons, the Senate remain in executive session to consider the following nominations; that there be 2 minutes of debate equally divided and controlled in the usual form between the votes; that the votes following the first be 10 minutes in duration; that the Senate proceed to vote on confirmation of the nominations; that the President be immediately notified of the Senate's action; and that the Senate resume legislative session without further intervening action or debate: Executive Calendar No. 827, the nomination of Joy Flowers Conti, of Pennsylvania, to be U.S. District Judge for the Western District of Pennsylvania; Executive Calendar No. 828, John E. Jones, III, of Pennsylvania to be U.S. District Judge for the Middle District of Pennsylvania.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

JOHN F. KENNEDY CENTER PLAZA AUTHORIZATION ACT OF 2002

Mr. DASCHLE. Mr. President, I now ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 524, S. 2771.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2771) to amend the John F. Kennedy Center Plaza Authorization Act of 2002 to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD without any intervening action or debate.

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

The bill (S. 2771) was read the third time and passed, as follows:

S. 2771

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''John F. Kennedy Center Plaza Authorization Act of 2002''.

SEC. 2. JOHN F. KENNEDY CENTER PLAZA.

The John F. Kennedy Center Act (20 U.S.C. 76h et seq.) is amended—

(1) by redesignating sections 12 and 13 as sections 13 and 14, respectively; and

(2) by inserting after section 11 the following:

''SEC. 12. JOHN F. KENNEDY CENTER PLAZA.

''(a) DEFINITIONS.—In this section:

''(1) AIR RIGHT.—The term 'air right' means a real property interest conveyed by deed, lease, or permit for the use of space between streets and alleys within the boundaries of the Project.

''(2) CENTER.—The term 'Center' means the John F. Kennedy Center for the Performing Arts.

''(3) GREEN SPACE.—The term 'green space' means an area within the boundaries of the Project or affected by the Project that is covered by grass, trees, or other vegetation.

''(4) PLAZA.—The term 'Plaza' means improvements to the area surrounding the John F. Kennedy Center building that are—

''(A) carried out under the Project; and

''(B) comprised of—

''(i) transportation elements (including roadways, sidewalks, and bicycle lanes); and

''(ii) nontransportation elements (including landscaping, green space, open public space, and water, sewer, and utility connections).

''(5) PROJECT.—

''(A) IN GENERAL.—The term 'Project' means the Plaza project, as described in the TEA–21 report, providing for—

''(i) construction of the Plaza; and

''(ii) improved bicycle, pedestrian, and vehicular access to and around the Center.

''(B) INCLUSIONS.—The term 'Project'—

''(i) includes—

''(I) planning, design, engineering, and construction of the Plaza;

''(II) buildings to be constructed on the Plaza; and

''(III) related transportation improvements; and

''(ii) may include any other element of the Project identified in the TEA–21 report.

''(6) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

''(7) TEA–21 REPORT.—The term 'TEA–21 report' means the report of the Secretary submitted to Congress under section 1214 of the Transportation Equity Act for the 21st Century (20 U.S.C. 76j note; 112 Stat. 204).

''(b) RESPONSIBILITIES OF THE SECRETARY.—

''(1) IN GENERAL.—The Secretary shall be responsible for the Project and may carry out such activities as are necessary to construct the Project, other than buildings to be constructed on the Plaza, substantially as described in the TEA–21 report.

''(2) PLANNING, DESIGN, ENGINEERING, AND CONSTRUCTION.—The Secretary shall be responsible for the planning, design, engineering, and construction of the Project, other than buildings to be constructed on the Plaza.

''(3) AGREEMENTS WITH THE BOARD AND OTHER AGENCIES.—The Secretary shall enter into memoranda of agreement with the Board and any appropriate Federal or other governmental agency to facilitate the planning, design, engineering, and construction of the Project.

''(4) CONSULTATION WITH THE BOARD.—The Secretary shall consult with the Board to maximize efficiencies in planning and executing the Project, including the construction of any buildings on the Plaza.

''(5) CONTRACTS.—Subject to the approval of the Board, the Secretary may enter into contracts on behalf of the Center relating to the planning, design, engineering, and construction of the Project.

''(c) RESPONSIBILITIES OF THE BOARD.—

''(1) IN GENERAL.—The Board may carry out such activities as are necessary to construct buildings on the Plaza for the Project.

''(2) RECEIPT OF TRANSFERS OF AIR RIGHTS.—The Board may receive from the District of Columbia such transfers of air rights as are necessary for the planning, design, engineering, and construction of the Project.

''(3) CONSTRUCTION OF BUILDINGS.—The Board—

''(A) may construct, with nonappropriated funds, buildings on the Plaza for the Project; and

''(B) shall be responsible for the planning, design, engineering, and construction of the buildings.

''(4) ACKNOWLEDGMENT OF CONTRIBUTIONS.—

''(A) IN GENERAL.—The Board may acknowledge private contributions used in the construction of buildings on the Plaza for the Project in the interior of the buildings, but may not acknowledge private contributions on the exterior of the buildings.

''(B) APPLICABILITY OF OTHER REQUIREMENTS.—Any acknowledgement of private contributions under this paragraph shall be consistent with the requirements of section 4(b).

