

under sections 401–408 should be construed as covering GAO and the Library and their employees where violations of sections 204–206 are alleged, and are requested to present the legal rationales that may bear on this inquiry. Commenters should address:

The relationship, if any, between the substantive requirements and remedies granted in part A of Title II and the procedures established in Title IV of the CAA.

The definitions and usage of the defined terms “covered employees” and “employing office” in various portions of the Act.

Whether the statute can be read to provide substantive rights and remedies but not procedures.

The provision in section 415 of the CAA prohibiting the use of the Office’s awards-and-settlements account for awards and settlements involving GAO and the Library.

The effect that section 225(d) of the CAA should have in determining this issue.

The canons of construction requiring that statutes in derogation of sovereign immunity must be construed strictly in favor of the sovereign and that a statutory construction which raises constitutional questions such as separation-of-powers may be adopted only if clearly required by the statutory text.

2. *Notwithstanding whether the procedures established under the CAA apply, are other procedures, whether internal or external to GAO and the Library, available for considering alleged violations of sections 204–206 and for imposing the remedies available under those sections?*

In considering the *Section 230 Study*, The Board received information from GAO and the Library and their employees indicating that a variety of internal and external venues are available for consideration of employee allegations of violations of workplace rights and protections. Commenters are invited to provide their views on the extent to which procedures other than those established by the CAA are available to GAO and the Library and their employees where a violation of sections 204–206 is alleged and the monetary and equitable remedies specified in those sections are sought. Furthermore, insofar as existing procedures may not comprehensively cover any dispute or provide any remedy afforded under the CAA, do GAO, the Library, and other employing offices have the authority to craft new procedures and, through such procedures, to grant whatever monetary and non-monetary remedies the CAA provides?

In responding to this inquiry, commenters are also asked to consider the implications of several provisions in the CAA. Do the following provisions limit the availability to GAO and the Library and their employees of the administrative, judicial, and negotiated procedures and might otherwise be available to them where violations of sections 204–206 are alleged and remedies granted under those sections are sought:

Section 225(d) and (e) and 401 contain provisions specifying, in general terms, what procedures must be used to consider a CAA violation and to seek a CAA remedy.

Sections 409 and 410 allow judicial review of CAA regulations and of CAA compliance only pursuant to the procedures of section 407, which provides for judicial review of Board decisions, and section 408, which provides a private right of action.

Commenters are also requested to be clear as to whether procedures available outside of the CAA cover claims by applicants for employment, former employees, and temporary and intermittent employees, and whether these procedures cover allegations by GAO or Library employees that their rights granted under the CAA were violated by

other employing offices and allegations by employees of other employing offices that their CAA rights were violated by GAO or the Library.

3. *Does section 207 of the CAA cover GAO and the Library and their employees with respect to sections 204–206 and 215? If not, do other laws, regulations, and procedures covering GAO and the Library and their employees afford similar protection against intimidation and reprisal for exercising CAA rights?*

The NPRM proposed to amend the Procedural Rules to cover GAO and the Library and their employees with respect to “any allegation of intimidation or reprisal prohibited under section 207 of the Act.” While the Library did not object to this proposal, section 207 does not expressly cover GAO and the Library and their employees. Comment is therefore invited on whether the prohibition against intimidation and reprisal established by section 207 should be construed as covering GAO and the Library and their employees.

If section 207 is construed not to apply, would other laws and regulations covering GAO and the Library and their employees afford protection against intimidation and reprisal for exercising rights under the CAA? Would these laws and regulations afford the same substantive rights and remedies as section 207? What procedures would be available to consider violations and to impose such remedies? Commenters are requested to be clear as to whether such laws, regulations, and procedures outside of the CAA cover applicants for employment, former employees, and temporary and intermittent employees, and whether these laws, regulations, and procedures cover allegations that GAO or the Library intimidated or took reprisal against employees of other employing offices and allegations that other employing offices intimidated or took reprisal against GAO or Library employees for exercising rights granted under the CAA.

