SENATE—*Tuesday, March 6, 2001*

The Senate met at 10 a.m. and was called to order by the Honorable CONRAD R. BURNS, a Senator from the State of Montana.

PRAYER

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

O God, who in the work of creation commanded light to shine out of darkness, shine in our minds. You have given us the gift of intellect to think things through in the light of Your guidance. Dispel the darkness of doubt and the petulance of prejudice so that we may know what righteousness and justice demand. We pray with Soren Kierkegaard: Give us weak eyes for things which are of no account and clear eyes for all Your truth.

Bless the Senators today as they seek Your truth in the issues before them. Place in their minds clear discernment of what is Your will for our beloved Nation. May they constantly pray with the Psalmist: Lead me, O Lord, in Your righteousness, make Your way straight before my face. Help them to look ahead to every detail of the day and picture You guiding their steps, shaping their attitudes, inspiring their thoughts, and enabling dynamic leadership. May the vision of You guiding them be equaled by the momentary power You provide. Give us wisdom to perceive You, diligence to seek You, patience to wait for You, hearts to receive You, and the opportunity to serve You.

We ask Your continued care and healing for our Vice President, DICK CHENEY. Now we commit this day and all of its opportunities and responsibilities to You. Through our Lord and our Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TIM HUTCHINSON, a Senator from the State of Arkansas, 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. THURMOND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 6, 2001.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CONRAD R. BURNS, a Senator from the State of Montana, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. BURNS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader, the Senator from Mississippi.

SCHEDULE

Mr. LOTT. Mr. President, today the Senate will consider Senate Joint Resolution 6, the ergonomics disapproval resolution. Under the provisions of the Congressional Review Act, there will be up to 10 hours of debate. A vote on the resolution is expected this evening or possibly during tomorrow morning's session. As a reminder, the Senate will recess from 12:30 p.m. to 2:15 p.m. for the weekly party conference meetings. At the completion of the disapproval resolution, the Senate will resume consideration of the Bankruptcy Reform Act.

I thank my colleagues for their attention and cooperation in this matter.

RESERVATION OF LEADER TIME

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

MOTION TO PROCEED—S.J. RES. 6

Mr. LOTT. Pursuant to the Congressional Review Act, I now move to proceed to the consideration of Calendar No. 18, S.J. Res. 6.

The ACTING PRESIDENT pro tempore. The motion to proceed is not debatable. The question is on agreeing to the motion.

The motion was agreed to.

Mr. LOTT. Mr. President, I understand the joint resolution is now pending and has up to 10 hours of debate to be equally divided in the usual form. I see there are Senators on the floor ready to go forward with this discussion.

I yield the control of the majority's time to the assistant majority leader, the distinguished Senator from Oklahoma, Mr. NICKLES.

DISAPPROVAL OF DEPARTMENT OF LABOR ERGONOMICS RULE

The ACTING PRESIDENT pro tempore. The clerk will report the joint resolution.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 6) providing for congressional disapproval of the rules submitted by the Department of Labor under chapter 8 of title 5, United States Code, relating to ergonomics.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I yield to the Senator from Vermont such time as he may desire.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I rise today to address S.J. Res. 6, which provides for congressional disapproval of the Occupational Safety and Health Administration's recently promulgated ergonomics standard. This action is being taken pursuant to the Congressional Review Act provisions incorporated into the APA in 1996. If successful, it will be the first time that the CRA has been used to invalidate an agency regulation. It will send a strong message to Federal agencies that Congress is serious that the intent of the CRA—that agencies issue more flexible and less burdensome rules, and be more responsive, and open, to input from the regulated public—is followed.

I will leave it to my colleagues to discuss the numerous problems with the Clinton Administration's regulation, such as its flawed rulemaking process, its extraordinary potential costs, its encroachment on state administered workers compensation programs, and its complexities and vagueness to the point of unworkability. I have to note, however, that the ergonomics rule certainly qualifies as a ''midnight'' regulation, which is exactly the sort of rulemaking that, in great part, led to enactment of the CRA. And I note further that the CRA is not radical legislation. In fact, it passed with broad bipartisan support, was signed by a Democratic President, and earlier versions of the legislation twice passed the House and four times the Senate.

Passage of the CRA was an exercise by Congress of its oversight and legislative responsibility. It was intended to compel bureaucrats to consider the economic effect of their regulations and to reclaim some of Congress' policymaking authority which had been

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

ceded to the executive branch because of the increasing complexities of statutory programs, and the resultant reliance on agency rulemaking. But my purpose today is not to focus on the merits of the Congressional Review Act.

OSHA has admitted that repetitive stress injuries have declined 22 percent over the last five years. This statistic proves two things: One, that there is a musculoskeletal disorder problem in the workplace. And two, that employers are cognizant of the problem, and addressing it. Further, the dramatic reduction illustrates that there are ways to reduce, and perhaps eradicate, MSDs in the workplace, in part by use of the science of ergonomics. OSHA, unfortunately, has continued to ignore these lessons and refuses to revise its approach that the stick is more effective than the carrot. This is proven by the very standard that is before us today.

Again, however, the most important fact that can be taken from the employers' successes in combating repetitive stress injuries over the past few years is that apparently there are methods available to attack this severe problem. We must continue to encourage the development of these innovative approaches. At the same time, we must not lose sight of the fact that the administration and the Occupational Safety and Health Administration have a role, and a responsibility, in leading the attack on these crippling workplace injuries.

OSHA must not give up its place at the vanguard of the assault on workplace MSDs because of the shortcomings of the Clinton Administration's ergonomics standard. I urge Labor Secretary Chao, in the strongest possible way, to investigate and consider all options, including initiation of additional rulemaking, if warranted, as part of an all out effort to seek solutions for this type of debilitating injury. I have received a letter from Secretary Chao. I ask unanimous consent that it be printed in the RECORD.

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

DEAR CHAIRMAN JEFFORDS: It is my understanding that the Senate will soon consider a Joint Resolution of Disapproval pertaining to the Occupational Safety and Health Administration's (OSHA) ergonomics standard. As you are aware, the Congressional Review Act of 1996 gives Congress the authority to vitiate this standard and permanently prevent OSHA from promulgating a rule in substantially the same form.

Let me assure you that, in the event a Joint Resolution of Disapproval becomes law, I intend to pursue a comprehensive approach to ergonomics, which may include new rulemaking, that addresses the concerns levied against the current standards.

This approach will provide employers with achievable measures that protect their employees before injuries occur. Repetitive stress injuries in the workplace are an important problem. I recognize this critical challenge and want you to understand that the safety and health of our nation's workforce will always be a priority during my tenure as Secretary.

I look forward to working with each of you throughout the entire 107th Congress.

Sincerely,

ELAINE L. CHAO,
Secretary of Labor.

Mr. JEFFORDS. I am heartened by the letter from the Secretary of Labor. It indicates that the Administration recognizes there is a problem and is committed to finding the answer. To this end, I am dismayed by what appears to be a systematic campaign of misinformation, and I would like to dispel the myth being perpetuated by those who oppose enactment, that adoption of this Resolution of Disapproval will sound the death knell for any future ergonomics regulation. That is not accurate.

Contrary to the misinformation being circulated, passage of the resolution of disapproval will not prevent OSHA from undertaking rulemaking regarding repetitive stress injuries. As I have already stated, I believe that rulemaking is an option that should be given serious consideration by the Administration. Secretary Chao agrees. In fact, by jettisoning this burdensome and unworkable standard, we will be eliminating a roadblock to consideration of more responsible approaches directed at resolving the workplace MSD puzzle. One approach could well include promulgation of a more reasonable and workable ergo standard.

The Congressional Review Act provides, in relevant part, that a rule vitiated by enactment of a Joint Resolution of Disapproval ''. . . may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.'' While this language appears clear on its face, it is being misinterpreted to mean that OSHA cannot regulate in the ''area'' covered by the disapproved rule.

There is no basis nor justification for this interpretation of the CRA provision. Where I have seen it mentioned—for example, in a March, 1999 CRS report—there is no citation of authority to support that interpretation. Indeed, it appears to have been created out of whole cloth or thin air. The better—in fact, correct—interpretation, provided by the actual language of the Statute is that a disapproved rule cannot be issued ''in substantially the same form.''

The intent, and thrust, of this language is made clear in a joint statement, by Senators NICKLES, REID of Nevada, and STEVENS, submitted for the RECORD on April 18, 1996. The purpose of the Joint Statement was to provide a legislative history for guidance in interpreting the terms of the Congressional Review Act. The Joint Statement indicates that the ''substantially the same form'' language that I quoted above, was ''necessary to prevent circumvention of a resolution [of] disapproval.'' Thus, the concern clearly was that an agency should not be able to reissue a disapproved rule merely by making minor changes, thereby claiming that the reissued regulation was a different entity.

This interpretation is confirmed by further discussion in the joint statement about the differing impact a disapproval would have depending upon whether the law that authorized the disapproved rule provided broad or narrow discretion to the issuing agency regarding the substance of such rule. Where such underlying law provides broad discretion, the agency would be able to exercise that discretion to issue a substantially different rule, but where the discretion is narrowly circumscribed, the disapproval might work to prevent issuance of another rule.

OSHA, of course, has enormously broad regulatory authority. Section 6 of the OSH Act is a grant of broad authority to issue workplace safety and health standards. To prove this point, one need look no farther than the scope of the ergonomics regulation before us. OSHA, in fact, considers its authority so broad that it ignored, in issuing its ergo standard, the clear statutory mandate in section 4 of the OSH Act not to regulate in the area of workmen's compensation law. And the definition of ''occupational safety and health standard,'' in section 3(8) of the Act, is further indicative of the discretion granted to the agency. I am convinced that the CRA will not act as an impediment to OSHA should the agency decide to engage in ergonomics rulemaking.

Some might question why now utilize the Congressional Review Act disapproval procedures instead of reviewing or amending the ergo standard through other means, such as additional notice and comment rulemaking, or by permitting the legal challenges to be brought to conclusion. The answer is simple. The CRA is being used in precisely the manner Congress intended.

As noted in the April 18, 1996 Joint Report, certain timing provisions in the CRA were put in place ''. . . to try to provide Congress with an opportunity to act on resolutions of disapproval before regulated parties must invest the significant resources necessary to comply with a major rule.'' And, I might add, scarce agency resources are also a concern. The standard before us certainly is a major rule, and the estimated compliance costs are huge.

For all of the reasons stated above, I believe that OSHA's ergonomics standard presents the ideal case in which to

exercise the disapproval provisions of the Congressional Review Act. An over broad, vague, and unworkable standard may act as a disincentive to development of reasonable and rational approaches to a serious problem. In addition, huge compliance costs do not encourage compliance and, in fact, may be beyond the resources of many small businesses. This may be the case where no standard is preferable to the standard promulgated by OSHA. But I am convinced that this is not the bottom line. OSHA can issue another ergonomics standard. I urge the secretary of Labor to consider this option.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I tell my friend from Massachusetts I will be brief because he has a lengthy statement. Let me make a few brief comments. We have 10 hours of debate on the issue under the Congressional Review Act. I expect we will be going back and forth. That is 5 hours on each side. We can have ample debate and discussion. I think that is healthy and very good.

One of the reasons Senator REID and I worked so hard and we passed the Congressional Review Act was that Congress would review regulations that had a negative impact or an impact on the economy in excess of $100 million a year. That makes sense. The idea of, wait a minute, should you have regulatory agencies passing measures that have a profound impact on the economy without holding Congress accountable? Congress should have some say. And sometimes do the regulatory agencies go too far? Sometimes it is their own fault. Sometimes we tell them, to pass some regulation and make the world safer, sounder, cleaner, whatever, without considering the cost or impact. We have done that in Congress.

What we did when we passed the Congressional Review Act was say we should review those regulations if they have an economic impact in excess of $100 million and find out how does this make sense. Is it a good deal? Is it a good deal for the economy? Is it a good deal for taxpayers to invest this kind of money? Congress should have a say.

