The Senate met at 9:00 a.m. and was called to order by the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska.

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

Almighty God, reign supreme as sovereign Lord in this Chamber today. Enter the minds and hearts of all the Senators. May they be given supernatural insight and wisdom to discern Your guidance each step of the way through this crucial day. Break deadlocks, enable creative compromises, and inspire a spirit of unity. Overcome the weariness of the hard work of this past week. Give these men and women a second wind to finish the race of completing the legislative responsibilities before them.

Where there is nowhere else to turn, we turn to You. When we fail to work things out, we must ask You to work out things. When our burdens make us downcast, we cast our burdens on You. If You could create the universe and uphold it with Your providential care, You can solve our most complex problems. We trust You, Father, and place You can solve our most complex problems. We trust You, Father, and place you can solve our most complex problems. We trust You, Father, and place you can solve our most complex problems. We trust You, Father, and place

PLEDGE OF ALLEGIANCE
The Honorable E. BENJAMIN NELSON led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE
The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
President pro tempore,

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

Mr. NELSON of Nebraska thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER
The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE
Mr. DASCHLE. Mr. President, today the Senate will resume consideration of the Patients’ Bill of Rights. As we agreed last night, we now will have a series of rollcall votes, all of which were on amendments which were offered last night.

Additional amendments with votes are expected throughout the day. It would be my expectation to finish the bill, either today or tomorrow, and then move to the organizing resolution.

So as I understand it, under the unanimous consent agreement, the first amendment is to be taken up right now. I yield the floor.

RESERVATION OF LEADER TIME
The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

BIPARTISAN PATIENT PROTECTION ACT
The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1052, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1052) to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

Pending:
Thompson amendment No. 819, to require the exhaustion of administrative remedies before a claimant goes to court.
Warner modified amendment No. 823, to limit the amount of attorneys’ fees in a cause of action brought under this Act.
DeWine amendment No. 842, to limit class actions to a single plan.
Grasley amendment No. 845, to strike provisions relating to customs user fees, and Medicare payment delay.
Santorum amendment No. 814, to protect infants who are born alive.
Nickles amendment No. 846, to apply the bill to plans maintained pursuant to collective bargaining agreements beginning on the general effective date.
Brownback amendment No. 847, to prohibit human germline gene modification.
Ensign amendment No. 848, to provide for genetic nondiscrimination.
Ensign amendment No. 849, to prohibit health care professionals who provide pro bono medical services to medically under-

This ‘bullet’ symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
So I think it is important for us to draw a line at least here. I am hopeful we will have unanimous support for this amendment. It is one that seems obvious on its face, but because of the courts and because of the practice in abortion clinics, it is necessary to make this statement again on the floor of the Senate.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. We yield 2 minutes to the Senator from California.

Mr. BOXER. Mr. President, it is nice to see you in the Chair.

I say to my friend from Pennsylvania, our side has no disagreement with this whatsoever. Of course, we believe everyone born should deserve the protections of this bill. The Senator, in his amendment, mentions infants who are born and that they deserve the protections of this bill. Of course they deserve the protections of this bill. Who could be more vulnerable than a newborn baby? So, of course, we agree with that.

But we go further. We believe everyone deserves the protection of this bill: babies, infants, children, families, all the way up until you are fighting for your life because you may have a dreaded disease; you may be elderly. Everyone deserves the HMOs to act in the right way and to put your vital signs ahead of their dollar signs. That is key.

Maybe in the spirit of our Chaplain who called for unity this morning we start off this morning together, saying everyone who is born deserves the protections of this bill. We all know that, regardless of what age, we have heard stories of patients who are really disregarded in the name of the bottom line.

During times when we see CEOs in these HMOs drawing down hundreds of millions of dollars, we see little children and elderly people and those in between denied the needed care, denied the kinds of prescriptions they need.

We join with an ‘aye’ vote on this. I hope it will, in fact, be unanimous. I also hope the underlying bill will get a very strong vote and we will say that all of our people deserve protection, from the very tiniest infant to the most elderly among us.

I urge an ‘aye’ vote.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to table was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I have a series of votes coming up. We anticipate eight votes. We are trying to move the process along.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) and the Senator from New Mexico (Mr. DOMENICI) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 208 Leg.]

YEAS—96

Alaska 1  Alaska 1
Arizona 2  Arizona 2
Arkansas 3  Arkansas 3
California 8  California 7
Colorado 4  Colorado 4
Connecticut 2  Connecticut 2
Delaware 1  Delaware 1
Delaware 1  Delaware 1
District of Columbia 1  District of Columbia 1
Florida 6  Florida 6
Georgia 1  Georgia 1
Hawaii 1  Hawaii 1
Idaho 1  Idaho 1
Illinois 8  Illinois 7
Indiana 1  Indiana 1
Iowa 1  Iowa 1
Kansas 1  Kansas 1
Kentucky 1  Kentucky 1
Louisiana 3  Louisiana 3
Maine 1  Maine 1
Maryland 2  Maryland 2
Massachusetts 4  Massachusetts 4
Michigan 1  Michigan 1
Minnesota 2  Minnesota 2
Mississippi 1  Mississippi 1
Missouri 2  Missouri 2
Montana 1  Montana 1
Nebraska 1  Nebraska 1
New Hampshire 1  New Hampshire 1
New Jersey 2  New Jersey 2
New Mexico 1  New Mexico 1
New York 4  New York 3
North Carolina 1  North Carolina 1
North Dakota 1  North Dakota 1
Ohio 1  Ohio 1
Oklahoma 1  Oklahoma 1
Oregon 1  Oregon 1
Pennsylvania 2  Pennsylvania 2
Rhode Island 1  Rhode Island 1
South Carolina 1  South Carolina 1
South Dakota 1  South Dakota 1
Tennessee 1  Tennessee 1
Texas 7  Texas 6
Utah 1  Utah 1
Vermont 1  Vermont 1
Virginia 3  Virginia 3
Washington 1  Washington 1
Wisconsin 1  Wisconsin 1
Wyoming 1  Wyoming 1

Lugar 1  Lugar 1
McClain 1  McClain 1
McConnell 1  McConnell 1
Mikulski 1  Mikulski 1
Miller 1  Miller 1
Murray 1  Murray 1
Nickles 1  Nickles 1
Reed 1  Reed 1
Reid 1  Reid 1
Roberts 1  Roberts 1
Rockefeller 1  Rockefeller 1
Santorum 1  Santorum 1
Sarbanes 1  Sarbanes 1
Schumer 1  Schumer 1
Sessions 1  Sessions 1
Shelby 1  Shelby 1
Smith (MI) 1  Smith (MI) 1
Smith (NY) 1  Smith (NY) 1
Snowe 1  Snowe 1
Specter 1  Specter 1
Stabenow 1  Stabenow 1
Stevens 1  Stevens 1
Thomas 1  Thomas 1
Thompson 1  Thompson 1
Thurmond 1  Thurmond 1
Torricelli 1  Torricelli 1
Voinovich 1  Voinovich 1
Warner 1  Warner 1
Westmont 1  Westmont 1
Wyden 1  Wyden 1

The amendment (No. 814) was agreed to.

Mr. KENNEDY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to table was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I have a series of votes coming up. We anticipate eight votes. We are trying to move the process along.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The ACTING PRESIDENT pro tempore. Under previous order, there will now be 4 minutes of debate prior to a vote in relation to the DeWine amendment (No. 842).

The Senator from Ohio is recognized.

The amendment (No. 842), as modified, is as follows:

On page 171, between lines 14 and 15, insert the following:

SEC. 301. LIMITATION ON CERTAIN CLASS ACTION Litigation.

(a) ERISA.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by section 302, is further amended by adding at the end the following:

"(d) LIMITATION ON CLASS ACTION Litigation—"

"(1) IN GENERAL.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative claimant, or the group of claimants is limited to the participants or beneficiaries of a group health plan established by only 1 plan sponsor. No action maintained by such class, such derivative claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative claimant, or group of claimants or consolidated for any purpose with any other proceeding. In this paragraph, the terms ‘group plan’ and ‘health insurance coverage’ have the meanings given such terms in section 733.".

"(2) EFFECTIVE DATE.—This subsection shall apply to all civil actions that are filed on or after January 1, 2002.".

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

Mr. DeWINE. Mr. President, this amendment is a very simple one. It limits class actions filed under this bill to suits filed within one company involving one plan. It is a commonsense approach. No individual’s rights are in any way violated. Individuals have the right to file suits pursuant to this bill. In addition to that, class actions can still be filed, but they must be filed within one company, one plan. What it basically would prohibit is the big national class action suits that would possibly be filed.

We are simply trying to balance the rights of the individual and the protection of the patient with the whole problem of increasing costs.

We believe that the elimination of these national class action suits will certainly help to keep the costs down.
Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore, The Senator from North Carolina.

Mr. EDWARDS. Mr. President, we appreciate very much the work by the Senator from Ohio. We appreciate him working with us. This is another example of what can be accomplished when we work together. We will be supporting this amendment.

I yield the remainder of my time to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I rise only to say that in previous debate, a story was referenced about a young patient named Christopher Roe, who tragically died on his 16th birthday. It was alleged that this had nothing to do with the Patients’ Bill of Rights. That, of course, is not true. Nevada, where Christopher Roe died, does not have clinical trial provisions, and this boy would have clearly benefitted from such provisions. This would have given him another chance for survival with the help of experimental treatments.

When this Patients’ Bill of Rights is enacted, either Nevada would have to enact a substantially compliant clinical trial provision or the provisions in this bill would apply. I don’t want people misrepresenting the notion of what is happening to some of these patients who deserve and ought to be able to expect to receive the protections under this legislation.

Young Christopher Roe died at age 16 because he was required to fight both cancer and the managed care organization at the same time. That is not a fair fight, and it should not happen in the future.

The ACTING PRESIDENT pro tempore. All time is yielded back.

Mr. KENNEDY. We yield back our time.

The ACTING PRESIDENT pro tempore. All time is yielded back.

The question is on agreeing to the DeWine amendment No. 842.

The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURkowski) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 209 Leg.]

YEAS—98

Mr. GRASSLEY. I know the Chairman is going to raise a point of order, and I want 1 minute to respond to the point of order.

Mr. KENNEDY. I ask consent that both sides yield back the time and the Senator be permitted to make a point of order and each side have 2 minutes to explain the point of order and 2 minutes to respond to that.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. CONRAD. Mr. President, sections 502 and 503 of the bill help to ensure that the Social Security surplus is not affected by the costs associated with providing expanded patient protection.

The bill extends customs user fees beyond 2003. That is all. The bill does not change the current nature, structure, or purpose of these fees. Customs operations will not lose funds as a result of the extension of these fees. However, the net effect of accepting the Grassley amendment would be that $6 billion in spending contained in this bill would not be offset. That is spending that represents a transfer of funds to protect the Social Security trust fund.

Deleting that offset would cause the Health, Education, Labor, and Pension Committees to exceed their committee budget allocation.

As a result, at the appropriate time I will raise the point of order.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, there will be a point of order made. If a point of order is made, I am obviously going to waive it. I make clear my motion to strike would essentially allow us to replace the revenues taken from the Finance Committee’s jurisdiction with general funds that are still available in the off-budget surplus. All Finance Committee members, Republicans and Democrats alike, including my respected chairman of the Senate Budget Committee, a senior member of the Finance Committee, and I want 1 minute to respond to the point of order.
to protect the Social Security trust fund.

Mr. President, I bring, therefore, a point of order that the pending amendment violates section 302(f) of the Congressional Budget Act of 1974.

The ACTING PRESIDENT pro tempore, Senator from Iowa.

Mr. GRASSLEY. I move to waive the point of order under section 904 of the Budget Act. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll. The motion to lay on the table was made by Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURkowski) are necessarily absent.

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

The yeas and nays resulted—yeas 46, nays 52, as follows:

[Rollcall Vote No. 210 Leg.]

YEAS—46

Allard—Fitzgerald
Allen—First
Bennett—Gramm
Bond—Grassley
Brownback—Gregg
Bunning—Hagel
Burns—Hatch
Campbell—Helms
Chafee—Hutchinson
Collins—Inhofe
Craig—Jeffords
Crafo—Kyi
DeWine—Lott
Ensign—Lagar
Enzi—McConnell

NAYS—52

Akaka—Dorgan
Baucus—Durbin
Bayh—Edwards
Biden—Feingold
Bingaman—Feinstein
Boxer—Graham
Breaux—Harkin
Byrd—Hollings
Cantwell—Inouye
Carnahan—Johnson
Carper—Kennedy
Cleland—Kerry
Clinton—Kohl
Conrad—Landrieu
Corzine—Leahy
Daschle—Levin
Dayton—Lieberman
Dodd—Lincoln

NOT VOTING—2

Domenici—Murkowski

The PRESIDING OFFICER. On this vote, the yeas are 46, the nays are 52.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Mr. KENNEDY. I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 846

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate prior to the vote in relation to the Nickles amendment No. 846.

The Senator from Oklahoma.

Mr. NICKLES. Madam President, the amendment we have before us now says this should apply to all private-sector plans, including union plans. For the private-sector plans, the effective date is October 1, 2002. But for collective bargaining plans, there is a little section on page 174 that says it shall not apply until the collective bargaining agreement terminates. In many cases, collective bargaining agreements do not terminate for years and years, or they may be renegotiated.

My point is, we should make these protections apply, and hope they will apply—if they are so positive—to all Americans, including union members. Union members should have these protections.

My colleague from Massachusetts asked: Was the Senate trying to punish the unions? I am not trying to punish anybody. Shouldn’t union members have the same appeals process? Shouldn’t they have the same patient protections we have for all private-sector plans?

To say we are going to exempt them for the duration of their collective bargaining agreements I think is a mistake, especially when some of these agreements may not terminate for years—maybe 10 years or more. We should make this apply for all plans at the same time.

Madam President, I yield the remainder of my time to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, this morning the Senator from North Dakota got up and spoke about a young man by the name of Chris Roe from my State. He said this young man’s parents would have been covered under this bill. But according to the Department of Labor, the protections in this bill do not apply to collective bargaining agreements. Because Chris Roe’s parents were under a collective bargaining agreement—as a matter of fact, that collective bargaining agreement does not expire until years from now—the Roe’s would not be covered.

Chris Roe is no longer with us, but people in the future like him should be able to be covered under the same patient protections as everybody else under this bill.

I urge the adoption of this amendment.

The PRESIDING OFFICER. The Senator’s time has expired.

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, this language on page 173. It is basically boilerplate language, which means we have used identical language in the HIPAA program and also in OBRA, the pension reform. It is basically out of respect for contracts. If you read the language it says “for plans beginning on or after October 1.” “For plans” refers to insurance. Most of the insurance, 60 percent of insurance plans start in January; 40 percent go over until the next year. So this will apply at the first opportunity when those plans expire and also when collective bargaining expires.

That is our purpose, to do it in a timely way. I hope the Nickles amendment will be defeated. I will offer an amendment that will say irrespective of collective bargaining, it will have to be done within 2 years, and rollovers will not be permitted. That is the best way to do it. That respects the contracts. It was really done with the support of the insurance industry. It has been boilerplate language that has been used in a number of different bills and a way of addressing respect for contracts.

I hope the Nickles amendment will be defeated. We give assurance to the membership that the follow-on amendment will say that every contract has to be done within 2 years and that there is no possibility, even within that period of time, for a rollover agreement.

Madam President, I move to table the Nickles amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll. The motion to lay on the table was made by Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURkowski) are necessarily absent.

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

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 211 Leg.]

YEAS—54

Akaka—Dodd
Baucus—Dorgan
Bayh—Durbin
Biden—Edwards
Bingaman—Feingold
Boxer—Feinstein
Breaux—Graham
Byrd—Harkin
Cantwell—Hollings
Carnahan—Inouye
Carper—Jeffords
Cleland—Kerry
Clinton—Kohl
Conrad—Landrieu
Corzine—Leahy
Daschle—Levin
Dayton—Lieberman
Dodd—Lincoln

NAYS—44

Allard—Cochran
Allen—Collins
Bennett—Crockett
Bond—Crapo
Brownback—DeWine
Bunning—Ensign
Burns—Hatch
Campbell—Helm

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Who yields time? The Senator from Nevada.

Mr. ENNSIGN. Madam President, I am going to ask unanimous consent in a moment to temporarily lay this amendment aside so we can work out the language. There seems to be support on both sides of the aisle for this amendment. There is just slight disagreement on the language.

I ask unanimous consent that my amendment No. 849 be temporarily laid aside to recur at the concurrence of the bill managers.

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

AMENDMENT NO. 848 WITHDRAWN

The PRESIDING OFFICER. The previous order, there will now be 4 minutes of debate in relation to the Brownback amendment No. 847.

Who yields time?

Mr. BROWNBACK. Madam President.

Mr. BURNS. Madam President, if the Senator from North Carolina is agreeable, I would like to offer an amendment in his name.

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate on amendment No. 848 by the Senator from Nevada.

Mr. ENNSIGN. Madam President, we can actually have a vote on this amendment. This amendment is about protecting health care providers who voluntarily give of themselves, give of their services, and this amendment will protect them from being sued.

Last night in the debate, the Senator from North Carolina mentioned the Volunteer Protection Act of 1997 already takes care of the health care providers. In fact, it does not. It defines a volunteer as “an individual performing services for a nonprofit organization or governmental entity who does not receive compensation or any other thing of value in lieu of reimbursement.”

I was speaking to one of my neighbors. He is a general surgeon. He was just in an emergency room last week. He saw a patient who did not have health insurance, could not afford to pay, and he voluntarily saw this patient. I do not think it would be right for people to volunteer and then be sued.

My amendment says if, out of the goodness of your heart, you work at a clinic, such as Dr. Chanderraj, a friend of mine who is a cardiologist in Las Vegas—he takes care of the poor on the weekends, and yet he has to carry malpractice insurance.

Many doctors and health care providers who volunteer their services for the poor should be encouraged, not discouraged, to give their services.

I urge the adoption of this amendment. It is the right thing to do, just as the Good Samaritan Act and the Volunteer Protection Act of 1997 were the right things to do.

The PRESIDING OFFICER. Time has expired. Who yields time in opposition? The Senator from North Carolina.

Mr. EDWARDS. Madam President, I, too, believe that health care reform in this country is the appropriate vehicle. This legislation we are debating today is the Bipartisan Patient Protection Act. It is about HMO accountability and HMO reform. These issues that are not directly related to HMO reform and HMO accountability do not belong on this legislation. For that reason, we oppose this particular amendment.

I yield the floor. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. EDWARDS. Madam President, I move totable the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

[Rollcall Vote No. 212 Leg.]

YEAS—52


NAYS—46

Nays—Ronzio, Fitzgerald, Frist, Gramm, Grassley, Gregg, Hagedorn, Hatch, Hatch, Hutchinson, Johnson, Kyl, Lott, Lugar, McConnell

State laws can remain in effect and States are given wide latitude to opt out and enact their own legislation on this issue. There is no such provision in this amendment.

Legislation, offered by Senator Coverdell and passed in 1997, covers this issue. If the Senator wants to attempt to amend that legislation, that is the appropriate vehicle, not this vehicle. This legislation we are debating today is the Bipartisan Patient Protection Act. It is about HMO accountability and HMO reform. These issues that are not directly related to HMO reform and HMO accountability do not belong on this legislation. For that reason, we oppose this particular amendment.

I yield the floor. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. EDWARDS. Madam President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MUKOWSKII) are necessarily absent.

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

The result was announced—yeas 52, nays 46, as follows:
The amendment was agreed to. 

Mr. KENNEDY. Mr. President, I move to reconsider the vote. 

Mr. STEVENS. I move to lay that motion on the table. 

The motion to lay on the table was agreed to. 

The PRESIDING OFFICER. The Senator from Massachusetts. 

Mr. KENNEDY. Mr. President, as a point of information, we have the Thompson amendment. It is agreed by the managers we would have a minute on either side and then go to a rollick vote. We ask our Members to remain in the Chamber, if they would. We are prepared. 

Mr. GREGG. Madam President, if the Senator will yield, I would like to also note after the Thompson amendment it is expected the order of amendments will be Senator SMITH of Oregon for 30 minutes, Senator NICKLES for 30 minutes, Senator SANTORUM for 40 minutes, and Senator ALLARD for 30 minutes. We will enter into a unanimous consent agreement after the vote, hopefully, to get that order worked out. 

The PRESIDING OFFICER. Who yields time? 

AMENDMENT NO. 819 

Mr. KENNEDY. Mr. President, I ask unanimous consent that on the Thompson amendment we have 4 minutes equally divided. I ask unanimous consent it be in order to consider the yeas and nays for a vote. 

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

Mr. KENNEDY. I ask for the yeas and nays. 

The PRESIDING OFFICER. The amendment is now pending. Is there a sufficient second? There appears to be. The yeas and nays were ordered. 

The PRESIDING OFFICER. Who yields time? The Senator from Tennessee. 

AMENDMENT NO. 819, AS MODIFIED 

Mr. THOMPSON. I call up amendment No. 819 and I send a modification to the desk and ask for its immediate consideration. 

The PRESIDING OFFICER. The amendment is so modified. 

The amendment (No. 819), as modified, is as follows: 

Page 153, line 8, and insert the following: 

"(ii) shall not preclude any liability under subsection (a)(1)(C) ... of the Bipartisan Patient Protection Act of 2001 shall be admissible in any Federal court proceeding and shall be presented to the trier of fact." 

On page 165, strike line 15 and all that follows through page 168, line 3, and insert the following: 

"(4) REQUIREMENT OF EXHAUSTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a cause of action may not be brought under paragraph (1) in connection with any denial of a claim for benefits of any individual until all administrative processes under sections 102, 103, and 104 of the Bipartisan Patient Protection Act of 2001 (if applicable) have been exhausted. 

"(B) LATE MANIFESTATION OF INJURY.—

"(i) IN GENERAL.—If the external review entity determines that the injury of such participant or beneficiary which was not known, and should not have been known, by such participant or beneficiary by the latest date that the requirements of subparagraph (A) should have been met regarding the claim for benefits which was denied. 

"(ii) DEFINITION.—In this subparagraph, the term 'late manifestation of an earlier injury' means an injury sustained by the participant or beneficiary which was not known, and should not have been known, by such participant or beneficiary by the latest date that the requirements of subparagraph (A) should have been met regarding the claim for benefits which was denied. 

"(C) EXCEPTION FOR NEEDED CARE.—A participant or beneficiary may seek relief exclusively in Federal court under subsection 502(a)(1)(B) pursuant to this subparagraph, no relief shall be available as a result of, or arising under, paragraph (A) unless the requirements of subparagraph (A) are met. 

"(D) FAILURE TO REVIEW.—
What we seek to do in this amendment is to basically require the exhaustion of administrative remedies, before a claimant goes to court.

We had a good discussion with the other side. The concern was expressed that the modification should recognize an instance for which a claim has been denied might later become more serious, after the timeframe for exhausting external review has expired.

That is a legitimate concern. If someone has a later-developed injury that did not manifest itself early on, there should be a provision so they are not deemed to not have exhausted administrative remedies, so they could never go to court. So we have addressed that in this modification.

The other concern was what if the external entity simply sits on the matter and does not come within the 21 days allowed under the bill to make its determination. We say in this modification, if the external entity takes longer than that, then we give them another 10 days and then we allow the claimant to go to court.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THOMPSON. I ask for an additional 20 seconds.

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

Mr. THOMPSON. Under those circumstances, the claimant would still have to exhaust their administrative appeal, but they could go ahead and file the lawsuit in the meantime under, what I think are very rare circumstances. So with that modification I think we have a good process set up so this elaborate administrative process we have established in the bill will actually be utilized.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

May we have order in the Chamber, please.

Mr. EDWARDS. I thank the Senator from Tennessee. This is another example of what can be done when we tackle these problems together and try to find solutions. As the issue of scope and employer liability, with a number of Senators on both sides of the aisle, now we are doing it on the issue of exhaustion of administrative remedies, exhaustion of appeals.

This amendment meets the very principle by which we began this legislative drafting, which is we want patients to get the care they need. The most effective way to do that is to have an effective appeals process.

What we have done in this process is, No. 1, require that the patient, the claimant, go through the appeal before going to court, exhausting those appeals. That is the easiest way and the most efficient way to get them the care they need.

The second thing we do is provide an outlet in case the appeals process drags on and it does not operate the way it should. If it is longer than 31 days, then the patient will be able to go to court. But as the Senator from Tennessee points out, they will have to simultaneously exhaust the administrative appeal.

Third, we have now provided specifically that the result of the administrative appeal will be admissible in any court proceeding, which is another important element of this amendment.

I thank my friend from Tennessee. I thank him for working with us on this issue. I think we have an issue about which we now have consensus and we are pleased to be there.

I yield the remainder of my time.

I ask for the yeas and nays.

Mr. NICKLES. Were the yeas and nays ordered on the amendment or the modification?

The PRESIDING OFFICER. They were ordered on the amendment.

Mr. NICKLES. Mr. President, I ask unanimous consent the yeas and nays be vitiolated on the amendment and they be ordered on the modification.

The PRESIDING OFFICER. Is there an objection? Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the Thompson amendment No. 819, as modified.

The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURkowski) are necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

(Rollcall Vote No. 213 Leg.)

YEAS—98

Mr. HATCH. Mr. President, I rise to oppose amendment No. 847 offered by my friend from Kansas, Senator BROWNBACK.

This amendment purports to establish safeguards with respect to medical treatments that encompass therapies directed at genetic defects. The amendment would impose criminal sanctions, including imprisonment of up to 10 years, on those who violate the restrictions on modifying the human genetic structure.

Not only is this the wrong time to consider this amendment, it is also the wrong piece of legislation on which to consider this amendment. In all candor, I must tell my colleagues that in my view, based on my preliminary reading of this amendment, I greatly doubt there will ever be a right time for this proposal.

I have no doubt that this amendment is well-intentioned. I have worked with Senator BROWNBACK many times in the past on many issues, including many important right-to-life issues, such as outlawing partial birth abortion. Both he and I are proud to call ourselves pro-life Senators.

But, as my colleagues are aware, Senator BROWNBACK and I happen to
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Among other problems, which of the examples listed above fit the definition and why does it matter? Moreover, the sentence—and he is referring to the first definition in section 301 which describes human germline modification—ends by referring to “including DNA, chromosome, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.” To what part of the first sentence does “human germline modification” is the language referring? Does the last sentence of the definition, “Nor does it include the change of DNA involved in the process of sexual reproduction” prohibit in vitro fertilization? Does any part of the amendment prohibit or allow in vitro fertilization? What genetic technologies does “normal” cover, if any?

Without objection, I would like to place in the Record a copy of a legal memorandum prepared by Edward Korweck of the law firm of Hogan & Hartson. As I understand it, this memorandum was written on behalf of BIO, the biotechnology industry association.

I also ask unanimous consent to place in the Record a copy of a letter from BIO to Senator LOTT opposing the Brownback amendment. This letter voices its opposition to the amendment by stating:

Let’s not cripple essential medical research for a host of chronic and fatal diseases such as diabetes, Parkinson’s disease, Alzheimer’s disease, and various cancers. The patients and families who suffer from these diseases are looking to advances in medical research to develop cures and better treatments for them.

This argument must be considered by all members of the Senate. The question of how in vitro fertilization relates to the normal process of sexual reproduction is a question of great importance because it appears to directly implicate the science of embryonic stem cell research.

Specifically, we need to know this language would treat research with human pluripotent stem cells. We all know where Senator BROWNBACK stands on that issue. While I generally agree with my friend from Kansas, I disagree with him on embryonic stem cell research.

This is an issue that deserves careful consideration by each Senate. I welcome this debate. But today is not the time. We simply need to know all the implications of the Brownback language before we even consider such legislation.

In my view, this Senate should go on record as supporting federal funding for embryonic stem cell research. And we certainly do not want to turn back the clock on the type of gene therapy research that has been conducted for over 20 years.

This is simply not the kind of measure that you try to slip into an unrelated bill.

All interested parties—patient groups, religious and advocacy organizations, scientists, health care providers, biotechnology firms—deserve to be fully consulted on how the language of this measure will affect their interests.

There being no objection, the letters were ordered to be printed in the Record, as follows:


Hon. TRENT LOTT,
U.S. Senate,
Washington, DC.

Dear Senator LOTT: On behalf of the Biotechnology Industry Organization (BIO), I am writing to express BIO’s opposition to an amendment that may be offered by Senator Brownback regarding germ line gene modification. This amendment may come up for a vote on the Senate floor as early as today during consideration of S. 1052—the McCain, Kennedy, Edwards Bipartisan Patient Protection Act. I urge you to vote against the Brownback amendment if it comes up for a vote.

BIO opposes germ line gene modification and we support the moratorium on germ line gene modification that has been in place for over a decade. This moratorium has allowed us to develop genomic research while prohibiting unsafe and unethical work. To our knowledge, all scientists have complied with this moratorium.

Unfortunately, the Brownback amendment reaches far beyond germ line gene modification. It attempts to regulate genetic research—a complex and dynamic field that holds great potential for patients with serious and often life-threatening illnesses. This proposal also could prohibit research on human pluripotent stem cells. Since these cells have been demonstrated to form any cell in the body they hold enormous therapeutic potential.

Let’s not cripple essential medical research for host of chronic and fatal diseases such as diabetes, Parkinson’s disease, Alzheimer’s disease and various cancers. The patients and families who suffer from these diseases are looking to advances in medical research to develop cures and better treatments for them.

Furthermore, to our knowledge there has been no consultation with the scientific community, researchers, physicians, or patient groups prior to the filing of the Brownback amendment. This is particularly troubling because the amendment calls for severe sanctions, including imprisonment of biotech researchers.

I urge you to vote against this amendment. If you have questions, please call me at 202-857-6244. Thank you for your consideration on this important matter.

Sincerely,

W. LEE RAWLS,
Vice President, Government Relations.

MEMORANDUM

From: Edward L. Korwek, Ph.D., J.D.
To: Michael Werner, Esquire, BIO Bioethics Counsel.

The Brownback Amendment is poorly worded and confusing as to its precise coverage. It uses a variety of scientific terms and other complex language both to prohibit and allow certain gene modification activities. Many of the sentences are composed of language that is incorrect or ambiguous from a scientific standpoint. A defensible legal examination needs to be made of what each sentence of the Amendment is intended to accomplish.
As to a few of the important definitions, the term ‘cell’ is defined in proposed section 301(3) of Chapter 16, as ‘a diploid cell (having two sets of the chromosomess of almost all body cells) obtained or derived from a living or deceased human body at any stage of development.’ What does ‘of almost all body cells’ mean? Is this an oblique reference to the haploid nature of human spermd and eggs? Also, why is it important to describe in such confusing detail from where the cells are derived (in contrast to simply saying, for example, a somatic or a haploid cell)? From a scientific standpoint, the definition of a somatic cell is not dependent on whether the cell is from living or dead human beings. More importantly, as to this human source issue, when does a ‘human body’ exist such that its status as ‘living’ or ‘dead’ or its ‘stages of development’ become relevant criteria for determining what is a ‘somatic cell.’