No decision will be made as to whether the Procedural Rules will be amended to cover GAO and the Library and their employees for purposes of alleged violations of sections 204–207 until after the comments requested in this Notice have been received and considered. During this interim period, the office will accept requests for counseling under section 402, requests for mediation under section 403, and complaints under section 405 filed by GAO or Library employees and/or alleging violations by GAO or the Library where violations of sections 204–207 of the CAA are alleged. Any objections to jurisdiction may be made to the hearing officer or the Board under sections 405–406 or to the court during proceedings under sections 407–408. The Office will counsel any employees who initiate such proceedings that a question has been raised as to the Office’s jurisdiction and that the employees may wish to preserve their rights under any other available procedural avenues.

Signed at Washington, D.C., on this 26th day of January, 1998.

RICKY SILBERMAN,  
*Executive Director, Office of Compliance.*

#### THE VERY BAD DEBT BOXSCORE

Mr. HELMS, Mr. President, at the close of business yesterday, Tuesday, January 27, 1998, the Federal debt stood at \$5,490,127,380,051.53 (Five trillion, four hundred ninety billion, one hundred twenty-seven million, three hundred eighty thousand, fifty-one dollars and fifty-three cents).

One year ago, January 27, 1997, the Federal debt stood at \$5,312,990,000,000

(Five trillion, three hundred twelve billion, nine hundred ninety million).

Five years ago, January 27, 1993, the Federal debt stood at \$4,174,096,000,000 (Four trillion, one hundred seventy-four billion, ninety-six million).

Ten years ago, January 27, 1988, the Federal debt stood at \$2,448,164,000,000 (Two trillion, four hundred forty-eight billion, one hundred sixty-four million).

Fifteen years ago, January 27, 1983, the Federal debt stood at \$1,196,387,000,000 (One trillion, one hundred ninety-six billion, three hundred eighty-seven million) which reflects a debt increase of more than \$4 trillion—\$4,293,740,380,051.53 (Four trillion, two hundred ninety-three billion, seven hundred forty million, three hundred eighty thousand, fifty-one dollars and fifty-three cents) during the past 15 years.

#### CLIMATE-RELATED CHANGES

Mr. GRAMM, Mr. President, with the administration expected to seek eventual Senate approval of the recent Kyoto Protocols on “global warming,” I would like to enter into the RECORD an excellent article on the subject by the noted author and historian T.R. Fehrenbach. It is a timely reminder of the many climate-related changes our planet has experienced and places the current debate in much needed historical context. I commend this article to my Senate colleagues and ask unanimous consent that it be printed in the RECORD.

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

[From the San Antonio Express-News, Jan. 4, 1998]

#### WHO’S REALLY FULL OF HOT AIR?

The most cursory study of geology, archaeology and history shows that Earth has undergone vast climatic changes throughout its existence. The oil and gas under Texas soil come from natural decay when this land was a hot, fetid, fern-filled swamp. Later Texas was covered by sea, emerging again as geological “new land.”

When the first human beings arrived, it was much cooler and wetter than today, supporting very different life forms from those Indians hunted in historic times.

Archaeology shows that Saudi Arabia was once a well-watered, populated plain, while Greece and Italy were heavily forested. Yes, people cut down those trees, some to make the ships that Helen launched, but man had nothing to do with the enormous climatic changes around the Mediterranean during our own geologic age, the decaying Pleistocene.

The world has grown steadily warmer and drier, the reason Spanish forests, once cut, never resprouted. Conversely, today in Alaska cut-over forests regrow within a few years without replanting.

The evidence of repeated glaciations—they seem to come about every 20,000 solar years—lies all over North America, the most obvious being our Great Lakes. During these repeated Ice Ages, Earth’s water supply being constant, the oceans shrink, falling as much as 200 feet. The first Americans got here across a land bridge now sunk beneath

the Bering Sea. But as glaciation recedes the seas rise, which they have been doing for thousands of years.