The bureaucrats who write the regulations are not elected; we are. That was the purpose of the Congressional Review Act. This is the first time we will utilize that act. I believe in this case the regulation promulgated by the Clinton administration in the Federal Register, dated November 14, 2000, which is over 6,000 pages long, went too far. All legislators who believe in division of power when reviewing this regulation will say the Clinton administration, in its last 4 days, went way too far and exceeded their constitutional authority. The President is President; he is not chief legislator.

In this legislation, in this regulation, they went into legislating. They went into devising a Federal system of workers compensation.

If Members want to pass a Federal workers compensation law, introduce a bill. It would go, I assume, to the Education and Labor Committee. It would be marked up. Have that process go forward if we are going to pass Federal workers compensation.

I have asked a couple of former Governors on the Democrat side if they knew there was Federal workers compensation in the ergonomic standard. Do they know this has a compensation system that is much greater than most State workers compensation laws? Most Senators answered no.

This has Federal workers compensation that supersedes State worker compensation laws. If you have any respect for the Constitution, if you have any respect for Members as legislators, you should say no bureaucrat, no official in the Department of Labor—who, incidentally, is probably not there anymore—can make that kind of imposition. That requires Federal legislative action. If someone wants to promulgate that kind of rule, let them introduce this as a statute. Let's debate it.

I don't think anyone will debate it. This is not defensible. How in the world can you come up with a Federal workers comp law that supersedes State law that is more generous? It might be proposed, but my guess is it would never pass, nor should it.

Yet in this case we have unelected bureaucrats who say: Let's make this the law of the land. Is he super Senator? Is he super legislator? Where did he get this kind of authority?

I appeal to my colleagues, Democrat or Republican, review the contents of this legislation. See how extensive and expensive it is. This is probably the most expensive, intrusive regulation ever promulgated, certainly by the Department of Labor—maybe by any department. It deals with the issue of repetitive motion injuries. It is wide open. It could be somebody typing at a desk, somebody standing at a checkout line, somebody stacking groceries, somebody moving things on trucks. It could apply to almost any job in America. It can be enormously expensive.

Federal bureaucrats are saying you can do this; you can't do that. You can only move 25 pounds 25 times a day. A grocery store may have to hire 10 times as many people to stock the grocery store. A moving company has to move a lot of things. Employees would say: I have to stop; it is 8:25, but I have already moved 25 things. Time out. Hire more people. Oops, can't do that; we need more people; we need to hire more people. Oops, we have to go out of business because we cannot comply with this rule.

There is no way in the world a lot of companies can comply with this rule. We would be putting them out of work or out of compliance, certainly liable for a lot of money and expense for a regulation that goes way too far.

My primary argument to my colleagues is nobody in OSHA was elected to legislate. We are elected to legislate. We, Members of Congress, are the legislative branch. Read the Constitution. Article I says Congress shall enact all laws. It does not say: unelected bureaucrats, you write a law, try and get it enacted, try and get it passed by legislation.

On January 16, in the last couple of days of the Clinton administration, this was a major gift to organized labor, saying, go ahead and legislate the last couple days.

No, we are the legislative body. If we want to legislate in this area, introduce a bill and we will consider it. Let's not have, as in the last couple of days of the Clinton administration, a regulation with costs ranging in excess of $100 billion a year. Let's not let that happen. Let's not supersede State worker compensation laws.

It will be interesting to see how former State Governors and State officials vote on this issue. Do they really want the Federal Government to supersede State workers compensation laws? I say the answer is no.

I urge all my colleagues, especially colleagues on the Democrat side—my colleagues on the Republican side are perhaps more familiar with this issue—I urge my colleagues on the Democrat side to review this. Do you really want to have a Federal workers compensation law passed by regulation superseding State worker compensation laws? I think not. I certainly hope not. If that is the case, we have delegated so much power to the regulatory agencies we should be ashamed of ourselves.

I urge my colleagues to review this statute. That is what the Congressional Review Act is all about. Let's review it. Let's talk about it today. Let's find out how intrusive it is, today. Let's find out if it really is the Federal Government taking the place of Congress in the legislative field. I believe they went way too far. We did introduce a bill 4 or 5 years ago, Senator REID and myself, and it passed both Houses of Congress overwhelmingly, signed by President Clinton. It is a good law. It was written for such items as this. This is an excellent time to review this regulation and stop it.

Does that mean we are for ergonomic injuries? No. Does that mean we shouldn't be taking action in Congress and/or in the Department of Labor to try and minimize ergonomic injuries? No. Let's figure out what can we do that is affordable, that is doable, that doesn't cost jobs, that does improve worker safety, that does reduce or minimize worker injury. Let's work on that together. Let's not accept a regulation crammed through in the last

couple of days of the Clinton administration that has economic costs in excess, maybe, of $100 billion.

One might ask, where do you get that figure? OSHA says it might cost $4.5 billion. The Clinton administration's Small Business Administration said it could cost up to 15 times that amount. That is up to $60 billion a year. Business groups having to comply with this say it may well be in excess of $100 billion. There is no way to know how much this would cost. It would cost plenty. It would cost jobs.

Again, this is something that needs to be reviewed by Congress and needs to be stopped by Congress. I urge my colleagues to support this resolution.

For the information of my colleagues, the 10-hour clock is running. My guess is we can have a vote this evening, or we will have a vote tomorrow morning. People should be on alert we may well work into the evening today. Be on guard to expect rollcall votes to occur later this evening or tomorrow morning.

I yield the floor.

Mr. WELLSTONE. Are we going to alternate back and forth?

Mr. NICKLES. As manager, I will designate Senator HUTCHINSON and Senator ENZI to manage on our time. We are happy to alternate back and forth. We are happy to accommodate our colleagues in any way.

Mr. WELLSTONE. I ask unanimous consent I be allowed to follow Senator KENNEDY on our side.

Mr. NICKLES. I reserve that. Let's not do that just yet.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this is a matter of enormous importance and consequence to America's workers. It will be the first time in the history of OSHA that Congress has taken action that will effectively terminate the ability of OSHA to protect American workers. It is in an area in which there is a growing problem and a growing concern because of the increased numbers of ergonomic injuries. In a period of some 10 hours we are going to undermine the efforts of the Department of Labor and OSHA over a period of 10 years. Some have made the comments, rather cavalierly, that this is a offhand rule that was developed in the final hours of the Clinton administration. Of course that is a complete distortion and a complete misrepresentation, as are a number of the other recent comments I have heard. I will respond to them in some detail at this time.

It is important to note there has been due process. There are those who have differed with the rules and regulations. You would listen to this part of the debate and think that those who are against the rules and regulations never had an opportunity to make their case during the process. Of course that is basically hogwash because they did have that opportunity.

We can also listen to those who say we have to eliminate these regulations. Of course there is a process and procedure by which the President can modify these rules and regulations, if he doesn't like them. That is not the path those who are seeking to overturn these regulations are taking. The President of the United States can just file, in the Federal Register, a resolution, effectively, of disapproval, and wait 60 days and those regulations are effectively suspended.

The Department of Labor could then go about the process through public hearings and alter the regulations. So for those who want to bring some modification and change, who think there ought to be some opportunity to do something different, that power and authority is there today. But that is being rejected by those who want to overturn any opportunity to provide any protection for the millions of Americans who have been adversely affected, impacted, and injured by ergonomics injuries over the past several years. That is what we are looking at.

With all the talk we have heard already this morning, and we will hear later on, we could still have the opportunity to modify and change and adjust and go back and trim the regulations. It is a simple process. But, no, that technique is being rejected. They are coming in here with a blunderbuss and saying, ''We have the votes, we are playing hardball''; effectively, ''we are going to give short shrift to the American workers''—primarily women because they are the ones most adversely impacted. We all have a responsibility to them.

I mention to my good friend, when he talks about 400 pages of regulations—there are 8 pages of regulations; not 400, 8 pages of regulations. It is right in here. If the Senator would want to look through them, I will be glad to spend some time. Eight pages of regulations—it might take someone 20 minutes to read through them. Eight pages of regulations—the rest is support.

It is not the Department of Labor talking about $4 billion of expenditures. It is the Department of Labor talking about $4 billion of savings. It is a big difference. We have to get our facts straight.

The same applies to the workers compensation provision. This does not undermine States' workers compensation. It has virtually nothing to do with workers compensation, other than what has been done traditionally with other kinds of OSHA rules and regulations such as for cadmium and lead.

There has not been an uproar from the States. I don't hear any. If the Senator will have some letters from Governors who talk about how their workers compensation has been destroyed, uprooted in ways, we would welcome them. We have not seen them. We have not heard from them.

I ask our Members to pay close attention. What is really at risk here is enormously important.

First of all, we don't have to be here dealing with this issue. We could be debating the bankruptcy issue. If we want to be doing that—we will have a chance and opportunity to do that—but, nonetheless, one of the first orders of business we are coming up to is not to look out after minimum wage workers or an increase in the minimum wage. No. We don't have that out here. We are not debating a Patients' Bill of Rights. It has been before the Congress for 5 years. We are not doing that on the floor of the Senate. No, we are not going to consider that. We are not debating prescription drugs in the Senate.

What are we doing? For the first time in the history of the Senate, we are talking about repealing protections for workers who are out there in the workforce of America with a blunderbuss kind of technique that says, ''We have the votes, we are going to repeal it, and as a result of that repeal and the statutory provisions, you will not be able to have any kind of ergonomic protection for American workers.''

We have the alternative of trying to change this in a responsible way but, oh, no, we are going to show a contemptible attitude, an arrogant, contemptible attitude towards the American workers by this blunderbuss technique that is being proposed by our colleagues on the other side of the aisle.

I listened when Senator REID's name was mentioned. He supported the concept of CRA, but he is strongly opposed to the actions being recommended by the Republican leadership.

We all have a responsibility to protect the safety and health of workers on the job. Today the most significant safety and health problems that workers face are debilitating and career-ending ergonomic injuries. Millions of workers and their families suffer needlessly. These injuries can be prevented by simple, inexpensive changes in the workplace. This rule is about prevention, preventing the injury. That is what this rule is about. We know the injuries are out there. We know what can be done in order to diminish the number of injuries and that is what this rule targets.

The Department of Labor's solution to this problem has been sound, sensible, and necessary. It is flexible and cost-effective for businesses, and it is overwhelmingly based upon scientific evidence. It has the support of virtually every health science professional group and their representatives. Every one of them has supported this proposal, every one of them—but not the Chamber of Commerce and the National Association of Manufacturers.

But if you are talking about protecting workers and you are talking about the medical implications and the

health implications, every organization that is concerned with that supports these proposals.

If people have differences about the specifics of this solution, we can work them out in a bipartisan way. The President can stop this regulation and issue a new one if he doesn't like it. But in 10 hours of debate today, the Republicans intend to destroy this crucial protection that was begun over 10 years ago by the Secretary of Labor, Elizabeth Dole.

In the 30 years that the job safety laws have been in effect, Congress has never taken away a protection for workers. Listen to me. In the 30 years the job safety law has been in effect, Congress has never taken away protection for workers. This could be the first. ''Don't alter it, don't change it, don't modify it—eliminate it. We have the votes. That is what we are going to do.'' This is a contemptible attitude towards the working families in this country.

One of the most essential roles of government is to protect its citizens. We protect public safety by providing a police force. We protect public health by regulating prescription drugs and food safety by rules and regulations by the FDA. Maybe there are those who want to eliminate all the rules and regulations.

The FDA isn't elected either, but they have rules and regulations to ensure safety and efficacy. We gave them that power. We gave them that responsibility. Are we suggesting now, since they are not elected to the Senate of the United States, how outrageous that they look out after protecting America from the scourge of different diseases that have ravaged our civilizations in the past—hoof and mouth disease, mad cow disease? Let's get those professionals out. They are not elected. Let's just free ourselves from regulations. It may cost the meat manufacturers and producers a few more bucks because they have to be inspected. Let's free ourselves from those matters. These are the same issues—health and safety. The same issues.