Similarly, the definition of ‘human germline modification,’ especially the first sentence, is very convoluted. The first sentence states: ‘The term ‘human germline gene modification’ means the intentional modification of DNA in any cell (including human eggs, sperm, fertilized eggs (i.e., embryos, or any early cells that will differentiate into gametes or be manipulated to do so) for the purpose of producing a genetic change which can be passed on to future individuals, including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondria, and synthetic DNA.’

Among other problems which of the examples listed are ‘sources’ or ‘forms’ of DNA and who does it matter? Moreover, the sentence ends by referring to ‘including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondria, and synthetic DNA.’ ‘To what part of the first sentence defining ‘human germline modification’ is this language referring? Does the last sentence of the definition, ‘include the change of DNA involved in the normal process of sexual reproduction’ prohibit in vitro fertilization? Does any other part of the Amendment prohibit genetic technologies does ‘normal’ cover, if any?

Similarly, the second sentence in the definition, ‘where it is not covered by the definition of ‘human germline modification,’ contains three ‘not’ words, leaving the reader to decipher what exactly is ‘not human germline modification.’ ‘The term does not include any modification of cells that are not a part of and will not be used to construct human embryos’ (emphasis added). Also, what is an ‘embryo for purposes of this Amendment and what does ‘part of’ mean? (fertilized sex cells ‘part of’ an embryo). The or other problems leave the bill unsupportable in its current form. Due to this imprecision, the amendment’s impact is unclear and seemingly far reaching.

Mr. ENSIGN. Mr. President, this pro bono amendment will benefit doctors across the country. A prime example is my neighbor, Dr. Dan McBride. Dr. McBride has provided medical care to individuals and families free-of-charge for years. He understands that not all Nevadans can afford health care insurance each month, and that many cannot even afford to go to the doctor once each year; but that does not mean that they are not deserving of proper health care. This amendment will ensure that doctors such as McBride can continue providing free health care to the less fortunate without fear of lawsuits.

Mr. KENNEDY. Mr. President, today we are at the threshold of astonishing new progress in the understanding in genetics and other areas of biomedical research will revolutionize the diagnosis and treatment of countless disorders. This astonishing potential to relieve suffering will be squandered if patients fear that their private genetic information will become the property of their insurance companies and their employers, where it can be used to deny people health care and deny workers their jobs.

To protect all Americans against genetic discrimination in health insurance and employment, I am proud to support the important legislation that Senator DASCHLE has introduced on this issue. I commend my colleague, Senator Ensign, for bringing this basic issue to the floor of the Senate, and I look forward to working closely with him in the days to come.

However, Senator ENSIGN’s amendment has several shortcomings that lead me to believe that it is not the right policy for us to adopt to end genetic discrimination. Yet in the interests of stimulating debate on this important issue and to speed the termination of debate on the Patients’ Bill of Rights, I am prepared to accept it as an amendment to the bill. But next month, in our Committee, we will have a full and thoughtful discussion of this issue in our committee and a thorough debate on the Senate floor.

Senator ENSIGN’s amendment fails to provide protections essential. The amendment does not address the important issue of discrimination in the workplace. Genetic discrimination in employment is real and it’s happening all across America. Effective legislation on this issue must include protections for workers.

We must realize that genetic information will be commonplace in medicine and we must ensure that our definitions adequately protect genetic information in all its forms. Unfortunately, the definitions of genetic information contained in the ENSIGN amendment do not properly protect genetic information. The definitions in this legislation allow employers and others to find dangerous loopholes in the protections offered by the legislation.

Finally, the remedies in the ENSIGN amendment do not provide adequate remedies for those whose rights have been violated. We should make sure that we give those whose rights have been violated to seek proper recourse. Despite these and other flaws in the ENSIGN amendment, I am prepared to accept the measure as a spur to future debate on this important issue. We will start from a clean slate in our committee deliberations and we will give the measure the attention it deserves. I look forward to a fresh debate and to taking action on Senator DASCHLE’s important legislation.

Mr. DASCHLE. Mr. President, in an effort to move forward and complete debate on the Patient’s Bill of Rights, the Ensign amendment on genetic discrimination, along with several other proposals, were included in a managers’ package without a full vote of the Senate. It must be clarified that there are several problems with the Ensign proposal as offered, and we do not support this approach for dealing with genetic discrimination.

First, the Ensign amendment does not comprehensively address the problem of genetic discrimination. This amendment only covers genetic discrimination in health insurance and is silent on discrimination in the workplace. Simply prohibiting genetic discrimination in health insurance, while allowing it to continue in the workplace, is no solution at all. Employers will simply weed out employees with a genetic marker. Additionally, the protections the amendment provides are so riddled with loopholes that health insurance providers would still have substantial access to individuals’ private genetic information.

Recently, employees working at Burlington Northern Railroad were subjected to genetic testing without their knowledge or consent. The company was attempting to determine if any of the employees had a genetic predisposition for carpal tunnel syndrome—in an attempt to avoid covering any costs associated with the injury. Giving up your private genetic information shouldn’t be the price you pay for being employed.

The Ensign amendment also fails to comprehensively cover all of the insured. We must create protections for all Americans regardless of where an employer is located or what state an employee lives in. The Ensign amendment provides no comprehensive coverage. It is unconscionable to allow genetic information to be used to discriminate against anyone—access must be limited appropriately to ensure that no American is left vulnerable to discrimination.

Finally, the Ensign amendment does not create a private right action—leaving individuals without an adequate remedy. Clearly, providing protections without proper enforcement provisions makes any protection meaningless.

We’ve seen a revolution in our understanding of genetics—scientists have finished mapping our genetic code, and researchers are developing extraordinary new tests to determine if a person is at risk for developing a disease. But with increased understanding of the possibilities of the genome uncovers, comes increased responsibilities. We simply cannot take
one step forward in science while tak-

The HELP committee will move for-

The PRESIDING OFFICER. Is there

The PRESIDING OFFICER. Do you mean a motion to com-

The PRESIDING OFFICER. Is there

The PRESIDING OFFICER. The Sen-

Mr. REID. Does the Senator from New Hampshire have any further expla-

The PRESIDING OFFICER. Without

The motion is as follows: Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report H.R. 3 back to the Senate forthwith with an amendment that— (1) strikes all after the enacting clause and inserts the text of S. 1052, as amended, to the Committee on Finance with instructions to report H.R. 3 back to the Senate forthwith with an amendment that— (2) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in S. 41, (3) provides that H.R. 3, as amended, pursuant to paragraphs (1) and (2), does not negatively impact the small business credit, (4) provides that H.R. 3, as so amended, is subject to a budget point of order, (5) Mr. SMITH of Oregon. Mr. President, for myself, Senator HATCH, Senator ALLEN, and others, I have sent to the desk a motion to commit S. 1052 to the Finance Committee with instructions to make permanent the research and development tax credit. We are joined in this by Senators CRAPO, CRAIG, BENNETT, BROWNBACK, BURNS, HUTCH- INSON, ALLEN, and ENZI.

As a Member of the Senate high-tech task force, I believe that the R&D tax credit is essential to the technology community and to the pharma-

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the credit’s revenue cost leads to a one dollar increase in business R&D spending.

There is broad support among Republicans for the credit, and President Bush included the credit in the $1.6 trillion tax relief plan.

I urge my colleagues to support this amendment, and I thank Senator HATCH and Senator ALLEN, the chief cosponsors, for providing us with the opportunity of increasing the size of the tax cut to include this important priority but which, unfortunately, was left out of the tax bill that we recently passed.

Before I yield to Senator ALLEN for his comments, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second?

The yeas and nays were ordered.

Mr. SMITH. I yield the remainder of my time to Senator ALLEN.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, I rise in support of the amendment and very much thank Senator Gordon Smith of Oregon for his leadership and for giving us the opportunity to vote on this very important amendment and principle and tax policy that is essential for the United States to compete and succeed in the future. I also commend the Senator from Utah, Mr. Orn HATCH, for all his work over the years, and especially this year, in advocating this measure.

As chairman of the high-tech task force on the Republican side of the Senate, we have endorsed this idea. We have been working on this idea. Unfortunately, as the Senator said, it was not included in the tax bill. But the reason that this is so important is that research and development—in general, speaking, research in biotechnology and pharmaceuticals—is at stake with this amendment and this research and development tax credit.

Up here in Washington, we are making decisions for a year or so, or even a 5-year budget, and even once in a while we do projections over 10 years. In private industry and business, their planning needs to be long-term. In particular, when you think of research and development into pharmaceuticals, the amount of research that goes into putting forward a drug before getting it to patent, to the market, and so forth, it is not just the research and the labs; there are clinical trials that go on year after year, and hopefully you will get a patent; and for a short period of time you will have a window of opportunity on that prescription drug, for example.

So this tax policy is very important so that businesses have certainty, that there is credibility, stability, predictability to devote the millions and, indeed, in some cases, billions of dollars to research and development and technology.

The issue is jobs and competition for the people of the United States. We, as Americans, need to lead in technological advances. The R&D tax credit is very important in microchips or semiconductor chips. It is important in communications research and development. It is important in life sciences and medical sciences and, obviously, that includes biotechnology and pharmaceuticals.

Making the R&D tax credit permanent, as Senator SMITH says, actually is cost effective. It makes a great deal of sense. Studies suggest every dollar of revenue cost leads to a $1 increase in business R&D spending. These are good jobs and it also allows us as a country to compete.

A permanent extension is long overdue. As Senator SMITH said, it has been extended even for a few years. Once in a while it lapses. Businesses cannot plan that way. They have to make sure it stays constant.

Publicly traded companies have their quarterly reports, their shareholder reports, and the amount of investment they get in their companies based on how they are operating and managing that company.

If you have changing tax laws or lack of credible, predictable tax policies that foil up that whole system, that makes them less likely to want to invest and take the risk of billions of dollars in research and development if they are not certain of the long term.

This amendment to make the research and development tax credit permanent will spur more American investment; it will create more American jobs—and they are good paying jobs—and that will lead us to better products, better devices, better systems, and better medicines.

I hope the Senate will work in a unified fashion on this amendment by Senator SMITH to make permanent the research and development tax credit so Americans get those good jobs, but, most importantly, allow America to compete and succeed and make sure America is in the lead on technological advances, whether they are in communications, in education, in manufacturing, or the medical or life sciences.

I again thank the Senator from Oregon, Mr. SMITH, for his great leadership, as well as that of Orn HATCH.

I yield back the time I have at this moment and reserve whatever time may remain on our side.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is a Patients’ Bill of Rights bill. This is not a defense bill. This is not a foreign aid bill. This is not an agriculture bill. This is not a tax bill. This is the Patients’ Bill of Rights.

The amendment offered by my good friend from Oregon is not a Patients’ Bill of Rights amendment. It is a tax amendment. In fact, he would like to report out of the Finance Committee, by his amendment, a bill that is currently in the Senate Finance Committee, a tax bill. Tax legislation does not properly lie at this moment on this bill. Pure and simple. Full stop. That ends it.

I also say to my good friend from Oregon I agree with permanent extension of the R&D tax credit. I daresay a majority of Senators agree. I cosponsored legislation in the past. The Finance Committee reported out a permanent extension, and the Senate-passed tax bill, that has a tax bill of $1.35 trillion, included permanent extension of the tax credit. Unfortunately, it did not survive in conference, but it is clear that the R&D tax credit has enormous support in this body.

Does anybody here think there is not going to be another tax bill? Of course, nobody here believes there will not be another tax bill. There will be tax legislation this year. That is clear. The appropriate time for this Senate to appropriately include permanent extension of the R&D tax credit is when the tax legislation comes up.

The current provision expires December 31, 2001, not December 31, 2002, not December 31, 2003; it expires December 31, 2004, over 3 years away. In all the years we have been extending the R&D tax credit, that is probably the longest extension that has existed.

I agree with my good friend; it should be permanent. This yo-yo, up-and-down, back-and-forth, on-again off-again application of the R&D tax credit by this body does not make good sense. It is wrong.

This is not a tax bill; this is a Patients’ Bill of Rights bill. There will be tax legislation. When there is tax legislation before this body, that is the time we can appropriately consider permanently extending the R&D tax credit.

I wish my good friend would withdraw his amendment because this is not the proper time and place for it. If he does not wish to withdraw it, I urge my colleagues to not support it because this is not the time and place. Were it to pass, the door would be open and we would be writing another tax bill. We have already passed a big tax bill. We passed a tax bill of 1.35 trillion bucks. That is a big tax bill. This is not the time and place.

Mr. REID. Will the Senator yield for a question?

Mr. BAUCUS. I yield to my good friend from Nevada.

Mr. REID. Mr. President, as chairman of the Finance Committee, the Senator from Montana made commitments to a number of people, including this Senator, that he is going to do everything in his power as chairman of the Finance Committee to make sure there are other tax vehicles this year; is that true?

Mr. BAUCUS. That is absolutely true. There are many Senators who
wished to offer tax provisions to this bill but deferred, recognizing this is not the time and place. It is Eclesiasticism. The President: Essentially there is a time and place for everything. This is not the right time and place for tax legislation.

Mrs. BOXER. Will my colleague yield to me for a question?

Mr. BAUCUS. I ask how much time is remaining on both sides?

The PRESIDING OFFICER. Eleven minutes to the opponents; 4 1/2 minutes to the proponents.

Mr. BAUCUS. I yield to my good friend from California.

Mrs. BOXER. I want to ask the distinguished chairman of the Finance Committee this question. As someone who comes from the largest State in the Union, on the cutting edge of high tech, in the tech sector, namely, the Republicans, and the President certainly was working at that time with Senator Grassley, could they not have put the extension of the R&D tax credit into the big tax bill that was brought to this Chamber?

Mr. BAUCUS. Mr. President, the Senator from California makes a very good point. Clearly, the President could have included a permanent extension of the R&D tax credit in his proposed tax legislation. The Senate was then controlled by the Republican Party, and it certainly could have put in the R&D tax credit, and it probably would have survived conference if they pushed it.

I say to my friend from California, this may be history, but that was not provided for because the current extension, the current provision is in place at least until December 31, 2004. So there is time for the R&D tax credit to take effect, and at a later date we can make it permanent.

Mrs. BOXER. I say to my friend, then that is the same comment we can make to our colleagues who are trying to put this on a Patients' Bill of Rights. The R&D tax credit is in effect until 2004, but that was not provided for because the current extension, the current provision is in place at least until December 31, 2004. So there is time for the R&D tax credit to take effect, and at a later date we can make it permanent.

I thank my friend for yielding.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon, Mr. President, I say to my friend from Montana, I want to put this on whatever moves. I say to my friend from Montana, I want to put this on whatever moves. I say to my friend from Montana, I want to put this on whatever moves. I want to see us do it as quickly as we can for the simple reason that businesses need to make planning and expenditures that last an awful long time. The year 2004 does not fit with some of those plans that need to be made.

This is not unrelated to medicine and patients' health. Part of the technological development we are hoping to continue to provide to our people is in the pharmaceutical and biotechnological areas which do have a direct bearing on patients' health. The best right a patient can have is good health. This will facilitate that a great deal, perhaps as much as anything else in the bill.

I ask unanimous consent to send a modification of my motion to the desk.

Mr. BAUCUS. Reserving the right to object, could the Senator share with the Senate the contents of the modification; otherwise, I will be constrained to vote against it.

Mr. SMITH of Oregon. It is simply to comply with the Parliamentarian's request to be consistent with Senate requirements.

Mr. BAUCUS. I do not object. The PRESIDING OFFICER. Without objection, it is so ordered.

The motion, as modified, is as follows:

Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report S. 1052 back to the Senate within 14 days with an amendment that—

(1) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in §41.

(2) provides that S. 1052, as amended pursuant to paragraph (1), does not negatively impact the social security trust funds or result in a net increase in the Medicare surplus account, and

(3) provides that the so amended, is not subject to a budget point of order.

Mr. REID. Has everyone yielded back their time?

Mr. SMITH of Oregon. I yield 1 minute to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. To wrap up in response to some of the assertions and comments made in opposition to this amendment, the reason this amendment is necessary is, unfortunately, the other side of the aisle knocked out the amount of the tax cut we wanted and omitted small family farms and small businesses against the research and development tax credit. Senator HATCH was working mightily, with the support of many Members, to try to get this into the tax cut bills.

More important than all the procedures is the fact that our economy is going very slowly. I am trying to be positive at this moment. The technology sector is obviously going very slowly. In fact, it is in some regards frozen, especially in new investment. The research and development tax credit being made permanent now matters because now and in the next few quarters is when technology companies, pharmaceuticals, biotechs, all folks in tech, will be making decisions, and that is the only way they can create the jobs, get our economy going again, and improve our lives.

I thank the Senator from Oregon for this amendment and hope my colleagues will support this amendment.

Mr. SMITH of Oregon. We yield back the remainder of our time.

Mr. BAUCUS. I ask, is all time yielded back?

The PRESIDING OFFICER. The Senator from Montana has 8 minutes 50 seconds.

Mr. BAUCUS. Mr. President, I yield back my time and I make a constitutional point of order against Senator SMITH's motion on the grounds that the motion would affect revenues on a bill that is not a House-originated revenue bill.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. I ask permission to enter a request for unanimous consent with the Senator from New Hampshire. I ask that the vote on the motion made by the Senator from Montana be set aside and we next go, as has been already ordered, to the Allard amendment, the Nickles amendment, and we next go, as has been already ordered, to the Allard amendment, the Nickles amendment, and we next go, as has been already ordered, to the Allard amendment, the Nickles amendment, and vote on those three amendments.

Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report S. 1052 back to the Senate within 14 days with an amendment that—

(1) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in §41.

(2) provides that S. 1052, as amended pursuant to paragraph (1), does not negatively impact the social security trust funds or result in an on-budget surplus that is less than the Medicare surplus account, and

(3) provides that as so amended, is not subject to a budget point of order.

Mr. REID. Has everyone yielded back their time?

Mr. SMITH of Oregon. I yield 1 minute to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. To wrap up in response to some of the assertions and comments made in opposition to this amendment, the reason this amendment is necessary is, unfortunately, the other side of the aisle knocked out the amount of the tax cut we wanted and omitted small family farms and small businesses against the research and development tax credit. Senator HATCH was working mightily, with the support of many Members, to try to get this into the tax cut bills.

More important than all the procedures is the fact that our economy is going very slowly. I am trying to be positive at this moment. The technology sector is obviously going very slowly. In fact, it is in some regards frozen, especially in new investment. The research and development tax credit being made permanent now matters because now and in the next few quarters is when technology companies, pharmaceuticals, biotechs, all folks in tech, will be making decisions, and that is the only way they can create the jobs, get our economy going again, and improve our lives.

I thank the Senator from Oregon for this amendment and hope my colleagues will support this amendment.

Mr. SMITH of Oregon. We yield back the remainder of our time.

Mr. BAUCUS. I ask, is all time yielded back?

The PRESIDING OFFICER. The Senator from Montana has 8 minutes 50 seconds.

Mr. BAUCUS. Mr. President, I yield back my time and I make a constitutional point of order against Senator SMITH's motion on the grounds that the motion would affect revenues on a bill that is not a House-originated revenue bill.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. I ask permission to enter a request for unanimous consent with the Senator from New Hampshire. I ask that the vote on the motion made by the Senator from Montana be set aside and we next go, as has been already ordered, to the Allard amendment, the Nickles amendment, and we next go, as has been already ordered, to the Allard amendment, the Nickles amendment, and vote on those three amendments at the conclusion of debate.

Mr. GREGG. We have 2 hours divided prior to the Allard amendment, the Nickles amendment, and the Allard and the Nickles amendment, and vote on those three amendments at the conclusion of debate.

Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report S. 1052 back to the Senate within 14 days with an amendment that—

(1) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in §41.

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(3) provides that as so amended, is not subject to a budget point of order.

Mr. REID. Has everyone yielded back their time?

Mr. SMITH of Oregon. I yield 1 minute to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. To wrap up in response to some of the assertions and comments made in opposition to this amendment, the reason this amendment is necessary is, unfortunately, the other side of the aisle knocked out the amount of the tax cut we wanted and omitted small family farms and small businesses against the research and development tax credit. Senator HATCH was working mightily, with the support of many Members, to try to get this into the tax cut bills.

More important than all the procedures is the fact that our economy is going very slowly. I am trying to be positive at this moment. The technology sector is obviously going very slowly. In fact, it is in some regards frozen, especially in new investment. The research and development tax credit being made permanent now matters because now and in the next few quarters is when technology companies, pharmaceuticals, biotechs, all folks in tech, will be making decisions, and that is the only way they can create the jobs, get our economy going again, and improve our lives.

I thank the Senator from Oregon for this amendment and hope my colleagues will support this amendment.

Mr. SMITH of Oregon. We yield back the remainder of our time.

Mr. BAUCUS. I ask, is all time yielded back?
to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

“(ii) DEFINITION.—In clause (i), the term ‘small employer’ means an employer—

“(A) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 15 employees on business days; and

“(B) maintaining the plan involved that is acting, serving, or functioning as a fiduciary, trustee or plan administrator, including—

“(aa) a small employer described in section 3(16)(B)(1) with respect to a plan maintained by a single employer; and

“(bb) one or more small employers or employee organizations described in section 3(16)(B)(iii) with respect to a plan maintained by a single employer; and

“(bb) one or more small employers or employee organizations described in section 3(16)(B)(iii) in the case of a multi-employer plan.

“(iii) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subparagraph:

“(I) APPLICATION OF AGGREGATION RULE FOR EMPLOYER SIZE.—For purposes of this paragraph to an employer shall include a reference to any predecessor of such employer.

“(II) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

“(III) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

“On page 165, between lines 14 and 15, insert the following:

“(D) EXCLUSION OF SMALL EMPLOYERS.—

“(i) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 15 employees on business days; and

“(ii) maintaining the plan involved that is acting, serving, or functioning as a fiduciary, trustee or plan administrator, including—

“(aa) a small employer described in section 3(16)(B)(1) with respect to a plan maintained by a single employer; and

“(bb) one or more small employers or employee organizations described in section 3(16)(B)(iii) in the case of a multi-employer plan.

“(iii) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subparagraph:

“(I) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

“(II) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

“(III) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

“Mr. ALLARD. Mr. President, my amendment provides another opportunity for the Senate to protect the country’s employees of small businesses. Yesterday, the Senate voted on an amendment I offered that would have protected employees of small businesses from losing their health care insurance.

“I am offering another amendment that gives Members another chance to protect those employees. My amendment, cosponsored by 12 Senators, protects employees of small businesses from losing their health insurance. My amendment would have exempted employers with 15 or fewer employees from unnecessary and unwarranted lawsuit.

“We must protect small business employees from losing their health care insurance. Small business represents over 90 percent of all employers in America. If the Kennedy bill passes in its current form, small business employees will be subject to increased health care premiums and to the possibilities of losing their health care insurance altogether.

“Based on studies from the Congressional Budget Office and the Lewin Group, the Kennedy bill would cause more than 1 million Americans to lose their health insurance. The White House estimated even more Americans will lose their health care insurance— the Kennedy bill could cause 4 to 6 million Americans to lose their health care.

“The least the Senate can do is to protect small business employees from losing their health insurance and protect small employers from unnecessary liability is to pass this amendment. We are talking about employers that have 15 to 2 employees. Currently, numerous Federal laws provide exemption for small businesses and their employees.

“In my previous amendment we talked about the 50 employees exemptions. The other side made the point it was unfair because we were creating a bright line and those with 49 employees would not have an opportunity to take advantage of benefits provided in the amendment as those with, say, 51 employees. This amendment draws a bright line. We are addressing the very small employers of the small business sector; that is, 15 employees or fewer. True, we have a bright line, but it is not unusual in Federal law to draw bright lines trying to differentiate where the respective law should deal with different sizes of employees, trying to draw a line between small employers and the larger employers.

“Let me cite for Members some examples. The Occupational Safety and Health Act exempts businesses of 10 or fewer employees, workers, in certain low-hazard industries. The Americans with Disabilities Act defines the term ‘employer’ as a person who has 15 or more employees engaged in an industry affecting commerce. This is the area where we have decided in this amendment to differentiate the very small employers from the other small businesses of this country. The Worker Adjustment and Retraining Modification Act, commonly referred to as the Plant Closing Act, defines the term ‘employer’ as any business that employs 100 or more employees. The Family and Medical Leave Act, which requires employers to grant leave to parents to care for a newborn or seriously ill child, exempts businesses with fewer than 50 employees. The Fair Labor Standards Act, which established the minimum wage standards, exempts certain employers with minimum gross income—they did not use the number of employees—of less than $500,000 as an indication of what a small employer might be as it applies to that statute. The Walsh-Healey Public Contracts Act, which contains minimum wage and overtime for federally contracted employers, exempts employers that have Federal contracts for materials exceeding $10,000, which also is indicative of a small employer. The Age Discrimination and Employment Act of 1967, exempts employers of 19 or fewer workers.

“These numerous employee protections are currently in place as Federal law. The Senate should extend similar protections to employers of small businesses. We do not protect employees from frivolous lawsuits, more than a million—some estimate up to 9 million employees—will lose their health care insurance.

“Again, I am offering this amendment to provide the Senate with another chance to protect employees of small business from losing their health care insurance.

“I inquire the time remaining on my side?

“The PRESIDING OFFICER. The Senator has 9½ minutes.

“Mr. ALLARD. Mr. President, I reserve the remainder of my time.

“The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

“Mr. KENNEDY. Mr. President, this is the third bite of the apple. The first bite was Senator Gramm’s amendment, where we were going to provide protection for small employers. Then we had the Allard amendment to protect an employer with 50 employees or less. Now with this amendment, we are down to 15.
The fact is, yesterday, if there was any question about what this legislation was really all about, it was well debated and addressed. That was what the amendment offered by Senator SNOWE of Maine and Senator DEWINE of Ohio. In their amendment, the Wall Street Journal says:

Employer protection makes gains. Senate passed bills to shield companies from workers' health plan lawsuits.

It is very clear now that the only employers, large or small, that are going to be vulnerable are those that take an active involvement in disadvantaging their employees in health care and putting them at greater risk of death or serious injury. That is it. The rest of this has been worked out. We have done it with 100 employees, we have done it with 50, and now we are down to 15. It makes no more sense today. Those would be adequately protected in these companies. I imagine, if the Senator is not successful with 15, we will be down to 10, we will be down to 5, and then we will be down to 3.

We have addressed this issue. Every Member of this body ought to know it. I think this is a redundant amendment, one that we have addressed. The arguments are familiar. I yield to the Senator from Nevada.

Mr. REID. Mr. President, this is clear filibuster by amendment. I have been here a long time. I have seen this happen. As the Senator from Massachusetts pointed out, we have been here; we have done that. Next, as the Senator from Massachusetts indicated, it will be 10 employees, 5 employees, 4 employees, 3 employees.

When the time has expired on this amendment, I will offer a motion to table. This amendment should not be discussed. It should not take up the serious time of the Senate that has been so well used these past 9 days.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, this clear filibuster by amendment. I have been here a long time. I have seen this happen. As the Senator from Massachusetts pointed out, we have been here; we have done that. Next, as the Senator from Massachusetts indicated, it will be 10 employees, 5 employees, 4 employees, 3 employees.

When the time has expired on this amendment, I will offer a motion to table. This amendment should not be discussed. It should not take up the serious time of the Senate that has been so well used these past 9 days.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. Mr. President, I yield 3 minutes to the Senator from New Hampshire.

Mr. GREGG. I join the Senator from Colorado on this amendment. This bill is incredibly complex—to be kind. It has thousands of moving parts. The bureaucracy, which is going to be created and empowered as a result of it, is going to be massive. The lawsuits are going to be massive. The number of litigable events is going to be massive. It is going to be incomprehensible to large amounts of the American working public and their employers.

It is only elementary fairness that we say, to at least the smallest employers that are the ones creating the jobs today, you are going to have to pay what will undoubtedly be your entire profit margin in order to try to comply with this new piece of legislation.

For employers that have 15 or fewer employees, it is simply fairness that we take them out from this cloud and give them the benefits of their own employees and not be overwhelmed by the cost of this bill.

We have talked a lot about the costs of this bill, but let me cite a couple of figures. The cost to defend an age discrimination suit is $77,000. There are very few employers in this country that have less than 15 employees that are making more than $77,000. They are running a small business, a grocery store or restaurant, gas station, small retailer. These are the smallest businesses that create the most energy in our economy. That is where our jobs are created; they are created in these small businesses.

Let's not have those folks who are willing to be entrepreneurs for the first time in their lives, the first-time entrepreneurs who are willing to step into the risk pool of the capitalist system and, as a result, create jobs, let's not burden them with the bureaucracy and cost of a bill which we know is going to be extraordinary. Let's pass the Allard exemption for employers with 15 or fewer employees.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, let's just go back over what we are talking about this afternoon. First of all, the majority of small businessmen and women in this country are not involved in decisionmaking that affects the well-being of the employees. We know that. They basically are busy enough. It has been explained by Members that they are involved in running their businesses. This is really not an issue so much in terms of small business.

The only ones that will be affected by this are the small businessmen or women who get hold of the HMO where they have the insurance and says, look, if any of my employees are going to run up a bill more than $25,000, call me up because I want to know. When that HMO calls up, the employer says: Don't give them the treatment. As a result of not giving that treatment, the child of an employee is put at risk, and perhaps dies, or the wife of an employee, who has breast cancer, is denied access into a clinical trial and may die as a result. This is only if you can demonstrate the employer is actively involved in denying the benefits to those employees. Are we going to say that all these employers, with 15 or fewer employees, are going to be completely immune from this when the only employer that has to worry about this is one who is going to be actively involved in making a decision that puts their employees at risk? We built in the protections with the Snowe-DeWine amendment.

We built them in and we have supported them. But it seems to me that workers in these companies, which make up about 30 percent of the American workforce, ought to be given the same kinds of protections against the employers that are going to make that decision.