''(d) RESPONSIBILITIES OF THE DISTRICT OF COLUMBIA.—

''(1) MODIFICATION OF HIGHWAY SYSTEM.—Notwithstanding any State or local law, the Mayor of the District of Columbia, in consultation with the National Capital Planning Commission and the Secretary, shall have exclusive authority, as necessary to meet the requirements and needs of the Project, to amend or modify the permanent system of highways of the District of Columbia.

''(2) CONVEYANCES.—

''(A) AUTHORITY.—Notwithstanding any State or local law, the Mayor of the District of Columbia shall have exclusive authority, as necessary to meet the requirements and needs of the Project, to convey or dispose of any interests in real estate (including air rights and air space (as that term is defined by District of Columbia law)) owned or controlled by the District of Columbia.

''(B) CONVEYANCE TO THE BOARD.—Not later than 90 days after the date of receipt of notification from the Secretary of the requirements and needs of the Project, the Mayor of the District of Columbia shall convey or dispose of to the Board, without compensation, interests in real estate described in subparagraph (A).

''(3) AGREEMENTS WITH THE BOARD.—The Mayor of the District of Columbia shall have the authority to enter into memoranda of agreement with the Board and any Federal or other governmental agency to facilitate the planning, design, engineering, and construction of the Project.

''(e) OWNERSHIP.—

''(1) ROADWAYS AND SIDEWALKS.—Upon completion of the Project, responsibility for maintenance and oversight of roadways and sidewalks modified or improved for the Project shall remain with the owner of the affected roadways and sidewalks.

''(2) MAINTENANCE OF GREEN SPACES.—Subject to paragraph (3), upon completion of the Project, responsibility for maintenance and oversight of any green spaces modified or improved for the Project shall remain with the owner of the affected green spaces.

''(3) BUILDINGS AND GREEN SPACES ON THE PLAZA.—Upon completion of the Project, the Board shall own, operate, and maintain the buildings and green spaces established on the Plaza for the Project.

''(f) NATIONAL HIGHWAY BOUNDARIES.—

''(1) REALIGNMENT OF BOUNDARIES.—The Secretary may realign national highways related to proposed changes to the North and South Interchanges and the E Street approach recommended in the TEA–21 report in order to facilitate the flow of traffic in the vicinity of the Center.

''(2) ACCESS TO CENTER FROM I–66.—The Secretary may improve direct access and egress between Interstate Route 66 and the Center, including the garages of the Center.''.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 13 of the John F. Kennedy Center Act (as redesignated by section 2) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) JOHN F. KENNEDY CENTER PLAZA.—There is authorized to be appropriated to the Secretary of Transportation for capital costs incurred in the planning, design, engineering, and construction of the project authorized by section 12 (including roadway improvements related to the North and South Interchanges and construction of the John F. Kennedy Center Plaza, but not including construction of any buildings on the plaza) $400,000,000 for the period of fiscal years 2003 through 2010, to remain available until expended.''.

SEC. 4. CONFORMING AMENDMENTS.

(a) SELECTION OF CONTRACTORS.—Section 4(a)(2) of the John F. Kennedy Center Act (20 U.S.C 76j(a)(2)) is amended by striking subparagraph (D) and inserting the following:

''(D) SELECTION OF CONTRACTORS.—In carrying out the duties of the Board under this Act, the Board may—

''(i) negotiate, with selected contractors, any contract—

''(I) for planning, design, engineering, or construction of buildings to be erected on the John F. Kennedy Center Plaza under section 12 and for landscaping and other improvements to the Plaza; or

''(II) for an environmental system for, a protection system for, or a repair to, maintenance of, or restoration of the John F. Kennedy Center for the Performing Arts; and

''(ii) award the contract on the basis of contractor qualifications as well as price.''.

(b) ADMINISTRATION.—Section 6(d) of the John F. Kennedy Center Act (20 U.S.C. 76*l*(d)) is amended in the first sentence by striking ''section 12'' and inserting ''section 14''.

(c) DEFINITIONS.—Section 14 of the John F. Kennedy Center Act (as redesignated by section 2) is amended by adding at the end the following: ''Upon completion of the project for establishment of the John F. Kennedy Center Plaza authorized by section 12, the Board, in consultation with the Secretary of Transportation, shall amend the map that is on file and available for public inspection under the preceding sentence.''.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 852, 868, 869, 870, 871, 872, 873, 874, 875, 877, 878, 879, 880, 881, 882, and 883; that the nominations be confirmed, the motions to reconsider be laid upon the table; that any statements relating thereto be printed in the Record; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session, with the preceding all occurring without any intervening action or debate.

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

The nominations were considered and confirmed, as follows:

DEPARTMENT OF ENERGY

Guy F. Caruso, of Virginia, to be Administrator of the Energy Information Administration.

DEPARTMENT OF JUSTICE

Gregory Robert Miller, of Florida, to be United States Attorney for the Northern District of Florida for the term of four years.

Kevin Vincent Ryan, of California, to be United States Attorney for the Northern District of California, for the term of four years.