We are protecting workers on the job today. If they are going to eliminate those protections today, what regulations are they going to eliminate tomorrow? We came very close to it 3, 4 years ago, eliminating protective regulations in food safety—the elimination of the Delaney clause—and many others. We came within a vote or two of eliminating those. The same forces are out there.

Today it is the safety in the workforce. Tomorrow it is going to be food, health, and well-being, and the air that we breathe and the water that we drink. Make no mistake about it. The greed is unbelievable. That is what it is all about. What do you think this is about? It is about bucks. It is about money. It is money on the one side; what the Chamber of Commerce and the National Association of Manufacturers want versus trying to invest and protect American workers. It is greed. It is money. It says that we are not really interested in safety. If they were interested in it, they would want to be responsible. Why do they drop this in the middle of the night? We found out in the magazines and newspapers on Sunday that this technique was going to be used now. Why not mention it and try to work this out? Is this the beginning of the process or the end of the process?

Why not bring up the Patients' Bill of Rights? Why not, even though the President indicated a month ago that he wanted to work this out? We said fine; we will try to work it out. A month has passed. Are we bringing that up? No. Not the Republican leadership. No. Oh, no. They are just dropping this right out here. ''We have the votes. We have the votes and are going to pursue it.'' So they do.

We protect the public safety by a police force, the public health by regulating prescription drugs and food safety. We require seatbelts in automobiles. When Americans are at risk, it is the duty of government to do whatever we can to protect them. That is our job. That is our responsibility as public servants. That is why we have laws and regulations to protect our citizens in the workplace.

I was in the Senate during the years when we heard the same voices we are hearing from that side of the aisle opposing the OSHA program. I will tell you this. OSHA has reduced the number of deaths in the workplace by half over the period of the last 27 or 28 years. It has saved an enormous number of lives, and it has protected health and well-being. But we heard at that time: Why are we going to do that? That is going to interfere with American business and their ability to produce American goods. Don't you think American industry is concerned about those workers? Of course they said they passed it.

Sure, there have been some actions OSHA has taken with which we don't all agree. But, nonetheless, if you look, particularly in the last several years, the record in terms of the number of lives that have been saved as compared to other times has been credible and defensible.

Over our history, and in the early years of the last century, we have fought long battles for the safety of factory workers. We struggled long and hard to improve the working conditions of our mine workers—one of the most dangerous jobs in America. We took steps to guard against child labor and other abusive practices.

Over the past 10 years, America has taken the next important step to protect workers against the kinds of injuries that occur in the modern workplace—so-called ergonomic injuries.

Yesterday, workers lost their limbs in factories. Today's workers suffer crippling pain in their wrists and in their hands because of computer keyboards. That is an ergonomic injury.

Yesterday, workers were burned in steel mills. Today's workers develop chronic back injuries from standing too long behind the lunch counter, carrying heavy trays of food, and sitting for long hours in their offices and chairs that harm their backs. Those are ergonomic injuries.

The resolution before us today is a complete about-face in the long march of protecting our workers. In a single vote, we will tell millions of Americans—mostly women—that their work doesn't matter. This resolution is antiworker, antiwoman, antifamily, and it deserves to be soundly defeated.

We all know what is going on. We could have sat down and worked this out in a bipartisan way. If President Bush disagrees with this current regulation, he could issue a new one. But, instead, our Republican friends took the course that hurt workers the most—banishing this important safety initiative to the dungeon.

If you do not like the last administration's approach to worker safety, Mr. President, then change it. Don't destroy it—because the health and safety of millions of American workers is at stake. Otherwise, this may well mean that all the talk about a new civility in Washington is just a hoax. Instead of helping hard-working families, this resolution is a big ''thank you'' to big business for all their support. It is politics at its worst.

It leaves the average American worker defenseless against today's workplace injuries. With Republicans in control of Congress and the White House, it is trample-down economics for American workers. Let American workers be on guard. Your rights and your dignity and your hard work are no longer respected. Today your safety is on the chopping block. Tomorrow it is going to be your medical leave or your ability to spend more time with your families, for our Republican friends can act today on this issue with such disregard for your labors, your hard-won workers' rights, your safety.

The Department of Labor's ergonomics rule is sound, sensible, and necessary. I strongly oppose this resolution of disapproval. If Congress passes this resolution, it will have destroyed in 10 hours what it took the Occupational Safety and Health Administration 10 painstaking years to create and will deprive workers of all of the protections from the No. 1 risk to health and safety in the workplace.

I have both good news and bad news today. The bad news is that ergonomic injuries are painful and often debilitating. They are common and they are caused by workplace practices.

The good news is that these injuries are readily preventable, and the

ergonomics rule offers an effective way to address workplace hazards.

The worst news is that Congress today will prevent OSHA from implementing this or any other rule that will protect workers from these significant risks to their health and to their safety.

My colleagues should make no mistake about the result of the resolution of disapproval that is before us. It is an atom bomb for the ergonomics rule.

Supporters of this resolution insist they can use it to fix the ergonomics rule and send it back to the drawing board. They are wrong. The language of the resolution is clear and nonamendable and will eliminate the rule altogether.

Until Congress gives it permission, OSHA will be powerless to adopt an ergonomics rule that, like this one, truly solves the problem. If the resolution's supporters have their way, all of this will be done today without any opportunity for committee input or for reasoned consideration on the Senate floor.

Our debate is limited to a maximum of 10 hours. This resolution is not subject to motions to amend, to postpone, to move to other business, or to recommit to committee. All points of order are waived, and appeals from decisions of the Chair are nondebatable.

This expedited process will not be used to disapprove a rule that an agency clearly lacks authority to issue. It will not be used to disapprove a rule that lacks any basis in scientific evidence. It will not be used to disapprove a rule that was adopted without adequate opportunity for public notice and comment. Instead, this fast-track procedure will be used to eliminate a rule that goes to the heart of the Federal Government's mission to protect workers' safety and health. That is supported by thousands of scientific studies. And that is the product of 10 years of study, 9 weeks of public hearings, and 11 best practice conferences all over the country, bringing employers and workers together to try to describe what is and isn't working. That's 11 conferences all over the Nation, 9 weeks of public hearings, and close to 4 months of opportunity for written comment from the public. This is an unprecedented attack on our workers' fundamental right to safe workplaces.

As long ago as 1990, Secretary of Labor Elizabeth Dole called ergonomic injuries ''one of the nation's most debilitating across-the-board worker safety and health illnesses.'' I wish we heard from the other side at least some recognition, some understanding, some awareness, some sensitivity to the workers who are being injured by ergonomic injuries every single day in America. But we do not. It is all technical language: ''We don't want to interfere with workers' compensation. There are 400 pages in this book over here. The Department of Labor says X, Y, and Z.''

We are talking about family members. We are talking about workers who are providing for their families, who are playing by the rules, trying to put in a good day's work in order to provide for their families. They ought to be given the assurances about preventing these kinds of injuries if we have the knowledge, the awareness, and understanding, and we can do it in an affordable way.

We will come back in a few moments and get into the costs on these issues. It is quite clear, if we are able to have an effective rule, this will actually save money and increase productivity and lower the cost of workers' compensation.

Now this is what Secretary Elizabeth Dole said in 1990:

> We must do our utmost to protect workers from these hazards.

She also said:

> By reducing repetitive motion injuries, we will increase both the safety and productivity of America's workforce.

As all the study, data, and personal experience since have amply shown, she was right.

Each year, over 1.8 million workers report that they have suffered from ergonomic injuries. Another 1.8 million incur ergonomic injuries that they do not report. What this means is simple: Over the 10 years of study OSHA devoted to this rule, America's working men and women endured over 18 million unnecessary injuries.

The average cost of these injuries—severe injuries—is anywhere from $25,000 to $27,000. I do not know what the value is in terms of denying someone their opportunity to use their hands, use their arms. What is the cost if they cannot use their fingers, cannot use their wrists, not only in the workplace but in terms of being able to pick up a child or be able to walk with a child or play with a child when they are growing up—all of the personal kinds of important opportunities in life that give individuals a sense of the joy of life?

What does it cost here? That is what we are debating. The Chamber of Commerce says it is too much. But 10 years of studies, evaluations, and best practices said that this can be done, and done in a way that will save money for American business.

You have two entirely different viewpoints. Do we have a chance to examine them? No. They say: ''We have the votes.'' We have how many hours left now? Nine more hours left? Nine more hours left until we can finish this rule off? That is the attitude of those who want to repeal this rule.

The statistics also show how serious this problem is. More than 600,000 workers lose a day or more from work each year because of these injuries. Indeed, the Academy of Sciences estimates this number is even higher, that over 1 million workers lose time at work because of their ergonomic injuries.

This is the Academy of Sciences. No, they are not elected to anything. But they are the Academy of Sciences, universally respected. And that is what they found, I say to Senators—1 million a year. And in 10 hours we are throwing out rules that can provide protection for these workers.

Ergonomic injuries account for over one-third of all serious job-related injuries and over two-thirds of all job-related illnesses. The injuries are costly. In a definitive study released only 6 weeks ago, the National Academy of Sciences estimated ergonomic injuries cost the Nation $50 billion annually in workers compensation costs—$50 billion now annually today if we do nothing. That isn't the Senator from Massachusetts saying that. That is the National Academy of Sciences saying that: $50 billion if we do nothing, in terms of workers compensation, absenteeism, and lost productivity.

In fact, ergonomic injuries account for $1 in every $3 that employers spend for workers' compensation costs. That is a cost of $15 to $18 billion every year in workers' compensation costs.

These injuries are painful and often crippling. They range from carpal tunnel syndrome, to severe back injuries, to disorders of the muscles and nerves. Carpal tunnel syndrome keeps workers off the job longer than any other workplace injury. This injury alone causes workers to lose an average of more than 25 days, compared to 17 days for fractures and 20 days for amputations.

These injuries affect all of us. Carpal tunnel syndrome afflicts nurses. It hurts truck drivers and cooks. It affects secretaries, cashiers, and hairdressers. It threatens any of us who use a computer or lift heavy objects or bend to pick things up. We are all at risk.

And even if each of us individually has not yet suffered a repetitive stress injury, we all know people who have. They are mothers, fathers, brothers, sisters, sons, daughters, and neighbors—and they deserve our help. But contrary to what the good Senator from Oklahoma says, there are broad industries which are left out. This rule is a rather reasonable rule and quite narrow. It does not affect agriculture. It does not affect the maritime industry, railroads, or construction. Those industries are left out. They are left out for other reasons. I can come back to them later.

So this idea of what is going to happen to workers' compensation and the number of pages of the rule, and what is the cost going to be, and about all the industry affected, we have to get down to the real facts.

Women are disproportionately harmed by ergonomic hazards. Women

make up 47 percent of the overall workforce, but in 1998 they accounted for 64 percent of the repetitive motion injuries and 71 percent of the carpal tunnel cases.

I will show you this chart very quickly. I see others on the floor, Senator FEINSTEIN and others, who will speak to this in greater detail.

Women are 47 percent of the total workforce. Of the total number of injured workers, they are only 33 percent. But if you are looking at ergonomic hazards, lost work time from repetitive motion injuries, in 1998, women accounted for 64 percent of those who had repetitive motion injuries and 71 percent of those who lost time for carpal tunnel injuries. This is a rule about protecting women in the workforce, because of changes in terms of our new economy primarily, and for other reasons as well.