Make no mistake about it. The great majority of employers do not do that today. Only a very small group do. But if the small group that do do that are able to get away with it, there is an open invitation to other small businessmen and women, in order to keep their premiums down, to get involved in similar kinds of activities. This will offer carte blanche so that 30 percent of the American workforce will not be covered one bit with this legislation. It makes no sense. It didn't make any sense when it was first offered by Senator GRAMM; it didn't make any sense when it was offered previously by Senator ALLARD; and it makes no sense at the time.

The only people who have to worry are those employers that are going to connive, scheme, and plot in order to disadvantage their employees in ways that are going to bring irreparable harm, death, and injury to them. If you want to do that to 30 percent of the workforce and put them at that kind of risk, this is your amendment.

I do not think we should. I hope the amendment will be defeated.

The PRESIDING OFFICER (Mr. CARRPER). The Senator from Massachusetts has 9 minutes 23 seconds remaining. Who yields time?

Mr. ALLARD. Mr. President, I yield 3 minutes to the Senator from Oklahoma.

Mr. NICKLES. My friend and colleague from Massachusetts said if you want to do this, you should sponsor this amendment. I am not sure I want to do what he just described, but I want to sponsor this amendment with my colleague from Colorado. I ask unanimous consent to be listed as a cosponsor.

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

Mr. NICKLES. This amendment is vitally important for small businesses. This bill, the underlying bill, says employers beware, we are coming after you because we do not exempt employers.

Interestingly enough, we exempt Federal employers, we exempt Medicare, we exempt government plans, but we do not exempt private plans. Anybody who has a private plan, employers beware because they can sue you and they can sue the plan.

Oh, I know we came up with a little cover, and maybe you can put the liability under the form of a designated decisionmaker, and they can assume it. But guess what? They are going to charge the employer for every dime they think it is going to cost. And my guess is, the designated decisionmaker will want to have enough cover so they don't go bankrupt, so they are going to charge a little extra to make sure they
have enough to protect them from the liability and the costs that are associated with this payroll. The cost of health care is exploding. Health care costs went up 12.3 percent nationally last year. They are supposed to go up more than that this year. That is not for small businesses. The cost of health care for small business is 20, 21, 22 percent, and that is without the cost of this bill.

CBO estimates the cost of this bill is 4.2 percent. But if you assume there is going to be a whole lot of defensive medicine, you can probably double that figure. And with the liability, you are probably looking at another 9 or 10 percent on top of the 20 percent for small business. Those are not figures I am just grabbing out of the air, I think they are the reality.

My friend and colleague from Colorado, Senator ALLARD, is saying: Wait, they are the reality. Just grabbing out of the air, I think business. Those are not figures I am probably looking at another 9 or 10 percent on top of the 20 percent for small business. Those are not figures I am probably looking at another 9 or 10 percent on top of the 20 percent for small business.

There are a lot of small business employers all over this country that are sending letters to Members of this Senate about the very same concerns that have been expressed by the Senator from Oklahoma, the Senator from New Hampshire, and numerous other Senators, at least on this side of the aisle, about the impact of this particular piece of legislation on small business.

Let me take one example. There is a Mr. Terry Toler, for example, of Greeley, CO. I represent the State of Colorado. He runs a small construction business. He employs three workers. The health insurance he provides to his employees also helps take care of the needs of his family. Terry cannot afford the costs that would come with the Kennedy bill in its current form.

Last year, Terry's company had a 65 percent increase in health insurance premiums and costs. This increase was on top of Terry's other insurance costs, including equipment insurance, professional liability insurance, and general liability insurance. If this bill is passed in its current form, the company's health insurance rates will increase even further. As a result, he may have to drop the health insurance he provides for his employees and his family.

My amendment will protect Terry and his employees from losing their health insurance. Terry is one of hundreds of small employers in Colorado that would be forced to jeopardize their health care insurance. We need to protect hard-working employees from losing their health insurance.

Let me share some further concerns of this small businessman. Large employers can obtain health insurance at a much lower rate. As a result, small business employers cannot compete with larger companies. In a tight labor market, employers compete for the best employees. These are all competitive issues about which a small business is concerned. If even this kind of legislation moves forward, you can understand their concerns.

I have heard comments from another small businessman in Springfield, CO, who has expressed his concern. He writes:

Health care costs are already prohibitive. Adding the law-given right to sue for punitive damages can only increase costs. A patient bill of rights is important, but not at the price of Kennedy's bill.

He further states:

...liability limits are a good way to help cap rising health care costs.

As an employer, he must evaluate the price tag that comes with paying for health care. He believes it is prohibitive.

According to a recent survey of some 600 national employers, 46 percent of employers would likely drop health care coverage for their workers if they were exposed to new health care lawsuits.

This is not a good bill for small business. The adoption of the Allard amendment would make it better. So I am asking my colleagues in the Senate to join me in protecting employees of small businesses thus protecting the employees' health care they currently enjoy. If the Kennedy bill passes in its current form, the health care protection of more than 1 million Americans will be jeopardized. Colleagues should support this amendment to protect employees' health insurance and limit small employer liability.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Colorado has 3 seconds remaining.

Mr. ALLARD. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado has 4 minutes 25 seconds remaining.

Who seeks time?

Mr. ALLARD. Mr. President, I reserve the remainder of my time.

Mr. KENNEDY. That is all right.

Mr. ALLARD. Mr. President, I say to the majority I would like to be able to wrap up on my amendment, if I might.

Mr. KENNEDY. Why don't you wrap up.

Mr. ALLARD. If you have finished, I will wrap up and then yield the time.

Mr. KENNEDY. Don't get too provocative.

Mr. ALLARD. Don't get too provocative? Maybe the Senator from Massachusetts would like to respond?

Mr. KENNEDY. That is all right.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Thank you, Mr. President.

Mr. President. I have had the experience of starting a business from scratch and having to meet a payroll. As far as I am concerned, too few Members of the Senate have ever had the opportunity to be in business for themselves and had to meet the challenges of making a payroll. But I personally know how legislation such as this can affect your business. I have had to face those tough decisions. They are not pleasant.

Meanwhile in the world of the HMOs, huge companies are the heads of these HMOs. Mr. McGuire makes $54 million and got $350 million in stock value last year—$400 million. That has something to do with the premiums for those companies.

This is a very simple kind of question. He talks about protecting the employers. We are interested. They are protected unless they go out and change and manipulate their HMO to disadvantage the patients who are their employees and deny them the kinds of treatments that would be protected and with which we are all protected.
I am reminded, myself, that my son had cancer. I was able to get a specialist for him and to get into clinical trials. I want those employees who are represented by the 15 not to be denied that same opportunity. I did not have someone who was riding over that and denying me that. But that is happening in America. It might not be happening in Colorado, but it is happening in America, where employers are calling up and saying: Don’t put them in those clinical trials. We are here to stand and say: We are going to protect them. We will work with you, with the small business, but let us protect the women who need that clinical trial for cancer and the children who need that specialist. Why deny them those protections? That is what this amendment is all about.

Mr. ALLARD. Mr. President, I thank the Senator from Massachusetts.

I am continuing to hear from small business employers. And other Members of this Senate, as well, are hearing the same message I am. They are concerned about the rising cost of health care and the impact it will have on their business and the impact this particular piece of legislation is going to have on costs.

They are also concerned about the increased number of lawsuits that will be faced by small business employers if this particular piece of legislation passes.

My amendment provides some relief for small businesses of 15 employees or fewer. When you first glance at this bill, as I did, you say: It looks as if the employer has been exempted. But when you read the fine print, then you see there is a circle around it, and you find that the small businessman gets pulled into and becomes subject to lawsuits, more lawsuits than he is facing now. That puts at jeopardy the health care he is currently providing for his employees.

I am asking the Members of the Senate to join me to make sure small business doesn’t get pulled into this ever-expanding web of tangled lawsuits into which they are going to be pulled if this particular bill passes.

The Allard amendment is a good amendment. I hope Members of the Senate will join me in protecting small business, those of 15 employees or fewer.

Mr. President, I yield back the remainder of my time.

Mr. ALLARD. Mr. President, I ask unanimous consent to print in the Record an editorial run in the Fort Collins Coloradoan.

There being no objection, the editorial was ordered to be printed in the Record, follows: PATIENTS’ BILL OF RIGHTS NOT END-ALL TO HEALTH CARE ISSUES

Physician (and consumer), heal you, should be the motto for the Patients’ Bill of Rights now under consideration by Congress. The legislation actually includes several amendments, focuses on whether consumers can sue their health care providers for not approving treatment deemed medically necessary. Congress should restore that power to consumers, but only if the suits are based on actual damages, rather than punitive penalties. Those penalties have led to some outrageous settlements, and those legal costs have been passed on to employers and employees.

But consumers would be unwise to believe that this legislation can solve the broader issues of the rising cost of health care.

Many symptoms combine to make medical care costly: Pharmaceutical companies are advertising directly to consumers rather than doctors, which means patients may demand the more expensive brand-name medicines. Low deductibles for doctor office visits benefits consumers upfront, but health care providers shift their expenses by demanding higher premiums, which have increased sometimes 10-fold in the past decade for employers.

Managed care is not all negative. Without a competitive system, many individuals could not afford even simple doctor’s visits to maintain their health. Those without insurance usually have to turn to acutely expensive emergency rooms for health care. The focus on preventive care came about, in part, from health care providers who were seeking to keep their costs down, but the process also keeps patients healthy.

Legislation will not meet the need for innovation and close scrutiny by consumers and health care professionals regarding how the system works. Some providers are using a triage system to separate and treat patients efficiently; employers are shopping around to find health plans that fit their needs; providers are considering tiered-cost plans; and patients bear responsibility for keeping themselves as healthy as possible.

Congress should allow patients the right to sue providers and exempt employers who have no control over medical decisions. Still, turning the decision over to the courts is expensive and unwieldy, with lawyers seeing the most benefit. Another option is to rely on a binding mediation process or an independent panel to weigh medical coverage decisions to keep the focus on health care and off litigation.

The Allard amendment is a good amendment. I hope Members of the Senate will join me in protecting small business, those of 15 employees or fewer.

Mr. REID. Mr. President, I move to table the Allard amendment and ask for the yea and nays. Under the previous agreement, that will be set aside and we will go to the Nickles amendment now.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yea and nays were ordered.

Mr. NICKLES. Mr. President, I send to the desk an amendment numbered 850.
before us says, no, the Federal Government will do it; we will do it for all private plans. Usually they don’t even say all private plans. They usually say for all plans.

The truth is, the legislation we have is a mandate on the private sector, but we have exempted the public sector.

It is amazing to me, almost hypocritical—I don’t want to use that word, impugning anybody’s motives—but it bothers me to think we are so smart and wise that we are going to mandate these patient protections on every plan in America, supersede State protections already present, and we don’t give them to a group of employees over whom we really have control. We do have control over the Federal employees health care plan. We can write that plan. We have control. We write the check for Federal employees pay about a fourth, but the Federal Government pays three-fourths. We have direct control over Federal employee plans, but they are not covered by this bill.

Federal employees in the State of Delaware, California, or Oklahoma usually get their health care from Blue Cross or Aetna or whomever. They get it just like any other employee, but they are Federal employees. They don’t get the patient protections under this bill. They don’t have the appeals process under this bill. They don’t have the legal recourse that is under this bill. They don’t have the patient protections that are dictated in this bill. All other private sector employees will. Does that really make sense? Is that equitable? I am not sure.

My friend and colleague Senator KENNEDY just talked about clinical trials, and maybe they help somebody. I looked at the language for Federal employees. We are getting ready to mandate a very expensive comprehensive list of clinical trials for every private sector plan in America, but not for Federal employees. I find that interesting.

We are getting ready to mandate an emergency room provision that includes prudent layperson, post-stabilization, and ambulance care provisions. I mention this for the Senator from Delaware because I believe the State of Delaware is passing a patient protection that only cover prudent layperson. That is what Federal employees do. Federal employees don’t have post-stabilization and ambulance. That means our staffs, our employees, don’t have the same patient protections that we are getting ready to mandate on every other health care plan in America. I find that to be very inconsistent.

I could go on and on and on. The OB/GYN provision: Federal employees get to have one visit. This is dictated or mandated—one visit to an OB/GYN. Under the bill we have before us, it basically allows the OB/GYN to authorize any OB/GYN care, without any other authorization requirements. That sounds unlimited to me, much more expensive provision than what we have for Federal employees.

It is almost the case all the way through the bill. For pediatricians under the McCain-Kennedy bill, we allow parents to designate a pediatrician for their children. That sounds fair, fine, but that, in itself would be unanimous. That is not a dictate for Federal employees. Some plans may have it; some plans may not.

My point is, Federal employees don’t have these patient protections. We are getting ready to mandate something on the private sector that we forgot to do for the public sector.

It is interesting because I know President Clinton made a big deal out of the fact, saying: Congress is not acting. I am going to have an Executive order and make Federal employees have these patient protections. I will do it by Executive order. Well, he didn’t do as much as we are getting ready to do on the private sector. That is my point.

I expect that what we are getting ready to do, that the patient protections we are passing, the examples I have listed—and that is not the total—are much more expansive than what has already been done. The same thing would apply for Medicare. If all these patient protections that have been espoused are so important, shouldn’t we give those to senior citizens? Shouldn’t senior citizens have the same expedited review process, internal/external appeal process, as we are going to mandate on all the private sector? I would think so. We all love our senior citizens, our moms and dads and grandparents. Surely we should give them the same protections we are passing, the examples I have listed—and that is not the total—and that is not the total.

I have some reservations. I think this is my point.

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I have some reservations. I think this is my point.

There is some inconsistency here. If these are such great protections and they are not that expensive, we should make sure they apply to our employees as well. Senator KENNEDY mentioned clinical trials, as if that was a mandate. Some of the Federal plans cover clinical trials. Not all do. We are getting ready to mandate them for every other employee. Shouldn’t we have it for Federal employees as well—maybe for the sons and daughters of the staff members working here? Shouldn’t they have access to those just as the private sector will now have access to them?

The appeals process: This is one of the real keys. There have been hours of debate on the floor saying that on appeals every individual should have rights of internal review, and then the external review should be done by an independent entity not controlled by the employer. Guess what Federal employees have? If they are denied care, they can appeal. But to whom? They appeal to the Office of Personnel Management—to their employer. The employer might subcontract it, but basically it is the employer, the Federal Government. It is not totally independent when the Federal Government might be making that decision. Shouldn’t we give Federal employees that same independent external review?

My amendment would make this bill applying to the public sector include
Federal employees, Medicare, Medicaid, Indian health, veterans, and civil service, I think it would help show that if we are going to provide these protections for the private sector and, frankly, mandate them, they should apply to the public sector as well.

I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, I have listened closely. I will come to the substance of the Senator’s amendment in just a minute. I listened to him very carefully about his great enthusiasm for the Federal employee program. It is a fact that 100 Members have that program here in the Senate. It is interesting because the taxpayers pay for 75 percent of it. So it is always interesting for those of us who have been trying to taxpay. Wonderful. Now they have health insurance program. I favored a single payer for years. I am glad to do it any way that we are able to do it.

But I am glad to hear from my good friend from Oklahoma how much he believes in the Federal employee program of which 75 percent is paid for every Member in here by the Federal Government. When any of us talk about trying to expand health insurance to try to include all Americans, oh, my goodness, we are going to have the Federal Government pay for any of these programs? My goodness. I welcome the fact that the Senator from Oklahoma is so enthusiastic about that concept, about having a uniform concept. It is interesting, you know, Mr. President. Many Americans probably don’t know it. When you come in and sign on, there is a little checkoff when you become employed in the Federal Government. You check it and you are included in the Federal employee program. You have probably 30 or 35 different options. I wish the other American people had those kinds of options.

No, we don’t get any kind of support for trying to give the American people those kinds of options.

But do you know what, Mr. President? All these Senators who are always against any kind of health insurance for all Americans are down there checking that off as quick as can be to get premiums subsidized 75 percent by the taxpayers. And when they come up and say, well, they don’t have all of the protections on it.

I want to say to the good Senator that I am very inclined to take the amendment. I would like to take the amendment. We are studying now the budget implications because I don’t want to take it and then find out that we have the Senator from Oklahoma come over and say we have exceeded the budget limitations and then you have to go back again and therefore the whole bill comes down. We know what is happening now. The basic protections of this legislation, according to the Congressional Research Service—

the patient protections in the McCain-Edwards-Kennedy bill would apply, with the exception of the right to sue. That is right to sue on this. As we saw some of those elements on the executive order, they have not been altered by the administration. I would like to make them statutory. No one would like to make them statutory more than I. I am about to wrap my arms around the Senator and bring him in and say I am in on this.

Hopefully, as our leader pointed out, after all the lectures that I have had—I don’t say that in a derogatory way to my friend from Oklahoma—about health insurance—we heard about how we are going to increase the numbers of those who are going to lose their health insurance. We are not dealing with that problem, with the 43 million. We will have an opportunity to invite your participation on these issues. We had some votes on the extension last year in terms of the parents on the CHIP program and virtually every Republican voted against it. To the extent that we saw progress made with the good support of Senator SMITH and RON WYDEN, we now have about $28 billion, $29 billion in the Finance Committee that can be used for the expansion of health care. We certainly want to utilize that. That is only a drop in the bucket. Our attempts in the past to get reserve funds out of the Finance Committee, which the Senator is on, so we could move ahead with a health insurance program have fallen on deaf ears.

I hope that all those—I will have a talk on that later on because I am taking all of those statements and comments made by our Republican friends over the period of the past days, all talking about health insurance, and we will give them a good opportunity. Hopefully, they won’t have to eat their words. We will welcome some of their initiatives. We know what they are against. We want to know what they are for in terms of getting some health insurance.

Well, I will say that I am going to recommend to our side that we accept the Nickles amendment. So I am prepared. The Senator made such a convincing argument, and it has taken a little while. He left out HCFA. That was the only thing he left out. That is why we have been so persuaded. I know HCFA is not going to have anything to do with this amendment the Senator offers because, otherwise, I know he wouldn’t have been successful.

Mr. REID. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. REID. Would the Senator from Oklahoma agree to a voice vote because it appears he is going to win so overwhelmingly?

Mr. NICKLES. I will think about that. How much time remains?

The PRESIDING OFFICER. Five minutes. The Senator from Massachusetts has almost 9 minutes.

Mr. NICKLES. Mr. President, I need to do this. I mean to do it. I wanted to compliment Senator GREGG and Senator KENNEDY for their leadership on this bill and their leadership on the education bill because it is kind of unusual that we have two committee chairmen and two people who are responsible for moving two major pieces of legislation consecutively. So they combined and spent about the last 2 months on the floor. That is not easy.

I have always enjoyed debating and working with you and my friend and colleague from Massachusetts, and we are good friends. Occasionally, we agree. We have had two or three amendments, and we have had great oratory and, occasionally, we still agree on amendments. I have appreciated it. We have combined on coming together basically on covering union plans today. We got very close to an agreement. We will make that, I guess, in the managers’ amendment. I appreciate that. I appreciate his willingness to accept this amendment.

I will be very frank and say we don’t know how much this is going to cost, but frankly, we don’t know how much this costs in the private sector. There is a point to be made. The Senator said maybe we can accept it, and possibly it can work out to give patient protections, but I don’t know about the right to sue. That might be pretty expensive. We are doing that on the private sector as well. We do not know how much that is going to cost, but it will be very expensive.

Federal employees have a lot of protections, but they do not have near the protections we are getting ready to mandate on the private sector.

Medicare has some patient protections. They do not have near the patient protections that we will be mandating on the private sector. They do not have an appeals process that is as expedited as this. I do not have a clue whether Medicare can comply with this language. It takes, in many cases, hundreds of days to get an appeal completed in Medicare. We have a very expedited appeals process in this bill. I happen to support that appeals process, and it would be good if Medicare could have a very concise, complete, final appeals process and one, hopefully, that would be binding. We improved the appeals process in this bill today with the Thompson amendment, and I compliment Senator THOMPSON for his leadership on that bill.

I would be very troubled to go back to my State of Oklahoma and have a town meeting and tell employers they have to do this, this, this, and this;
Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURkowski) are necessarily absent.

The yeas and nays resulted—yeas 57, nays 41, as follows:

(Rollcall Vote No. 214 Leg.)

YEAS—57

Akaka
Baucus
Baucus
Bingaman
Boxer
Braun
Byrd
Cantwell
Carnahan
Carper
Chafee
Chambliss
Chambliss
Chambliss
Chambliss
Christensen
Cochran
Collins
Colson
Conrad
Corzine
Daschle
Dayton
DeWine
Dodd

Mr. KENNEDY. Mr. President, I yield back my time.

Mr. ALLARD. Mr. President, if I may, I would like to give a brief explanation of what this amendment is all about. The Allard amendment says that if you are a small businessman—you have between 2 and 15 employees—you are exempt from the provisions of this bill. That means you do not have to face the increased burdens of having to face lawsuits. And it means you will not have to face the increased burdens of higher premium costs on your insurance.

So it is a very straightforward amendment. It is an amendment that is strongly supported by the small business community. Probably most of you have been getting calls into your

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they have to have this in their plans; if things do not work out, they might be sued for unlimited damages, and have one of many other things. I say: “Did you do that for Federal plans?” and say, “No, we didn’t. We just did it for ourselves.”

We have control over Federal plans. Those are the ones over which we really have control. I would find it very troublesome. I was one of the principal sponsors of the Congressional Accountability Act a few years ago who said Congress should live under the rules like everybody else. I remember some of my colleagues saying: Don’t do that; if we make the Capitol comply with OSHA, it is going to be very expensive. If you walk into the basement of the Capitol today, you will find a lot of electrical work that would not pass any OSHA inspection.

It bothers me to think we are going to mandate on every private sector health care plan: You have to have this, this, this, and this, all very well. I think at a town meeting in my State of Massachusetts someone might add, but some of which will be pretty expensive. I would find it troubling if we mandate that on the private sector and say: Oops, we forgot to do it for Federal employees.

That is the purpose of my amendment. I appreciate the willingness of my colleague from Massachusetts to accept the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I listened to the Senator talk about being in a town meeting and the questioner says: How in the world, Senator, can you apply all these provisions to our small business and you are not doing that to the Federal employees?

I would think at a town meeting in my State of Massachusetts someone might stand up and say: Senator, how come your health care premium is three-quarters paid by the taxpayers; why don’t you include me? That is what I would hear in my State of Massachusetts. That is what I hear.

Maybe they are going to ask you about the right to sue where hard-working people have difficulty putting together the resources to get the premiums and get the health care. They wonder why the Federal Government is paying for ours. If we are being consistent with that, I say to the Senator from Oklahoma, we ought to be out here fighting to make sure their health care coverage is going to be covered. I do not see how we can have a town meeting and miss that one.

It is interesting, as we get into the Federal employees, we have 34, 35 different choices. What other worker in America has that kind of choice? The people say, what about your appeal? Generally speaking, you do not need an appeal; you can just go to another health care policy. We have that choice, but working Americans do not.

They are stuck with the choices in the workforce. We can get on with those differences. But I am still in that wonderful voter cheer for my friend from Oklahoma. I urge all our colleagues to support this well-thought-out, well-considered amendment. I look forward to working with him on other matters on health care to make sure we are going to do for the others, the rest of the people of Massachusetts and Oklahoma, as well for them as we do for ourselves in health care.

I am ready to yield back the time or withhold my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my colleague. He mentioned the fact that the Federal Government pays 100 percent of the salaries in Massachusetts; I don’t know. I appreciate his willingness to accept the amendment. I am not going to ask for a recorded vote. The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. NICKLES. I yield back my time.

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes remaining.

Mr. KENNEDY. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to amendment No. 850. The amendment (No. 850) was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Regular order, Mr. President.

MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, there are now 4 minutes evenly divided prior to voting on a motion to table the Allard amendment No. 821.

Who seeks time?

Mr. KENNEDY. Mr. President, Senator ALLARD isn’t going to use his time. I would be glad to yield back at this time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, if I might, I would like to give a brief explanation of what this amendment is all about. The Allard amendment says that if you are a small businessman—you have between 2 and 15 employees—you are exempt from the provisions of this bill. That means you do not have to face the increased burdens of having to face lawsuits. And it means you will not have to face the increased burdens of higher premium costs on your insurance.
offices from small businesses concerned about how this is going to impact their small business. So it is an important small business vote.

I ask for a "nay" vote on the motion to table.

The PRESIDING OFFICER. Who seeks time?

The Senator from Massachusetts. Mr. KENNEDY. Mr. President, over the past several days, Members, in a bipartisan way, have worked very hard and successfully in shielding employers from frivolous suits. As the Wall Street Journal today points out: "Senate passes rule to shield companies from workers' health plan lawsuits.''

When this bill is passed, the only employers that have to worry in this country are going to be those employers that call their HMOs and tell them they have a balance now as a result of a bi-voted on this issue. It seems to me we will be an incentive for others as of the law will get lower premiums, and women into the clinical trials. They $25,000. They are not going to let run up a bill of more than $20,000 or employers that call their HMOs and tell them this will be the third time we have country are going to be those employ- ers that have to worry in this workers' health plan lawsuits.''

Mr. WORKING OFFICER. Mr. President, we were planning on the other order. The person who will be responding to the Senator from Idaho is not here.

Mr. KENNEDY. We prefer to go the other way. We announced the order, and this has changed. We will need to put in a quorum call to get the person who will be addressing this amendment.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order of the Santorum amendment and the Craig amendment be switched and that the time allotted be the same. Senator santorum is still perfecting a portion of his amendment.

Mr. REID. Mr. President, we were planning on the other order. The person who will be responding to the Senator from Idaho is not here.

Mr. KENNEDY. We prefer to go the other way. We announced the order, and this has changed. We will need to put in a quorum call to get the person who will be addressing this amendment.

Mr. CRAIG. I am sorry for this delay. Mr. KENNEDY. We are moving along, and we will do the best we can. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, there was an agreement that the Santorum amendment would proceed and I would follow. We agreed we would switch those. I think that is the current agreement that has been accepted. I see the Senator from Montana is on the floor, the chairman of the Finance Committee, so with that, I send my amendment to the desk.

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

Mr. CRAIG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.
The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: to express the sense of the Senate regarding making medical savings accounts available to all Americans)

At the appropriate place insert the following:

SEC. 1. SENSE OF THE SENATE REGARDING FULL AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) FINDINGS.—The Senate finds:

(1) Medical savings accounts eliminate bureaucracy and put patients in control of their health care decisions.

(2) Medical savings accounts extend coverage to the uninsured. According to the Treasury Department, one-third of MSA purchasers previously had no health care coverage.

(3) The medical savings account demonstration program has been hampered with restrictions that put medical savings out of reach for millions of Americans.

(b) RECOMMENDATION.—It is the sense of the Senate that a patients’ bill of rights should remove the restrictions on the private-sector medical savings account demonstration program and make medical savings accounts available to more Americans.

Mr. CRAIG. Mr. President, I had planned up until an hour ago to offer a detailed amendment on medical savings accounts that I think fits appropriately into any discussion about patients’ rights in this country. The first and foremost right is access to health care, relatively unfettered access to health care. The problem with that under the current scenario on the floor is it would bring about a point of order and I do not want this issue to fall based on that.

Certainly it is appropriate we are here and we are taking the necessary and adequate time to debate patient’s rights in American health care. I am proud on party lines Republicans have a solid record on protecting patients and their rights. We have fought for patients’ rights from the very day we defeated the Clinton health care plan a good number of years ago, which was a massive effort to use government to take over our health care system, which would have largely let bureaucrats decide whether your family would get the medical care they need.

It was a Republican Congress that stood up for patients’ rights by creating medical savings accounts for the first time. Medical savings accounts, in my opinion, are the ultimate in patient protection for they throw the lawyers, employers, and bureaucrats out of the examining room and leave decisions about your health between you and your doctor.

What has been most fascinating under the current medical savings account scenario in our country is that we have limited them to about 750,000 policies. Yet a good many people have come to use them even though we have made it relatively restrictive and we have not opened it up to the full marketplace.

What is most fascinating about the use of medical savings accounts is the category that all Members want to touch. We have cut it off quite often. That is the large number in our country of uninsured. Since we offered up a few years ago this pilot program, 37 percent of those who chose to use it were the uninsured of America. In other words, it became one of the most attractive items to them because it offered them at a lower cost full access to the health care system.

It proves something many colleagues do not want proved: That given the opportunity, Americans can afford to health coverage if the price is right and the strings are not attached and they can, in fact, become the directors of their own health care destiny. I think it is fascinating when you look at this amendment. With it known if scenario, of over 100,000 MSA buyers, one-third were previously uninsured.

With medical savings accounts, you choose your own doctor. Also, if you believe you need a specialist, you have direct access to a specialist. You don’t need an HMO or an insurance company working with or telling your doctor what you may or may not do. Of course, the debate for the last week has been all about that, all about the right of a patient to make the greater determination over his or her destiny and to have that one-on-one relationship with the health care provider. There is no question that if you are independent in your ability to insure or you have worked a relationship with your employer so you are independent through a medical savings account, then you can gain direct access to an OB/GYN. If your child is ill, you have direct access to a family pediatrician. With MSAs there are no gatekeepers; you are the gatekeeper; you make mandatory referrals; you are the one who makes the decision, you and your doctor. The only people involved in your personal decisions, once again: Your family, you, and the medical professional you have chosen or to whom your doctor has referred you. That is the phenom- enally great independence to which we are arbitrarily deciding Americans cannot have free access.

I hoped to offer a much broader amendment that would have to face that tough test of dealing with the Senate rules and all of that because it would deal with taxes and it would deal with revenue. As a result, instead of making the changes in the law that ought to be made because even the program I am talking about that has been so accepted expires this year and it is the responsibility of this Congress to expand it and make it available, here instead we are still talking about the rights of lawyers, not the rights of the patient.

The rights of the patient are optimized if you provide the full marketplace access to medical savings ac- counts. Since we introduced the limited pilot program, wonderful things have happened. The very people we thought were uninsured, are able to afford health coverage. And, in our society today, many of the uninsured are the children of working men and women who can’t afford to add them as an extra beneficiary to their health care coverage because of the costs. Yet they found they were able to do that when their employer that allowed them to have a medical savings account.

Medical savings accounts combine low-cost insurance, and a tax-preferred savings account for routine medical expenses. The catastrophic insurance policy covers higher cost items beyond what the savings account covers.

That is why I think it important that this Senate now express its will and its desire to continue to support medical savings accounts. That is why it appropriately fits inside the broad discussion of a Patients’ Bill of Rights.

We want a Patients’ Bill of Rights that works. We have had a President say very clearly, unless you can provide us with a Patients’ Bill of Rights that creates stability, that allows the kind of flexibility we need to assure that employers can continue to provide health care without the risk of being dragged into court because of a health care program that they may be a sponsor of, then he will veto it.

