

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

or her own health care. Even in the British National Health Service, a citizen can privately contract. But not here.

If the U.S. Constitution protects a pregnant teen-ager when she seeks an abortion, even one so young the law considers her lacking the capacity to vote, it must protect senior citizens who seek only to receive the health care they want and for which they are willing to personally pay. If the Constitution protects the medical records of those with deadly diseases about which we know very little, it surely protects the medical records of seniors who seek privacy. If the Constitution protects citizens against discrimination, it surely protects seniors from being singled out and denied the opportunity to make decisions regarding their personal health just because they are 65 years of age or older.

On Dec. 30, the members of the United Seniors Association, including Tony Parsons, Peggy Sanborn, Ray Perry and Margaret Perry filed a lawsuit in federal court asking that Section 4507 of the Balanced Budget Act of 1997 be declared unconstitutional as violative of Article I, Section 8, of the Constitution and the First, Fourth, Fifth, Ninth, 10th and 14th Amendments of the Constitution. They have asked the court for an injunction to stop the Clinton administration from enforcing Section 4507, and to block any attempts to interfere in the private contracting of America's elderly.

Until this unconstitutional provision is eradicated by Congress, the freedom and safety of America's senior citizens will be severely jeopardized.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

Mr. COVERDELL. Madam President, parliamentary inquiry: It is my understanding that for the next hour and a half the control of the time is under the direction of the Senator from Georgia or others he may designate.

The PRESIDING OFFICER. The Senator is correct. Under the previous order, the Senator from Georgia or his designee is recognized for 90 minutes.

Mr. COVERDELL. Thank you, Madam President.

#### STATE OF THE UNION RESPONSE

Mr. COVERDELL. Madam President, last night President Clinton delivered some good news and some bad news for those who, like me, want to address the crisis in American education. And Madam President, that crisis exists in grades kindergarten through high school. I repeat, kindergarten through high school. The good news is that President Clinton has finally joined the Republicans in recognizing that we must address this crisis.

It is bad enough that our Nation's schoolchildren have to run a gauntlet of drugs and violence just to sit in class, but when they get to the classroom they are not learning the basics.

Just recently, a study published in Education Week showed that only 4 in 10 urban school students could master basic math and reading skills. Four in 10. It does not get much better when we move to the suburban schools. There it is only 6 in 10 who can master these basic skills when tested.

Madam President, we are failing our students, and we clearly are not preparing America for the new century that the President spoke of last evening. Republicans first attacked this problem with a comprehensive proposal over 1 year ago, S. 1, that addressed how to help children in unsafe schools, how to increase literacy, and how to give new authority to parents and communities to improve their local schools.

Regrettably, although we were able to reach common ground on making college more accessible and affordable, President Clinton fought real education reform for the kindergarten through high school grades every step of the way.

Most notably and unforgettably, he threatened to veto the entire tax relief bill last year unless we dropped one single provision, one that provided education savings accounts to parents for use for their child's specific educational needs.

Madam President, if there was ever a proposal that was win-win in this city, the education savings account was it. The President said he would veto the entire tax relief proposal if that remained. The bad news in President Clinton's speech last night is that he still does not understand what needs to occur and where it needs to occur for grades kindergarten through high school. President Clinton last night repeated his belief that politics should stop at the schoolhouse door. I agree. I do not know anybody who does not agree. President Clinton should get out of the schoolhouse doorway and allow real education and reform to help the kids inside those schools.

What we saw last night was education proposals that ignored giving parents and local communities real power and real choices; ignored real reform in favor of business as usual—we call it the status quo around here—spending increases, and paying for all these new programs with money the Government does not even have and may not ever have. I repeat, paying for all these new programs in the State of the Union with money the Government does not have and may never have.

We have a better way. It is called BOOKS, the Better Opportunities for Our Kids and Schools Act.

Madam President, BOOKS has several very powerful provisions that do exactly what I just alluded to—give new authority and choice to parents, give new authority and choice to States and local school districts that move decisionmaking capability to the people on the frontline and away from the Washington bureaucrat who could not associate a single face with a single name.

Title I. A-plus accounts, education savings accounts. Parents can contribute \$2,500 a year for a child's K through 12 education—public, private, religious or home schools. Everybody wins no matter where their children are in school. I might add that if they chose, they could keep those savings accounts on through higher education as well.

Dollars could be used for a home computer, the tutor that is needed for a math deficiency, tuition or the expenses of home schooling; 75 percent of these massive new resources would be used by those in public schools. They would be a major winner. And 70 percent of the people taking advantage of the savings account earn less than \$75,000 per year. The Joint Tax Committee is the source of this estimate. The cost would be \$2.6 billion over the next 5 years. Basically, what we are saying is that we are going to leave \$2.6 billion in the checking accounts of parents trying to help their children.

Title II. Dollars to the classroom. Dollars to the classroom would block grant about \$3 billion to States and continue to send \$7 billion in title I, part A funds to the States with only one requirement—that 95 percent of those Federal dollars go to the classroom to where the kids are, not where the bureaucracy offices are. So the money to the disadvantaged children stays the same with the exception we want it in the classroom, and we free \$3 billion a year so that those local school districts can do what they need to do. Do they need to hire teachers? Then they hire the teachers. Do they need to build schools? Then they build schools. Whatever it is they need—not what we envision they may need—could be done through dollars to the classroom. Bureaucracy eats up scarce dollars as State and local governments comply with Washington's strings. This is not new. It has become endemic in our Government.

Even in title I, the moneys that go to the disadvantaged, 99 percent reaches the school district but 4 to 13 percent is eaten up by administrative costs—4 to 13 percent. That is big dollars. The \$3 billion block grant could pay for as many as 50,000 teachers a year and 1 million new computers every year or it could pay for building up to 500 elementary schools. The key point here it is their choice—their choice.

Title III. Opportunity and safety for low-income children. This is a 5-year pilot choice program at 20 to 30 sites to allow low-income children to attend a safe school through a choice system. We would invest \$75 million for 1 year on this project.

I do want to point out, Madam President, that this is voluntary. This is not imposed on anyone. In fact, with the exception of requiring that Federal dollars go to the classroom at the 95 percent level, there is nothing in the BOOKS Act that is mandatory. It defines, under this title, low income as 185 percent of the poverty line. Unsafe schools are those with high crime