These women are not faceless numbers. We are talking about workers such as Beth Piknick from Massachusetts, who was an intensive care nurse for 21 years before a preventable back injury required her to undergo a spinal fusion operation and spend 2 years in rehabilitation. Although she wants to work, she can no longer do so. In her own words:

> The loss of my ability to take care of patients led to a clinical depression . . . My ability to take care of patients—the reason I became a nurse—is gone. My injury—and all the losses it has entailed—were preventable.

We are talking about workers such as Elly Leary, an auto assembly person at the now-closed General Motors assembly plant in Framingham, MA. Like many, many of her coworkers, she suffered a series of ergonomic injuries—including carpal tunnel syndrome and tendonitis. Like others, she tried switching hands to do the job. She tried varying the sequence of the routine. She even bid on other jobs. But nothing helped. Today, years after her injury, when she wakes up in the morning, her hands are in a claw-like shape. To get them to open, she has to run hot water on them.

We are talking about workers such as Charley Richardson, a shipfitter at General Dynamics in Quincy, MA, in the mid-1980s. He suffered a career-ending back injury when he was told to install a 75-pound piece of steel to reinforce a deck. Although he continued to try to work, he found that on many days he could not endure the lifting and the use of heavy tools. For years afterwards, his injury prevented him from participating in basic activities. But the loss that hurt the most was having to tell his children they could not sit on his lap for more than a few minutes because it was too painful. To this day, he cannot sit for long without pain.

We are talking about workers such as Wendy Scheinfeld of Brighton, MA, a model employee in the insurance industry. Colleagues say she often put in extra hours to ''get the job done.'' As a result, Wendy has lost the use of her hands, and is now permanently unable to do her job, drive a car, play the cello, or shop for groceries.

The ergonomics rule was too late to help Beth, Elly, Charley, and Wendy. And there will be many, many more like them if Congress takes away the protections of the rule now.

This is because there is now conclusive, indisputable evidence that workplace practices cause ergonomic injuries. Dr. Jeremiah Barondess, the chair of the panel of experts that conducted the comprehensive study of the ergonomics issue for the National Academy of Sciences, has pointedly stated that there is a ''clear causal relationship'' between working conditions and ergonomic injuries.

And in case anyone has forgotten, this NAS study was the very study that opponents of the ergonomics rule said would inform their views on the issue. Time and time again, my colleagues across the aisle urged us to wait for more evidence that ergonomic injuries were a problem, that workplace practices were responsible for these injuries, that these injuries could be prevented. These were unjustified delaying tactics. But if anyone thought there was any doubt at all about these issues, they now have their answer. To suggest that these issues are debatable is, quite simply, preposterous.

Mr. President, I will come back later on. There are other points I wish to make. I note a number of my colleagues on the floor.

I underscore a very simple and basic thought: This rule has been in the making 10 years, weeks of hearings and examination and evaluation, studied by the Academy of Sciences and by every scientific group, supported by virtually all of the health community that has expertise in these areas. There was a simple technique by which this rule could have been altered or changed, a very simple technique. That is being rejected. If you are for some modification, any modification at all, you ought to reject this proposal. That way, it will still be possible to bring about some changes in the ergonomic rules.

But instead, what we are being asked to do is to accept lock, stock, and barrel that we are going to reject this rule that will effectively close out any opportunity to protect these workers for the first time in 30 years.

I cannot think of many health and safety rules and regulations which the Chamber of Commerce or the National Association of Manufacturers has supported to protect American workers. If there are some, I hope we have the chance to hear it from the other side. They have been basically opposed to these regulations. They think they have the votes now not only to modify it but to end this rule, which addresses the No. 1 health and safety issue for American workers today. That is basically wrong. It was recognized as being a major problem by the wife of our former Republican majority leader, Elizabeth Dole, over 10 years ago. There has been nothing that has happened since that time to indicate to the contrary.

On the contrary, there is constant scientific evidence to demonstrate that this is a problem, that this rule has been carefully considered and, finally, that this rule, when it is implemented, will actually save money because it will reduce workers' compensation, reduce absenteeism, and increase productivity. That is why the Department of Labor in its evaluation finds that instead of this problem costing $50 billion a year, we will actually save more than $4 billion a year.

I reserve my time.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Chair for the opportunity to comment, and I thank the Senator from Massachusetts for so well setting up the comments I have.

There was a reason for the Congressional Review Act being passed, a good reason for it. You could even assume there was a good reason on the basis that it was passed in a very bipartisan way. First, cosponsors of it were Mr. NICKLES, the Senator from Oklahoma, and Mr. REID, the Senator from Nevada—one from each side. How good of a job did they do of persuading you that this was a good law to put in place? I am not sure what precipitated it. I assume that some agency jerked the Congress around, and Congress believed it was time to jerk them back to reality. Not one of you voted against the CRA.

There is a need to have an act such as the CRA. That need exists when an agency fails to listen to a single comment on the work they are doing, when they are so sure of their work that they will not listen to hearings; that they will not listen to Congress; that they will not listen to experts; that they continue to do exactly the same thing they did before. Wait a minute. No, they did make some changes. They made it far worse. They took the comments they got, and they opposed everything and incorporated things in this that were worse than in the law that was passed.

We can't have agencies taking that kind of action. We know this is a divided Congress. My bet is that there will still be a very bipartisan action to pass this resolution we are voting on today to eliminate the rule as was proposed, as was printed, as is now in effect.

There has been a suggestion that we should trim it. I could go along with

that. But where would you start? I am holding 600 pages of stuff that the average American businessman cannot understand. Yes, he can hire technical experts who will help him with it at great expense. But even the technical experts are divided.

This little document includes by reference eight more documents. This isn't the whole load that a small businessman has to carry around this country. Let me ask you if you have received those eight documents and read those eight documents. I can tell you conclusively, you have not. One of those documents isn't even available. The people, when you call them and ask for the document, say: Don't bother us anymore.

This is ridiculous. One document referred to in this rule you can't even get. Some of my colleagues say the rule is really a short rule. Is it 400 pages? Is it six pages? Is it eight pages? Is it 20 pages? You can argue for all of those numbers. You can argue for 800 pages. But if you really count what the small businessmen in America are going to have to read, you will find that it is 800 pages. To say that this document is eight pages is statistically impossible.

If you agree this document is eight pages long, you think that the income tax forms you fill out only require reading two pages of material. That is exactly the same thing. When you fill out your income tax form, there are two pertinent pages to fill out, but there is a little manual that comes with them. If you don't pay attention to that manual, you will mess up your taxes. You will be fined. Maybe you will be thrown in jail. So you can't just look at the two pages, even if they are the only ones you fill out.

So let's not argue about 8 pages, 20 pages, 400 pages, 600 pages, 800 pages. Ask the small businessman how much he wants to read, and then take a look at how much he is going to have to read.

Now, you and I can look through this, or we can have our staffs look through it, and decide what we think is pertinent. I tell you, the small businessman out there doesn't have that luxury. He can't say, ''Somebody just show me the couple of paragraphs that affect my business.'' He can't do that because this affects his business—this and eight more manuals, only seven of which are available at a cost of $220.90.

That is a lot of work for a small businessman. Trim it? Why didn't OSHA trim it. California has a one-page ergonomics rule. Why not OSHA?

Why is this rule bad? This rule was written for the people who are bad to the bone. You and I both know that in any profession, in any business, and even with groups of employees, there are going to be about 5 percent of the people who are ethically challenged. Five percent look for ways not to do exactly what they ought to do. That is both the businessmen and the employees. Out of that 5 percent, you will find that there are about 3 percent—this is included in that 5 percent—the reason they are ethically challenged is that they don't care. No matter what you put in their manual, they don't care; they are going to do business as usual. Out of that 3 percent, there is about one-tenth of a percent of people who are bad to the bone. That is on both sides. That isn't just businessmen or employees. It might even be a smaller number than that.

This rule is written punishing 99.9 percent of the people in this country—businesses and employees—to take care of one-tenth of 1 percent of the people who are bad to the bone. That is not the way we are supposed to do these rules. That isn't the right way to do it.

We have a little conflict in some of our laws. One of the conflicts we have is that it is difficult to talk to the worker. You will hear examples throughout the day of terrible things being done to workers. I know of some of them. I have heard the speeches before on a lot of them. I have even looked into some of them. I have talked to some of these workers. Do you know we have a law that prohibits management from talking to the employee about how his job could be more ergonomically sound, unless he is in a union?

Now, there is a little catch there. Actually, the employer still doesn't get to talk to the worker who is doing the job because he is represented. It is the representative that they have to talk to. So they don't get to listen to a worker who is doing the job. I listen to them in Wyoming almost every weekend—they know how this job ought to be done. And they have some of the simplest solutions. But they are not able to talk to employers about it because of the National Labor Relations Act. But this rule doesn't incorporate the solutions for the kinds of problems that you are going to hear today in a way that the small businessman can handle them.

Last July we had this debate and we passed an amendment, in a bipartisan way, that was avoided by the administration, pressed by the agency, and circumvented by the agency so this could be put into place. I will have some more words about how that was achieved.

I wish to make it perfectly clear that this vote is not about whether we should have ergonomics protection. It isn't about that. Let me repeat that. This vote is not about whether we should have ergonomics protection. Of course we should. Of course we need it.

Have each of you worked in your offices to handle some of the ergonomics problems there? I have. It is a necessity right where we work. Does this rule work for us? No. And we have lots of staff. It is just the other people, just the small businessmen who have to memorize the manual themselves.

My colleagues and I strongly believe in protecting the workers, protecting the employees against musculoskeletal injuries—there is one of those $50 words from OSHA. We are not trying to kill ergonomics protection. In fact, you heard my colleague from Vermont earlier say that the Congressional Review Act clearly permits OSHA to issue another ergonomics rule, and you have heard the words of the Secretary of Labor who said she will continue to look at this issue and consider all the best options for protecting worker safety, including a new rulemaking.

I look forward to engaging in that process with Secretary Chao. As chairman of the subcommittee dealing with work safety, I feel a special responsibility to help employers protect American workers. I have no interest in killing the ergonomics protection, and I would not vote to do that. In fact, one of the highlights of last weekend was my meeting with the Service Employees International Union in Wyoming and receiving a certificate from them, on a national basis, for the work that I did on safety with needle sticks—something that was extremely important in this country, something that had been worked on for at least a decade.

Senator KENNEDY and I, and Senator JEFFORDS, and others, talked about some reasonable improvements that could be made. We got together on a bill. We put it together as a bill—not as a rulemaking by a bunch of unelected bureaucrats, not something as long as this rule. We agreed on it. Do you know what happened. It passed both bodies by unanimous consent. It went to the President and, of course, the President signed it.

After years of working on it, we sat down and worked it out. I am saying that we can work out ergonomics legislation so it will be beneficial to everyone, particularly the ones doing the work. That is how we are supposed to go about doing things, not through the process I am going to describe to you that OSHA went through and wound up with this huge rule.

But we are not voting on the value of ergonomics protection today; we are voting on one thing, and one thing only, and that is this Clinton ergonomics rule. This rule cannot be allowed to stand. If this were allowed to stand, it would not be of benefit to people who are working. It was issued as a last political hurrah for the former administration. It is the product of a rushed and flawed rulemaking, and it will not protect workers.

The power for OSHA to write this rule did not materialize out of thin air. We in Congress did give that authority to OSHA, and it is time for us to take some responsibility for what OSHA has done this time. The Congressional Review Act gives us special procedures to

do just that, and I am proud to be a part of today's historic innovation of the act.

I thank my colleague, Senator NICKLES, for passing the bipartisan Congressional Review Act, along with Senator REID, and for his hard work on the ergonomics issue. I also thank my colleagues, Senator BOND, Senator HUTCHINSON, and Senator THOMPSON, for their hard work on this issue.

This ergonomics rule is such an overbroad, overblown bureaucratic mess that I cannot imagine any action more in need of being taken than congressional intervention.

I am sure by the time we have had our 10 hours of debate, this rule will be indefensible.