But here is a President who also supports maximizing choices in the marketplace. How you maximize choices in the marketplace for the patient today is to allow open access to a medical savings accounts program that optimizes all the flexibility we have talked about. You reach out and bring in the uninsured of America. In that program, wonderful things are attempted. We have a 50 percent pilot program, wonderful things happened. And we would like to see that extended.

I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER (Ms. STABENOW). WHO YIELDS TIME?

Mr. BAUCUS. I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I appreciate the efforts of the Senator from Idaho for small businessmen and women, for families who are unable to afford health care costs to be able to invest in a medical savings account. I would like to put this issue in the context of this entire debate.

One of the first amendments proposed in this debate was to provide tax relief—not a sense of the Senate but an actual amendment to the pending legislation to provide tax relief for small businessmen and women to get deductibility for their health care plans, at
that time 100-percent deductibility on their health care plans.

At that time I said OK, then I will not support them unless we have some kind of narrowing—as I said, as many as three. That offer was rejected.

Here we are at 2 o’clock Friday afternoon, after many days of debate, and we are talking about a sense-of-the-Senate resolution on medical savings accounts.

I am sorry. They should have taken advantage of the opportunity that I and the sponsors of this legislation would have provided to provide legisla-
tive—not sense of the Senate —relief for small businessmen and women, for allowing to establish medical savings accounts, and perhaps another bill. That offer was rejected.

At this time I would then have to oppose this sense-of-the-Senate resolution, I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Montana.

Mr. BAUCUS. Madam President, I yield myself such time as I consume.

This is a Patients’ Bill of Rights bill. This is not a tax bill. This is not a Department of Defense bill. This is not a agriculture bill. This is not a foreign policy bill. This is a Patients’ Bill of Rights bill.

The amendment offered by my friend from Idaho is not a Patients’ Bill of Rights amendment; it is a tax amend-
ment. We will have ample time this year to take up tax legislation. We will take up tax legislation at some time, even though we had a huge tax bill al-
ready this year. When I say “we,” I mean the Finance Committee. That is because the budget resolution provides $28 billion for health insurance benefits for Americans who are now uninsured.

I guess the committee will report out legislation this year which will include expansion of some benefits, perhaps under CHIP, but perhaps also some tax provisions. There are many Senators who have good ideas to encourage Americans to have more health insur-
ance—credits, deductions, and so forth. MSAs is just one way. MSAs, I might say, are actually, under the law, re-
served for the most wealthy Ameri-
cans. It is a particular kind of savings account which enjoys very lucrative, very beneficial status with respect to our tax laws; that is, contributions are not deductible, inside buildup is not taxed, withdrawals for medical pur-
poses are not taxed, and only with-
drawals for nonmedical purposes are, but not in the case when a person reaches the age 65. Essentially, they can be converted by wealthier people into a retirement account beyond a savings account.

They are just one way of, perhaps, providing health insurance for Ameri-
cans. The main point being this is not a tax bill. The Finance Committee will take up health insurance legislation this year as provided under the budget resolution. At the time we consider MSAs, we will consider other appropri-
ate ways to encourage Americans to have more health insurance. That is the appropriate time for this body to consider health insurance legislation. That is when the Finance Committee can consider all the various ideas and report out a bill to the Senate which, in a more orderly way, because it is a tax bill which is dealing with tax mat-
ters, particularly health insurance, will help more Americans.

I also say to my good friend from Arizona, it is now 2 o’clock Friday afternoon. We have been on this Pa-
tients’ Bill of Rights bill a long time. It is very good legislation. We are going to finally pass a Patients’ Bill of Rights, after I don’t know how many, tonight. That is my guess.

We will not pass it tonight—who knows when we will ever get to finally pass it—if we start going down this road of adopting sense-of-the-Senate resolutions.

This is the first sense of the Senate. We have not had one before. This par-
ticular resolution says this bill should include expansion of medical savings accounts. If we are not going to add savings accounts here, we are, in effect, deciding we should not add medical savings accounts, a tax bill, on this bill.

I respectfully suggest to all my col-
leagues, the proper vote here is to vote no because it is, in effect, a tax provi-
sion. It is a sense of the Senate. We have not done that before. We are about ready to conclude passage of this bill and we will take up health insur-
ance, tax legislation, at an appropriate time later.

I reserve the remainder of my time.

Mr. GRASSLEY. Mr. President, I want to talk about the Craig amendment that it is the sense of the Senate that the Senate act to expand access to Medical Savings Accounts.

I commend Senator Craig for offer-
ing this amendment. I support expand-
ing access to MSAs. I recently intro-
duced S. 1067, the Medical Savings Ac-
count Availability Act of 2001, with my colleague from New Jersey, Senator TORRICELLI. My support for MSAs is long standing. Senator TORRICELLI and I introduced in the last Congress a comparable bill to expand access to Medical Savings Accounts. I think we will improve access to MSAs with the support of Senator Craig and many other Senators, particularly on my side, who I know want to see MSAs with the reach of every person. My colleagues know. I have ar-
gued during this debate that tax mate-
rial should not be included in this bill. I do not consider this amendment a tax amendment because, if adopted, it would not have the effect of changing tax law.

Earlier in this debate, I sought and received agreement from the Chairman of the Finance Committee that health related tax matters will be considered at a markup of the Finance Committee in the near future. I look forward to pursuing this issue at that time.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Madam President, I in-
quire how much time remains on my side.

The PRESIDING OFFICER. The Sen-
ator has 6 minutes 20 seconds.

Mr. CRAIG. I inquire if the Senator has anyone else who would wish to speak to it on his side. If not, I will wrap up.

Mr. BAUCUS. Madam President, I will wait until the Senator concludes and then I will make a judgment whether I want to make another state-
ment.

The PRESIDING OFFICER. The Sen-
ator from Idaho.

Mr. CRAIG. I allocate myself 5 min-
utes so I would like to conclude the de-
bate of my amendment. Let me speak briefly to what the chairman of the Fi-
nance Committee said.

First of all, I ask him to read my sense of the Senate. It has nothing to do with taxes at this moment. His un-
derlying argument that the responsi-
bility for MSAs, when you are making substantive changes in current law, is a finance responsibility and a tax pro-
vision is correct. My amendment is not a tax provision.

It is asking the Senate to speak to the importance of doing what the Sen-
ator from Montana has said he will do this year. That is what my amendment says—that medical savings accounts are important. Do they belong in a Pa-
tients’ Bill of Rights? Absolutely they do. If you want to optimize the rights of a patient or of a potential patient in America’s health care system, then you give them full access—not limited and restricted access to medical sav-
ings accounts.

Let me correct one other thing that I think is important. As to this old bugaboo “it is just for the rich” that comes from the chairman of the Finance Committee, will he tell me that one-third of the 100,000 people who are uninsured and have never had insur-
ance before because they couldn’t afford it are somehow “closeted rich” people? I doubt it very much. These are the working poor of America—not the working wealthy—who found an oppor-
tunity to provide health care for them-
selves, their spouses, and their families.
because the Federal Government, through the Congress, opened up a limited window of opportunity for them to use a medical savings account to their advantage.

That is what that is all about. The House is looking to provide medical savings accounts in their Patients’ Bill of Rights. The President supports medical savings accounts. It is not an agriculture bill. It is not a bill for the Interior Department. It is a bill for Americans seeking health care in the system today.

Why shouldn’t we debate that right to have optimum access to the market on a Patients’ Bill of Rights? Because it doesn’t involve a lawyer? That is a good reason to debate it, because it doesn’t involve a Federal bureaucrat at HCFA, and it doesn’t involve an HMO or an insurance company. It involves the patient who holds that medical savings account and his or her doctor.

That is what this issue is all about. You darned well bet it is important that our Congress express to the American people that we should make medical savings accounts increasingly available.

I am pleased to hear the chairman of the Finance Committee speak about addressing that this year because this year it expires. We should not allow that to happen.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I will make a couple of points.

If you read it, it makes clear that this is a sense-of-the-Senate tax provision. It says sense of the Senate, and the Patients’ Bill of Rights should remove the restrictions on the private sector medical savings account demonstration program to make medical savings accounts available to more Americans.

Medical savings accounts are a tax provision. This says remove restrictions to make it more available; to, in effect, change the tax law to make it more available.

It is clearly a sense-of-the-Senate tax bill.

Second, it has been asserted that it is for the working poor. I have a distribution chart furnished by the President which indicates what income groups of Americans utilize medical savings accounts. By far, the highest income level to use medical savings accounts is that with adjusted gross income—the total above $100,000 and $200,000. Those people are hardly the working poor. For those in the lowest category—those with adjusted gross incomes of under $5,000—you get 111 returns. For those in the earlier category that I mentioned—those in the $50,000 to $200,000 adjusted gross income—you get 9,400 returns.

It is not for the working poor. That is not the main point. The main point is that this is a sense-of-the-Senate tax provision.

We should not go down this road. We will at the appropriate time later this year in the Finance Committee work on a measure to protect and provide more health insurance for those who do not have health insurance and report that legislation at the appropriate time to the floor.

I yield the remainder of my time. If the Senator from Idaho will yield the remainder of his time, I will make a motion with respect to this amendment.

Mr. CRAIG. Madam President, I believe that we have the opportunity to express the will of the Senate. The Congress has moved slowly but grudgingly toward medical savings accounts and has created flexibility. We have a good opportunity to do so this year.

Today, we have an opportunity to express our will to do that once again. I hope we will do so.

I yield the remainder of my time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. BAUCUS. Madam President, I am going to move to table.

The PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. I move to table the Craig amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

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

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

Mr. SANTORUM. Madam President, I call up my amendment No. 841, with the modification I send to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The clerk will report.

The assistant legislative clerk read as follows:

The Senate from Pennsylvania (Mr. SANTORUM) proposes an amendement number 841, as modified.

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

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

The amendment is as follows:

(Purpose: To dedicate 75 percent of any awards of civil monetary penalties allowed under this Act to a Federal trust fund to finance refundable tax credits for uninsured individuals and families)

At the end, add the following:

SEC. 8. REFUNDABLE TAX CREDITS FOR THE UNINSURED FINANCED WITH CERTAIN CIVIL MONETARY PENALTIES.

(a) PAYMENT OF CERTAIN PENALTIES TO SECRETARY OF THE TREASURY.

(1) IN GENERAL.—Notwithstanding any other provision of law, 75 percent of any civil monetary penalty in any proceeding allowed under any provision of, or amendment made by, this Act may only be awarded to the Secretary of the Treasury.

(2) CIVIL MONETARY PENALTY.—For purposes of this section, the term ‘‘civil monetary penalty’’ means damages awarded for the purpose of punishment or deterrence, and not solely for compensatory purposes. Such term includes exemplary and punitive damages or any similar damages which function as civil monetary penalties. Such term does not include either economic or non-economic losses. Such term does not include either economic or non-economic losses. Such term does not include either economic or non-economic losses.
SEC. 9511. HEALTH INSURANCE REFUNDABLE CREDITS TRUST FUND

(a) Creation of Trust Fund.—There is hereby established in the Treasury of the United States a trust fund to be known as the "Health Insurance Refundable Credits Trust Fund", consisting of such amounts as may be—

(1) appropriated to such Trust Fund as provided in this section, or

(2) credited to such Trust Fund.

(b) Transfer to Trust Fund of Amounts Equivalent to Certain Awards.—There is hereby transferred to the Health Insurance Refundable Credits Trust Fund amounts equivalent to the awards received by the Secretary of the Treasury under section 1324(b) of title 31, United States Code, as a result of actions provided for in this bill and create a trust fund which will be used to finance those who do not have employer-provided health insurance— in other words, the uninsured.

I think that is a way to ameliorate some of the damage caused by this legislation. The cost pulled out of the health care system through litigation, and through punitive damages in particular, will drive up the cost of health insurance. That money will go to lawyers, to a select few— principally the lawyers, but to a select few clients, patients, such as the gentleman from California who a couple of weeks ago hit the "lottery," with a $3 billion punitive damages award. If that kind of award occurs within the health care system, imagine the impact on all of the insured in this country. Imagine the cost that is going to have to be borne by the millions of people who have insurance with a $3 billion punitive damages award. How much are your insurance rates going to go up if an award such as that is given? The least we can do is take the potential of a back-breaker award, or a series of back-breaker punitive damage awards, and put that back into the system in a way that helps those who do not have insurance.

So what I am suggesting is really a way to avoid some of the criticism that has been leveled against this bill, that this is full of litigation and costs, without any benefit coming back into the system. Remember, what we are concerned about here—is our concern about individual cases, obvious. I am also concerned about the greater picture, which is making sure the public generally has insurance and has quality health insurance.

As you can see from this chart, there is a real difference between the kind of health care people get when they are insured versus when they are not insured. This says "nonelderly adults with barriers to care by insurance status." In cases where they had procedures needed, but did not get the care for a serious problem, only 3 percent of the people who had insurance ended up in that category. So if they have insurance, if they have a serious problem and a prescribed solution, they basically get the care. But if they are not insured, 20 percent—almost seven times the number of the uninsured—do not get the care they need. This says "skipped recommended test or treatment." If they are insured, 13 percent of the people skip those tests. If you are not insured, almost 40 percent skip that.

Had problems getting mental health care: 4 percent versus 13 percent.

If we are concerned about quality care, we must protect the 99 percent. If everyone, then we have to address the issue of the uninsured. This bill just deals with those who have insurance. I remind people, this bill only deals with people who have insurance. The biggest problem is patient care is those who do not have insurance, and that is displayed on this chart. We all know that is the fact from our own lives, knowing people who do and do not have insurance.

We cannot walk out of here with our arms raised high saying we have a great victory for patients when we accomplish two things: No. 1, we provide a little bit of protection—and that is what we do, provide a little bit of protection—for those who have insurance but whom we would like to see have insurance to lose their insurance and end up with vastly inferior care. We provide a little bit of benefit for a lot, but we harm a lot of people profoundly in the process.

This amendment is a pretty minimal amendment. We allow for 25 percent of the punitive damages to stay with the lawyer—to stay with the client so they get a little piece of this pie. The lawyer gets paid, although if they have a big punitive damage award, they probably get a big settlement in a lot of other areas, too. In this $3 billion award, they got $5.5 million in compensatory damages. Nobody is going poor, from the lawyer's perspective, on filing this case.

When it comes to potential enormous awards for punitive damages, we need to plow some of this money back into the system. I am hopeful the Senate will take a step back and say this is one of the reasonable suggestions that can come about if we are willing to take seriously this matter of providing quality health care, not just for those who have insurance but plowing that money back for those who do not.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from North Carolina.

Mr. EDWARDS. Madam President, in my remaining time I am going to do with this amendment is I hope to take one of those negative provisions—that being unlimited punitive damages in State court and a $5 million cap on punitive damages in Federal courts—and channel some of that cost that is going to be borne by the insurance system and employers, and put that back into the system in the form of a trust fund for those who do not have employer-provided health insurance. So this is an amendment that will take 75 percent of all punitive damage awards that occur and put that back into the system in the form of a trust fund which will be used to finance those who do not have employer-provided health insurance—in other words, the uninsured.

I think that is a way to ameliorate some of the damage caused by this legislation. The costs pulled out of the health care system through litigation, and through punitive damages in particular, will drive up the cost of health insurance. That money will go to lawyers, to a select few— principally the lawyers, but to a select few clients, patients, such as the gentleman from California who a couple of weeks ago hit the "lottery," with a $3 billion punitive damages award.

If that kind of award occurs within the health care system, imagine the impact on all of the insured in this country. Imagine the cost that is going to have to be borne by the millions of people who have insurance with a $3 billion punitive damages award. How much are your insurance rates going to go up if an award such as that is given? The least we can do is take the potential of a back-breaker award, or a series of back-breaker punitive damage awards, and put that back into the system in a way that helps those who do not have insurance.

As you can see from this chart, there is a real difference between the kind of health care people get when they are insured versus when they are not insured. This says "nonelderly adults with barriers to care by insurance status." In cases where they had procedures needed, but did not get the care for a serious problem, only 3 percent of the people who had insurance ended up in that category. So if they have insurance, if they have a serious problem and a prescribed solution, they basically get the care. But if they are not insured, 20 percent—almost seven times the number of the uninsured—do not get the care they need. This says "skipped recommended test or treatment." If they are insured, 13 percent of the people skip those tests. If you are not insured, almost 40 percent skip that.

Did not fill a prescription: 12 percent if you are insured; 30 percent if you are not insured.

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be it. We will live with that, but we are not paying for it. Even though it is covered by our policy, even though we knew we had to pay to get it, we refuse to pay it, period.

Let’s suppose because that child fails to get some treatment or test that they should have gotten, the child was paralyzed for life. Then a group of Americans sitting on a jury listens to the case, as they do in criminal cases every day in this country, and decides the HMO has engaged in criminal conduct and awards punitive damages on that basis.

First of all, I say to my friend from Pennsylvania, I doubt if the parents of that child crippled for life believe they have hit the lottery. That child’s life has been destroyed because of Intentional criminal conduct on behalf of a defendant like the HMO and the health insurance company.

It is not abstract. This is conduct that was specifically aimed at that child. It is not abstract to the world. This is something that was aimed specifically and who lost a child on the stump of that courtroom, and the jury found—in order for this to be possible, the court requires that the jury find that the HMO has engaged in outrageous, egregious conduct.

This is what this amendment does: It says we are going to take away 75 percent of that child’s punitive damages award. That is what it says. We are going to impose a 75-percent tax on that child.

That is a real case. This is not an abstract academic exercise. This is reality. I say to my colleague, if we are going to start taxing people around the country 75 percent of their money—that would be that child’s money in this case. It does not belong to the Senator from Pennsylvania; it does not belong to me and, by the way, it does not belong to the Government unless this amendment is adopted. It belongs to that child. If we are going to start taking 75 percent of people’s money, let’s not stop at that child. Why don’t we consider taking 75 percent of the $400 million that the CEO of one of these HMOs apparently made last year? That will help. We can go around the country and start picking all kinds of groups of people and put that money in a pot and do what we choose with it.

This is not a serious response to a serious problem. My friend from Pennsylvania and I agree that the uninsured are a very serious problem in this country. It is an issue we need to address, and we need to address it in a serious way. None of us suggest that what we are doing with this Patient Protection Act will solve that problem. It will not. We hope work left to do. There is no doubt about that. But we need to do that work in a serious, thoughtful, comprehensive way that will deal with the kids and the elderly in this country who do not have access to health insurance and who, as a result, do not have access to quality health care. The way to accomplish that is not by imposing a 75-percent tax on people, families who have been hurt by HMOs.

Mrs. BOXER. I ask the Senator to yield me 5 minutes.

The PRESIDING OFFICER. Who yields time?

Mr. EDWARDS. I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I thank Senator Edwards for using a hypothetical example of why this is a very cruel amendment which I hope will be voted down overwhelmingly. But I have a real case I can talk about in a moment.

This morning—it seemed like a very long time ago, and it was—I voted for an amendment by Senator SANTORUM to protect infants, to say that infants who are born should have the protections of the Health Insurance Portability and Accountability Act. I voted down overwhelmingly. But I certainly agree that infants, children, and teenagers all the way up to the elderly, the most frail, should be covered by this bill.

What does my friend now suggest? A 75-percent tax on pain and suffering to go to the Federal Government for a Government program. This is unbelievable to me. A 75-percent tax on families who may be suffering because a child is permanently disabled, made blind, paralyzed, forever in a wheelchair, and then having to pay 75 percent of a punitive damage award that could go to help ease the pain of that child, that child could hire people to take care of that child.

This is a cruel amendment. My friend always says he is for the children. This is not for the children. This is not for the families. This is not for the patients. This amendment will take the funds away from those families who are in desperate need of money to build a life for someone deeply harmed by an HMO that had no conscience.

As my friend says, punitive damages are not gotten lightly. It has to be proven that you were willful, that you were vicious in your intent. And then to say to that family: No, you have to give up 75 percent of that fund that you won because you were a victim. It is a victim’s tax. It is a victim’s tax that goes to a Federal fund, to a Government program.

I always thought my friends on the other side trusted local people, a jury of our peers. They say: A local judge, someone from the community who can look at that family and understand what it means when they have a child permanently disabled.

A family with a little child in a wheelchair was coming to my office several years ago. The child was hooked up to every conceivable tube imaginable. The child was blind. There were caps on those punitive damages. And there was not enough money to give their child the most decent life possible.

Now on top of this, as I understand this amendment, even in cases where there is a cap on punitive damages, this amendment still takes away 75 percent of the punitive damage. That is a slap at that victim, that child, the parents, the very children my friend said he cared about just 7 hours ago. This is an amendment that says the Federal Government is more important than your family. The Federal Government will reach into a local jury; the Federal Government will take 75 percent of your award, of your punitive damages award, and put it into a Government program.

This is a terrible amendment. I hope it will be defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

The PRESIDING OFFICER. I make one clarification: There are eight States that currently do this. One of them is the State of the Presiding Officer. The State of Georgia takes 75 percent of punitive damages, less attorney fees, and puts them in the State treasury. That is the State law in at least eight States. Georgia was, in fact, the model we used for this legislation.

By the way, those States are exempt from this provision so we don’t take both the State and the Federal. If there is a State law, those are excluded under this act. This is hardly punitive. These are punitive damages, not compensatory damages. These are not pain and suffering.

Mr. EDWARDS. I yield 2 minutes to the Senator from Louisiana.

Mr. BREAUX. I was not going to say anything, but the arguments have nothing to do with the substance of the amendment. Everybody ought to realize punitive damages have nothing to do with awarding a person who has been injured. A person who has been injured is compensated for economic losses, and there is no cap on economic losses. They are compensated by pain and suffering. There are no caps on pain and suffering. Punitive damages have one purpose. That is to punish the person who has caused the injury. That is the only purpose for punitive damages, to say to a company or an HMO, your conduct has been so outrageous, so egregious, you will be punished. That has nothing to do with the compensation for the injured plaintiff or child. They have already been taken care of.

The concept of taking punitive damages and people who need to use those damages to help people who do not have insurance, is a novel idea. Other States have done it. It is a good approach. I think we should support it because it
Mr. EDWARDS. First I say to my colleagues: This is a modest amendment that tries to lessen the heavy hammer of punitive damages to specific purposes. I mentioned Georgia is one; Florida allocates money into the medical assistance trust fund; Illinois, into the department of rehabilitative services; Iowa puts money into the civil reparations trust fund; Kansas puts money directly in the State treasury; Missouri, to the tort victims compensation fund; Oregon to lessen the heavy injury compensation account; Utah, anything in excess of $20,000 in punitive damages goes to the State treasury.

This is not a brand new concept but a concept States have adopted because they understand, as the State of Georgia, that these are punitive damages, not compensatory damages. These are to punish people. We are saying, if you punish a guy who does a bad thing, who is a criminal, the crime is against everyone. Those who are not in the courtroom should be benefiting from this. That is the uninsured.

What will happen if those punitive damages are awarded to the individual or to the lawyer—because they get a big chunk? There will be more uninsured because of high rates of insurance because of these punitive damages, and we will punish people who are going to lose their insurance because of that. We are getting unlimited compensation. There are no limits in State or Federal court for any compensation that is due this person. Who we are punishing here with punitive damages are the people who are going to lose their insurance because of that. We are getting unlimited compensation.

So with all respect, to offer an amendment to help the children of this country with their health insurance has no relevancy in terms of the substantive difference. That is why they are called punitive—punish; compensatory—compensate. There is a difference. That language is not there for window dressing; it is there for substantive difference.

What I am suggesting is that these punitive—punishment—damages should not further punish people who have insurance because they are the ones ultimately to be punished. Several States have recognized this and have plowed that money back into the system to help those who would otherwise be punished by this money coming out of the system of health insurance.

So I just suggest that my commitment here is sincere and my object here I think is worthy of support.

I reserve the remainder of my time.

Mr. EDWARDS. First I say to the Senator from Pennsylvania, the Senator from Pennsylvania, the Senator from North Carolina, to impugn me personally and suggest I am disingenuous by proposing that we provide some money in punitive damages, not damages to compensate for injury but damages to punish someone who did a wrong—why should that go to an individual opposed to society, which was wronged by that activity, as all criminal activity is. It is a crime against society. We do not compensate, as you know, when we prosecute someone criminally. The individual does not get benefit from that prosecution.

So punitive damages are there to punish, not to compensate. I know the Senator from North Carolina knows that. That is why they are called punitive—punish; compensatory—compensate. There is a difference. That language is not there for window dressing; it is there for substantive difference.

It doesn't carry any weight. The American people can see through this. Let's get about the business of passing a real Patients' Bill of Rights and let's go out and try to pass a real health insurance bill that will do something about the remainder of the children who need the care and also the parents of those children who need it in long-term family care. Let's do something to look out after our fellow citizens. I withhold the remainder of my time.

Mr. SANTORUM. One second—I just suggest to the Senator from Massachusetts that the Smith-Wyden amendment that provided $28 billion for those who do not have insurance passed and that is now law. It was in the budget. So I have been a supporter of money and a substantial amount of money for those who do not have insurance. I have sponsored a piece of legislation, with Senator TORRICELLI, that is called Fair Care, which provides tax credits for the uninsured at the cost of around $20 billion a year.

So I suggest to the Senator from Massachusetts—

Mr. KENNEDY. Will the Senator yield on my time?

Mr. SANTORUM. One second—I just suggest to the Senator from Massachusetts, to impugn me personally and suggest I am disingenuous by proposing that we provide some money in punitive damages, not damages to compensate for injury but damages to punish someone who did a wrong—why should that go to an individual opposed to society, which was wronged by that activity, as all criminal activity is. It is a crime against society. We do not compensate, as you know, when we prosecute someone criminally. The individual does not get benefit from that prosecution.

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So I just suggest that my commitment here is sincere and my object here I think is worthy of support.

I reserve the remainder of my time.
Senator Kennedy’s statement the health insurance executives? According and salaries of the HMOs and the money to be spent. I don’t question the Senator from Pennsylvania suggesting we tax that to pay the health insurance needs of America. No, let’s take it away from the families of those who were killed at railroad crossings. Let’s take it away from the families of children who were blamed, with permanent injuries they are going to face for a lifetime. He would not dare reach into the pockets of the executives of these health insurance companies.

Come to think of it, just 6 weeks ago we gave them a tax break here, didn’t we?—a $1.6 trillion tax break for those executives. But a new tax on the families of those who come to court looking for compensation for real injuries and death in their own family?

We should reject this amendment. We know what it is all about. We are this close to passing a Patients’ Bill of Rights with two fundamental principles, principally that say: First, doctors make medical decisions, not health insurance companies in America; and, second, when the health insurance companies do something wrong, they will be held accountable as every other business in America will be.

There are those on the other side of the aisle who hate those concepts just as the devil hates holy water. But I will tell you, families across America know they are sensible, sound values. All of this fog and all of this smoke about tax punitive damages for the good of America—aren’t you taxing the executives’ salaries at the health insurance companies who are ripping off people across America? Instead, you are passing tax breaks for those very same people. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. Santorum. Mr. President, I will be happy to work with the Senator from Texas. Essentially, with these increased damages from punitive damages, oddly enough, the way insurance works in America, the premium payers are going to pay more. The more big verdicts that are rendered, the more premium payers will pay, raising rates for innocent people who had nothing to do with the misconduct that resulted in the punitive damages, resulting in higher costs so more people economically will drop off the insurance rolls.

We have a real problem with the uninsured in America. It seems to me this is a solution that is very creative. It is a solution that has been talked about by legal scholars for some time—what to do with punitive damages. Why, the part of it you pay for pain and suffering, you pay for contract laws—the victim gets that. But what about the money that is to punish the company? Where should it go?

I suggest the Senator is correct; it go to the uninsured and help people be insured.

Mr. Santorum. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two and one-half minutes.

Mr. Edwards. Mr. President, I yield 1 minute to the Senator from Connecticut.

Mr. Dodd. Mr. President, I thank my colleague for yielding. I see my good friend from Texas. He and I have worked over the years on litigation matters and have authored litigation reform bills and a variety of other measures to reform the legal system. I think it is important to remember that we have had great debates over the years about victims’ rights and how important it is that victims be remembered when crimes are committed. It seems to me that on this particular proposal and in this case when a person is subject to criminal conduct—that is what this amounts to—they have been victimized. This is not just compensatory damage for a mistake that is made. If you have been a victim of criminal conduct and are going to be deprived of the award that a jury provides you, that is fundamentally wrong. It ought to be defeated on just that point.
Mr. SANTORUM. Mr. President, I yield to the Senator from Tennessee.

Mr. THOMPSON. Mr. President, I have been listening to this debate, and I think some good points have been made on both sides. But is the standard for recovery of punitive damages in this case criminal conduct, or wanton misconduct, or intentional infliction of distress? I would be surprised if the standard for punitive damages is criminal conduct.

Is that the case?

Mr. SANTORUM. No. It isn’t. It is not.

Mr. THOMPSON. If I could respond, conduct that is subject to civil litigation versus conduct that is subject to criminal litigation, the conduct that the Senator described may, in fact, turn out to be also in addition to having civil exposure having criminal exposure. We may not. But the conduct that is very well may be reckless, or even intentional, and constitutes conduct which is subject to punitive damages which can still not be criminal.

My only point is that it is not the same. It is not the same. The same conduct can in some cases be both, but in the civil context if the conduct that is subject to punitive damages which can still not be criminal.

Mr. SANTORUM. Of course, it is criminal conduct.

Mr. THOMPSON. No. It isn’t.

Mr. SANTORUM. Of course, it is criminal conduct.

Mr. THOMPSON. No, no, no. Reclaiming my time, let’s not get the lily. I think you have some good points. Let’s not try to convince people that wanton misconduct and willful misconduct is the same as criminal misconduct. It is not.

Mr. SANTORUM. Mr. President, let me reclaim my time. It is quickly running out.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. EDWARDS. Will the Senator yield for a response to that question?

Mr. SANTORUM. Mr. President, I ask unanimous consent for an additional minute to finish this colloquy so it doesn’t impinge on my time.

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

Mr. EDWARDS. The language of the legislation is that reckless, intentional conduct is criminal conduct—al1 over America—except the Senator from Arkansas.

Mr. THOMPSON. No. It isn’t.

Mr. EDWARDS. I respectfully disagree. Somebody who engages in reckless conduct in the operation of an automobile has engaged in criminal conduct. Somebody who engages in reckless conduct that causes the death of another person has engaged in criminal conduct. I respectfully disagree with the Senator.