In recorded history, we can trace a warming trend interspersed with "little Ice Ages" or irregular cold periods within the cycle. The Rhine and Danube froze over in late Roman times; wine-growing in those regions was impossible. With warming, olive orchards grew in France, only to be destroyed by horrendous cold in the late 16th and early 17th centuries, the same change that killed off Norse settlers in Greenland.

Climatology, a still-rudimentary science, attributes these cycles to sunspots, changes in the sun's energy output, or to slight tilts in the Earth's axis. A wobble can make a difference of a degree or two in average temperature, and that much difference can make seas recede or flood and huge areas unfit for agriculture.

Then there's El Niño, killing off marine life and raising hob on both sides of the Pacific Rim. It was around for thousands of years before the media discovered it.

Archeologists believe El Niños in A.D. 546 and 576 destroyed an early Indian civilization in Peru with floods, soil erosion and destruction of irrigation systems, followed by a 32-year-long drought.

And, of course, there's vulcanism, very active in our age. The bubbling up of Earth's molten core causes volcanic eruptions, earthquakes, and vanishing islands. Everybody knows about Pompeii; few know about the many thousands killed in this century, or the eruption of a Pacific crater that, by smoke and dust hurled into the atmosphere, caused crop failures across America in the early 1800s.

And, friends, the tectonic plates, which once separated continents, are still shifting ever so slightly. One day California may join Japan, if it doesn't join Atlantis first.

Climatic disasters occurred before man, and most have happened when there weren't enough wood-burning people around to create atmospheric pollution or much other kind. This is why I suspect the recent Kyoto Protocols on global warming (though it exists and governments should study it) are an exercise in human arrogance.

The Kyoto pontificators were mostly politicians, social scientists (which the media accept as "scientists") and bureaucrats, while climatologists, weathermen, and true "hard" scientists remain divided as to the causes of global warming and whether it's good or bad. They agree, meanwhile, that nothing disastrous in any case will happen for 100 years, when we may be in a new Ice Age.

Listening to the rhetoric makes me wonder if we've advanced all that far from the days of the Aztecs, when priest-rulers ordered sacrifices to propitiate nature, in their case tossing virgins down wells to bring rain and cardiectomies to make the sun rise. We understand the forces of nature better—but we have no more control over them than ancient peoples praying to the moon.

Without more proof—of the scientific, not the ideological kind—I'm not prepared to sacrifice my Grand Cherokee to the current shamans' gods.

#### MEDICARE, FREEDOM, AND PRIVATE CONTRACTS

Mr. GRAMM. Mr. President, one of the most important pieces of legislation that will be considered by the Senate this year is Senator JON KYL's bill, S. 1194, the "Medicare Beneficiary Freedom to Contract Act". I am proud to be an original co-sponsor of this bill.

Enactment of this legislation will insure that our senior citizens who participate in the Medicare program will retain the right to pay for the treatment or services they want from the doctor of their choice.

The Clinton administration has sought to restrict such a fundamental freedom but I do not believe that the American people will support that position once we have had a chance to bring the matter to their attention.

Mr. Kent Masterson Brown, writing in the Washington Times on January 25, 1998 has provided a succinct analysis of this issue and I commend his article to my colleagues. I ask unanimous consent that the article be printed in the RECORD.

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

#### MEDICARE'S ASSAULT AGAINST THE ELDERLY

Throughout my 23-year career as a litigator of constitutional issues, principally in the health care arena, I have witnessed the growth of Medicare with a sense of alarm.

From what was designed by Congress to be a "voluntary" health benefits program for the elderly, it has mutated into a bureaucratic leviathan that controls who provides health care services, and how those health care services are delivered—despite absolutely explicit, statutory guarantees to the contrary. We now have a federal agency—the Health Care Financing Administration (HCFA)—involved in a relentless effort to totally control the delivery of health care to the elderly by deciding, without legal authority, what services a physician will provide even though Medicare will not pay for them. Those controls now manifest themselves in the denial of basic health care services to the elderly, as well as denying the elderly access to the most innovative and cost-effective health care technologies.