Many of my Democrat colleagues are criticizing the effort to overturn the ergonomics rule. I wonder if any have actually read this gorilla of a rule. Have they tried to understand it? Have they tried to implement it in their offices? Have they asked the small business people in their States whether they will be able to implement it? Of course they haven't. If they had, there is no possible way they would want this rule to remain in effect.

Let me explain specifically why Congress must act to revoke the ergonomics rule. This rule violates sound principles of State and Federal law and, more importantly, common sense. I will talk more about that later, as will my colleagues.

First, I will talk about how we got here and then we will better understand why this rule is so bad and needs to go. Simply put, OSHA rushed through the rulemaking process. Worse yet, they stacked the evidentiary evidence. They ignored criticisms—worse than that, they paid people to rip the criticisms apart. They changed the rules in the middle of the game.

Is it any wonder this flawed process produced a flawed rule? Use spoiled milk, you get a spoiled milkshake. Let's look at some examples. Since 1988, the average time OSHA has spent per rule has been 4 years. Yet the ergonomics regulation was finalized in under 1 year by OSHA despite the fact it generated more public comment than any other prior OSHA rule. Why the rush? The answer is clear: The history books were closing on the Clinton Presidency so OSHA rushed to publish its final rule on one of the last possible days before the new administration to ensure that the new administration would have no recourse. The rule was published on November 16, put into effect on January 16. Is it any coincidence that the inauguration was January 20? That is by constitutional law. Everybody knew when the inauguration would be, when the opportunity would come for a new administration to take a look at what has happened. This has been a rush. No, they rushed forward in spite of the fact that both the Senate and the House voted to impose a 1-year delay on the rulemaking in a bipartisan way, in a civil way. Responsible rulemaking or political posturing? What was the agency doing and thinking?

My Democrat colleagues love to say this rulemaking has been a 10-year process started by Republican Elizabeth Dole. Let's be perfectly clear. No matter how long an issue is out there, the public has no way of knowing how OSHA will handle it, what OSHA will require, what OSHA is going to do, until OSHA actually publishes a proposed rule. That is the beginning of the rule debate. We have all known there have been ergonomics problems—ergonomics problems at work, at home, ergonomics problems with our recreation. Something needs to be done in all of those areas to eliminate the pain and suffering people go through. We have all recognized that.

When did OSHA actually do something? They did it a little less than a year before the final rule. In the case of ergonomics, OSHA let us in on their plan a mere 358 days before they made it the law of the land, one-quarter of the time they typically take.

Let's break it down even further. After the public comment period closed on August 10, 2000, OSHA received over 7,000 comments with 800 volumes of exhibits comprised of over 19,000 separate documents, each ranging in size up to 700 pages. Say the average size of these documents is just 100 pages; that comes to 1.9 million pages of material. That is pretty close to 2 million pages. But there were only 94 days between the end of the public comment period and the date of the OSHA-published rue.

How can the American people possibly have confidence that OSHA truly read, understood, analyzed, correlated, and responded to the 2 million pages of material in 94 days? That is 20,000 pages a day, steady, consolidated. Even if they don't consider it—which we know they didn't—it takes a long time to get through 2 million pages of work. Maybe that is where they saved time because there isn't a single bit of evidence that a single concern made it to the final rule. In fact, the rule got worse. They didn't listen; they made it worse.

Maybe OSHA didn't think it needed to pay any attention to these comments because it could get all the information it wanted from its hired guns. Yes, hired guns. At a most conservative estimate, OSHA paid over 70 contractors a total of $1.75 million to help it with ergonomics rulemaking. In particular, OSHA paid some 20 contractors $10,000 each to testify on the proposed rule. They not only testified on it; they had their testimony edited by the Department. Does that show concern for the problems of America? They brought them in for special sessions so they would be prepared for the same kind of atmosphere they would be in when they were presenting their testimony. They practiced these people, which also made sure the testimony they were giving was the testimony OSHA wanted given.

Then—and this is the worst part of it all—they paid those witnesses to tear apart the testimony of the other folks who were testifying, at their own expense.

Not being paid $10,000 by their government, coming to Washington wanting to testify on a rule, or sending their comments to Washington expecting their comments to be read and considered: not much to ask of a citizen, is it?

What does our government do? They pay contractors to rip apart the testimony. These may be the same contractors who helped compile these 2 million pages of documents to see if there was anything worth putting into the rule. That is not how our government ought to work. OSHA assisted the contractors with preparation of their testimony; they made suggestions to them about what they should say; they held practice sessions to prepare them.

Regardless of whether these tactics actually violate any law, it clearly paints OSHA as a zealous advocate, not an impartial decisionmaker. That is what we expect of our government: impartial decisions—not rabid, zealous advocates.

OSHA should be weighing all of the evidence and making the best decision for workplace safety, not blindly defending its own position at all costs—literally all costs, your costs and my costs, paying people to present the testimony.

How can the American people have any confidence that the outcome of this rulemaking was fair and unbiased? Look at the evidence. They can't.

This perception is also strengthened by the fact that OSHA completely ignored the many criticisms of the proposed rule and actually made it worse. For example, I held two hearings on OSHA's proposed rule last year. Yesterday, I brought in a volume that included that, with lots of testimony, lots of information, lots of letters.

During the first hearing, we examined a provision that requires employers to compensate certain injured employees at 90 percent to 100 percent of their salary. OSHA calls this requirement a ''work restriction protection,'' or WRP. But this provision sounds an awful lot like Federal workers compensation, doesn't it?

At the hearing, we heard testimony from a State workers compensation administrator and two experts in insurance and workers compensation. We also received written testimony from a large group of insurance companies. All of this testimony unequivocally showed that this provision will wreak havoc with the State workers compensation systems.

All 50 States have intricate workers compensation systems that strike a delicate balance between the employer and the employee. When I was in the State legislature in Wyoming, that took up a good deal of the time we spent in the Labor Committee, working on all of the history of workers comp. It is decades old, and there are thousands of administrators who have worked on this for years. OSHA doesn't have anybody who has worked on it for years. OSHA doesn't have anything in place to take care of the kinds of things that are going to happen when this rule starts generating workers comp payments.

All 50 States do have intricate workers compensation systems, and they strike a delicate balance. Each party gives up certain rights in exchange for certain benefits. An employer gives up his ability to argue that a workplace accident was not its fault in exchange for a promise that the employee will not pursue other remedies against it.

Each State has reached its own balance through years of experience, trial and error. Significantly, Congress has never taken this autonomy away from the States by mandating Federal workers compensation requirements before. The ergonomics rule destroys the State's balance and completely overrides the State's rights to make an independent determination about what constitutes a work-related injury and what level of compensation injured workers should receive.

OSHA doesn't have the mechanisms or the manpower to decide the numerous disputes that will inevitably arise because of the WRP provision. All of a sudden, OSHA will have to decide disputes over the existence of medical conditions, the causation, and the right to compensation. What is going to happen to workplace safety and health while OSHA is busy being a workers compensation administration? Do you think they are going to need some additional help on that? You bet they will.

In addition, under WRP, employers must pay immediately and employees can keep both the WRP payment and the workers compensation payment unless the employer sues the employee to recoup the double payment. Do you think the employee will have the money to pay back the double payment?

What we mentioned in committee, and I have mentioned this personally to the people who were working on this rule, that it was set up so an employee could be paid twice for being injured—I ask you, if you can make more money by not showing up for work than you can by showing up for work, would your boss expect you to be there? Even for the best intentioned person, this is a great temptation. And what we are hearing from the businessmen across this country. How do we administer this? How do we make sure we are not doing double payments to employees? How do we make sure that our workforce isn't being paid not to work? We want to do what is right, but we do need workers.

Employees will be making more money by staying home than coming to work, and without any medical diagnosis.

The rule is triggered with no medical diagnosis. Worse yet, under the WRP, the employer cannot get information from the doctor about how the accident happened? He can't get advice from the doctor who actually looked at the patient, to see how to solve the problem. That is illegal under the rule. If we really want to solve the problem for the person, why can't they talk to each other under this rule? Talking to people is the way to get the solution, and OSHA prohibit it because they think all those employers out there are bad to the bone. They wrote this rule for the one-tenth of 1 percent of the people in this country who will not be affected by the rule one bit.

It is no surprise that this WRP provision was vigorously opposed by the Western Governors' Association, the Tennessee Legislature, the New York Department of Labor, the Pennsylvania Department of Labor, and many others. All these complaints are on top of the fact that WRPs violate the OSH Act, a little problem OSHA chose to ignore.

Thirty years ago when Congress wrote the Occupational Safety and Health Act, it made an explicit statement about OSHA and workers compensation. I will quote the act.

> . . . supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

This is almost as if to say: What part of ''no'' don't you understand? ''Nothing in this chapter shall be construed''—''in any other manner''—there are so many words in here that say you can't do workers comp.

You will hear the other side mention a couple of areas where there have been some WRP payments. You will find that those are instances where they can test for substances that can be isolated at the workplace, where there was virtually no other possibility of them getting the contamination somewhere else. They are in the cotton dust and the lead provision. These are very special cases where the exposure can only happen at those workplaces.

That is not like this one, where the accident can happen—it happens over a period of time; it happens as a result of an accumulated effect, and, according to the National Academy of Sciences study, it is even based on attitude at the moment. I would like to see people measure that one.

Twice the provision uses the broad phrase ''shall not affect in any manner'' to describe what OSHA should not do to workers compensation. As someone with the privilege of being one of the country's lawmakers, it is hard for me to imagine how Congress could have drafted a broader or more explicit prohibition of OSHA's interference with State workers compensation.

But did OSHA heed these numerous complaints and the potential illegality and the constant mention that has been made of it during the entire process, in comment letters, in hearings, and remove the rule? No, it did not. They are all right here. It is on page 6885–4—I love the numbering of the Federal documents—of the final rule.

In our second hearing, we examined the devastating effect the rule would have on patients and facilities dependent upon Medicaid and Medicare. Testimony at that hearing demonstrated that the rule forces these facilities to violate the law and could force them out of business. In 1987, Congress passed the Nursing Home Act, recognizing the importance of human dignity—the importance of patient dignity—the importance of permitting patients to choose how they are moved and how they receive certain types of care.

This act and corresponding regulations mandate this important freedom of choice for patients. The ergonomics rule, on the other hand, imposes many requirements on all health care facilities and providers concerning patient care and movement. Thus, these facilities and providers may be forced to choose between violating the ergonomics rule or violating both the Nursing Home Act and patient dignity. We asked them to come up with some kind of solution for that problem in the hearing.

Moreover, OSHA's rule forces impossible choices about resource allocation between patient care versus employee care. The only way for businesses to absorb the cost of this rule is to pass the cost along to consumers. However, some consumers are patients dependent on Medicaid and Medicare—very important people we cannot leave out. The Federal Government sets an absolute cap on what these individuals can pay for medical services. Thus, the facilities that provide care for these patients simply cannot charge a higher cost. They have to absorb the cost of the rule.

Simply put, these facilities and providers are unable to absorb the cost of the ergonomics rule. And there is no question these facilities will face a cost. OSHA's own estimate of the cost of compliance in the first year will total $526 million for nursing and personal care facilities and residential care. The industry is already having trouble. The industry estimates that the per-facility cost for a typical nursing home will be $60,000.

But my issue with this rule is not that it will cost these facilities so much. It is that it will cost elderly and poor patients access to quality care. The new expenses this rule will add simply cannot be passed on to the patients who depend on this program, and a cut in service will be the only option. We have already seen what is happening, particularly with rural medical practice costs of providing the treatments that are limited. They are going out of business in my State.

Did OSHA do anything to address this problem? Did it resolve the legal conflict? Did it explain how these facilities can comply without sacrificing quality of care and quantity of care? No. In fact, OSHA's own estimate of the cost of compliance with the final rule actually increased over the proposed rule. And they stuck in a couple more things. OSHA actually made this situation worse rather than listening to these vulnerable facilities.