Mr. THOMPSON. If I could respond, conduct that is subject to civil litigation versus conduct that is subject to criminal litigation, the conduct that the Senator described may, in fact, turn out to be also in addition to having civil exposure having criminal exposure. We may not. But the conduct that is very well may be reckless, or even intentional, and constitutes conduct which is subject to punitive damages which can still not be criminal.

My only point is that it is not the same. It is not the same. The same conduct can in some cases be both, but in the civil context if the conduct that is subject to punitive damages which can still not be criminal.

Mr. SANTORUM. Mr. President, I reiterate that this amendment is about taking money. The concern of this bill is that excessive costs will drive up the rates for insurance. We are taking some of this excessive cost that is built into this bill and plowing it back into the system to make sure that we don’t have more uninsured if we don’t take care of it.

I wish to make one additional point. Back in 1992, the House sponsor of the McCain-Kennedy bill, John DINGELL, proposed using 50 percent of punitive damage awards to help compensate people—in this case, to prevent medical injuries. This is not a punitive damage measure. This is a measure that understands that punitive damages should go to benefit those in society who could be hurt by their increased cost of insurance. That is what this amendment does.

I hope we can get some bipartisan support for it. I ask for the yeas and nays.

The PRESIDING OFFICER. All time has expired.

Is there a sufficient second?

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has expired.

Is there a sufficient second?

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there a sufficient second?

Is there a sufficient second? The question is on agreeing to the motion. The clerk will call the roll.
in the order we talked about. Senator WARNER; Senator ENZI on genetics, and I understand his pro bono amendment is being agreed to; and Senator THOMPSON, which I understand also has been agreed to.

Mr. THOMPSON. No.

Mr. GREGG. It has not. And then Senator Frist has a substitute.

Is there anybody else who has an amendment?

That appears to be our list.

Mr. DASCHLE. Mr. President, I ask unanimous consent that be deemed as the finite list of amendments to be offered to this bill.

Mr. CRAIG. Reserving the right to object.

Mr. DASCHLE. Mr. President, is there an objection?

Mr. NICKLES. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I just tell the majority leader, we have not had a chance to run that by our colleagues. We have been shopping amendments, and the Senator from New Hampshire is to be congratulated that he has reduced the number of amendments substantially. We will need a few minutes at least to run this by the rest of our colleagues to make sure they know that if they have additional amendments to be considered, they need to get them on our list.

If the majority leader will please withhold the request, we will shop it around.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, while Senators are working out their amendments, I think there ought to be an Independence Day speech. I assume we are going home for the Fourth of July. So if there is no objection, I have a speech in hand. (Laughter.)

Mr. MCCAIN. Reserving the right to object. (Laughter.)

In admiration of the Senator's tie, how long is the speech?

Mr. BYRD. Well, now, in the face of that extraordinary compliment, I would say it is just half as long as it would have been otherwise. (Laughter.)

Mr. MCCAIN. No objection.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

INDEPENDENCE DAY

Mr. BYRD. Mr. President, the Senate will shortly recess, hopefully, for the Independence Day holiday. Many Mem-
come to be used for something that constitutes a main support or depend- 
ent, especially a "law of danger." True, then the Constitution is not 
just the organizing construct of our government, but also, as Jefferson 
saw it, the tool by which our Nation would 
preserve our liberties. It is fitting, then, to close with the words of the 
poet who wrote about the republic in "The Building of the Ship."

Thou, too, sail on, O Ship of State! 
Sail on, O Union, strong and great! 
Humanity with all its fears, 
Is hanging breathless on thy fate! 
We know what Master laid thy keel, 
What Workmen wrought thy ribs of steel, 
Who made each mast, and sail, and rope, 
What anvils rang, what hammers beat, 
In what a forge and what a heat

Were shaped the anchors of thy hope! 
Fear not each sudden sound and shock, 
'Tis but the flapping of the sail, 
In spite of false lights from the shore, 
Sail on, nor fear to breast the sea!

Our hearts, our hopes, are all with thee, 
Our hearts, our hopes, ours prayers, our tears.

Our faith triumphant o'er our fears, 
Are all with thee—are all with thee! 
Mr. President, I yield the floor.

(Applause from Senator's rising.)

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I cer- 
tainly join my colleagues in expressing our 
warm appreciation for our senior 
colleague, our President pro tempore, 
Mr. REID. Our anticipation now—we 
will yield back the time?

The PRESIDING OFFICER. Without 
objection, the amendment is modified.

The amendment (No. 833) as further 
modified, is as follows:

On page 154, between lines 2 and 3, insert the following:

"(I) INITIAL DETERMINATION OF LODestar 
ESTIMATE.—"(I) IN GENERAL.—To determine whether 
the attorney's fee is a reasonable one, the court first shall, with respect to each attor- ney representing the plaintiff in the cause of 
action, multiply the number of hours deter- 
moved under subclause (II) by the hourly rate 
determined under subclause (III). 
(II) NUMBER OF HOURS.—The court shall 
determine the number of hours reasonably 
expended by each such attorney.

(III) HOURS RATE.—The court shall deter- 
mine a reasonable hourly rate for each such 
attorney, taking into consideration the actual 
time that would be charged by each such attorney and what the court determines is the prevailing rate for other similarly situ- ated attorneys.

(IV) CONSIDERATION OF OTHER FACTORS.—A 
court may increase or decrease the product 
determined under clause (i) by taking into 
consideration any or all of the following fac- 
tors:

(1) The time and labor involved, 
(2) The novelty and difficulty of the questions involved, 
(3) The skill required to perform the legal service properly, 
(4) The length of other employment of the attorney due to the acceptance of the 

"(X) The undesirability of the case.

"(XI) The nature and length of the attor- ney's professional relationship with the client.

"(XII) The amounts recovered and attor- ney's fees awarded in similar cases.

"(D) RARE, EXTRAORDINARY CIR- 
CUMSTANCES.—Notwithstanding subpara- 
graph (A), in rare, extraordinary cir- 
cumstances, the court may raise the attor- ney's fee above the 1⁄3 cap imposed under sub- 
paragraph (A) to ensure a balance of equity 
and fairness to both the attorney and the plaintiff.

"(E) NO PREEMPTION OF STATE LAW.—Sub- 
paragraph (A) shall not apply with respect to 
a cause of action under paragraph (I) that is 
brought in a State that has a law or frame- 
work of laws with respect to the amount of 
an attorney's contingency fee that may be 
incurred for the representation of a partici- 
pant or beneficiary (or the estate of such 
participant or beneficiary) who brings such 
a cause of action.

Mr. WARNER. Mr. President, I want 
to comply with the wishes of the dis- 
tinguished leaders.

Mr. DASCHLE. Mr. President, may we 
have order.

The PRESIDING OFFICER. The Sen- 
ate is not in order. The Senate will sus- 
pend. Please take your conversations off the floor.

Mr. WARNER. Mr. President, I wish 
to accommodate the managers, but I 
am ready to proceed. I think I can de- 
scribe my amendment in about 10 or 15 
minutes or less. I urge colleagues to ac- 
cept that offer to move ahead and give 
equal time to each side.

Mr. REID. I am sorry. I say to my 
friend, the distinguished Senator from Virginia, we have had trouble hearing 
over here.

The PRESIDING OFFICER. The Sen- 
ate will be in order. The Senator from 
Virginia is entitled to be heard.

The Senator from Virginia.

Mr. WARNER. I say to my good 
friend, the distinguished majority whip, I am seeking now to address my 
amendment. It has been pending for 
some several days. I am perfectly will- 
ing to enter into a time agreement. I need but, say, 15 minutes.

Mr. REID. Say 30 minutes evenly di- 
vided?

Mr. WARNER. I am quite agreeable 
to 30 minutes equally divided.

Mr. REID. Our anticipation now—we 
will work this out, speaking with the 
managers of the bill—is to offer side by 
side with yours, or second degree, 
whatever your manager wishes to do, 
but you should go ahead and proceed. 
We are available during our 15 minutes to 
wait for you.

Mr. WARNER. Mr. President, might I 
have clarification? If I understand it on 
the second-degree, in the event it 
seems we need some adjustment in the 
time agreement with which to address this?

Mr. REID. Why not take an hour 
evenly divided, and if we don't need it, 
we will yield back the time?
Mr. GREGG. Mr. President, I am not sure what the Senator from Virginia wishes to do. I hope they will not include a second-degree amendment in it, but, rather, offer an amendment which would be a stand-alone, side-by-side amendment.

Mr. REID. I am sorry, did you say you wanted to offer it side by side? That is what I want to do.

Mr. WARNER. That is perfectly agreeable. Could my amendment be voted on first?

Mr. REID. Of course—well, let me not get my mouth ahead of my head.

In the past what we have done, Mr. President, is the second-degree amendment could be a second-degree amendment that appears to be the one we would ordinarily vote on first. Through all these proceedings, the stand-alone was the one we would vote on first. In other words, that could have been a second-degree. That is what we have done in the past.

Mr. WARNER. Actually, we did reverse the order on the Snow...

Mr. REID. It is not important whether it is first or second. Do you agree?

Mr. EDWARDS. We should go first.

Mr. REID. Through these entire proceedings—I don’t know how many votes it has been now, but certainly it is lots of them—the one that would have been the second-degree should be voted on first. We think we should do it in this instance.

Mr. WARNER. Mr. President, I believe I have the floor. I believe the amendment is up. We are simply discussing a time agreement. I am not prepared to yield the right that I believe I now have with respect to proceeding with this amendment. But I want to accommodate my distinguished friend. He has been most helpful for 3 or 4 days, as I have worked on this amendment.

Could you be more explicit exactly what you think you would like to have? I understand you have to consult with others.

Mr. REID. What we would like to do is offer an amendment that would be voted on, a companion to yours.

Mr. WARNER. Fine.

Mr. REID. The only question now, it seems, is which one would be voted on first. What we have done during these entire proceedings has been a bipartisan amendment that was offered by the Senator from Maine, the one that would have been a second-degree is voted on first. We think we should follow that same order.

Mr. WARNER. I simply ask as a matter of courtesy—some 3 days I have been working with you—just allow mine to be voted first. Certainly we could have discussion on the one that is in sequence. I am confident Members will very quickly grasp the basic, elementary framework that I have in my amendment. And I presume any companion amendment you or others wish to introduce would likewise be very elementary. We could quickly make decisions, all Senators, on it and proceed with our business this afternoon.

Mr. REID. The Senator from Virginia, I know some of our friends would rather we went first. We feel pretty confident of our vote, so we will go second.

Mr. WARNER. Mr. President, I like a man who is audacious, I accept that challenge. We will proceed on mine. I need only about 10 minutes to address it.

Mr. DASCHLE. Will the distinguished senior Senator from Virginia yield for a unanimous consent request? Mr. WARNER. Oh, yes.

Mr. DASCHLE. We were able to reach this agreement with the cooperation of all our colleagues. I think we are now prepared to propound the agreement.

Mr. President, I ask unanimous consent that the following be the only first-degree amendments remaining in order to S. 1052, except the Warner and Ensign amendments which have been laid aside and which now are being debated that they be subject to relevant second-degree amendments; all amendments must be offered and disposed of by the close of business today; and that upon disposition of these amendments the bill be read a third time and a vote on final passage of the bill occur without any intervening action or debate:

Frist substitute; Frist, liability; Craig, long-term care; Craig, nuclear medicine; Kyl, alternative insurance; Santorum, unions; Nickles, liability; Bond, punitive; Thompson, regarding point of order; Kennedy, two relevant; Daschle, two relevant; Carper, relevant, to be offered and withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Reserving the right to object, I ask if the majority leader would be willing to adjust his unanimous consent so Senator Ensign could modify his amendment, which is pending, and also, because we have not seen the Kennedy, Daschle, or Carper amendments, we would want to reserve the right to have a second-degree amendment.

Mr. DASCHLE. The amendments are subject to second degrees, of course. I ask consent the Ensign amendment be allowed to be modified.

Mr. CRAIG. Reserving the right to object.

Mr. GREGG. Reserving the right to object.

Mr. THOMPSON. Reserving the right to object, a simple point: My amendment was listed as one having to do with a point of order. If we could correct that, it actually has to do with venue.

Mr. DASCHLE. I ask consent the clarification be made with regard to the Thompson amendment.

Mr. GREGG. I also ask that the Nickles amendment be defined as relevant, rather than liability, and, since the majority leader has asked to reserve two relevant amendments, the Republican leader be given two relevant amendments.

The PRESIDING OFFICER. Does the majority leader modify the request?

Mr. DASCHLE. I ask unanimous consent that the request be so modified.

The PRESIDING OFFICER. The request is modified.

The Senator from Idaho.

Mr. CRAIG. Mr. President, may I inquire of the majority leader, is it your intent to at least shape the field of amendments into a set number but there is no time tied to those? Is that correct?

Mr. DASCHLE. That is correct.

Mr. CRAIG. Thank you.

The PRESIDING OFFICER. Is there objection to the request. Without objection, it is so ordered.

Mr. DASCHLE. I thank our colleagues.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, if I may just proceed, my understanding is that we have 30 minutes equally divided under the time agreement. Is that correct?

The PRESIDING OFFICER. That has not been propounded.

Mr. WARNER. Mr. President, I suggest we just leave it open. I want to give adequate opportunity to those who wish to address this subject. I will proceed.

Mr. President, for some time I have followed this bill very carefully. I am, of course, quite aware of the name of it—the Patients’ Bill of Rights. I want to ask the Senate to give serious consideration to protecting the right of a patient to receive what I regard as a fair return on such awards as a court may approve, presumably, by a jury finding. The Patients’ Bill of Rights has merit and assigns an award figure.

The McCain-Kennedy-Edwards bill provides new rights. But there is nothing in there to give the patients the protection from what could well be perceived by many as an unfair allocation of that award between attorneys and patients. Therefore, I think there should be a framework of caps on the maximum amount of the award to be made.

May I explain it.

It is kind of complicated because we have a Federal court and a State court. While I don’t know the ultimate finality of this legislation, at this point the amendment provides for the treatment of caps in both courts, and they are somewhat different.

In addition, I believe very strongly that there is in rare instances and under extraordinary circumstances a case where an attorney would be entitled in excess of the one-third cap that I am proposing in both Federal and State courts. An allowance has to be made for the exceptional type of case.
I am proposing a framework of caps. It would be giving the court the right to only appropriate attorney's fees in a case to one-third of the amount of the damages. It could well be that the client may have struck an arrangement with his attorney for less than one-third. It recognizes that situation.

Having the one-third cap strengthens the ability of the patient—the client—to get a fee structure which is consistent with their receiving the majority of the ultimate one-third as the basic structure in both the Federal and the State court.

In addition, in both Federal and State court, we have exceptions in rare cases, and extraordinary facts, where the judge can go above the one-third with no cap.

We have reposed confidence in our judicial system. Indeed, we have reposed confidence in those members of the bar. Many years ago, I was privileged to be an active practitioner before the bar and had extensive trial experience as assistant U.S. attorney and some modest trial experience in other areas.

I recognize that the vast majority of the bar will work out a fee schedule with their client in such a way that there will be an equitable distribution. But there are instances where the patient could well be deserving of the award by the court and then prohibited from getting what I perceive as a fair and proportionate share by someone who does not follow the norm.

The norm in most cases does not exceed one-third. Contingent fees are usually one-third or less. Therefore, we put in the cap of the one-third.

I also want to make it clear that there is a good deal of expense to a lawyer associated with representing a client, with a lot of expenses associated with it, it does not come out of the one-third. It recognizes that situation.

We lay out a formula for the Federal courts under the lodestar method. That is a formula that was approved by the Supreme Court of the United States as it relates to attorney fees in Federal cases.

Here are basically the factors the court would review in the Federal system: The time involved by the attorney; the difficulty of the questions involved; the skill requisite to perform the legal services; or the preclusion of employment of the attorney due to acceptance of the case.

In other words, he is giving up other opportunities to take on this case. What we are trying to do is limit the contingency fees that are before the courts and the bar in the jurisdiction that the case is held? Whether the fee is fixed or contingent; time limitations imposed by the client on the circumstances; the amount involved in the return of the jury in most instances; the experience and reputation of the particular bar attorney, and on it goes. But it is carefully worked out through many years of following these cases.

Therefore, I believe that we are giving protection to the patient. For rare and extraordinary cases, the court can go above it. In some instances, the court will decide that the one-third is not appropriate, and that it should be some fee less than a third, again protecting the interests of the patient.

I find this a very reasonable amendment. It certainly comports with the basic objectives of this law; namely, to give some benefits to those who have suffered the grievances which are designated in this law.

I also recognize the Federal-State law; that is, what we call States rights. I have been a strong proponent of that throughout my career in the Senate. I provide that in the case of a State court, if the State in which that court sits has a framework of laws which govern attorney fees, then this amendment does not apply.

I repeat that the State law would govern the return to the attorney of that amount to which he or she is entitled for their services—not this proposed amendment.

Mr. President, I see my colleague in the Chamber.

I yield the floor for the moment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have a unanimous consent request I am going to propose in just a minute—or in even less than a minute.

Senator GORE is in the Chamber, and I appreciate his listening.

Mr. President, I ask unanimous consent that I be recognized to offer an additional first-degree amendment, with 30 minutes for debate in relation to the Warner amendment and the Reid amendment to run concurrently prior to a vote in relation to the Warner amendment—which the Senator from Virginia indicated he wanted first—followed by a vote in relation to the Reid amendment, with no second-degree amendments in order prior to the votes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 852

Mr. REID. Mr. President, Senator WARNER and I have worked side by side all the time I have been in the Senate on the Environment and Public Works Committee. I have been his subcommittee chairman; he has been my subcommittee chairman. Twice I have been chair of the full committee. I have been the ranking member of that committee.

There is no one I have worked with in the Senate who is more of a gentleman than the Senator from the Commonwealth of Virginia, Mr. WARNER. He has been a pleasure to work with. We tried to work this out on the attorney's fees. We have been unable to do that. But his amendment is, in my opinion, very complicated. It is going to create litigation, not solve it.

We have a fair way to address this issue. Even though personally, as an attorney, I had done a great deal of defense work where I was paid by the hour and a significant amount of work where I was paid on a contingency fee basis many years before I came back here, I think contingent fees should be based upon whatever the States determine.

But I am willing to go along with the basic concept of the Senator from Virginia; and that is we will go for a straight one-third, no complications. It is very simple: A straight one-third.

Senator WARNER’s proposal introduces a complex calculation in every case and ignores the agreements between injured patients and their lawyers. This proposal purports to tell State judges how to apply State law. We do not need to do that here in Washington.

This proposal ties only one side's hands in litigation. HMOs can hire all the attorneys they want and plaintiffs cannot. There is no restriction on how much money the attorneys for the HMOs make. We are not going to get into that today. We could. It would be a very interesting issue to get into.

But what we are saying is, when you walk down in the well to vote on the amendments, we have a very simple proposal: It is one-third, period. Under Senator WARNER's proposal, it is something thing; and we will figure it out later based on how many hours, and where you did it, and what kind of case it was. Ours is simple, direct, and to the point. It would only complicate things to support the amendment of my friend from Virginia.

Mr. President, at this time, after explaining my amendment, I call my amendment forward and ask for its immediate consideration.

The PRESIDING OFFICER. The bill clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 852.

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

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

The amendment is as follows:

(Purpose: To limit the amount of attorneys' fees in a cause of action brought under this Act)

On page 154, between lines 2 and 3, insert the following:

“(11) LIMITATION ON AWARD OF ATTORNEYS’ FEES.—

(A) In general.—Subject to subparagraph (B), with respect to a participant or beneficiary (or the estate of such participant or beneficiary (or the estate of such participant or
beneficiary) who brings a cause of action under this section and prevails in that action, the amount of attorneys’ contingency fees that a court may award to such participant, beneficiary, or estate under subsection (g)(1) (not including the reimbursement of actual out-of-pocket expenses of an attorney as approved by the court in such action) may not exceed an amount equal to \( \frac{2}{3} \) of the amount of the recovery.

“(B) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of an award of attorneys’ fees required under subparagraph (A) as equity and the interests of justice may require.

On page 170, between lines 21 and 22, insert the following:

“(9) LIMITATION ON ATTORNEYS’ FEES.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys’ contingency fees, subject to subparagraph (B), a court shall limit the amount of attorneys’ fees that may be incurred for the representation of a participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under paragraph (1) to the amount of attorneys’ fees that may be awarded under section 502(n)(1).

“(B) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of attorneys’ fees allowed under subparagraph (A) as equity and the interests of justice may require.

Mr. REID. Mr. President and Members of the Senate, the language in this amendment was not made up in some back room by my staff or somebody from HOWEN, Inc. It was taken—every word of it—directly from the amendment originally offered by the Senator from Virginia—exactly identical, not a word changed.

Certain paragraphs were taken out of his amendment. It is far too complicated. But every word in my amendment is directly from the amendment offered by the Senator from Virginia. I ask Senators to support my amendment, what should be a bipartisan amendment.

There are some people who want no restrictions. We have acknowledged that we are going to, in this instance, have a restriction. If there is going to be one, it should be direct and to the point, as is this one.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, I yield whatever time the Senator from Delaware wants.

Mr. BIDEN. Five minutes.

Mr. REID. Five minutes.

Mr. WARNER. Mr. President, for clarification, are we under a time agreement?

Mr. REID. Yes, we are.

Mr. WARNER. Was that in the unanimous consent agreement?

Mr. REID. Yes. But I say to the Senator, whatever time you need we can yield to you.

Mr. WARNER. Fine.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I always find these debates about attorney’s fees fascinating. I find my friends on both sides of the aisle who usually are seeking to restrict attorney’s fees are the same folks who told us that in California—when you have utility companies gouging the public—that we should not, even though we have authority under Federal law, put on some limitations. They are folks who tell us that, notwithstanding the fact that a drug company may be able to manufacture a pill for one-quarter of 1 cent and sell it for $75, there should not be any relationship between the amount of cost involved and the profit made.

I find it all kind of fascinating. For example—I am not going to do it—a great amendment to the amendment by my friend from Virginia would be the following: That any fee charged by an HMO for health care coverage must bear direct relationship to their cost and cannot exceed a profit rate of X amount. That would be fair, right?

All these folks who can’t afford health insurance, who are getting banged around and battered, we are trying to help, but I imagine I would not get many votes for that. I bet my friend from Virginia would not vote for that because that is free enterprise.

My grandfather Finnegan used to have an expression. He said: You know, it’s kind of fascinating. There’s free enterprise for some people, free enterprise for the poor, and socialism for the rich. You find yourself in a position where, if you are representing the right interest, we talk about free enterprise; if you don’t like the interests that are there, you’re going to talk about socialism. You should have imposed limitations on fees or on profits, based on whether you like what is going on.

I do not know whether most people know this, that an awful lot of these folks who want to bring suit against a giant company don’t have any money. These giant companies, they have a lot of money and a lot of lawyers. So what they do is, they depose you to death, and you say: By the way—after the fact, and the gander, the goose—isn’t good for the gander. If we do this with regard to attorney’s fees and we don’t do this with regard to health care costs and fees, what is the fundamental difference? Tell me the fundamental difference. Tell me who has a suddenly great interest of my friends to protect the poor, aggrieved plaintiff, who has been wronged by the insurance company. At any rate, I am as anxious to get out of here as everybody is. I wanted to make it clear: I think this is bad law, bad policy, a bad idea, and it is, in a literal sense, discriminatory.

Mr. REID. Mr. President, this legislation that is now before the body is not about attorney’s fees and we don’t do this with regard to health care costs and fees, what is the fundamental difference? Tell me the fundamental difference. Tell me who has a sudden great interest of my friends to protect the poor, aggrieved plaintiff, who has been wronged by the insurance company. At any rate, I am as anxious to get out of here as everybody is. I wanted to make it clear: I think this is bad law, bad policy, a bad idea, and it is, in a literal sense, discriminatory.

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$411,995,000 last year. That is just a little item they might be concerned about a little bit. We have a lot of money that isn’t necessarily needed.

This is not about how much money people make. What it is about is trying to pass a Patients’ Bill of Rights. I ask that we move forward as quickly as possible and vote and get on with the rest of the legislation.

The PRESIDING OFFICER. Who yields time?

Mr. REID. The Senator from Tennessee may have some of mine.

Mr. THOMPSON. A couple of minutes, if I may, Mr. President.

I have been listening to the debate. We are making it much more complicated than it needs to be. We are talking about whether or not this is a good idea. The sponsors of these two amendments have some good ideas. I will not debate that these are possibly a couple of those good ideas.

I am afraid we are not permitted to get that far because not every good idea is constitutionally permissible. I simply do not see our authority, even if we want to do this under the Constitution, to say to a State court, having lifted the preemption that was there before, that in its deliberations and in its lawsuits it will be trying, that we have, in a government of enumerated powers, the authority to reach in and do that. This is not raising an army. This is not copyrights and patents. This is not interstate commerce. I simply see no basis of authority for the Congress to do this, whether it is a good idea or not in our system of enumerated powers.

If I am incorrect about that or there is something I am not thinking about, I will stand corrected. That is a concern of mine. I yield the floor.

Mr. WARNER. Mr. President, if I could reply to my distinguished colleague, that very question I entertain of mine.

Mr. REID. A couple of minutes, please.

Mr. WARNER. Yes, I had been going for 46 minutes. I think the floor is some dozen or so that have a statutory framework for the regulation of attorney fees. Those States are the one side. But we find authority that it is within the power of the Congress to regulate interstate commerce. We have a proposed bill giving new rights to litigants. We believe that comes within that clause. That is how I proceed to do it.

We are just very fearful, I say to my distinguished colleague, that patients will not be able to, without this authority of some cap, obtain a fair allocation of these proceeds in some few cases. I myself have a high confidence in the bar and the courts to exercise equity and fairness. In some instances, it might not prevail.

We have cases here where some lawyers are getting $30,000 per hour, in some of those tobacco cases. Mind you, $30,000 per hour. I just think it is time that we, the Congress of the United States, do what we can within the framework of our constitutional law to exercise and put a cap on that. I say to my good friend from Nevada, he has marked up an earlier version of my bill. And at least you started with a pretty good base here, but you took out the essence of the idea. We did remain with a one-third fee, but giving the court the right to raise or lower this fee without any guidance whatsoever, even without the guidance of the word ‘reasonableness’ put into the proposal by my friend. And, I say to my good friend from Virginia, you give the discretion to the judge to do whatever he sees fit. It makes it complicated.

It seems to me that, while we are apart, we could possibly bridge our differences, if I could have the assurance that a patient, as we now call them, anyone else, there somehow was a mistrial—I have tried them myself. Jurors get ill, sick. For whatever reason, the court pronounces a mistrial and the attorney has to go back and try the whole case over again—that begins to add up in time and expense, and so forth, that attorney should be fairly compensated, and his client has to recognize that in rare and extraordinary cases the court can adjust the fee above the one-third. I find in here no guidance whatsoever.

Under this proposed law, I laid down a formula which has been approved by the Supreme Court and is followed now in our Federal system.

I further point out to my distinguished colleague from Nevada that the ERISA framework of laws governs much of the action in the Federal court. And there ERISA puts an affirmative duty on a judge to review that attorney’s fee. You are, in effect, modifying the framework of ERISA here, as I read it, to strike at that affirmative duty on the court in the Federal system to review those attorney fees.

Mr. REID. Mr. President, I apologize to my friend. Did the Senator from Virginia ask me a question?

Mr. WARNER. Yes. I had been going on for some moments now. I will go back over it again. I say to my good friend, you took an earlier version of my amendment, and in striking it out, No. 1, you left the one-third cap in, but you lawyers are trying to make an argument you can give the judge to go up or down, with no guidelines by which that jurist goes up or down. In other words, there is no even standards of reasonableness. It could be implied, of course. But I looked upon the lodestar method, which is followed by the Federal courts in arriving at a fair award. We have good people who believe there is no guidance for the jurist in the proposal of my colleague.

Mr. REID. I say to the Senator from Virginia, in every State court in America, every day judges are called upon to settle their discretion to determine attorney’s fees. In estate cases, in cases where people are hired to represent indigent defendants, there are a multitude of cases in which judges every day use their discretion to make awards of attorney’s fees.

Here, as the Senator has given a number of examples, if the judge, in rare instances, would find that somebody has been paid too much under the contract, he can take a look at that. Or there was a very complicated appeal and maybe he would decide that there should be a little more there.

Tobacco has nothing to do with this. Mr. WARNER. I missed the word. What has nothing to do with this?

Mr. REID. The Senator talked about the tobacco litigation. I say that has nothing to do with this matter now before the Senate because these attorney’s fees were very high, of course, and litigation results because these attorneys recovered not hundreds, thousands, millions, but billions of dollars.

Tobacco attorneys were hired by State attorneys general. I don’t think there is anything that I can ever even contemplate that would be the same in relation to tobacco and these HMO cases. I would say that we have pretty well formulated both of our positions.

I respectfully say that the Senator from Virginia is taking away the discretion the State judges have. It makes it very complicated to determine attorney’s fees. What has to go with is a process that is very specific, direct, and to the point, and leaves some discretion with State judges.

Mr. NELSON of Florida, assumed the chair.

Mr. WARNER. I want to make it clear. I think it is clear in the amendment that the expenses are over and above the allocation of fees.

Mr. REID. I took that directly from your original amendment.

Mr. WARNER. Well, I guess there is some reason that could be done. That is only to say that we are trying to give as much discretion as possible to State judges. I think they need that. I think one of the problems that I have with the Senator’s
original amendment is it takes away from State law, from what States can do. It seems interesting to me that we are so in tune with States rights around here all the time, unless it comes to something dealing with juried parties—whether it is product liability cases or whatever. We suddenly want to take away what the States have been doing for all these decades. I think my friend’s amendment takes away a lot of what we have with our States.

Mr. WARNER. Mr. President, I will read to my friend section (E) of my amendment, page 6:

(No Preemption of State Law.—Subparagraph (A) shall not apply with respect to a cause of action under paragraph (1) that is brought in a State that has a law or framework of laws with respect to the amount of an attorney’s contingency fee that may be incurred for the representation of a participant or beneficiaries.

And so forth. In other words, if the State has a framework of State laws, we in the Congress should not be trying to amend them, as I fear you are doing through an omission in yours. I have protected it in mine.

Mr. REID. Well, I understand what the Senator’s intent is. When you are looking for intent, you want to be as precise and direct as possible. I respectfully say we should get on with the vote. I think we have said everything, but may not everyone has said it. You and I have.