HCFA has exercised its power to control the delivery of health care by steadily ratcheting down payment for health care services, and, at the same time, stepping up its threats against providers who deliver health care services which HCFA, for purely fiscal reasons, deems "unnecessary" even though those services might be life-saving and even though the federal government does not pay for them. Recent changes in law which we are challenging in court, will make the situation even worse.

To understand what is taking place, we need to start with the basic Medicare law. Nowhere in the Medicare Act is a beneficiary required to file a claim for payment for health care services each and every time he or she sees a physician. Yet, those in charge of HCFA threaten physicians with severe sanctions "even criminal prosecution" if they do not file such claims. Why make such a demand, which only adds to costs? If a car insurance company made such demands on its policyholders everytime a door was dinged it would go bankrupt.

In 1992, I had to file a lawsuit in federal court in Newark, N.J., in order to allow five patients to contract privately with their personal physician. All those patients wanted was the opportunity to see their physician in the nursing home more than once a month and to protect the privacy of their medical records, nothing more. The federal government, however, threatened the physician with sanctions if she complied with the patients' wishes and did not file a claim. HCFA entered the courtroom declaring that the physician could not contract privately with

her Medicare patients because she is required to file a claim with Medicare each and every time she sees her Medicare patients. If those patients wanted to pay privately, HCFA declared, they could write a check to the federal government.

The federal court disagreed with HCFA in *Stewart vs. Sullivan*. The court found there were no statutory prohibitions against private contracting for Medicare beneficiaries and that HCFA had developed no "clearly articulated" policies against it. The threats were just that: threats. They were made without any statutory or even regulatory authority.

Last summer, all this sparring took a drastic turn for the worse. Congress, under pressure and threats from the Clinton administration, enacted Section 4507 of the Balanced Budget Act of 1997. This provision makes it unlawful for a physician to contract privately with a Medicare-eligible patient unless the physician agrees, in writing, not to bill Medicare for any services delivered to any Medicare patient for two years.

The practical consequences of Section 4507 "which amounts to a de facto ban on private contracting" are not difficult to foresee. We know, for example, more than 96 percent of the nation's physicians see Medicare patients. We know the vast majority of these physicians will not abandon all their current Medicare patients in return for entering into private contracts with a few. And we know many of the less than 4 percent of physicians not directly affected by the de facto ban already, for one reason or another, have been excluded from the Medicare program. Thus, no senior citizen will be able to contract privately for any meaningful health care services even if he or she could find a physician who was willing.

Seniors are thus left with a "take it or leave it" system that denies and rations health care. They will get only those services the federal government says they should get. Nothing more can be provided—even if they wish to pay for it themselves.

What does this mean in real life terms? The answer is simple. For everyday, inexpensive screening and diagnostic laboratory services, our seniors will receive one, unless there is an "approved" diagnosis accompanying a claim for payment filed with HCFA. Because all laboratory services claims must be filed on an "assignment" basis, if HCFA will not pay, the services will not be provided unless the physician pays for them and exposes himself/herself to severe sanctions.

Thus, the elderly will be denied asymptomatic prostate-specific antigen (PSA) tests to detect prostate cancer, asymptomatic serum glucose tests to detect diabetes, and thyroid tests to detect hypothyroidism and hyperthyroidism, to name a few.

What is alarming is that senior citizens, more than most, need to have such tests available because as a group they are the most vulnerable to a variety of life-threatening diseases. To detect these diseases (all of which have long asymptomatic periods) early is to control or to cure them. That saves lives and money. If HCFA get its way, seniors will only get those important diagnostic tests after the symptoms have appeared—either too late for much help, or when intervention becomes expensive. That is how the federal government has determined to control health care for what it calls our "frail elderly."

This is Medicare's brave new world. It is a world that offers the minimum at best. It allows for no decision-making on the part of the Medicare beneficiary.

It is incredible that in this country—supposedly the freest on Earth—the government prohibits a senior citizen from paying for his