This really disappoints me.

After the hearings were over, I met with the former Assistant Secretary for OSHA and talked to him about my concerns. Mr. Ballinger made efforts in North Carolina in ergonomics and saw a reasonable approach to it, and even recommended him to be the Assistant Secretary for OSHA. I was there at the nomination process and the confirmation hearing. I asked questions about this. I thought we had a person who was reasonable and who would listen. Perhaps he did. Perhaps the bureaucracy took control of him.

But I met with him after we had the hearings and before the rule went into effect. I pleaded with him to solve the problems created by the proposed rule. And he said he would make significant changes. But it was clear that he thought OSHA was an advocate for their original version rather than an impartial decisionmaker weighing all the evidence fairly.

Now that I have seen the final rule, it is clear that OSHA saw blind advocacy as more important than its duty to craft the best possible rule. I see no indication that he took my subcommittee's work or any of the public comments to heart.

Perhaps more disturbing than OSHA's disregard for public comment is its denial of public opportunity to accept only certain elements of the final rule—another drastic attack on the American people. OSHA made significant substantial changes to the final rule without giving the public an opportunity to comment on them.

What this could lead to if we don't reverse the rule today is the agency saying: Let's see. The easiest way to do this would be to leave things out of the proposal and then hold the hearings and take the testimony. And, when we are finished, we will do the final rule the way we want to.

That is what OSHA did. The starting point wasn't so popular and it drew significant adverse comment. But they didn't address it. They just went on to another publication—one that was more stringent than with what they started.

The worst of these changes is OSHA's addition of eight new job hazard analysis tools.

I can almost see your eyes starting to glaze over. If I started to read all of these additional pages to you, they would. But remember that the small businessman has to take these into consideration. The guy out there who doesn't have the specialized staff that OSHA has is going to have to know these because they have included them in the rule.

OSHA's rule says to employers: If you want to be assured of avoiding fines and penalties, you have to reduce the ergonomic hazards in your workplace below the level specified in one of eight tools contained in mandatory appendix D–1.

Doesn't that get you excited? The tool you use is dependent on the type of work your business performs. But you have to figure out which one for yourself.

Here are a couple of them.

We have the ACGIH hand-arm vibration—actually sharing a summary with the small businessmen. It may be some help to them but not much.

GM-UAW risk factor checklist: Sounds like the kind of study you would want to read to keep your mind active.

The push-pull hazard table, and the rapid upper limb assessment—do those sound a little difficult? Yes; they are. They were written by ergonomists for ergonomists. None of them were written for small businessmen. But the small businessman still has to understand them.

These tools are actually eight separate documents that were not written by OSHA, and they were not mandated in the proposed rule—only the final rule. No member of the scientific community and none of the regulated public had an opportunity to comment on whether mandating compliance with these tools is a good idea.

Adding insult to injure, as far as I can tell, OSHA does not provide these documents. Instead, OSHA tells employers: You are on your own. Go ask the publishers, the trade association, and the private companies that wrote these tools to give them to you. So we gave it a shot.

Let me tell you it wasn't easy. It took three of my staff several days, and there was still one document they were not able to obtain at all. Remember, these weren't free.

As for the rest of them, one of the documents is 164 pages long. That is in addition to the rule. It all depends on how thick the paper is. The Government didn't use good paper. That probably saved us a little bit of money. Not doing the rule would save us a lot more.

So let's see what the local bakery has to comply with. I am going to read from The American Conference of Governmental Industrial Hygenists Hand/Arm (Segmental) Vibration Threshold Limit Value (or TLV). This is straight from the range of pages cited by OSHA in the mandatory appendix:

> For each direction being measured, linear integration should be employed for vibrations that are of extremely short duration or vary substantially in time. If the total daily vibration exposure in a given direction is composed of several exposures at different rms accelerations, then the equivalent, frequency-weighted component acceleration in that direction should be determined in accordance with the following equation.

As for the rest of them: One of these documents is one hundred sixty-four pages long. For at least five others, there are separate monetary charges—that's right, businesses have to pay to be able to read these federally mandated documents. And several of these documents are articles in scientific journals written for ergonomists and engineers. But the corner convenience store, local newspaper and your favorite bakery must comply with them all the same.

That is something we deal with on the floor of the Senate every single day, isn't it? I mean, why wouldn't our small businessmen be able to take this simple—simple?—calculus formula and figure out if their employees were getting too much vibration on the job?

It would be a lot simpler if they asked the employees if they were having vibration problems. But the law makes that difficult.

You cannot talk to the guy with the problem and say: Are the vibrations bothering you? What can we do to eliminate some of the vibrations? No. Instead, we have this thing about RMS accelerations, with equivalent, frequency-weighted component acceleration, determined in conjunction with this very simple formula.

Now, I am sure everybody in Congress is going to be proud to go to their baker and say: We know you run some equipment that has vibrations. I want to help you understand this formula. Yes. It is not going to happen. When your baker sees this thing, I will tell you what he will think you ought to do with this rule. There really ought not to be anybody who votes for this rule, not the way it has been messed up through a process that ought to be helping people.

Do you see any evidence there was any attempt to help people? All we built in was cost. We did not build in care. We did not take care of the people of America. We did not save them from their ergonomics problems. We put so much garbage out there that the businessman is simply not going to be able to comply.

This isn't the kind of thing any of us ever anticipated we would be thrusting

on the small businessmen of this country. In fact, it isn't even what we thought we would be thrusting on the workers of this country. Do you know what is going to happen in a bunch of businesses in this country. Instead of asking that employee what could be done, instead of asking him how to solve the problem, they are going to hire somebody who will automate the plant. People will lose their jobs. Yes, we may hire somebody to run the automation, but that is not going to take care of jobs in this country, the jobs of people who work hard every day and know what they are doing and know the simple ways that the process could be improved.

I tell you, not one of them is going to read this; not one of them needs to read this. You do not need to read this to solve the problems in the workplace. There are none of us who do not want to see the ergonomics problems reduced and eliminated. I tell you, business has been doing that. Yes, according to OSHA, over the last 5 years business has reduced the number of ergonomics accidents by 22 percent. The Bureau of Labor Statistics gives business a lot more credit than OSHA for these numbers.

What would improve ergonomics in this country? I tell you, if we had the same number of people working with businesses suggesting things that would help the people in that business, instead of spending their time writing this kind of stuff, we would have a lot more of the problems solved.

I am willing to work on coming up with an ergonomics rule that will work to reduce injuries. I am not interested in seeing an ergonomics rule that is for the benefit of the jobs of bureaucrats. That is not going to help us.

I ask you, how in the world is any small business or any businessman, for that matter, supposed to figure out all this stuff? They can't. Businesses simply will not be able to comply with the requirements. But OSHA has not heard their stories because it deprived the American people of the opportunity to comment on the requirements.

Rest assured, these problems are just the tip of the iceberg. You will be hearing about more flaws from my colleagues in the coming hours. But if even one of these issues that I have raised troubles you—and I think they should all trouble you deeply—then you must recognize the desperate need for congressional intervention. That is why a bipartisan act years ago set up this process, so that Congress could jerk an agency back to reality that has not been paying attention. There is a desperate need for congressional intervention.

I urge my colleagues to vote in favor of this resolution. Let's show the country that although Congress delegated rulemaking authority to OSHA, we have not abdicated our responsibility to the American people. I will watch out for the American people. I know my colleagues will, too.

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

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, first of all, let me say to my colleague from Wyoming—he chairs the committee with jurisdiction over workplace safety, and I am the ranking minority member—I appreciate him as a Senator. There is a different version of those hearings and a different version about what is the right thing for us to do. I would like to speak to that.

Each year, there are 1.8 million workers who suffer from ergonomics disorders. Mr. President, 600,000 men and women have injuries so severe they are forced to take off work. Obviously, there is a problem. If it is your son or your daughter or your brother or your sister or your husband or your wife, it is very personal to you.

I think this is a class issue. I said it yesterday on the floor of the Senate—and I have to say it again—I think precious few Senators really understand what these statistics mean in personal terms because, frankly, we are talking about a part of the population that is not well represented in the Congress, not well represented in the Senate. We are talking about working-class people. I do not think most Senators have loved ones who are doing this work, whether it is blue-collar work or white-collar work.

As I say, 1.8 million workers every year suffer from work-related ergonomics disorders—many of them women. I must say, I think some of the discussion on the floor trivializes these injuries, trivializes this pain, and trivializes the need for protection for people.

I do not know how many times I have heard from my colleagues that, of course, there should be ergonomics protection, that, of course, we should do something—but it is never this rule; it is never that rule; it is never the next rule. Frankly, there are interests that for 10 years have done everything they could to oppose any kind of rule providing people at the workplace with this protection. That is what this resolution is about. That is what this debate is about.

Keta Ortiz is a sewing machine operator in New York City. She was 52 when her whole life came crashing down. She ended up with cramps in her hands so severe that when she woke up, they were frozen like claws. She had to soak her hands in hot water just to be able to move her fingers. This went on for 5 years. Terrified of losing her job, she suffered agony beyond measure, beyond any measure most Senators know. Finally, she had to give up her job. It took 2 years for her to get her first workers comp check. She lost hers and her family's health insurance, and she now tries to get by on $120 a week in workers comp payments.

Shirley Mack from Spring Lake, NC, is a single parent with four children. Let's talk about people. You can put charts up, and you can make fun of rules, and you can trivialize what this is all about, but let's talk about people's lives.

Shirley Mack has worked since she was 5 and tried very hard to stay off public assistance. Her job was splitting chicken breasts in a poultry plant, working 8 or 9 hours a day, 5 days a week. I doubt whether very many Senators have done that. I have not. Maybe some have, not too many, though.

I am on safe ground, aren't I, colleagues, in saying that not too many Senators have ever done this kind of work? She says she was one of the faster workers but then her hands started hurting and going numb. To avoid losing her job, she continued working, but then her hand stopped working. Her finger locked. Her hand grew numb and cold, and her arm stopped working. After a few days in the plant of not being able to work, she was fired.

I quote from her:

> Now I go to bed in pain and I wake up with pain. It hurts to hold my new grandson. I can't fix a big meal like I used to or hang clothes or do yard work at all. I can't go to the grocery store by myself anymore because I can't push the cart. I can only really use my left hand so lots of things like doing my hair and driving take longer and really hurt. . . . I didn't want to go on assistance, but I am now disabled. This carpal tunnel syndrome is very real.

Some of us are being very generous with the suffering of others. That is what this rule was all about—lessening the suffering of a whole lot of people in the workforce of the United States of America. Now with this resolution, we are going to wipe out that rule, wipe out that protection.

It is interesting: We are in this intense debate—or will be soon—on the education bill regarding accountability for our schools, but when it comes to worker safety, all of a sudden accountability and standards go out the window.

My colleagues have been holding up the Federal Register. They have been talking about the rule. The rule is eight pages. The rule is eight pages. There is background; there is context; there are reasons for doing it. This is the rule, eight pages. This whole book is not the rule; it is a lot of good background information on the rule.

I will discuss what this rule is about, 8 pages, 10 years in the making, starting with Elizabeth Dole, and now in 10 hours we are going to overturn it. By the way, for all my colleagues who say they are committed to doing something, they will do something, time is

not neutral for these workers. These injuries are debilitating. It is a life of hell. It is a life of pain. Now in 10 hours we are going to overturn this rule.

These standards, eight pages of a rule, represent a sound, reasonable, sensible approach. What does the rule basically say? After 10 years of diligent work, initiated by Elizabeth Dole when she was Secretary of Labor, right up to now, what do we have? We have state-of-the-art, flexible, commonsense rules for employers, helping them to deal with this vexing problem of ergonomic disorders.