Mr. WARNER. Let me point out one other thing. Again, there is a difference as to how these things are treated under Federal and State. As I said, ERISA gives certain protections that are involved in the Federal court. There Federal law requires relief grievance under ERISA and that is not found in my friend’s amendment. You say it is implicit in every court in the land; therefore, it is not needed to be expressed. Is that your point?

Mr. REID. The reason we took your basic amendment and made it directly to the point as to the one-third is it becomes too complicated for a court to determine attorney’s fees based on the complicated program you have set up. Ours is simple and direct. In rare instances, a judge can step in and raise them or lower them.

Mr. WARNER. I wanted to make sure they were explicit. That is my view. We have a difference of opinion on that.

Mr. President, I will soon suggest the absence of a quorum so I have some period of time to reflect on perhaps other suggestions I might have. I am willing to all amendments to be laid aside if the Senator would agree to proceed with others.

Mr. REID. We have been laying aside things so long—

Mr. THOMPSON. If that is of no help, we need not do that.

Mr. REID. I have no problem having a quorum call and we can talk. I really think we have to move on. I am willing to take my chances, whatever they might be. Other people are waiting around to offer amendments. We should move on if we can.

Mr. THOMPSON. Mr. President, I am prepared to move forward with an amendment, if that is desired by my two colleagues, while you have your discussions. If you want to go into a quorum call, we will wait.

Mr. REID. I would be happy to set these two amendments aside and let my friend from Tennessee, who offered probably the best elucidation on attorney’s fees today—No. 1, he was concise and to the point. I think probably both of these are unconstitutional. I am willing to go forward.

I ask unanimous consent that the two amendments by Senators Reid and Warner be set aside and that the Senator from Tennessee be allowed to call up an amendment. The Senator’s amendment is on the improved list, correct?

Mr. THOMPSON. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendments are laid aside.

The Senator from Tennessee is recognized.

AMENDMENT NO. 653

(Purpose: To clarify the law which applies in a State cause of action)

Mr. THOMPSON. I send to the desk an amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. Thompson] proposes an amendment numbered 653.

On page 170, between lines 21 and 22, insert the following:

"(9) Choice of Law.—A cause of action brought under paragraph (1) shall be governed by the choice of law rules of the State in which the plaintiff resides."

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I let the amendment be read because it is probably the shortest amendment that will be considered tonight. It is very simple and straightforward. Basically, what it says is that in these lawsuits that we are dealing with, we apply the law of the State of residence and citizenship of the plaintiff in this case.

Let’s go back just a bit and understand the lawsuit scheme that we have created by this litigation. We have created a Federal cause of action in Federal court for matters that are essentially contract; and we have created a State cause of action in State court for matters that have to do with medically reviewable situations.

What that has left us with is the ability of a claimant to bring a State court claim in any State where the defendant is doing business. If you have a medical insurer and they are doing business in several States, even though you live in Tennessee, you could bring your lawsuit in any number of States where that insurer is doing business. That is simply known as forum shopping.

The reason people do that is different States have different laws in terms of limitations on recovery. They have different rules of evidence. Some allow punitive damages—most do. Some cap those punitive damages, some don’t allow punitive damages at all. So I don’t believe we want to create a situation where if we are going to have this liberal litigation scheme that we have set up, that we allow it to occur anywhere in the country which might be the case with regard to some big defendants.

Now, employers in some cases are going to be defendants also, I believe it is quite clear. You not only have the insurance companies, but you also have the employers to look at and to see whether or not they are doing business in these various States and, if they are, then you could bring your lawsuit in any of those States. They are doing business. I don’t think that serves the purposes that we are trying to serve with this legislation.

Therefore, we have the authority, and I think it would be a wise exercise of our authority and discretion, to limit those lawsuits. If you are from the State of Tennessee and you have a legitimate claim and you want to bring a lawsuit, you ought to be bound by the law in the State from which you come. You should not be able to forum shop.

Now, there might be some Federal causes of action that are also of the medically reviewable kind. We have been talking in this debate for several days about State causes of action, but we are really dealing with the laws of those States. They are causes of action based on the laws of individual States. So if a person wants to bring his lawsuit, he can still bring it in Massachusetts if he lives in Tennessee, but he is bound by the law of Tennessee.

If there is a diversity situation in Federal court, where the Federal court has jurisdiction and you have a doing-business requirement satisfied as far as the corporate defendant is concerned, for example, you have diversity. You still are bound by the law of your home State. So that would prevent forum jumping.

I believe this is desirable. I heard several expressions of agreement with the proposition we did not want to create a system of forum shopping in this litigation. We are going to have this law apply to all 50 States. There will be lawsuits produced in all 50 States, and all 50 States have laws that will be applicable in the suits wherever they are brought. A citizen ought to be bound by the laws of his or her State and not be able to shop all over the country for a potentially better situation than what they have in their State. It is a State cause of action. They should be bound by the laws of their home State.
That is the amendment. I hope my colleagues will see the wisdom of it and will yield to the amendment on it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to my friend from Tennessee, his argument is persuasive enough that all the managers on our side left the floor, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. AKAKA. Mr. President, I ask unanimous consent that I may be permitted to speak as in morning business for 5 minutes.

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

(The remarks of Mr. AKAKA are located in today’s Record under “Morning Business.”)

Mr. KENNEDY. Mr. President, I express great appreciation also for the Senator’s strong support for our Patients’ Bill of Rights. This has been an issue in which he has taken a great personal interest. He has been one of the strong supporters of this legislation for many, many years. Although he has not been a member of our committee, this is a matter I know he cares deeply about. He has been a strong supporter of all the amendments that have protected patients, and I don’t think there has been a member who has been a stronger advocate for the patients and their rights than our good friend, the Senator from Hawaii. I thank him very much for his statement and the work he has done to help bring the bill to where it is.

Mr. President, I understand the Senator from Nevada will modify his amendment and we will have a voice vote, and the Senator from Tennessee will have an amendment agreed to, also. Hopefully, we can dispose of those two amendments right now.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 849, AS MODIFIED

Mr. ENSIGN. Mr. President, I call up amendment numbered 849 and I send a modification to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The amendment will be so modified.

The amendment numbered 849, as modified, is as follows:

Subtitle C of title I is amended by adding at the end the following:

SEC. 122. GENETIC INFORMATION.

(a) Definitions.—In this section:

(1) GENETIC INFORMATION.—The term ‘‘genetic information’’ means information about genetic characteristics of an individual or family member of such individual, including information about a request for or the receipt of genetic services by such individual or a family member of such individual.

(2) GENETIC TESTING.—The term ‘‘genetic testing’’ means a determination of the presence or absence of a mutation, phenotype, or karyotype, for the purpose of predicting risk of disease in asymptomatic or undiagnosed individuals.

(3) GENETIC SERVICES.—The term ‘‘genetic services’’ means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.

(b) NONDISCRIMINATION.—

(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan, or a health insurance issuer offering health insurance coverage, shall not request or require predictive genetic information concerning an individual or a family member of the individual (including information about a request for or the receipt of genetic services by such individual or a family member of such individual).

(2) INFORMATION NEEDED FOR DIAGNOSIS, TREATMENT, OR PAYMENT.—

(A) IN GENERAL.—(A) subsection (a) notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage, that provides health care items and services to such individual or dependent may request (but may not require) that such individual or dependent disclose, or authorize the collection or disclosure of, predictive genetic information for purposes of diagnosis, treatment, or payment relating to the provision of health care items and services to such individual or dependent.

(B) NOTICE OF CONFIDENTIALITY PRACTICES AND DESCRIPTION OF SAFEGUARDS.—As a part of a request under subparagraph (A), the health insurance issuer offering health insurance coverage, shall provide to the individual or dependent a description of the procedures in place to safeguard the confidentiality, as described in section 1862(o)(4)(D), of such predictive genetic information.

(c) COLLECTION OF PREDICTIVE GENETIC INFORMATION.—

(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan, or a health insurance issuer offering health insurance coverage, shall not request or require predictive genetic information concerning an individual or a family member of the individual (including information about a request for or the receipt of genetic services by such individual or a family member of such individual).

(2) INFORMATION NEEDED FOR DIAGNOSIS, TREATMENT, OR PAYMENT.—

(A) IN GENERAL.—(A) subsection (a) notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage, that provides health care items and services to such individual or dependent may request (but may not require) that such individual or dependent disclose, or authorize the collection or disclosure of, predictive genetic information for purposes of diagnosis, treatment, or payment relating to the provision of health care items and services to such individual or dependent.

(B) NOTICE OF CONFIDENTIALITY PRACTICES AND DESCRIPTION OF SAFEGUARDS.—As a part of a request under subparagraph (A), the health insurance issuer offering health insurance coverage, shall provide to the individual or dependent a description of the procedures in place to safeguard the confidentiality, as described in section 1862(o)(4)(D), of such predictive genetic information.

(C) COMPLIANCE WITH CERTAIN STANDARDS.—With respect to the establishment and maintenance of safeguards under this subsection, such plan or issuer is in compliance with such subsection if such plan or issuer complies with the standards promulgated by the Secretary of Health and Human Services under—

(A) part B of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); or

(B) section 264(h) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note).
Mr. THOMPSON. I believe I am correct in saying my amendment has been accepted and it is agreeable to have a voice vote.

Mr. KENNEDY. The Senator is correct.

The PRESIDING OFFICER. The question is on agreeing to the Thompson amendment, No. 853.

The amendment (No. 853) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 853, AS FURTHER MODIFIED

Mr. REID. Mr. President, I ask that the amendment of the Senator from Virginia be called up, the yeas and nays be withdrawn, and it be agreed to by voice vote.

Mr. WARNER. Reserving the right to object, should we lays out a full understanding of our agreement?

Mr. REID. I think we should just vote.

Mr. WARNER. Your amendment is withdrawn?

Mr. REID. Yes.

Mr. WARNER. I send a modification to the desk.

Mr. REID. This is the Warner substitute.

Mr. WARNER. Mr. President, my modification has been sent to the desk. The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 833), as further modified, is as follows:

Purpose: To limit the amount of attorneys’ fees in a cause of action brought under this Act.

On page 154, between lines 2 and 3, insert the following:

“(11) LIMITATION ON ATTORNEYS’ FEES.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding an attorney’s fee, the amount of an attorney’s contingency fee allowable for a cause of action brought pursuant to this subsection shall not exceed 1⁄3 of the total amount of the plaintiff’s recovery (not including the reimbursement of actual out-of-pocket expenses of the attorney).

“(B) DETERMINATION BY COURT.—The last court in which the action was pending upon the dispositional ending all appeals, of the action may review the attorney’s fee to ensure that the fee is a reasonable one.

“(C) NO PREEMPTION OF STATE LAW.—Subparagraph (A) shall not apply with respect to a cause of action under paragraph (1) that is brought in a State that has a law or framework laws with respect to the amount of an attorney’s contingency fee that may be incurred for the representation of a participant or beneficiary (or the estate of such participant or beneficiary) who brings such a cause of action.

Mr. WARNER. We have worked it out together. I ask that the yeas and nays be withdrawn.

The PRESIDING OFFICER. Without objection, the yeas and nays are vitiated.

Mr. WARNER. I understand we will proceed to a voice vote and the amendment of my distinguished colleague will be withdrawn.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 833), as further modified.

The amendment (No. 833), as further modified, was agreed to.

Mr. WARNER. I thank my distinguished colleague from Nevada.

Mr. WARNER. Mr. President, I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 852, WITHDRAWN

Mr. REID. I asked unanimous consent my amendment be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. As I understand it, we are down to two amendments on our side: Senator KYL’s and Senator FRIST’s, which will be the substitute.

I hope we can get a time agreement on Senator KYL. How much time does the Senator need? He does not know. And Senator CARPER, on the other side, is going to make a statement and maybe offer an amendment.

Before they go, since people are a little confused, so they can get ready, we are heading toward the finish line. Before we get to the finish line, I want to mention that a lot of people do a lot of work around here. They are called the staff. They are extraordinary. I especially want to thank my staff, Senator KENNEDY’s staff, Senator FRIST’s staff, who have worked so hard on this. I am sure there are many folks on the other side, but I specifically want to thank Stephanie Monroe of my staff, Colleen Cresanti, Steve Irizarry, Kim Monk, and Jessica Roberts for all they have done to make this process move smoothly for me and allow me to be successful. They really have put in extraordinary hours. I greatly appreciate...
June 29, 2001

CONGRESSIONAL RECORD—SENATE

AMENDMENT NO. 855

Mr. CARPER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The legislative clerk read as follows:

The Senator from Delaware [Mr. CARPER] proposes an amendment numbered 855.

Mr. CARPER. I ask unanimous consent he speak at this time.

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To disallow punitive damages)

On page 153, strike line 9 and all that follows through page 154, line 2, and insert the following:

“(10) STATUTORY DAMAGES.—The remedies set forth in this subsection shall be the exclusive remedies for any cause of action brought under this subsection. Such remedies shall include economic and noneconomic damages, but shall not include any punitive damages.

Mr. CARPER. Mr. President, the amendment before us, which I will ask to be withdrawn in a few moments, is one Senator LANDRIEU and I offer, and I know has the support of a number of Members of this body from both sides of the aisle.

A great deal of effort has gone into crafting a compromise with respect to the appropriate venue, Federal or State, for bringing litigation in cases where an HMO has acted inappropriately.

As I have studied this issue over the last week or so, the way the underlying bill assigns venue for State action and for action that is more appropriate in the Federal courts, I have come to believe that the sponsors of the legislation figured it out just right. When it comes to determining damages that might be assigned in cases brought in Federal courts, I personally have concluded that there should not be a cap with respect to economic damages.

I further agree with the approach that is taken in the underlying bill, that in cases where noneconomic damages are sought in Federal courts, particularly in cases where children may be involved who are not working, who do not have a livelihood, or in cases where a spouse—perhaps a woman, but it could easily be a man—who is not in the workforce and stays at home with a family, we may not, if we cap noneconomic damages, be really fair to that young person or to the spouse who is working from the home.

However, with respect to damages at the Federal level, as they pertain to punitive claims, I am not comfortable with the approach that is embodied in the underlying bill. Senator BREAUX and Senator FRIST have offered an approach which I think is better in this regard, and I just want to mention it.

It deals with whether or not there should be punitive damages awarded on actions taken in Federal courts. I conclude they have it right and those punitive damages should not be allowed in the Federal courts.

Having said that, for actions that are brought in State courts, the laws and rules of the States should prevail. If there are caps in the State courts, that is the business of the States, and that is appropriate.

As we try to find the compromise here, I believe the underlying bill has it right with the appropriate middle ground on caps and venue. I believe the underlying bill has it right with respect to the Federal action. No caps on either economic or noneconomic damages.

I also believe the underlying bill has it right with respect to the proper venue, State versus Federal.

As I believe my friend from Louisiana and my friend from Tennessee have a better idea with respect to punitive damages and they simply should not be allowed in Federal court. Senator LANDRIEU is probably on route to the Chamber now to say a few words with respect to the amendment. I do not see that she has arrived yet. If I may, I would like to just reserve the remainder of my time.
which allows forum shopping for the best punitive damage opportunities; whereas, under today's law, punitive damages are radially distributed, and should be because the purpose is to create quality health care, and punitive damage awards would drive up insurance costs. That is passed on to the consumer, which means fewer people can afford insurance.

As a practical matter, I want to say that I think the Senator from Delaware is on the right track, and I hope the conference will listen to his comments.

Mr. CARPER. Mr. President, will the Senator yield? I say to my friend from New Hampshire that my fervent hope is that when the bill passes the Senate and later the House, and the conference committee is established, the conferences will see that tough unanimity is required on this issue. My hope is that the final compromise will reflect this amendment.

I also want to express to the Senator from New Hampshire my heartfelt thanks for the leadership he has provided to the Republican side of the aisle on this issue, and my appreciation for a chance to work with him, as well as the Senator from Massachusetts.

Thank you.

Mr. GREGG. I thank the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

AMENDMENT NO. 854

Mr. KYL. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 854.

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

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

The amendment is as follows:

(Purpose: To permit choices in costs and damages)

On page 156, between lines 15 and 16, insert the following:

“(17) DAMAGES OPTIONS.—

(A) In general.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

(i) Equitable relief as provided for in subsection (a)(1)(B).

(ii) Unlimited economic damages, including reasonable attorneys fees.

(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's medical care delivery under state law shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under this section.

On page 170, between lines 21 and 22, insert the following:

“(9) DAMAGES OPTIONS.—

(A) In general.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

(i) Equitable relief as provided for in section 502(a)(1)(B).

(ii) Unlimited economic damages, including reasonable attorneys fees.

(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's medical care delivery under state law shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under this section.”

Mr. KYL. Mr. President, it has been requested that the time agreement on this amendment be 30 minutes on my side and 10 minutes in opposition, with an up-or-down vote at the conclusion of the debate. I propound that unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, that is fine with no second degrees in order. Is that right?

Mr. KYL. That would be my understanding. I thank the Senator from Nevada.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. KYL. I do indeed modify my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KYL. Mr. President, I rise to introduce the consumer health care choice amendment. This amendment would amend section 302 of the underlying legislation to provide that employers and health plan issuers would be free to offer, and participants and beneficiaries free to choose, health plans with two remedy options, in addition to the underlying plan: equitable relief—the benefit or value of the benefit; and unlimited economic damages.

The bill provides damages as provided under S. 1052 unlimited economic and non-economic, and up to $5 million in punitive damages.

This amendment applies only to the new remedies established by S. 1052 for Federal contract actions and state "medically reviewable" claims. It explicitly protects the regulation of medical care delivery under state law.

The problem: Increased premium costs lead to greater numbers of uninsured. The Congressional Budget Office predicts that S. 1052 could result in a 4.2 percent increase in premiums costs. This predicted increase is in addition to the 10–12 percent increase employers are already facing this year.

The CBO report illustrates the cold truth about a critical, but often overlooked, public policy issue: The irrefutable link between health-care premium increases and the number of Americans without insurance. As the Congress debates the various health-care proposals, we must keep this link age in mind.

Supporters of S. 1052 are quick to claim that their bill will improve health care, but not so quick to admit that it will also raise costs and cause employers to stop offering health-care coverage, making insurance unaffordable for more Americans. This fact is politically inconvenient. We should keep an important statistic in mind. According to the Lewin Group consulting firm, for each one percent premium increase, an additional 300,000 citizens lose their insurance.

As I mentioned, the Congressional Budget Office predicts that S. 1058 will increase premiums by 4.2 percent. A premium increase of this amount would cause about 1.3 million Americans to become uninsured as a result of S. 1052. The Office of Management and Budget recently predicted that between 4–6 million more Americans would become uninsured as a result of S. 1052.

How can we call this a Patients Bill of Rights when it will result in fewer patients?

I believe our first goal should be to "do no harm"; or, at a minimum, to reduce the harm, as my amendment will do.

My amendment would allow employers or plans to offer two options for employees to voluntarily choose, in addition to the general plan covered by this bill, Option No. 1: A low premium increase of this amount that would allow for full economic damages only.

There are in addition to the higher premium policy with a remedy limited to the benefit, or the value of the benefit. Option No. 2: A mid level premium policy that would allow for full economic damages only.

This amendment should be appealing to employers and plans as a way to control their costs and appealing to employees as a way to hold down their premiums by voluntarily limiting their risk to sue.

Data from the CBO and the Kaiser Family Foundation estimate that S. 1052 would cost a typical family with health care coverage roughly $300 per year.
Certainly, we should promise not to pass legislation that would reduce or completely consume the $300 billion in rebate that Americans will be receiving sometime this summer as a result of the tax-relief bill just signed into law by President Bush.

If adopted, this amendment would afford Americans a chance to recoup some of the loss imposed by S. 1052. Some have argued that so-called patients’ rights legislation that includes an unlimited right to sue is overwhelmingly popular with Americans. It is worth noting that a Kaiser Family Foundation/Harvard School of Public Health Survey from January 2001 asked the following question to voters: “Would you favor a law that would raise the cost of health plans and lead some companies to stop offering health care? If you would, you probably do more to deter them to this question, only 30 percent voiced support, and 70 percent voiced opposition to such a law.

Fortunately, we don’t have to force people to make that choice. We can give them a choice. For those who prefer the right to sue and are willing to pay they have their plan. For those who are willing to forgo lawsuit, they can buy their plan. And, state remedies apply in any event—so called “quality of care” suits.

Certainly, enhancing a patient’s right to sue is cold comfort to those who currently can’t afford health insurance, or those who lose their coverage due to increased costs.

Clearly, the proposed legislation to reform health care comes with a steep price tag attached. Before we commit to passing legislation, perhaps we should first promise not to pass a bill that will lead to more uninsured Americans.

My amendment would merely reduce this price tag, and reduce the harm we will by enacting S. 1052.

This amendment is very simple. I ask for my colleagues’ attention because I can’t imagine that anyone would want to oppose this amendment if the concern is really about patients rather than lawyers.

Let me restate that. If we are really concerned about health care for patients rather than fees for lawyers, this amendment will probably do more to provide that we keep people insured than anything else we have done during the last week because it provides for a simple option.

For any plan of an employer that provides coverage under this bill, they may also offer another option. That option is a plan that would enable their employees to forego damages in court. It is that simple. You can’t just do that. You have to be providing a plan that fulfills the provisions of this act, so that the full benefits, including all of the rights to go to court and file lawsuits for damages, are preserved. You still have the right to choose that policy.

We all know that policy is going to cost more money. The reason it is going to cost more money is because lawsuits reduce the number of insurance, which drives up premiums, which means that fewer employers can pay for insurance, which means that fewer employees are insured. And that is what is concerning all of us.

This amendment makes it possible to offer, in addition to the higher cost policy, a lower cost policy that would say you can forego your rights to litigation. You can just receive the benefits that ERISA provides for today. Those benefits are health care that you contracted for—or the dollar value of that health care.

There is a second option in here. That is a limited one, which is you could also go to court and get unlimited insurance. But in pain and suffering damages or punitive damages. Maybe some companies would write that kind of a policy, too. But either of those policies would have a lesser premium than the policy that would be offered and the underlying plan under this legislation.

To some who say there might be a case where there is a quality of care decision which just needs to go to court, and damages need to be collected, my amendment specifically protects all of the State court litigation that is currently developing about quality of care.

Even if an employee exercised an option to buy this lower cost policy, that employee would still have all of the rights of litigation for damages in State court.

Some have said: Isn’t this a little bit similar to the Enzi amendment? The answer is no. The Enzi amendment said if a particular group of employees were merely offered a specific kind of policy, they wouldn’t be covered by the act. That is not my amendment. All employers are covered by the act under my amendment. It is just if they offer a plan to their employees, they may in addition to that plan offer this lower cost alternative.

Why do I offer this?

As we know, the Congressional Budget Office predicts that the underlying bill would result in a 4.2-percent increase in premium costs. This is in addition to the 10- or 12-percent increase that employers would have to develop a product that they might offer to employers or plans to sell for their lower cost option.

Second, employers would have to decide that in addition to the plan offered under the bill, they would offer one of these lower cost alternatives that is on the market.

Third, employees would have to decide to take advantage of that lower cost option.

It is a matter of choice. Nobody is making anybody do anything. None of the benefits under the legislation go away all, nor is the State court remedy.

It seems to me, since it is all voluntary, that there is nothing mandatory but it gives us one opportunity to reduce premium costs. We all ought to be supportive of this proposal.

I ask that the remaining time that I have not be yielded but, rather, see if there are any others who might wish to speak.

The PRESIDENT PRO Tempore. The Republican leader.

Mr. LOTT. Mr. President, if Senator KENNEDY will allow me to speak at this point, let me say, first of all, that I think progress is being made. Senator REID has been working. Everybody has been trying to cooperate. I believe, after this very important amendment, we will have the substitute, and hopefully we would be ready to go to final passage.

I don’t want to usurp the majority’s role here, but I want people to realize that we are to the point where perhaps we can begin to wrap this up.

I thank Senator Kyl for agreeing to not put the lengthy debate. He feels very strongly about it, and this is certainly a very good and valuable alternative.

I heard Senator BOND of Missouri say repeatedly that when it comes to...
health care, we should make it available, affordable, and safe. One of our greatest concerns about this bill in its present form is health insurance for patients, and what they have available through managed care is not going to be affordable. Rates are going to go up. They are going to lose coverage for a variety of reasons. So it is a question of availability and affordability.

This is a good, viable alternative. This provides a low-cost option that will, hopefully, result in more people keeping their coverage. But it is an option. It is not in place of; it is in addition to what will be available otherwise. It just gives plans the option of offering a low-cost alternative that forgoes lawsuit damages under the law. The State court would still have the "quality of care" damage available. Those rights would still be there. You don't replace that.

So I want to emphasize, it is not in lieu of but it is in addition to the plans offered under the bill. This really is about patients, and it really is about the freedom to have a choice, to have an option to choose to have this coverage but not going to lawsuits later on. By paying less, they will be able to afford it. That will give them an option. I think this would be a very attractive way to make sure it is available and affordable.

I would like to speak at greater length on this myself, but in the interest of time I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I commend the Senator from Arizona, Mr. Kyl, for his amendment, which is strikingly similar in concept—as he and I discussed off the floor earlier—to the Auto Choice proposal I have introduced that last two Congresses, cosponsored by Senator Moynihan and Senator Lieberman.

Essentially what is envisioned in these kinds of choice proposals is giving the consumer the option of opting out of the litigation lottery in return for a lower premium and lower cost. I want to ask the Senator from Arizona if it is his view that this is similar in concept to the Auto Choice measure that I just described that we have discussed.

Mr. KYL. Mr. President, if I may answer the question of the Senator from Kentucky, I am remiss for not acknowledging that my idea for this amendment came exactly from the proposal the Senator has just discussed. It seemed to me that if it worked well in that context, it would also work well in this context. I should have mentioned that earlier. I know the Senator did not ask the question to get credit, but credit certainly is due him for this idea.

Mr. MCCONNELL. I cannot announce the support of others, but I wanted to mention that on the Auto Choice bill there was also the support of Michael Dukakis, Joe Lieberman, Pat Moynihan, the Democratic Leadership Council, the New York Times, and the Washington Post.

I cannot say for sure that they would support the amendment offered by the Senator from Arizona, but the concept he describes of giving the consumer the option of leaving aside the litigation lottery in return for a lower premium and defined benefits provided for that lower premium. It does not really deny anybody. It does not deny them the right to sue. It does not put a cap on damages. It does not tell the lawyers what to charge. It simply says to the consumer: You have a choice.

What the Senator from Arizona is suggesting is to take what is a sound idea from the recent marketplace, Auto Choice, and apply it to the health insurance market.

Under his amendment, employers would have the option of offering their employees up to two additional insurance choices. Given the additional causes of action permitted under this bill, I believe giving consumers the option not to participate in the personal injury litigation lottery is only appropriate.

It is important to note, just like my Auto Choice option, choosing Senator Kyl's "Health Choice" option would be completely voluntary to both the employer and the employees. An employer who offers his employees health insurance would not be allowed to offer only the limited-litigation health policies. Nothing in the Kyl amendment would. The employer must offer the plans envisioned in the Kennedy-McCain bill.

Therefore, nothing in the Kyl amendment would take away any right. It would allow employees who don't want to sue their health insurance plan, a lower cost health insurance option.

While we have made significant progress at improving this legislation, many of us on this side of the aisle have lingering concerns that this bill will dramatically increase the number of uninsured Americans. We ought do everything possible to minimize this impact and that is why I wholeheartedly endorse the proposal of the Senator from Arizona. Patients need more choices and should not be forced into a system of jackpot justice without their consent.

As the Senator from Arizona has pointed out, we hope not to have a greater number of uninsured when this is all over. One of the great fears many of us have who are going to be voting against this bill is that is what is exactly what the result of it will be. But the Senator from Arizona has astutely offered an amendment that will certainly provide an opportunity for a number of people to receive lower premiums and thereby, hopefully, reducing the increase in the number of uninsured which so many of us fear.

So I express my strong support for the Senator's Amendment. I tell him, I think it is a very good idea. I hope the Senate will support it. It seems to me it is entirely consistent with the theme of the underlying bill. I commend the Senator from Arizona for his fine amendment.

Mr. KYL. I thank the Senator.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, as I listened to the proposal by the Senator from Arizona, the thought came to my mind about the right of an individual to waive rights. That is deeply ingrained as part of the law of the United States, so much so that when you talk about constitutional rights in a criminal case—where the rights are much more deep-seated, much more profound, based on the Constitution—that right to waive does exist.

In a sense, what the Senator from Arizona is proposing is that an individual would have the right to maintain health insurance would have the right to waive certain rights, which is recognized in law.

The keyword which I found persuasive in what the Senator from Arizona had to say was the word "voluntary." I would add to that—I think this is part of his concept—that it be a knowing waiver—a voluntary, knowing waiver. And I would expect that, as part of that, the individual would have cause to understand his rights, because you cannot understand your rights for damages—the complexities unless you know what they are, and whatever may be said about lawyers on this floor, you need a lawyer to tell you what your rights are. Then the individual would be in a position to evaluate the reduction in premiums, and thereby which savings would be passed on to him for what he was giving up.

In that context, I think the proposal passes muster.

Mr. KYL. I thank the Senator.

Mr. SPECTER. I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I, too, thank the Senator from Arizona, Mr. Kyl, for bringing this amendment to us.

This debate has been framed as though everybody had all of their insurance paid for by the company for which they work. I know that is not the case. Throughout America, most people participate in the cost of their insurance. So it is going to be very important for every individual who has to participate in the cost of their insurance to be searching, with their employer, for a lower cost way of doing it. This is a good, viable alternative. It is very innovative. It will fill a void we have left by doing the bill, particularly if the estimates are true on how much insurance is going to go up based on
Mr. KYL. I understand that Senator FRIST would like to quickly proceed. There are several people who would like to speak on behalf of my amendment. Therefore, what I would like to propose is that we lay my amendment aside, go to Senator FRIST, and I take up the remainder of my time prior to that vote.

Mr. REID. I have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is laid aside.

AMENDMENT NO. 856

Mr. FRIST. Mr. President, I call up amendment No. 856 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Tennessee (Mr. FRIST), for himself and Mr. BREAUX, proposes an amendment numbered 856.

Mr. FRIST. Mr. President, I ask unanimous consent for reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's Record under "Amendments Submitted.")

Mr. FRIST. Mr. President, I will be brief, given the late hour.

At this juncture, I have introduced an amendment which is a comprehensive approach to the Patients' Bill of Rights. Essentially this bill is the Frist-Breaux-Jeffords bill which was introduced on May 15 of this year, modified with several of the amendments, which we will speak to shortly in the introduction either now or, if we have an interruption, we will speak to them in the 15 minutes on this side.

