me recently and say, they are going to have to leave San Diego and California because they cannot live with this uncertainty.

So we have the power. The power is there. By the way, when we asked them why they produce, and they had talked to one of the people working there, and they revealed the logs and they said, they just turned it off. First they told me, well, we turned it off because there was environmental problems, restrictions, and we went to the air quality board and the board said, there is no lie, there is no restrictions. They said there were mechanical problems, but the mechanics there said there were none. Then they said the system operator in the State did not ask them; it turned out that they did.

So we have this incredible situation.

Mr. SHERMAN. Mr. Speaker, a stage-3 alert is a desperate situation where we are asking everybody to conserve and preserve.

Mr. FILNER. And, the blackouts occurred at a time when our capacity for production theoretically is 45,000 megawatts, the demand in the winter time when air-conditioning is not on is about 30,000, so we have a 30,000 megawatt shortage. We have a 45,000 megawatt capacity. Economics 101 says there ought to be sufficient supply at a reasonable price. We had blackouts, and we had blackouts because of the situation that the gentleman described earlier.

I wonder if the gentleman might share with us also the experience of those with public power; that is, there are 3,000 communities around this country that have public power. The City of Los Angeles, which the gentleman knows very well, produces its own power and distributes it. The City of Sacramento I think has its own power supply. Those cities and those municipalities, those areas that have public power are not under the control, for the most part, of this energy cartel.

Mr. SHERMAN. Mr. Speaker, it works just fine. In the City of Los Angeles, and I live within the city limits, the prices are the same, no blackouts; we have no problems. Our city produces a little bit more electricity than it needs and sells it to the gentleman’s city and others in the west. Occasionally, somebody will say, maybe L.A. is charging San Diego too much or too little, and somebody will write a story about it on page 6 of the newspaper. But the overwhelming story, the headline story is, no story here.

Mr. Speaker, regulated electricity, that is to say privately owned but subject to rate regulation, cost plus profit, worked fine in our State and virtually every other State for 80 to 100 years. Something even more regulated, that is to say the government actually owning the means of production and selling the electricity itself, works fine in San Francisco, the City of Los Angeles, the City of Burbank.

Unregulated power seems to work well in some of the States where their economy is not growing at all and their population relative to the rest of the country is contracting. But in a State like ours that is growing a bit, surrounded by other States that are also experiencing growth, an unregulated market is not going to be gorged. The theorists may not have realized that at the time. It seems apparent now. When we try something and it does not work, we should go back to what we had before that was working pretty well.

Mr. Speaker, the Federal Government will not let us. We get lectures from the White House, lectures about how, if only we had elected Republicans, this would not have happened. But we are having a hard time hearing the lecture, because we are bound and gagged by Federal law that will not allow us to go back to the same system that worked so well for us.

Mr. FILNER. Mr. Speaker, if I can sum up from my perspective and then give the gentleman a similar change, California is being bled dry by a cartel of energy wholesalers. We are being charged at a rate of $3 billion a month, and the State is purchasing that because the utilities are bankrupt. Our first concern is to keep those plants going.

We have legislation which virtually all of the Democrats and some Republicans from the States of California, Washington, and Oregon are supporting, which establishes rates for the municipalities for its own electric distribution system.
People stood up, applauded, and clapped for the sentiment that Ms. Hunt was expressing about her HMO.

In fact, we know the sentiment is widespread when we start to see humor, even if it is black humor. Here we have an HMO bean counter next to us. We have the HMO bean counter next to him. The doctor says, ‘scalpel.’ The HMO bean counter says ‘pocket knife.’ The doctor says ‘suture.’ The HMO bean counter says ‘bandaid.’

"Do you know what? That joke may be funny to some, but it is not funny to this family, this little girl and boy and the father. Because the HMO did not inform their mom that they were putting screws on one of the health centers not to provide her necessary medication. This case ended up being covered on the front cover of one of the national news magazines as an example of HMO abuse.

Now, this is really black humor. Here we have an HMO receptionist saying, ‘Cuddly Care HMO. How can I help you? You are at the emergency room and your husband needs an approval for treatment? Oh, he is gasping, writhing, eyes rolled back in his head? Doesn’t sound that serious to me. Clutching at his throat? Turning purple? Uh-huh.”

Then the reviewer says, “Well, have you heard about an inhaler?” Then the next one is ‘He is dead?” And the next one says, “Well, then he certainly needs inhaler.” And finally, the reviewer looks at us and says, “People are always trying to rip us off.”

How about the case where this young woman fell 40 feet off a cliff about 70 miles from Washington, D.C. She had to be evacuated to an emergency room and intensive care. She had a broken pelvis, a fractured skull, a broken arm. Her HMO would not pay her bill. She had not phoned ahead for prior authorization. I guess she was supposed to know she was going to fall off a cliff. Gee, it would be just like that prior cartoon, the HMO saying, ‘Those patients, they are always trying to rip us off.”

Speaking about emergency care, this little boy, when he was 6 months old and needed emergency care in the middle of the night, he had a temperature of about 105, 104, 105, mom phoned the 1-800 number and was told to take him to one specific hospital, the only one the HMO contracted with. Mom said, “Where is it?” The answer on the telephone, “I don’t know. Find a map.” It turned out it was 70 miles away. “But we are only going to authorize that one hospital.”

So they passed several other hospitals, not knowing how sick their little boy is. He has a cardiac arrest. En route, they are lucky, they manage to keep him alive. His mom leaps out of the car carrying the little baby. When they finally got to the emergency room, they put an IV in. They save his life, but they do not save all of this little baby, because he ends up with gangrene of both hands and both feet, which have to be amputated, because that is what the surgeons in this country that do these kinds of surgery in the last 2 years have had cases denied like this because this is, according to the HMO, a cosmetic condition.