The requirements are not complicated: One, the standard simply calls for employers to provide employees with basic information about ergonomic disorders so that if you are working and you are experiencing these symptoms, you know what is happening to you before it is too late. Then the employer need not do anything more, that is it, unless a worker or an employee reports a disorder or a symptom which is a sign of the disorder. The worker says: I can barely move my wrist; my fingers are swelling; I am in pain. Then there is a problem.

First the employer lets the workers know, gives them information so people can understand what might be happening to them. That is a terrible idea?

Then if the employee should come to the employer and say, I have a problem, it is up to the employer to determine whether or not what has been reported is an ergonomic incident. There are clear criteria laid out. If that threshold is reached, then the employer is obliged to work with his or her employees to identify and analyze the hazards and develop a program to deal with those hazards.

We would think, from hearing some of the Senators on the floor of the Senate, that OSHA has done a terrible thing by promulgating a rule, based on 10 years of work, to provide some protection for well over a million and a half workers every year who face these disabling injuries, 600,000 of whom are not even able to work part of the time because of these injuries.

Are these rigid, onerous, arbitrary rules? No, they are not. A lot of smart businesspeople are already utilizing these standards. Tom Albin, who is an ergonomist at 3M in St. Paul, MN, had this to say about what 3M does in my State:

> Our experience has shown that incorporating good ergonomics into our manufacturing and administrative processes can be effective in reducing the number and severity of work-related musculoskeletal disorders, which not only benefits our employee, but also makes good business sense.

Tom Albin is right; it is good business sense.

> 3M's evolving ergonomics process has been effective at reducing the impact of these disorders on our employees and our business. From 1993 to 1997 we have experienced a 50 percent reduction in ergonomics-related OSHA recordables and 70 percent reduction in ergonomics-related lost time OSHA recordables.

In other words, paying attention to ergonomics makes good business sense. It is cost effective. Estimates are that the $4.5 billion annually it will take to implement these standards will result in $9.1 billion annually of savings which are recouped from the lost productivity, lost tax payments, administrative costs, and workers comp. You do the prevention. We have this rule. You have this standard. You prevent injuries. You have more productivity. Workers are not absent from work, and you have fewer workers comp claims. We have also lived to our values: We have provided protection for hard-working people.

When my colleagues come to the floor and talk about this standard as if it is arbitrary and capricious, they leave out a little bit of the history of this. The fact is, many companies are saying, yes, we need to do this. Good businesspeople are saying, yes, we need to do this. It is preventative, and it saves money.

The results are not surprising. The National Academy of Sciences and the Institute of Medicine report, which was requested by industry groups and opponents of these standards—I haven't heard any discussion about this—finds scientific support that, one, exposure to ergonomic hazards in the workplace causes ergonomic disorders; and, two, these injuries can be prevented.

This is the report. If I were to list—and I don't have time because other colleagues will speak—the panel composition, it extends from internal medicine to nursing to physiology to biomechanics to human factors engineering, a most distinguished panel of men and women. The National Academy of Sciences found a strong and persistent pattern, both on the basis of epidemiological studies and biomechanical studies, that indeed there was a huge problem in the workplace. Repetitive stress injuries are for real. People are disabled.

They also found that in fact if we want, we can take action to reduce this pain and agony. We could change the design of tools and work stations, rotate jobs, lift tables, have vibration-dampening seating devices. There are a whole set of ergonomic principles which can be used to reduce exposure to risk factors and, as a result, mean less pain for many women and men in the workforce.

I have not heard my colleagues talk about this study. I know sometimes facts are stubborn things. I know sometimes we don't want to know what we don't want to know. The NAS report goes on to affirm the basic elements of the OSHA standard: management, leadership, employee participation, job hazard analysis and control, training, and medical management. So my second point is that the case for these standards is strong and unassailable.

My last point has to do with the rush to judgment that we are witnessing today: Ten years of work, countless studies, untold time and effort overturned after 10 hours of debate. This resolution of disapproval wasn't sent to committee, and this, despite the fact that we have a new study hundreds of pages long, commissioned by the opponents of this rule that supports the essential elements of what OSHA ordered. This is the problem my colleagues have. They are doing the bidding of some very greedy folks who say they don't want to have to spend any more money.

How generous we are with the suffering of others. So we had 10 years of study and the opponents wanted the National Academy of Sciences to give us their best judgment. Well, they ended up supporting basically the rules that OSHA ordered, which was what the opponents were opposed to. So now Senators don't have the study; they don't have the research; they don't have the evidence. But I will tell you what they do have. This is what they do have. They could come to the floor of the Senate. The administration could do the same thing. The administration could stay OSHA's rule. The administration could reopen the rulemaking process, call for further studies; they could let the court processes unwind.

Instead, this effort is to kill the rule. This is scorched earth policy to prevent OSHA from ever issuing a rule in ''substantially the same form, unless specifically authorized by a subsequent act of the Congress.'' That is what this is all about.

Let me be clear about this. My colleagues are not interested in making any kind of accommodation. That is not what this is about. They are not interested in saying, yes, there are some parts in this rule we don't like; let's see if we can fix them. What they want to do is avoid accountability for worker safety. That is what this is all about—that we will avoid accountability. That is what is so egregious. That is what is so egregious about what is happening.

I finish this way. This is one interesting and telling week for—sometimes you speak on the floor of the Senate and you somehow hope you get the attention of people, and you almost hope people listen and you can connect with the people in the country to somehow follow debate, or they hear one thing you say.

I certainly wish to say this: For working people, for people who are not the heavy hitters, not the big players, not the investors, don't have all of the economic clout, don't lobby here every day in Washington, who are doing the work, who are faced with these kinds of

injuries and this kind of pain, these kinds of disabilities, men and women—but probably the majority are women—this is not a good week for them because this resolution overturns 10 years of hard, diligent work to finally write a rule that will give working men and women some protection in the workplace. And then if you can't work because you are disabled by this injury—remember, a lot of people have no other choice. A lot of people work at these jobs because they have no other choice. They don't work at these jobs for the fun of it. We have options. We can go to other work. They don't.

And then what we are going to do, starting tomorrow, assuming this resolution passes, is we are also going to say to the same people, now we have overturned the rule, now we have moved away from protection—although Senators are saying, of course, we are concerned. Your concern doesn't mean much because time is not neutral, and for a whole lot of folks the injuries are now.

I keep hearing we are for another rule, another time, another place; but every time big economic interests say, oh, no, we can't afford it.

My colleague from Wyoming, whom I respect, talked about nursing homes. I hope that the choice is not between nursing homes or hospitals saying, look, in order for us to be able to make it economically—I agree they have gotten the short end of the stick when it comes to reimbursement. We have our health care providers saying the only way they can survive economically is for the workforce to work jobs that are unsafe and continue to suffer and struggle with disabling injuries. That should not be the tradeoff.

Does anybody wonder why we have a 40-percent turnover in nursing homes every year? Part of it is the low wages and part of it is outrageous working conditions, taking care of our mothers and fathers who built the country on their backs. One would think we would do well for parents and grandparents and for the human service workers who take care of them. We don't do well for the men and women who take care of our parents and our grandparents in nursing homes or in home health care when we do not take action to protect them and make sure they are safe.

I can only say that the supreme irony of this week is that now that we take away the protection, if you are disabled and you can no longer work, then what we are going to do, starting tomorrow, is pass the bankruptcy bill that is going to make it impossible for most people in the country to any longer file chapter 7 and rebuild their lives. Incredibly harsh. Great for the credit card companies. It doesn't hold them accountable for their predatory policies, for pumping these credit cards on our children and grandchildren. But, boy, when it comes to families that find themselves in terrible economic circumstances because of a major medical bill, or because of the loss of a job, or because of a divorce, it is going to be practically impossible for people to rebuild their lives.

So I say that working families get the shaft on the floor of the Senate this week and next week as well. I say that is a shame. But I say that I believe in the intelligence of people, and my guess is that citizens in the country will figure this out and they will have a pretty good sense of who gets represented well here and who is left out.

I will finish with this sentence. I think, unfortunately, that even though I don't believe it is intended, because Senators on the other side of this debate are good people—we just disagree—I think the effect of this resolution overturning 10 years of work, overturning this rule, so important to protecting men and women in the workplace—the effect is to make many working Americans, men and women, expendable. We are making them expendable. We are saying to many working class people in the country that you are expendable Americans. I am in profound opposition to that statement.

I yield the floor.

Mr. ENZI. Mr. President, I yield such time as the Senator from Tennessee may use.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I rise in support of the proposition that in a democratic republic it is entirely appropriate for elected representatives to have some say-so when a bureaucracy produces a rule that so greatly affects people's lives.

As we get into our discussion, we can discuss some of these broad, powerful, greedy interests that have been referred to, and we can discuss exactly who is affected by this rule and whether or not all these people fit that definition that our previous speaker has just cast on everyone who comes to us with concern about this rule.

I rise in support of the resolution of disapproval of OSHA's ergonomics regulation. I do not make this decision lightly, but this regulation is so unworkable, and the process under which it was issued so unsound, I believe I have no choice but to support its disapproval.

This regulation is a perfect illustration of how political gamesmanship can subvert rational policymaking.

At the outset, I will address some of the claims made about this resolution of disapproval. Some assert that this resolution is an attack on worker safety. Some may even claim this resolution will bar OSHA from addressing the problem of musculoskeletal disorders. The truth is, none of us oppose worker safety. Many of us have worked on those assembly lines we hear so much about. Some have firsthand experience with such matters.

This resolution prevents an irresponsible and unworkable regulation from taking effect. OSHA will still retain the freedom to address the problem of musculoskeletal disorders, including through the use of its general enforcement authority or by reissuing a reasonable regulation. Just because something has been worked on for many years does not mean the final product produced at the last minute is a reasonable product. Perhaps a lot of good work went into this over the last 10 years, but what counts, as we have learned in so many other areas, is what happened as it went out the door.

There is not enough time to discuss all of the flaws and problems with this regulation. Many of my colleagues have discussed, and undoubtedly will discuss, some of these problems. They will show this regulation is the product of an unfair, biased process. The rule will unfairly burden businesses all across America, especially small businesses. Beyond the private sector burdens, this regulation will cost the U.S. Postal Service over $3.4 billion, plus $1.5 billion annually thereafter. My colleagues will also show this regulation is incomprehensible. This regulation is unworkable. All of this is cause for concern. I am particularly concerned about the burden this regulation imposes on businesses in Tennessee. But I will not rehash all of these arguments in the limited time I have today. Instead, I want to focus on how the Clinton ergonomics regulation would harm State and local governments and violate principle of federalism.

As chairman of the Governmental Affairs Committee, I have the responsibility to oversee Federal-State relations. Over the past several years, I have struggled with the Clinton administration over its federalism policy. This ergonomics regulation is consistent with their disrespect for the principle of federalism. By many measures, this would be the most burdensome regulation ever imposed by OSHA. It would amount to an enormous unfunded mandate. It would preempt traditional State and local authority. It could seriously impair State and local governments across our country, and certainly in Tennessee. It could hit hardest in many small and poor communities where local governments struggle to meet the needs of their citizens already.

Yet until the 11th hour, OSHA neglected to consider how its regulation would burden State and local governments and erode their traditional authority. OSHA failed to properly consult concerned local representatives or to fully explain the potential effect on State and local employers.

After spending years to study the impact of this mega-regulation, OSHA neglected to consider the economic impact of its proposed regulation on

State and local governments. This is not a small oversight, to say the least. When OSHA published its proposed ergonomics standard in November of 1999, OSHA claimed ''few if any of the affected employers are State, local, or tribal governments.'' Then OSHA heard the howls of protest and conceded that the regulation certainly was going to impose very large and real burdens on these groups.