What I wish to stress is that this amendment is a comprehensive reform of the health care system. It involves strong patient protections, access to specialists, access to emergency rooms, elimination of gag clauses, continuity of care.

It has a strong appeals process, internal and external appeals. It requires full exhaustion of the internal and external appeals process. If the external decision—again, that is an independent physician, unbiased, independent of the plan—overrides the plan, then and only then does one go to court for the extraordinary damages. At any time during the appeals process you can go for what is called injunctive relief. Once you go for these damages, what are they? The first tier is $150,000 or three times economic damages. And that is a change from the underlying Frist-Breaux-Jeffords bill.

There are no punitive damages. In other bills, I mention that we require full exhaustion of the internal and external appeals process. We go to Federal court. We have not had very much debate over the last week on the Federal
versus State court. Senator Breaux will be speaking more directly to that. It is critical, we believe, that we get this bill to the President for his action to the Federal courts. There are strong timelines.

The purpose of this amendment is to make sure people get the care they need when they need it—not a year later or 2 years later or 5 years later. It is a balanced approach. The amendment itself is the Frist-Breaux-Jeffords of May 15. We have included the amendments put forth by Senator Thompson and modified by Senator McCain on the exhaustion of internal/external appeals. We have also included the Snowe-DeWine language. That is the direct decisionmaker language that they drew upon from our bill, the Frist-Breaux-Jeffords bill. But we took the specific Snowe-DeWine amendment and placed it in our bill; in addition, the amendment of Senator Bond, with the 1 million uninsured, then the liability would be repealed, which passed on the floor, is also a part of our bill.

Secondly, we did raise the non-economic caps from $500,000 to $750,000 or three times economic damages. As a physician, as someone who has taken care of patients, as someone who recognizes that the purpose of a Patients’ Bill of Rights is for patients to get the care when they need it, not extraordinary lawsuits, not frivolous lawsuits and skyrocketing costs, all of which will be absorbed by the 170 million people, we believe this bill is the balanced, responsible way of delivering a strong ‘enforceable Patients’ Bill of Rights. I yield to Senator Breaux.

Mr. Breaux. Mr. President, do we have a time agreement on this amendment?

The PRESIDING OFFICER. There is no time established on this amendment.

Mr. Breaux. Let’s try it without an agreement. We will see how it goes without any kind of agreement.

Mr. President, I rise to comment on the bill that is now before the Senate. It is the Frist-Breaux-Jeffords substitute bill.

Before doing so, while the Senator from Tennessee is still on the floor, I want to say something about how enjoyable it has been to work with him. While many of us are going to be leaving this Chamber tonight or tomorrow sometime to spend time with our family on vacation or have an enjoyable period of time that we can rest and relax, the Senator from Tennessee, because of what he does professionally and what he believes in, is going to be leaving on a flight tonight to go to Africa. He is going to Africa to do surgery on women and children and families who cannot afford health care on the continent of Africa. I want to say how proud all of us can be of one of our colleagues who has that type of attitude. He not only serves his constituents in Tennessee in this body but also serves so much of humanity in various places in the world by volunteering at his own cost, on his time, with his medical expertise, serving people who have no health care. We are talking about a Patients’ Bill of Rights on the floor of the Senate. He really, truly is practicing that by providing health care to people who can’t afford it in various parts of the world.

For those who are interested in getting a Patients’ Bill of Rights enacted into law, let me without the amendment that we have offered, the bill will not become law because the President has clearly indicated he will veto a bill that does not contain some of the main principles that you can find in the Frist-Breaux-Jeffords substitute.

What I am talking about is not that complicated. The White House has said we are creating new Federal rights, Federal remedies, and we are amending a Federal statute—the ERISA laws of the United States. If there is going to be any litigation dealing with these new Federal rights, they ought to be handled in the Federal courts. Why do we recommend that? Why does the President say it is important? So we can have one consistent way of handling all of these potential suits that will be filed. Instead of having 50 different courts, with 50 different jurisdiction, with 50 different rules of evidence and 50 different procedures on how to handle litigation, you would have any disputes dealing with these Federal rights handled in the Federal court systems of the United States.

Our opponents argue that the Federal courts don’t want any more suits to be filed. Neither do the State courts. There is not a State court or district court anywhere in the United States that is going to say we need more litigation, come sue on a State level. Neither the Federal nor State courts want any additional litigation because they are as full as they possibly can be. So the argument that the Federal courts don’t want them—well, neither do the State courts. The reason of trying to make sure we have a system that works, that is, a national system that protects Federal rights, it should be in Federal court.

If this is not part of the final package, the final package, indeed, will not become law, and that would be a very serious mistake for the people in this country.

Second, we have recommended some type of caps—a reasonable amount of caps on noneconomic damages. We have had to agree to that. Of course, but we suggested a cap of $750,000 for pain and suffering, for noneconomic damages, or three times the amount of economic damages, whichever is greater. We tie it to inflation. I think that is reasonable to sign this.

We had also suggested something I think would be very important for the patients and, indeed, the lawyers who are concerned about litigating cases. There are no caps on our bill for gross negligence. At an earlier time we had offered that there would be no caps for wrongful death if a person was killed as a result of some decision made dealing with medical necessity. Then there would be no caps whatsoever either for gross negligence or wrongful death.

Those two ingredients are very important. What happens when this bill leaves this body, if we are truly interested in getting an agreement, is that somehow between now and the time it gets down to the White House, these concerns are going to have to be addressed in a fashion that I think means they are going to have to be adopted. It does us no good to have a bill that is going to be vetoed. We will help no patients. They get a good political issue, but they don’t get any help, any guarantees. We will have spent all of this time arguing about things that cannot become law. So I think the clear thing that our bill provides, which I think is absolutely essential either now or at some time, is that we have a degree of Federal jurisdiction that enforces the Federal rights that we are creating in this legislation, and that we address the question of unlimited damages in a way that allows the White House to be able to sign the bill.

I will tell you that in reading what we have done with all of the amendments—the Snowe, Thompson, and DeWine amendments—where we have split jurisdiction, and the Kennedy-McCain bill which says some of the suits will be in State court and some in Federal court, our suggestion is just the opposite. The new rights will be in Federal court, and all the previous ones in the State courts will remain.

I yield to Senator McCain.

Mr. McCaIN. Mr. President, regarding the caps, I agree to the $750,000 cap for pain and suffering. I think that is reasonable. I think that the caps that we have put in place are reasonable. I think that other caps that have been put in place are reasonable. I think that the White House, if it could agree to the caps, particularly on noneconomic damages, that it would help to a great degree make this bill work.

I am under no illusions about what is going to happen, but I know I am also not under any illusions about what can
be signed into law and what cannot. I fear that what we have tonight cannot be signed into law without the recommendations we have made.

I yield the floor. I see my colleague from Vermont is also with us.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. President, for nearly 5 years, Congress has debated how best to enhance protections for patients enrolled in managed care plans without unduly increasing health care costs, imposing significant burdens on America’s employers, and adding to the ranks of the uninsured. Our debate over the last two weeks has given us ample opportunity to thoroughly discuss these critical issues.

Through the amendment process the McCain-Edwards-Kennedy bill has been significantly improved. I particularly commend Senator SNOWE for her amendment on employer liability and Senator THOMPSON for his amendment on exhausting the appeals process.

However, I believe the McCain-Edwards-Kennedy bill is still fundamentally flawed in two critical areas. First, the bill would subject plans to excessive damages in the new federal cause of action. And second, by subjecting plans and employers to a new State cause of action, the bill destroys the current national uniformity for employers. The bill would subject employers or their designated agents to lawsuits in 50 different States.

The better alternative to the McCa

Third, the independence of the review panel. I concede I have not seen the language, but assuming it is the same language, it is not in the substitute. It is like the HMO being able to pick the judge and the jury. So there is not established to anyone’s satisfaction that, in fact, that appeals panel will be independent.

Finally, on the issue of going to Federal court versus State court, the American Bar Association, the Federal judiciary, the U.S. Supreme Court, the State attorneys general, all the objective, large legal bodies in this country have said that these cases should go to State court.

That is what our legislation provides. Unfortunately, under this substitute, the vast majority of cases would, indeed, go to Federal court.

Many Americans live hundreds of miles from the closest Federal courthouse. It would be much more difficult for these injured patients to get a lawyer to represent them in a Federal action, particularly one that might take place hundreds of miles away, and most important, and the reason so many of these objective bodies said these cases belong in State court, is that it will take so long to get the case heard. There is such a backlog already, it makes no sense to send these cases to Federal court.

What we have done instead is say: You, HMO, if you are going to overrule doctors, if you are going to make health care decisions, we are going to treat you exactly as we treat the other health care providers. We treat them exactly the same. It is the reason this is a critical and a priority provision to the American Medical Association, to all the doctors groups across this country and to the consumer groups across America.

There are fundamental differences in our underlying legislation, as amended, and in the substitute, starting with the issue of scope, about which we have reached consensus, going to the issue of exhaustion of administrative remedies, which is not in this substitute; the required independence of the review panel is not in the substitute; the requirement that the cases that every objective body says should go to State court, including the U.S. Supreme Court, those cases go to Federal court instead under this provision.

We have made tremendous progress. I am very pleased with the work of all of our colleagues—Republicans, Democrats, and Independent—in this process. The work has been productive. We have done important work in the Senate, but it is not important to us. It is important for the people of this country, the families of this country who...
deserve more control over their health care decisions, who deserve real rights, enforceable rights.

That is what we have been able to accomplish over the last 2 weeks. Unfortunately, in every respect in which this substitute is different from the underly- ing legislation, as amended, it favors the HMO versus the patient. In every respect, we favor the patient; they favor the HMO.

I say to my colleagues who sponsored this amendment, I know they are well-intentioned. I know they worked very hard on it. I respect every one of them, and I respect the work they have done, but I believe the work we have, in fact, done in this Chamber over the last 2 weeks is a much better product and, most importantly, will provide meaningful protections for the patients and families of this country who deserve fin- ally to have the law on their side in- stead of having the law on the side of the big HMOs.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Sen- ator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. There is no time limit.

Mr. KENNEDY. Mr. President, I thank my good friend, Dr. F RIST. Senator Frist has been the chairman of our Public Health Subcommittee and he and I have worked on a lot of differ- ent health care issues together.

I thank Senator JEFFORDS who has been a strong ally on many health care issues over a long period of time.

I have also worked extensively with the Senator from Louisiana, Mr. BREAUX, on many health care issues.

The fact is, when you have this com- bination of people making a strong recommen- dation, it is worthy for the Sen- ate to give a true examination of their product and their recommendation this evening.

Having said all of that, it is worth- while in the final minutes of this de- bate and before action that we give special consideration to the viewpoints of the doctors, the nurses, and the pa- tients who have followed this issue and have really breathed life into this issue over a long time.

Tonight, at this time, there is only one matter that is before us that has the complete support of the medical profession, the nurses, the doctors, all of the groups that represent the chil- dren in this country, all the groups that represent the disability commu- nity, all of the groups that represent the Cancer Society, all the groups that represent the aged, all the groups that represent the special needs of people who have special medical challenges. They have had a chance to review each and every provision. They know every aspect of every page of the legisla- tion and the amendments, and they come down virtually unanimously in support of the McCain-Edwards legisla- tion.

Senator Edwards has already out- lined and Senator McCaskill will further outline the various concerns.

Let me mention matters we have fo- cused on during this debate.

The clinical trials: We are in the cen- tury of life sciences, and we are putting resources into and investing in the NIH. We are never going to get the ben- efits of the research in the laboratory to the bedside unless we have effective clinical trials.

We have strong commitments on clinical trials; Breaux-Frist is short on that, and it will take up to 5 years to begin the clinical trials.

Specialty care: We guarantee special- t y care. Any mother who brings in a child who has cancer will be able to get the specialty care. Breaux-Frist does not provide it. If it is not within that particular HMO, then it is not a medically reviewable decision. There are restrictions here in the bill.

We have debated the issues of the ap- peals. Breaux-Frist still has provisions where the HMO will be selecting the appeal organization, which is effec- tively selecting the judge and jury in these appeals.

Liability: As has been pointed out, Breaux-Frist brings all the liability into the Federal system. Every pa- tients group and every group that con- cerned itself about getting true ac- countability for patients understands the importance of keeping liability in the State court.

Even though the words are similar, although we have the issues of medical necessity, although we use the words of specialization, although the words of appeals are used in both bills, there is a dramatic and significant difference. Those are the two choices before the Senate.

I thank our colleagues and friends on the other side. There really is only one true Patients’ Bill of Rights that is going to protect the patients in this country, the families, the children, the women, the workers in this Nation, and that is the McCain-Edwards bill. I hope we support that shortly.

The PRESIDING OFFICER. The Sen- ator from Nevada.

Mr. ENSIGN. I ask unanimous con- sent action with respect to Ensign amendment No. 849. It has been vitiated and the Senate vote in relation to the amend- ment following the disposition of the Kyl amendment, with up to 10 minutes equally divided for debate prior to that vote.

Mr. LOTTT. Reserving the right to ob- ject, I hope the Senator will withhold. I think a continued effort is underway, and if he will withhold at this point— I prefer not to object—let’s see if we can’t work it out.

Mr. ENSIGN. I withdraw my unani- mous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.
Soon we will vote on this legislation. I believe we will prevail. I think this, like the campaign finance reform bill, has some merit. Fair datate on which all sides have been heard, and I think, again, the Senate can be proud, no matter what the outcome, of the way we proceeded to address this issue which is important to so many millions of Americans.

This is an important issue to American citizens. This is an important issue to the person who cannot contribute a lot of money to American political campaigns. This is an important issue to average citizens whose voices are oftentimes drowned out in Washington, in my view, by the voices of the special interests, whether they be trial lawyers, insurance companies, HMOs, or others.

I yield the floor.

THE PRESIDENTING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I will make two or three comments. First, I compliment and congratulate Senator KENNEDY and Senator GAZZIE for their patience and leadership in managing this bill and also managing the education bill. Also, I congratulate Senator MCCAIN and Senator EDWARDS for their contribution because they are going to pass a bill, and Senator DASCHLE, as well.

This has been a battle that some have been wrestling with for a long time. As a matter of fact, a year ago we passed legislation that was called Patients’ Bill of Rights Plus. In my opinion, prior to the legislation we are getting ready to pass tonight. It was legislation that allowed every plan to have an appeal, internal and external, and it was binding—not binding by lawsuits, but if you did not comply with external appeal, you could be fined $10,000 a day—a different approach. I think it is far superior.

In looking at the language we have today and in the underlying bill, the so-called McCain-Edwards-Kennedy bill, maybe some modest improvements have been made. It is the bill that will finally pass, but it is a bill that the President will not sign and the President shouldn’t sign.

I hope we will pass good legislation but not pass legislation that will dramatically increase health care costs, as I am afraid it will. There has to be some reason that employers that voluntarily supply health care, purchase health care for their employees, that employers of all sizes are almost unanimously in their opposition. They are not compelled to buy health care for employees, but they want to. Now we are getting ready to threaten them with unlimited liability. We keep hearing about suing the HMOs, but suing the HMOs and/or employers and threatening them with unlimited liability, that will hurt many of our non-economic damages, pain and suffering—there are costs included.

Somebody said we solve that because we have a designated decisionmaker. If there is a designated decisionmaker, the net result is, well, if you see something non-economic damages, pain and suffering—there are costs included.

With contracts that can be abrogated or breached, an independent reviewer can say, you have to cover other things, and you have a lot of liability if things do not work out. The net result will be the independent reviewer will say, defensive medicine, we will pay for anything because they don’t want to be sued. They don’t want to be liable. Then that may be because, whatever the liability is, they don’t know how much it is or how expensive it is, and they will increase their rates. They don’t plan on losing money and they don’t want to go out of business, so there will be a lot of defensive medicine and they will charge extra premiums to the employer to make sure they don’t go out of business.

So the cost estimates, some people have said, are 4- or 5-percent per year increases on top of the already 19- or 20-percent increases built in, in increased costs for health care. They are probably much more. The costs of the bill could increase the cost of health care by 8 to 10 percent. We should know that.

Again, we should do no harm. We should not pass legislation that will not work, that will do harm. It will do harm if you increase the number of uninsured. It will do harm if you price insurance out of the realm of affordability for millions of Americans. I am afraid that is what we are doing.

There is one other issue that has not received maybe enough attention. Senator COLLINS and Senator NELSON raised that. That is the issue of scope: Should the Federal Government be taking over regulating that the States do? I am concerned about the language. It was modified modestly. I said the States have to be substantially compliant with these new Federal regulations. That language goes so far that really the States are going to have to adopt almost identical language to what we have put in this bill. The net result? If they don’t, HCFA takes over—the Health Care Financing Administration.

A couple of points: HCFA can’t do it. HHS can’t do it. The Department of Labor cannot do it. I want to make that point one final time.

We are ready to pass this mandate and say to the States: If you don’t do it, Federal Government, you do it. If the States don’t, you do it.

The Federal Government does not have the wherewithal to do it. Every State has hundreds of personnel involved in enforcing insurance regulation, and we are saying, you do it or we will do it. One of the largest unfunded mandates ever proposed by Congress.

I am a little mad at myself for not being able to offer a point of order that this is an unfunded mandate. One of the reasons I cannot is that it was not reported out of committee.

The unfunded mandates bill, the Congressional Accountability Act, says we have a report that comes out with the committee report and we can raise a point of order if you have an unfunded mandate on cities, counties, States, and the private sector. We cannot do that because we don’t have a committee report because the bill was not reported out of committee. It was a year ago, but it is not now.

My point is this is an enormous unfunded mandate on counties and cities and States. We are mandating this on all those employees. I know best, the Federal Government knows best. States, we know you have an emergency room procedure, but we are going to dictate a more expensive one.

I could go all the way down the list. My point is, even though we have done it, we cannot enforce it. You have non-enforceable provisions. There is no protection there. It may make us feel better, we may tell the American people we have provided the protections, but we cannot enforce it because the Federal Government cannot and should not take over State regulation of insurance. That is a mistake.

I am afraid the combination of the two, the expanded liability—you can sue employers and the providers for unlimited damages in State and/or Federal court for economic and non-economic, unlimited in both cases. You can jury shop. You can find a place that would work. It would scare employers. Employers beware, the bill we are passing tonight makes you liable. You are going to have to pay a lot more in health care costs as a result of the bill we are passing tonight.

Again, my compliments to the sponsors. They worked hard. The opponents worked hard. We will pass a bill tonight. But I hope it will be improved dramatically in conference so we will have a bill that is affordable, will not scare people away from insurance, will not increase the number of uninsured by millions. My prediction is this bill would increase the number of uninsured by millions and cost billions and billions of dollars. I hope that is not the case. I hope this is fixed and improved in conference and we will have a bill that President Bush can sign and become law and of which we will all be proud. Unfortunately, I think the undermining bill does not meet that test.

We great reluctance. I am going to be voting no on the underlying McCain-Kennedy-Edwards bill. I urge my colleagues to do likewise.
Mr. STEVENS. Mr. President, I regret deeply I will not be able to vote for this bill. My State does not have a problem with the HMOs that other people have expressed. Our State would be mandated by this bill to change its laws. The sensible amendment offered by Senator COLLINS was defeated. The Allard amendments that dealt with small business were defeated. The mandates in this bill will hamper our development of a sound health care delivery system for Alaska.

It is a vast area with a few people. We do not need the interference of the Federal Government. We need help. I think this bill will interfere with what we are doing. I hope by the time it comes out of conference I will be able to support the judge will rule. The bill has tried, but this, the underlying bill, will not help our people; it will hurt them; and I cannot support it.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. STEVENS. Mr. President, I think this bill is a lot better than when we started. There remains one area, of course, where we have substantial disagreement, and that has to do with where the lawsuits are going to be brought. The underlying bill still has a bifurcated system where some suits can be brought to State court and some in Federal court. I think that is the main thing the Frist-Breaux-Jeffords amendment tries to address.

We all can read the handwriting on the wall. I think we know how this is going to go. But it is very important our colleagues understand what we are doing. With regard to the underlying bill, there is a presupposition, apparently by the managers, that the lawyers will walk into the lawyer's office with a tag around his neck saying, I'm a State suit, or, I'm a Federal suit. That will not be the case. There will be many cases that are mixed. Some will have to do with coverage denial, some will have to do with medically reviewable claims, some will be more of a contract case, some will be more of a tort case. Arguably, it could go in either court. Some will go to Federal court and the defendant will object and say, no, you belong in State court, until it comes to an end. Then there will be an appeal in that venue. Then that will be determined, and then it will go possibly to the opposite court. In other words, there will be litigation at one or more levels in order to determine where you are going to litigate.

Some, on the other hand, will go to State court, and there will be a fight there as to whether or not that belongs in State court. It may be remanded over to Federal court.

Some will come in with cases, parts of which will arguably be in Federal court and parts of the same case could arguably be in State court.

All I am suggesting is there is no easy solution to this. It has been pointed out that there are some down sides to bringing them in Federal court, too. They are overcrowded. We have heard examples of federally related lawyers and judges saying it ought to be in State court. If you took a poll among the State-mate that you and judges, they would say just the opposite. But at least you avoid the problems I am talking about.

We are going into a system now where we are creating new law; we are creating new defendants. But wait, it is not just HMOs and employers. The independent decisionmakers are subject to liability, too. The independent medical reviewer is subject to liability, too. They have a higher standard. I believe it is an "gross or willful misconduct" standard. It is a higher standard, but they can be sued for settlement value or whatever.

We have a complicated liability framework, so you have different people, different law, different lawsuits. It is going to be extremely confusing for a long time, and it is going to result in much higher costs.

The tradeoffs may be there. The decisions were made that we adopted this in view of all of that. But I think it is very important that at a time when health care costs are already going up in double digits, we are doing something that quite clearly is going to result in much more litigation, much more confusion about that litigation. Somebody ultimately has to pay for all that. It is going to ultimately result in higher costs to our citizens. I think it is important we understand that before we cast these votes.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, we are just about at the point now where I think we can begin voting on amendments. I ask unanimous consent that following the first amendment, all other votes be limited to 10 minutes. I ask further that the two managers be permitted to offer a joint managers' amendment following the passage, prior to the close of business today.

Mr. LOT T. Reserving the right to object, Mr. President, I will not object, I just want to clarify where we are. I believe we are ready to recognize Senator KYL—he had a little time left on his amendment—and then I believe we will be ready to have the three votes: Kyl amendment, Breaux-Frist, and final passage.

Mr. GREGG. Reserving the right to object, on the managers' package we are working to try to reach an agreement. Hopefully, we will reach an agreement. If we do not reach agreement—my understanding correct that we have to reach agreement by the end of today? What is the parliamentary situation if we do not reach an agreement by the end of today?

Mr. DASCHLE. Mr. President, there would not be a managers' amendment if we couldn't find mutual agreement on the key issues.

Mr. GREGG. I thank the majority leader.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 854

Mr. KYL. Mr. President, I ask unanimous consent Senator Nickles be shown as a cosponsor of amendment No. 854.

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

Mr. KYL. There are two people I know of who would like to speak briefly on my amendment. I would like to respond briefly to what Senator KENNEDY said and then summarize.

May I begin by congratulating the authors of the underlying legislation and expressing appreciation for all those who have worked with me. Especially I want to thank my colleague, JOHN MCCAIN, and congratulate him for his successful efforts in moving this legislation forward. It is not always easy when colleagues from the same State are not in total agreement on everything, but he let me know early on when I first came to the Senate he didn't expect to agree with me on every issue. He said he might even be in disagreement on some matters with me from time to time.

I appreciate his efforts and the efforts of all of those who have worked with me.

Just to summarize for those who were not here earlier, my amendment is very simple. It merely provides an option for employers that offer plans that are covered by this bill to also provide an alternative for their employees. That would permit the employees to have as their remedy the receipt of the health care or for the cost of that health care rather than going to court and getting damages as they are permitted to do under the bill. This should provide a lower cost alternative that could be made available to them. That, in turn, should provide a way for employers that might otherwise have to reduce the number of employees covered, or not have insurance for their employees at all, to continue to provide that coverage.

As I pointed out before, according to the Congressional Budget Office information, and the Lewin Group, probably over a million American citizens will lose their health care as a result of the increased expenses that could result from this legislation. The effort that we have all tried to engage is to find ways to reduce those costs so premiums won't go up as much and so employers can continue to provide the care. The best way to do that is to allow them to provide a purely voluntary option for their employees to accept, which would not have the same lawsuit damage option but would...
provide them the health care for which they have contracted. It is about health, not suits rather than lawsuits. We think this would provide the remedy for that.

The only comment that Senator KENNEDY made in opposition was that we are not regulating how the employer would contribute toward the insurance policies for their employees. That is very true. We are not doing that in the underlying bill. We are not doing it in the Breaux-Frist amendment. We are not doing it in my amendment. I don’t think anybody here has suggested we should be mandating from the Federal Government how much money the employers have to pay for their insurance option that they provide for their employees. I do not think that is a relevant point.

I reserve the remainder of my time for those who wish to speak to it. Then I will be prepared to yield back.

Mr. KENNEDY. Mr. President, I will just take 1 minute.

The Kyl amendment will permit a company to offer a sham policy and a real policy. To get the real policy, an employee will have to waive all of his or her rights under the liability provisions of the McCain-Edwards bill. Those are the alternatives. It basically undermines the whole concept of this legislation because it will permit employers and HMOs to escape any kind of accountability upon which this legislation is built. That creates a massive loophole which is undermining the whole purpose of this legislation.

I hope the amendment will be defeated.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, the hour is late, but the Kyl amendment is important. There is no shame here at all. It is the marketplace at work—voluntarily to provide the employee with options. The employer must provide health care programs if they are going to provide health care programs that fit this bill, that fit the Patients’ Bill of Rights, but in doing so they also can provide a voluntary option if the employee chooses to take it, which simply says you waive your rights to a lawsuit. And guess what. It might cost that employee less money. Yet he and she, and their families, might still be covered.

Isn’t that a reasonable option and a voluntary option to provide to the marketplace?

How dare we say that every attorney ought to have a right here? Why not say to whoever has a right to a marketplace of options that this voluntary approach that the Senator from Arizona provides gives to the health care system of our country?

I support the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, over the past 8 days we have had amendment after amendment that have created massive loopholes in the very basic and fundamental fabric of this legislation, which is to protect patients, protect families, protect doctors, and protect medical decisions against the bottom line of HMOs.

This is another one of those in the parade, and it should be rejected.

The PRESIDING OFFICER. Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask for 1 minute.

Mr. President, the option provided by Senator Kyl is not a loophole. It is an option. Under his plan, all policies that an employer would offer would provide the external and internal reviews that we have in all of the plans. The option to go to specialists, the gag rule protections that we have made a part of this bill—all of that would be in the plan.

It would simply give the employee an option, if he thought it would save him money and he or she didn’t intend to sue for benefits, to choose a policy that could be cheaper and simply not have certain lawsuit rights but, in fact, that operate for liability purposes under current law. It is no worse than current law. It is no better than current law. It would simply give the employee an option, if he thought it would save him money and he or she didn’t intend to sue for benefits, to choose a policy that could be cheaper and simply not have certain lawsuit rights but, in fact, that operate for liability purposes under current law. It is no worse than current law. It is no better than current law.

That is an option that could save a working family money that they need for their budget.

For those who want all matters to be exactly the same, I don’t see why they would resist such an option. I think it is good for the employees.

I salute Senator Kyl. I also note that Senator Jeffords had a hearing recently on the uninsured in America. We know there are over 40 million uninsured and that every 1 percent increase in insurance costs causes 300,000 people to drop out of the insurance rolls.

I think it is a good move. I support it.

Mr. LOTTO. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The yeas and nays were ordered.

Mr. KYL. Mr. President, there is nothing mandatory in this legislation. It is all voluntary. It is a simple choice for the employee. I hope my colleagues will support the amendment.

The PRESIDING OFFICER. Is all time yielded?

Mr. KYL. Mr. President, I yield all time on this side, which is to the amendment. The question is on agreeing to the Kyl amendment No. 854. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Colorado (Mr. CAMPBELL), and the Senator from Texas (Mr. GRAMM) are necessarily absent.

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

The result was announced—yeas 36, nays 59, as follows:

Yeas—42

Albright
Allen
Bennett
Bond
Brownback
Bunning
Burns
Byrd
Cochran
Collins
Craig
Craige
DeWine
Ensign
Enzi
Frist
Graham
Grassley
Hutchinson
Inhofe
Kyl
Lott
Lugar
McCain
McCollum
McConnell
McMillan
Mettcalf
Miller
Murray
Nelson (FL)
Nelson (NE)
Reid
Rockefeller
Sarbanes
Schumer
Stevens
Stockman
Torricelli
Wellstone
Wyden

Nays—54

Akaka
Baucus
Bayh
Biden
Bingaman
Breaux
Byrd
Cantwell
Carnahan
Carper
Chafee
Chambliss
Cleland
Clinton
Collins
Corzine
Crapo
Craig
Collins
Burns
Bennett
Allard

NOT VOTING—4

Campbell
Domenici
Gramm
Mikulski
McKean
McKee
McConnell
Dodd
Durbin
Edwards
Feingold
Feinstein
Graham
Gingrich
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The amendment (No. 856) was re-elected.

Mr. STEVENS. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mrs. LINCOLN. Mr. President, I wish to enter into a colloquy with the distinguished manager of the bill to clarify the intent of the sponsors.

Section 202 of the bill amends the Public Health Service Act with a new section 2733 that applies all of the requirements of title I of the Patients Bill of Rights to each health insurance issuer in the individual market.

Current law, at section 2763 provides that none of the preceding requirements of the “individual market rules apply to health insurance coverage consisting of “excepted benefits”.

Similar provisions exist in current law at section 2721 of the Public Health Service Act for the group insurance market. A parallel provision exists in ERISA at section 732 for “excepted benefits.”

Is it the intent of the managers of the bill that current law section 2763 and the parallel provisions for the group market in the Public Health Service Act and ERISA remain in full force notwithstanding the language of new section 2753?

In other words the requirements of title I of the Patients Bill of Rights would apply to individual and group health insurance other than “excepted benefits” coverage.

Mr. KENNEDY. The Senator is correct. It is the intent of the managers of the bill that the requirements of title I do not apply to insurance coverage consisting of “excepted benefits.”

Ms. CANTWELL. Mr. President, I rise today to speak in support of the bipartisan McCain-Edwards-Kennedy Bi-partisan Patient Protection Act. Managed care reform, particularly the enactment of a comprehensive Patients’ Bill of Rights, is one of the most important issues currently before either body of the U.S. Congress. After all the debate we have had on the floor in the last two weeks, I believe we are at the cusp of providing true, meaningful protections for every American in every health care.