How did we get to this sorry state? We got to this because 25 years ago, Congress passed a law called the Employee Retirement Income Security Act, which was primarily a pension law meant to be for the benefit of the employee. But somehow or other, health plans got included in this, and along came managed care, which was much more intrusive, and all of a sudden we now have a situation where, under emergency care, health plans do not have to follow any State regulations.

Furthermore, they are not liable or responsible for any of their decisions. Think about this. As far as I know, there is only one group of people or an institution in this country that is free of responsibility for its decisions, that is foreign diplomats, except for the HMOs and employer health plans. That little boy who lost both hands and his feet, under Federal law that plan is responsible for nothing except the cost of his amputations.

That, unfortunately, has led employer health plans to cut corners. Not all of them. Some plans try to do the right thing. But some plans have definitely cut corners in order to save money, in order to satisfy their stockholders.

That has resulted in unfair processes and unfair denials. And, furthermore, under this Federal law, it basically says that a health plan can define medical necessity in any way they want to. They can say in their contract that we define medical necessity as the cheapest, least expensive care. That means, for instance, that the little child that had the cleft lip that I just showed my colleagues would not be able to get that. The HMO could deny a surgical correction which is standard of care. Maybe we would just put a piece of plastic in the roof of his mouth, because after all that would be the cheapest least expensive care.

Mr. Speaker, that is the way it works under this Federal law, which took the oversight from States where it had resided for 200-plus years in this country.

I think that is unconstitutional. I think that is an abridgement of the 10th amendment, but it is incumbent on Congress to fix that. Because it was congressional action that created this problem 25 years ago.

Now, I am not the only one who thinks this. The Federal judiciary
thinks this, too. In fact, Judge Pickering, the father of one of our colleagues here in the House, told me that he thinks we need to fix this. He has come up against cases like this. Here we have a statement from Judge Arbis in Pomero v. John Hopkins. He says the problem of exhaustion and utilization review now in effect in most health care programs may warrant a reevaluation of ERISA by Congress so that its central purpose of protecting employees may be reconfirmed.

Another judge, Judge Gorton, in Turner v. Fallon says even more disturbing to this court is the failure of Congress to amend a statute that, due to the changing realities of the modern health care system, has gone conspicuously awry from its original intent.

We are talking about ERISA. We are talking about messages coming to us from the Federal bench.

Judge Bennett says in Prudential Insurance v. National Park Medical Center, if Congress wants the American citizens to have access to adequate health care, then Congress must accept its responsibility to define the scope of ERISA preemption and to enact legislation that will ensure every patient has access to that care.

The Supreme Court has looked at this and the Federal courts are working their way towards this goal case by case modifying this ERISA law, because they are seeing gross inequities, but it is a slow process.

Mr. Speaker, what are the courts doing? They are remanding these medical judgment cases back to the States.

The Supreme Court in Pegram v. Herdrich said decisions involving benefits stay in ERISA, but decisions involving medical judgment should go to the States where they have traditionally resided, where we have 200 years of case law. That is what they should be doing. That is what is in the Ganske-Dingell Bipartisan Patient Protection Act.

Just last year, the Judicial Conference of the United States stated “personal injury claims arising from the provision or denial of medical treatment have historically been governed by State tort law and suits on such claims have traditionally and satisfactorily been resolved primarily in the State system.”

The State courts have significant experience in personal injury claims and would be an appropriate forum to consider personal injury actions pertaining to health care treatment. Federal courts cannot handle this. They already have a huge number of judicial vacancies under Federal law.

They are obligated to give priority to criminal cases, Criminal case filings go up every year. You could not get a speedy resolution to these types of decisions, especially if we are coupling this with a review system.

I say to my colleagues, we are going to have this debate soon. The gentleman from Georgia (Mr. NORWOOD), the gentleman from Michigan (Mr. DINGLE), I, and others, we have modified the provisions of our bill, the Ganske-Dingell Bipartisan Patient Protection Act of 2001.

Let us pass this finally and let us do something for all of our constituents, all of them have experience with this through either a friend, a family member, a fellow worker. Eighty-five percent of the country has indicated that they think that Congress should pass a law to protect patients from HMO abuses.

Let us get this done finally, and let us put it on the President’s desk. Our bill satisfies the President’s principles. It is modeled after Texas law, and it would be a great victory for our constituents and the people who get their health care from their employers.

By unanimous consent, leave of absence was granted to:

Mr. VISCOSKY (at the request of Mr. GEPHARDT) for today on account of attending a friend’s funeral.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(For the following Members (at the request of Mr. GREEN of Texas) to revise and extend their remarks and include extraneous material):

Mr. LITFISKI, for 5 minutes, today.
Mr. SHERMAN, for 5 minutes, today.
Mr. DEFAZIO, for 5 minutes, today.
Mr. ENGEL, for 5 minutes, today.
Mr. RUSI, for 5 minutes, today.
Mr. UNDERWOOD, for 5 minutes, today.
Mr. KIND, for 5 minutes, today.
Mr. HONDA, for 5 minutes, today.
Mr. GREEN of Texas, for 5 minutes, today.
Mr. NORTON, for 5 minutes, today.
Mr. WICKER, for 5 minutes, today.

(For the following Members (at the request of Mr. WICKER) to revise and extend their remarks and include extraneous material):

Mr. SCHAFER, for 5 minutes, today and May 24.
Mr. HORN, for 5 minutes, May 24.