Such small inconvenience did not slow OSHA's rush to ram out this regulation in final form in the last days of the Clinton administration. OSHA simply cranked out a perfunctory economic analysis last May and provided State and local governments a grossly inadequate 30-day period to comment on OSHA's slipshod economic analysis. OSHA also moved its July 7 hearing to consider the economic impact on these parties from Washington, DC, to Atlanta, GA, during a time when there was a huge convention in Atlanta and rooms were scarce. Many interested parties, including representatives of local government, were not even able to attend due to the expense and inconvenience involved.

When it issued the final rule, OSHA admitted there would, indeed, be economic burdens for State and local governments—to the tune of about $558 million each year. Other estimates are much higher. The Heritage Foundation estimated that the cost of the ergonomics proposal on State and local government would be about $1.7 billion.

When OSHA proposed this regulation, it claimed that the Unfunded Mandates Reform Act did not apply. In the preamble to its final rule, OSHA does not deny that the ergonomics regulation would impose an enormous unfunded mandate. But it glibly claims that the final rule is the most cost-effective alternative. We have already seen many instances where the Clinton administration thumbed its nose at the Unfunded Mandates Act. A GAO report I requested a couple of years ago concluded that the Unfunded Mandates Act has had little effect on agency rulemaking. I think this episode cries out for reexamining the Unfunded Mandates Act.

I am concerned that many governmental entities—towns, water districts, volunteer fire departments, and so on—will not be able to sustain the cost of this unfunded mandate without increasing taxes or cutting vital services. Local governments simply do not have adequate resources to meet these far-reaching mandates from OSHA. This is true both in Tennessee and across America.

According to the National League of Cities, out of 36,000 cities and towns in America, 91 percent have populations of fewer than 10,000. The average annual budget of these small towns and cities is about $1.6 million. At the end of the day, there is simply no money for lawyers and ergonomics experts.

But the story does not end there. This standard preempts an area of traditional State authority. State workers' compensation systems are based on decades of experience and careful deliberation. We talk about 10 years working on this rule. What about the many more years it has taken to develop State workers' compensation laws that are totally abrogated by this rule?

In one fell swoop, OSHA would overturn the careful policy choices of the States. This regulation supersedes existing State workers' compensation programs despite the fact that the Occupational Safety and Health Act makes clear that OSHA may not supersede or in any way affect any workers' compensation law.

The rule's work restriction protection provisions, which require employers to pay 90 percent of earnings and 100 percent of benefits to employees unable to work, would effectively create a Federal system of workers' compensation. The rule would also allow employees to bypass the system of medical treatment provided by State law for workers' compensation injuries and seek diagnosis and treatment from any licensed health care provider.

Did Congress intend to delegate the authority to the bureaucracy to establish a Federal workers' compensation law in this area and to preempt State laws that were formulated over the last decades? I don't think so. By interjecting a special Federal compensation system for ergonomic injuries into State compensation programs, the work restriction protection provisions would provide preferential treatment for people with musculoskeletal disorders as opposed to every other job-related injury or illness.

Some local representatives have argued that the work restriction protection provisions could provide an employee who hurts his wrist playing tennis more money in benefits than current benefits provide a laborer who loses his arm.

To make matters worse, the work restriction protection provisions double the opportunity for fraud by failing to provide employers any recourse for recovering workers' compensation payments from employees who have already received their earnings and benefits through the work restriction protection provisions. The double payment would take more money away from people with real injuries who have legitimate claims.

My concerns are shared by many State and local governments that face this unfunded mandate and the erosion of their traditional authority. Both houses of the legislature of my home State of Tennessee are controlled by the Democratic Party.

The Tennessee Legislature passed a resolution calling on Congress ''to take all necessary measures to prevent the ergonomics regulation from taking effect.'' They are concerned that the ergonomics rule will preempt Tennessee's workers' compensation system, impose drastic requirements on the state government, and cause hardship for many Tennessee businesses. I agree, and I wish the Clinton Administration had listened to the representatives of the people of Tennessee.

The concerns raised by Tennessee are shared by many other state and local governments. The National League of Cities, the largest and oldest organization representing the nation's cities and towns, has opposed the regulation from the beginning. The Western Governors' Association passed a resolution detailing how the regulation would supersede the entire complex of state workers' compensation provisions and conflict with state laws.

Mr. President, a couple of years ago, I fought the Clinton Administration's attempt to repeal President Reagan's Executive Order on Federalism and to replace it with a new Order that would have created new excuses for federal meddling in state and local affairs. Ironically, the Clinton Administration tried to issue this executive order, which called for more consultation with state and local government, without consulting with state and local governments at all. A firestorm of protest from state and local officials led the White House to adopt a new federalism order that mimicked the Reagan Order. The Clinton Administration promised to consult more with state and local officials. But a year later, on the most burdensome regulation ever proposed by OSHA, the Clinton Administration did not address the problems raised by state and local officials, did not seriously consider the enormous impact of this unfunded mandate, and did not trouble itself with the rule's disruption of complex areas traditionally regulated by the states.

I ask unanimous consent that the resolution of the Tennessee legislature, a letter from Tennessee Governor Don Sundquist, and the letters from Mayor Victor Ashe of Knoxville and Mayor Charles Farmer of Jackson, be printed in the RECORD.

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

SENATE JOINT RESOLUTION 610

Whereas, Tennessee has enacted a comprehensive workers' compensation system with incentives to employers to maintain a safe workplace, to work with employees to prevent workplace injuries, and to compensate employees for injuries that occur; and

Whereas, Section 4(b)(4) of the federal Occupational Safety and Health Act, 29 U.S.C. §653(b)(4), provides that ''Nothing in this chapter shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties or liabilities of employers and employees under any law with

respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.''; and

Whereas, the Occupational Safety and Health Administration (''OSHA''), notwithstanding this statutory restriction and the constitutional, traditional and historical role of the states in providing compensation for injuries in the workplace, has nevertheless published a proposed rule that, if adopted, would substantially displace the role of the states in compensating workers for musculoskeletal injuries in the workplace and would impose far-reaching requirements for implementation of ergonomics programs; and

Whereas, the proposed rule creates in effect a special class of workers compensation benefits for ergonomic injuries, requiring payment of up to six months of wages at ninety percent (90%) of take-home pay and one hundred percent (100%) of benefits for absence from work; and

Whereas, the proposed rule would allow employees to bypass the system of medical treatment provided by Tennessee law for workers' compensation injuries and to seek diagnosis and treatment from any licensed health care provider paid by the employer; and

Whereas, the proposed rule would require employers to treat ergonomic cases as both workers' compensation cases and OSHA cases and to pay for medical treatment under both; and

Whereas, the proposed rule could force all manufacturers to alter workstations, redesign facilities or change tools and equipment, all triggered by the report of a single injury; and

Whereas, the proposed rule would require all American businesses to become full-time experts in ergonomics, a field for which there is little if any credible evidence and as to which there is an ongoing scientific debate; and

Whereas, the proposed rule would cause hardship on businesses and manufacturers with costs of compliance as high as eighteen billion dollars ($18,000,000,000) annually, without guaranteeing the prevention of a single injury; and

Whereas, the proposed rule may force businesses to make changes that would impair efficiency in distribution centers; and

Whereas, this proposed rule is premature until the science exists to understand the root cause of musculoskeletal disorders, OSHA should not rush to make rules that are likely to result in a loss of jobs without consensus in the scientific and medical communities as to what causes repetitive-stress injuries, and medical researchers must answer fundamental questions surrounding ergonomics before government regulators impose a one-size-fits-all solution; now, therefore,

Be it *Resolved* by the Senate of the One Hundred First General Assembly of the State of Tennessee, the House of Representatives concurring, That this General Assembly hereby memorializes the United States Congress to take all necessary measures to prevent the proposed ergonomics rule from taking effect.

Be it further Resolved, That an enrolled copy of this resolution be transmitted to the Speaker and the Clerk of the United States House of Representatives; the President and the Secretary of the United States Senate; and to each member of the Tennessee Congressional delegation.

STATE OF TENNESSEE,
Nashville, TN, March 5, 2001.

Hon. FRED THOMPSON,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR THOMPSON: I'd like to offer you my support for Senate Joint Resolution 6, which disapproves the ergonomics rule submitted by the Department of Labor.

I oppose unfunded federal mandates and believe in each state's right to set workplace laws. The Ergo Rule is too complex, too unworkable and would be far too costly for state and local governments at a time when most state and local governments are working to cut costs in an effort to continue to provide quality, effective services without overburdening taxpayers.

In addition, the ergonomics legislation would negatively impact hundreds of Tennessee businesses. For these reasons, I join you and the Tennessee Association of Business, the Tennessee Apparel Corporation, the Tennessee Grocers Association, the Tennessee Automotive Association, the Tennessee Malt Beverage Association, the Tennessee Health Care Association and Chattanooga Bakery Inc. in support of Senate Joint Resolution 6.

If I can be of further assistance on this or other matters please don't hesitate to call.

Sincerely,

DON SUNDQUIST.

THE CITY OF KNOXVILLE,
Knoxville, TN, March 5, 2001.

Hon. FRED THOMPSON,
U.S. Senate,
Washington, DC.

DEAR FRED: I am writing to advise you that I fully support S.J.R. 6.

This regulation regarding ergonomics is ill advised and will adversely impact local governments. It will, in fact, impose another unfunded mandate on local governments that would prove to be extremely costly for our taxpayers. It would eventually result in reduced services and/or a property tax increase.

This regulation is complex and unworkable. It is unclear how state and local governments will be affected. In addition, there can be no alternative position established for personnel such as firefighters and police officers.

I am hopeful your efforts to stop this regulation from taking effect will meet with success.

Sincerely yours,

VICTOR ASHE,
Mayor.

CITY OF JACKSON,
Jackson, TN, March 5, 2001.

Re S.J. Resolution 6.

Senator FRED THOMPSON,
Committee on Governmental Affairs,
Washington, DC.

DEAR SENATOR THOMPSON: I urge you to support S.J. Resolution 6 which allows for disapproval of the rule submitted by the Department of Labor relating to ergonomics regulation for the following reasons:

Tennessee has already enacted a comprehensive and effective workers' compensation system that encourages employers to provide a safe working environment and to compensate employees for injuries that occur.

The proposed rule would displace the role of states in compensating workers for musculoskeletal injuries in the workplace.

It would require employers to compensate workers for medical treatment under both the existing workers' compensation rules and OSHA rules.

The rule would force manufacturers to unnecessarily alter workstations and redesign facilities, which could cause undue financial hardships on businesses without guaranteeing the prevention of a single injury.

In some work environments such as fire fighting and police activity it would be impossible to alter the components of their job and remain effective.

It is unclear how state and local government employees will be affected by the rule.

OSHA did not conduct a cost-benefit analysis revealing the fiscal impact of the rule.

The rule is an unfunded mandate thereby placing the burden of funding on states and cities.

In short the rule is costly and unworkable.

Thank you for your attention to this matter. Please advise as to how I can provide further assistance of information.

Yours truly,

CHARLES H. FARMER,
Mayor.

RECESS

The PRESIDING OFFICER. The hour of 12:30 having arrived, under the previous order the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ENZI).

DISAPPROVAL OF DEPARTMENT OF LABOR ERGONOMICS RULE—Continued

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, I ask unanimous consent that the order recognizing Senator THOMPSON be vitiated.

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

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I wish to address the Senate on the matter before us that has been the subject of the debate all morning—the resolution which would vitiate OSHA regulations on ergonomics. Ergonomics is a dreadful name. I am trying to find a good definition for it. It is probably causing some people to wonder what this debate is all about.

I am told that ergonomics is the science of fitting the job to the worker and ergonomic injuries are repetitive stress injuries.

There have been some rather startling statistics regarding these stress-related injuries over the last number of years. The National Academy of Sciences and the Institute of Medicine report of January, 2001, reported that in 1999, nearly 1 million people took time from work to treat or recover from work-related ergonomic injuries. The cost of these injuries is enormous—about $50 billion annually. Many of the people with ergonomic injuries we are familiar with, such as