Randall Dean Anderson, of Utah, to be United States Marshall for the District of Utah for the term of four years. (Reappointment)

Ray Elmer Carnahan, of Arkansas, to be United States Marshall for the Eastern District of Arkansas for the term of four years.

David Scott Carpenter, of North Dakota, to be United States Marshall for the District of North Dakota for the term of four years.

Theresa A. Merrow, of Georgia, to be United States Marshall for the Middle District of Georgia for the term of four years.

Ruben Monzon, of Texas, to be United States Marshall for the Southern District of Texas for the term of four years.

James Michael Wahlrab, of Ohio, to be United States Marshall for the Southern District of Ohio for the term of four years.

DEPARTMENT OF LABOR

Kathleen P. Utgoff, of Virginia, to be Commissioner of Labor Statistics, United States Department of Labor for a term of four years.

W. Roy Grizzard, of Virginia, to be an Assistant Secretary of Labor.

NATIONAL COUNCIL ON DISABILITY

Lex Frieden, of Texas, to be a Member of the National Council On Disability for a term expiring September 17, 2004.

Young Woo Kang, of Indiana, to be a Member of the National Council On Disability for a term expiring September 17, 2003.

Kathleen Martinez, of California, to be a Member of the National Council On Disability for a term expiring September 17, 2003.

Carol Hughes Novak, of Georgia, to be a Member of the National Council On Disability for a term expiring September 17, 2004.

Patricia Pound, of Texas, to be a Member of the National Council On Disability for a term expiring September 17, 2002.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDERS FOR MONDAY, JULY 29, 2002

Mr. DASCHLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 4 p.m. on Monday, July 29; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 5:30 p.m., with Senators permitted to speak for up to 10 minutes each, with the time equally divided between the two leaders or their designees; and that at 5:30 p.m. the Senate proceed to executive session under the previous order.

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

PROGRAM

Mr. DASCHLE. Mr. President, the next rollcall vote will occur at approximately 5:30 p.m. on Monday, July 29, on the confirmation of Julia S. Gibbons to be U.S. Circuit Judge for the Sixth Circuit.

ADJOURNMENT UNTIL 4 P.M. MONDAY, JULY 29, 2002

Mr. DASCHLE. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 3:54 p.m., adjourned until Monday, July 29, 2002, at 4 p.m.

NOMINATIONS

Executive nominations received by the Senate July 26, 2002:

DEPARTMENT OF DEFENSE

OTIS WEBB BRAWLEY, JR., OF GEORGIA, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR A TERM EXPIRING JUNE 20, 2003, VICE WILLIAM D. SKELTON, TERM EXPIRED.

DEPARTMENT OF TRANSPORTATION

MARION C. BLAKEY, OF MISSISSIPPI, TO BE ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION FOR THE TERM OF FIVE YEARS, VICE JANE GARVEY, TERM EXPIRING.

UNITED STATES POSTAL SERVICE

JAMES C. MILLER III, OF VIRGINIA, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR THE

TERM EXPIRING DECEMBER 8, 2010, VICE EINAR V. DYHRKOPP, TERM EXPIRED.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 26, 2002:

DEPARTMENT OF ENERGY

GUY F. CARUSO, OF VIRGINIA, TO BE ADMINISTRATOR OF THE ENERGY INFORMATION ADMINISTRATION.

DEPARTMENT OF LABOR

KATHLEEN P. UTGOFF, OF VIRGINIA, TO BE COMMISSIONER OF LABOR STATISTICS, UNITED STATES DEPARTMENT OF LABOR FOR A TERM OF FOUR YEARS.

W. ROY GRIZZARD, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF LABOR.

NATIONAL COUNCIL ON DISABILITY

LEX FRIEDEN, OF TEXAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2004.

YOUNG WOO KANG, OF INDIANA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2003.

KATHLEEN MARTINEZ, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2003.

CAROL HUGHES NOVAK, OF GEORGIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2004.

PATRICIA POUND, OF TEXAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2002.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

CHRISTOPHER C. CONNER, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

DEPARTMENT OF JUSTICE

GREGORY ROBERT MILLER, OF FLORIDA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS.

KEVIN VINCENT RYAN, OF CALIFORNIA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF CALIFORNIA, FOR THE TERM OF FOUR YEARS.

RANDALL DEAN ANDERSON, OF UTAH, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF UTAH FOR THE TERM OF FOUR YEARS.

RAY ELMER CARNAHAN, OF ARKANSAS, TO BE UNITED STATES MARSHALL FOR THE EASTERN DISTRICT OF ARKANSAS FOR THE TERM OF FOUR YEARS.

DAVID SCOTT CARPENTER, OF NORTH DAKOTA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF NORTH DAKOTA FOR THE TERM OF FOUR YEARS.

THERESA A. MERROW, OF GEORGIA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF GEORGIA FOR THE TERM OF FOUR YEARS.

RUBEN MONZON, OF TEXAS, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF TEXAS FOR THE TERM OF FOUR YEARS.

JAMES MICHAEL WAHLRAB, OF OHIO, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF OHIO FOR THE TERM OF FOUR YEARS.