Unfortunately, while over 160 million Americans rely on managed care plans for their health insurance, HMOs can still restrict a doctor’s best advice based purely on financial costs. The fact is, we know that the great promise of managed care—lower costs and increased quality—has in all too many cases turned into an acute case of less freedom and greater bureaucracy.

I want to tell my colleagues about the Malone family from Everett, Washington. Their son, Ian, was born with brain damage that makes it very difficult for him to swallow, to even cough and gag properly. He cannot eat or breathe without being carefully watched. He’s fed through a tube in his stomach since he can’t swallow.

The doctors at Children’s Hospital in Seattle—one of the best pediatric care institutions in the world—said that Ian could leave the Intensive Care Unit but they could not provide home nursing care a day for Ian. And while initially the Malone’s health insurance company paid for this care, it decided to cut it off. Ian’s father says that “The insurance company told us to give Ian up for adoption and let the taxpayers step in and pay for his care. They didn’t care. It was all about saving money.”

It seems that the week’s rhetoric has centered on the idea of business and employers versus patients—as if these two interests are inherently antithetical, rather than complementary. But they are not. In fact, I believe the Bi-partisan Patient Protection Act is a balanced approach to protecting patients and protecting the business of managed care.

My home State of Washington has been a leader in providing health care to all of its citizens and has enacted strong patient protections at the state level. Under Washington State law, patients have the right to an accurate and accessible information about their health insurance; the right to a second opinion; timely access to services by qualified medical personnel; the right to appeal decisions to an independent review board; and the ability to sue providers for damages if they are substantially harmed by a provider’s decisions.

I believe that States are the laboratories of democracy and I do not take lightly the possibility that any federal legislation would undermine or preempt state law. I spent six years on the Health Care Committee in the State House of Representatives and just this last year Washington passed a comprehensive Patient’s Bill of Rights. In issues such as the one before us this week, it is paramount that federal legislation enhance state protections, not undermine them.

And that is what this bill does. The McCain-Edwards-Kennedy compromise explicitly preserves strong state patient protection laws that substantially comply with the protections in the Federal bill. This is an extremely important point. The standards for certifying state laws that meet or exceed the Federal minimums ensure that only more protective State laws replace the Federal standards.

But I find it ironic that opponents of a strong, enforceable, Patients’ Bill of Rights have traditionally limited the scope of the patient protections in their managed care reform legislation to those individuals in self-insured plans, which are not regulated by the States, and assert that the States are responsible for the rest.

This approach denies Federal protections to millions of Americans—teachers, police officers, firefighters and nurses who work for State and local governments; most farmers and independent business owners who purchase their own coverage; most workers in small businesses who are covered by small group insurance policies, and millions more who are covered by a health maintenance organization. We know federal protections are needed that all Americans are guaranteed basic rights.

In fact, no state has passed all the protections in the bipartisan McCain-Edwards-Kennedy Patients’ Bill of Rights. To fail to enact this bill would mean that neighbors, and sometimes workers in the same company, will have different protections under the law. The scope of this legislation simply ensures that all Americans in all health plans have the same basic level of patient protections.

Let me focus for a few minutes on what this bill does.

This bill protects a patient’s right to hear the full range of treatment options from their doctors, and it prohibits financial incentives to limiting medical care.

This bill allows patients to go to the first available emergency room when they are facing an emergency—regardless of the Federal minimum standards. E.R. is in their managed care network.

This bill allows women to go directly to their obstetrician or gynecologist...
without going through a "gatekeeper," and it allows parents to bring their children directly to pediatricians instead of waiting to go through primary care physicians.

This bill allows patients with life-threatening or serious illnesses, for whom standard treatments are ineffective, to participate in approved clinical trials by non-medical HMO personnel who have died as a result of decisions made prior to the denial of care. The McCain-Edwards-Kennedy Patients' Bill of Rights grants patients' access to medical treatments, before it is too late, and millions more carry partial to inadequate health coverage, as HMOs and their disputes have far higher stakes. Instead, they are engaged in the battles they have fought for far too long, and their disputes have far higher stakes.

Mr. EDWARDS. I agree with my distinguished colleagues that HMOs have come very far on this legislation. We have said that this bill gives patients the right to a second opinion, and to have their lives, and we have a real responsibility to ensure that any changes we make are in the patient's interests first. That is what this bill does, and I proudly rise in support of the Bipartisan Patient Protection Act.

Mr. FEINGOLD. Mr. President, I was prepared to offer an amendment to S. 1052 concerning mandatory arbitration to ensure that HMOs are held accountable for their actions, which after all is one of the primary purposes of this bill. I have been asked not to offer that amendment, so I wanted to discuss it with the lead sponsors of the bill and ask them to clarify their intention.

Some managed care organizations currently require patients to sign mandatory binding arbitration contracts before any dispute arises. These provisions, according to the patient's interests first. This is what this bill does, and I proudly rise in support of the Bipartisan Patient Protection Act.

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merely sought to reduce cost and increase profits. With this legislation, that need not happen ever again.

We have received commitments from employers and have agreed on a settlement that does not increase the cost of health care and, by extension, increase the number of uninsured in America. Studies in states that have implemented similar protections have shown that this just is not the case. This right serves as a check against irresponsible decision-making and is critical to the legislation before us.

Finally, the McCain-Edwards-Kennedy Patients’ Bill of Rights provides hope for those suffering from chronic illness, who long and have endured too much. They deserve quality care—they deserve the Patients’ Bill of Rights, and we must give it to them. I urge my colleagues to vote for the McCain-Edwards-Kennedy Patients’ Bill of Rights.

Mr. KOHL. Mr. President, I rise today in support of S. 1052, the Bipartisan Patients Protection Act. After nearly 5 years of debate and partisan fighting, I am pleased that the Senate has returned a real, meaningful bipartisan Patients Bill of Rights. It is a step that is long overdue.

For many years, the growth of managed care arrangements helped to rein in the rapidly growing costs of health care. That benefits all patients across the Nation and helps to keep health care costs down.

However, there is a real difference between making quality health care affordable and cutting corners on patient care. In Wisconsin, we are lucky that our health plans do a good job in keeping costs low and providing quality care. But too often across this nation, HMOs put too many obstacles between doctors and patients. In the name of saving a few bucks, too many patients must hurdle bureaucratic obstacles to get basic care. Even worse, too many patients are being denied essential treatment based on the bottom line rather than on what is best for them.

The Patients Bill of Rights will ensure that patients come first—not HMO profits or health plan bureaucrats. It makes sure that doctors, in consultation with patients, can decide what treatments are medically necessary. It gives patients access to information about all available treatments and not just the cheapest. Whether it’s emergency care, pursuing treatment by an appropriate specialist, providing women with direct access to an OB-GYN, or giving a patient a chance to try an innovative new treatment that could save their life—these are rights that all Americans in health plans should have. And questions concerning these rights should be answered by caring physicians and concerned families—not by a calculator. This bill puts these decisions back in human hands where they belong.

This legislation will also make sure these rights are enforceable by allowing patients to hold health plans accountable for the decisions they make. First, all health plans must have an external appeals process in place, so that patients who challenge HMO decisions may take their case to an independent panel of medical experts. The External Reviewer must be independent from the plan, and they must be able to take valid medical evidence into account when deciding whether a treatment was inappropriately denied. The vast majority of disputes can and will be resolved using this external review process.

I was pleased that during the course of this debate, the Senate adopted an amendment that further clarified the rules of the external review process. I shared the concerns of Wisconsin employers and insurers that the original version could have potentially allowed an external reviewer to order coverage of a medical service that the health plan specifically disallowed in its plan. I strongly support the creation of a strong, clear, external review process to address disputes between a patient and their insurer over whether a service is medically necessary. At the same time, I believe employers who offer their employees health care coverage and enter into a contract with a health plan should have a level of certainty about the services that are not covered under the plan.

That is why I voted for the McCain-Bayh-Carper amendment, which preserves the sanctity of the contract and makes it crystal clear that a reviewer may not order coverage of any treatment that is specifically excluded or limited under the plan. At the same time, it still allows reviewers to order coverage of medically necessary services that are in dispute. In addition, if a health plan felt that a reviewer had a pattern of ordering care of questionable medical benefit, the plan could appeal to the secretary to have that reviewer decertified.

I recognize that some preferred the accountable—recommended by Senators NELSON and KYL in addressing this issue. However, I opposed the Nelson-Kyl amendment because it went a step too far. By attempting to have the Federal Government create a national definition of “medical necessity,” it would create a regulatory nightmare for patients and providers, and could potentially result in a definition that nobody supports and is too rigid to move with the advances in medical technology and treatment. The compromise amendment offered by Senator MCCAIN struck a more appropriate balance by protecting the sanctity of health plan contracts while allowing patients real recourse through an external appeal for medical necessity disputes.

Beyond the external review process, if a health plan’s decision to deny or delay care results in death or injury to the patient, this bill ensures that the health plan can be held accountable for its actions. And this bill, as amended, includes clear protections for employers. I was pleased to support the amendment offered by Senators SNOWE and NELSON which further clarified the difficult issue of employer liability.

Let me make it clear that our main objective is to make sure that patients have access to the treatments they need and deserve, and that if a health plan wrongly delays or denies treatment that causes injury or death, that patients can hold their health plans accountable—just like they would hold their doctor accountable if their doctor’s action caused injury or death. In other words, the patient should be able to hold accountable that entity who directly made the decision to deny care.

That is why I supported the amendment by Senators SNOWE and NELSON, which provides strong protections for employees from being sued by allowing them to choose a “designated decision-maker” to be in charge of making medical decisions and to take on all liability risk. In the case of an employer
who offers a fully insured health plan, the health insurance company which the employer contracts with is deemed to be the designated decisionmaker, and the employer is therefore protected from lawsuits. In the case of an employer that offers a self-insured health plan, that employer may contract with a third-party administrator to administer the benefits of the plan. That third-party administrator would agree to be the designated decisionmaker and the employer is shielded from lawsuits. Only those employers that act as insurers and directly make medical decisions for their employees can be held accountable. This group accounts for only approximately 5 percent of all employers in the country.

This bill now makes it clear that employers—who voluntarily provide health coverage to their employees—and the vast majority of which do not act as insurers by making medical decisions—are shielded from lawsuits. This is in total agreement with President Bush's stated principles of a Patients Bill of Rights if he would sign, where he said, and I quote: "Only employers who retain responsibility for and make final medical decisions should be subject to suit." That is exactly what this bill does. It is one of the main keys to making the rights in this bill enforceable, and I strongly urge that this right be retained in any bill that is sent to the President.

Most importantly, this bill gives all of these protections to ALL Americans in managed health care plans, not just a few. All 170 million Americans in managed health plans deserve the same protections—no matter what State they live in.

As someone who comes from a business background, I understand the concerns of employers. Some of my colleagues on the other side have claimed that our bill will increase health care costs so much that it will make it impossible for employers and families to afford coverage. But the Congressional Budget Office reported that the patient protections in our bill will only increase premiums by 4.2 percent over 5 years. This translates into only $1.19 per month for the average employee. CBO also found that the provision to hold health plans accountable—the provision the other side opposes the most and claim would cause health care costs to skyrocket—would only account for 40 cents of that amount. An independent study by Coopers and Lybrand indicates that the cost of the liability provisions is potentially less than that, estimating that premiums would increase between three and 13 cents a month per enrollee, or 0.03 percent. This is a small price to pay to make sure that health plans which provide the health care we all deserve.

I believe this bill meets the President's principles for a real Patients Bill of Rights, and I hope that when the House passes its bill, we can come together and send a bill to the President he will sign. The time has come to take common-sense actions to protect patients. There is no reason whatsoever to continue to allow health plans to skim on quality in the name of saving profits. Patients have been in the waiting room long enough. It is time for the Senate to act and make sure they receive the health care they need, deserve, and pay for.

Mr. FEINGOLD. Mr. President, the lobbying on this bill has been intensive. There's been a great deal of coverage in recent weeks about the wealthy interests that have collided over whether the nation should have a Patients’ Bill of Rights, and what that bill should look like.

I think even the media has had a tough time getting, on this side of the debate, the required balance. On this debate has the power of the "special interests" on their side. Some have said the money is on the side of the McCain-Kennedy-Edward bill, since interests supporting the bill include the American Medical Association, the American Association of Health Plans, the trade association for HMOs, the American Association of Trial Lawyers, the American Medical Association, and labor unions like AFSCME.

Others say that the special interests are weighing in against the Patients Bill of Rights, because of the powerful business and insurance coalitions fighting to defeat this legislation.

So who is right? Where is the money in this debate? The answer is simple, there are donors on both sides. Wealthy interests aren't aligned exclusively on one side or the other. So for the information of my colleagues and the public, I thought I would take a moment to call the bankroll by examining the donations the interests on both sides have given in the last election cycle. I will start my effort to defeat this legislation, brought to us by a coalition of insurance and business interests that represent some of the most powerful donors in the campaign finance system today.

Opposition to McCain-Kennedy is being spearheaded by the Health Benefits Coalition. An analysis by the Center for Responsive Politics puts the cumulative donations of the members of the Health Benefits Coalition at $12.8 million in the last election cycle. That figure includes soft money, PAC money and individual contributions made by the members of the Coalition.

The Coalition includes corporate members such as Blue Cross/Blue Shield, Aetna Inc., and Humana Inc. But perhaps more importantly, the Coalition also includes major business and insurance associations. These organizations include the Chamber of Commerce, the Business Roundtable, the American Association of Health Plans, the Health Insurance Association of America, the National Retail Federation, the National Restaurant Association, and the Food Marketing Institute, to name just a few. And of course whenever organizations like these join forces, they bring with them the collective clout of all the major political donors they represent.

The Health Insurance Association of America is an enormous coalition of the insurance industry. The insurance industry itself gave nearly $40.7 million in PAC, soft, and individual donations in the 2000 election cycle.

The American Association of Health Plans, the trade association for HMOs and PPOs, spent a total of nearly $2.5 million on lobbying in 1999 alone. According to a recent New York Times article, AAHP has budgeted $3 to 5 million to make their case against the Patients' Bill of Rights, and they are willing to spend "whatever it takes," unquote, to get the job done.

The Business Roundtable also has spent money on an ad campaign against the bill, and so has the Health Benefits Coalition itself.

According to the Center for Responsive Politics, AFSCME gave more than $16 million in soft and individual contributions in the last election cycle. The Association of Trial Lawyers of America gave more than $3.6 million in PAC, soft and individual contributions during that same period, and the AMA gave more than $2 million.

We don't know yet whether the will of the people will be heard above the din of lobbying calls, TV ad blitzes and the cutting of soft money checks to the political parties. I hope we pass a strong Patients' Bill of Rights. But whatever the outcome of this bill, we have to ask ourselves if this is the way we want to legislate, and the way we want our democracy to function. I think when the public hears that this debate pits wealthy interests against each other—in some kind of showdown at Gucci Gulch—they tune us out, because suddenly it's no longer about them, it's just another story about how big money rules American politics. And when that's the case, all of us lose, no matter which side of this debate we're on, because our legislative process is diminished, and the American people's faith in us is diminished along with it. I thank the chair and I yield the floor.
Mr. LEAHY. Mr. President, today’s passage of the Bipartisan Patient Protection Act marks a major—upward in the struggle for a meaningful Patients’ Bill of Rights. I am hopeful that with the adoption of this landmark legislation, patients throughout the country can feel a sense of relief knowing their rights will now be protected.

Over the past two decades, our Nation’s healthcare delivery system has seen a seismic transformation. Rapidly rising healthcare costs have encouraged the development and expansion of managed care organizations, specifically health maintenance organizations. Unfortunately, the zealous efforts of HMOs to contain these costs have ended up compromising patient care and stripping away much of the authority of doctors to make decisions about the best care for their patients.

During the past several years, many Vermonters have let me know about the problems they face when seeking health care for themselves and their families. Like most Americans, they want: greater access to specialists; the freedom to continue to be treated by their own doctors, even if they switch health plans; health care providers, not accounting clerks at HMOs, to make decisions about their care and treatment; HMOs to be held accountable for their negligence.

The Bipartisan Patient Protection Act is the solution that Americans have called for—patient protections that cover all Americans in all health plans by ensuring the medical needs of patients are not secondary to the bottom line of their HMO.

Too many times, I have heard from Vermonters who have faced difficulty in accessing the most appropriate healthcare professional to meet their needs. This legislation will solve that problem by giving Vermonters—and all Americans who suffer from life-threatening, degenerative and disabling conditions—the right to access standing referrals to specialists, so they do not have to make unnecessary visits to their primary care physician for repeated referrals. These patients will also be able to designate a specialist as their primary care physician, if that person is best able to coordinate their care.

This legislation makes important strides in allowing patients access to a health care provider outside of their plan when their own plan’s network of physicians does not include a specialist that can provide them the care they need. This is especially important for rural areas, like many parts of Vermont, which tend to not have an excess of health care providers. Women will now be able to have direct access to their OB/GYN and pediatricians who have been designated as primary care providers for children.

If an individual gets hurt and needs unexpected emergency medical care, the Bipartisan Patient Protection Act takes important steps to ensure access to emergency room care without a referral. If a woman is suffering from breast cancer, this bill will protect her right to have the routine costs of participation in a potentially life-saving clinical trial covered by her plan. This bill puts into place a wide range of additional protections that are essential to allowing doctors to provide the best care they can and to allow patients to receive the services they deserve.

Many of our States have already adopted patient protection laws. My home State of Vermont is one state that currently has a comprehensive framework of protections in place. This Federal legislation will not prohibit Vermont or any other state from maintaining or further developing their own patient protections as the laws are comparable to the Federal standard. I am pleased that this bill will allow states like Vermont to maintain many of their innovative efforts, while also ensuring that patients in states that currently have no laws in place will receive the basic protections they deserve.

Each of the important protections I have highlighted will only be meaningful if HMOs are held accountable for their decisions. The key to enforcing these patient protections rests in strong liability provisions that complement an effective and responsive appeals process. The Bipartisan Patient Protection Act provides patients with the right to hold their HMO liable for decisions that result in irreparable harm or death. Managed care organizations are one of the very few parties in this country that are shielded from being held accountable for their bad decisions. The time has come for that to change. Opponents of patients’ rights legislation have been vocal in suggesting that by allowing patients to hold HMOs liable in court, there will be an explosion of lawsuits, causing the costs of healthcare insurance to skyrocket. This has not been the case in states like Texas, that have already enacted strong patient protections. Rather, it has been shown that most cases are resolved through the external appeals process and that only a very small fraction ever reach the court room. Under this legislation, a patient must exhaust all internal and external appeals before going to court.

I have heard from many Vermonters concerned about the potential impact of new HMO liability provisions on employers. I am disappointed that the opponents of this legislation have exploited and misrepresented this part of the bill. Rather than attempting to alleviate concerns by explaining the liability provisions, they have instead resorted to a scare tactic strategy. If you listen to some opponents of this bill, you would think that any employer who offers health coverage will be sued. I would like to take this opportunity to clarify some of the facts. The Bipartisan Patient Protection Act protects employers with a strong shield that only makes the employer accountable when he or she directly participates in health treatment decisions. The bill also clearly states that employers cannot be held responsible for the actions of managed care companies unless they actively make the decision to deny a health care service to a patient. This only occurs in about five percent of businesses—generally those employers large enough to run their own health plan. Those few companies that directly participate in the decision to deny a health care benefit to a patient, should accept legal responsibility for those decisions.

After nearly 5 years of debate in Congress for the closest emergency room, a juj is finally closing in on the patients’ rights and protections they deserve. But there is still more work to be done. The House of Representatives must consider this important issue in a timely manner and I hope that the bill will include provisions similar to the bipartisan patient protection legislation passed in the Senate. Most importantly, I am hopeful that President Bush will hear the voices of Americans and not those of the special interests and their well-financed lobbyists, and sign this important legislation into law. The American people have spoken; the time for enacting strong patient protections is long overdue.

Mr. KERRY. Mr. President, I am proud to support the bipartisan McCain-Kennedy Patients Bill of Rights. It is legislation that is long overdue. Time and again, we have heard the 180 million Americans enrolled in managed care demand patient rights. Time and again, the members of this Senate have promised to provide them those rights. Finally, with the Patients Bill of Rights legislation before us, we stand ready to deliver.

The McCain-Kennedy Patients Bill of Rights ensures Americans that they can receive the very health care they pay for. In exchange for their monthly premiums, patients deserve a guarantee that they can see their own doctor, visit a specialist, and go to the closest emergency room, a guarantee that their doctor can discuss the best options for treatment, not just the cheapest; and a guarantee that their doctor’s orders will be followed by their HMO. The McCain-Kennedy bill guarantees all of those rights.

When those rights are violated, and harm results from the delayed application or outright denial of treatment, the McCain-Kennedy bill guarantees that they can hold their HMO accountable. And, that is what all of the rights to access care hinge upon—the ability to hold a health plan liable if access to care is denied.
We have spent days on the floor of the Senate debating the issue of liability. But, the argument here is simple. In this decision for an individual or corporation results in harm or death to a consumer, the decision-maker is held accountable. That holds true for every individual, and for every company except an HMO. HMOs, businesses who make countless decisions daily that affect the health of millions of Americans, do not face this same accountability. The number of patients who are suffering as a result is staggering.

Every day, 35,000 patients in managed care plans have necessary care delayed. Too many of these patients pay the ultimate price for the callousness displayed by these managed care plans. I would like to share the story of one woman from my state of Massachusetts who lost her life after being denied care by her HMO.

Mrs. White was diagnosed with leukemia in October 1997, and was unable to find a bone marrow match for a transplant in the 2 years of battling the disease she went into remission. She then learned that Massachusetts General Hospital was working with a newly-developed anti-rejection drug which would allow patients like herself, with less than perfectly-matched donors, to have bone marrow transplants. But, her HMO denied her care the day before she was due to be admitted to the hospital.

Six months later, Mrs. White enrolled in a new health plan which covered the costs of the transplant. However, during the 6-month impasse, Mrs. White fell out of remission, and her body was less able to sustain the new bone marrow. She died 3 months after the procedure was performed.

Recent court cases like these demonstrate why HMOs must be held accountable for their decisions. Real people like Mrs. White are the reasons why there are liability provisions in the McCain-Kennedy Patients Bill of Rights—liability protections that allow patients to sue their health plans in state court when an HMO’s decision to withhold or limit care results in injury or death. My colleagues on the other side of the aisle seek to misconstrue that point. But, let’s define the right to sue an HMO as a protection for America’s patients, not as a reward to America’s trial lawyers.

Opponents of the Kennedy-McCain Patients Bill of Rights have predicted that the liability language in the bill will cause a future flood of frivolous lawsuits against managed care companies. But, recent history paints a very different picture.

The President’s home State of Texas enacted a comprehensive bill of rights—which includes a provision to hold HMOs accountable—in 1997, albeit without the support of then-Governor Bush. Since that time, 17 lawsuits have been brought against managed care insurers in Texas. Let me repeat that—17 lawsuits in 4 years. That is a trickle, not a flood.

Mr. President, no one wants to encourage unnecessary lawsuits that increase the cost of providing health care. That is why the McCain-Kennedy bill sets out a comprehensive internal and external review process that seeks to remedy complaints before they reach a courtroom. Except in cases of irreparable harm or death, patients must exhaust this review process before pursuing a legal remedy.

But we must establish a legal remedy. A right without legal recourse fails to exist. The liability provision in this legislation simply establishes a mechanism by which to enforce the very patient protections it provides. Managed Bill of Rights that we all can avoid any liability, as long as they act responsibly and ensure that their patients receive the quality medical care prescribed for them by their physicians.

Let’s be clear about another issue.

As chairman of the Small Business Committee, I am well aware of the substantial challenges small businesses face in providing employee benefits while holding down costs. I understand the concerns small business owners have over the Kennedy-McCain bill’s potential to expose them to liability for the sole, laudable initiative of offering health insurance coverage to their employees. But that is not the intent of this legislation.

The McCain-Kennedy bill only holds accountable those employers who directly participate in the medical decisions governing an employee’s care if harm or injury occurs. The logic here is simple. If you like HMOs, it is only fair that they be held to the same accountability standards. For employers who do not directly participate in these medical decision there should be no liability.

I understand that many businesses remain weary of the safeguards against employer liability that are included in the Kennedy-McCain legislation. Negotiations are underway to strike a compromise and strengthen these safeguards so that we may arrive at a Patients Bill of Rights that we all can support. I join all of my colleagues in hoping that those negotiations bear fruit.

Another attack on this Patients Bill of Rights legislation that we have heard—not just in this chamber but across the television airwaves—is that this bill will cause insurance premiums to increase dramatically. Nothing could be further from the truth. According to the most recent estimate from the Congressional Budget Office, this legislation will cause premiums to increase an average of 4.2 percent a year. For the average employee, that equates to $1.19 per month in additional premiums, a small price to pay for meaningful patients rights extended in this bill.

Many of my colleagues across the aisle argue that this minor increase will cause large numbers of Americans to become uninsured when, in fact, no evidence exists to support this. Nevertheless, I am encouraged by the concern for the uninsured in our country, the 43 million Americans—the 15 percent of our population—who have no health care coverage at all. I challenge my colleagues on both sides of the aisle to continue the discourse on this critical issue and look forward to working towards extending health coverage to every American once we have passed this bipartisan Patients Bill of Rights.

The McCain-Kennedy Patients’ Bill of Rights legislation has widespread support from patients groups and health care providers—the two parties that we should really be focused on in this debate. To date, over 500 health care provider and patients’ rights groups have endorsed our bill.

An April 2001 Kaiser Family Foundation poll found that 85 percent of Americans supported a comprehensive Patients’ Bill of Rights that includes provisions to hold HMOs accountable. Mr. President, patients and health care providers have spoken loud and clear. They want expanded rights for patients now, rights that our legislation will provide. I urge all of my colleagues to pass the McCain-Kennedy Patients Bill of Rights.

Mr. CORZINE, Mr. President, I rise to talk specifically about how important the Patients’ Bill of Rights is to improving the mental health care Americans receive.

For far too long, mental health consumers have been discriminated against in the health care system—subjected to discriminatory cost-sharing, limited access to specialists, and other barriers to needed services. This is particularly true of the mental health care that children receive. More children suffer from psychiatric illnesses than from Leukemia, AIDS and diabetes combined. Yet, while we recognize the human costs of these physical illnesses, we often forget the cost of untreated psychiatric illness. For young people, these costs include lost occupational opportunities because of academic failure, increased substance abuse, more physical illness, and, unfortunately, increased likelihood of physical aggression to themselves or others.

This is why I am so pleased that McCain-Edwards-Kennedy goes a long way towards addressing the inequities in mental health care and ensuring access to needed mental health care services.

For example, the proposal ensures access to critical prescription drugs.

We have made tremendous progress in developing medication to treat mental illnesses. Although medication is
often only one component of effective treatment for mental illnesses, access to the newest and most effective of these medications is crucial to successful treatment and recovery. These new medications are more effective, have fewer side effects, and save money in the long run. Yet unfortunately, all too often managed care organizations prevent patients from accessing these life-saving drugs.

How? They use restrictive formulas that restrict access to preferred drugs—often the newer and more effective ones. The HMOs do, in effect, undermine our own drug regulations and approval processes.

Fortunately, the bipartisan McCain-Edwards-Kennedy Patients' Bill of Rights protects patients by providing exceptions from the formula when medical experts believe that a certain medication is the best treatment for a patient, that patient will get that medication. Also—and this is a critical difference with the Breaux-Frist alternative—our bill requires that all non-formulary medication be subject to some cost-sharing requirements. Breaux-Frist does not—continuing the discriminatory treatment of mental health treatments.

The McCain-Edwards-Kennedy proposal is also superior for mental health care because it ensures access to specialists. The bill allows standing referrals—so that primary care providers do not have to continue authorizing visits. It also requires plans to allow patient access to non-participating providers if the plan’s network is insufficient. So that patients can see the provider who can best meet their needs. The Breaux-Frist plan—in another contradiction—does not allow access to out-of-network specialists.

In the end, this can result in more costly treatment. And for some illnesses, the longer the duration or the greater the number of significant episodes, the harder to treat and more intractable the disease becomes.

Finally, the McCain-Edwards-Kennedy proposal, unlike Breaux-Frist, provides the right to a speedy and genuinely independent external review process when care is denied. Let me tell you a personal story of a constituent of mine to illustrate the importance of these protections. Earlier this year, a mother in Gloucester County, NJ wrote to me about problems she had encountered getting treatment for her daughter. Her teenage daughter had attempted suicide, and been hospitalized for 8 days. She was diagnosed with depression and borderline personality disorder, and both her physician and therapist recommended intensive outpatient therapy, called “partial care” therapy. But the managed behavioral care organization determined that this treatment was not “medically necessary.” Instead of the intensive five and a half hour, twice a week therapy program, the insurer wanted to send her for one hour a week of therapy. This, despite the recommendation of her physician and therapist.

Like any loving parent would, the mother fought back, calling the company many times. She was told to wait—even though, to quote her letter, her daughter “was self-mutilating and her behavior was becoming dangerous to herself and possibly others.” The mother finally enlisted the help of several people at the treatment program, who also wrangled with the company, and she even wrote to my office, and I wrote to the company on their behalf. Eventually, the company relented, and her daughter is now doing well in that intensive eleven hour a week program. But it shouldn’t have had to be like that for anyone. Doctors, not insurers, should decide what treatment a patient receives. When a physician says that a certain medication is necessary to help a suicidal teenager, an insurance company should cover it. As my constituent so poignantly wrote to me about her daughter, and I quote: “This treatment is important and necessary (because) by learning the skills she needs to cope with her illness she can have a safe, normal, adolescence and adult life. If we address this illness now instead of waiting until the next time she hurts herself we have a better chance of her leading a happy and normal life.”

Unfortunately, a study by the National Alliance for the Mentally Ill found that less than half of surveyed managed behavioral health care companies defined suicide attempt as a medical emergency.

This year, 2,500 teenagers will commit suicide in the United States. Over 10 million children and adolescents have a major mental illness that results in a academic failure, social isolation and increased difficulty functioning in adulthood. Only one out of five will get any care and even less will get the appropriate level of care they need and deserve.

So unless we provide critical patient protections, including the right to a fair and independent appeals process for review of medical necessity decisions, more families like my constituent will have to wonder if an insurance company will cover critical care that a doctor has prescribed for a loved one.

In sum, the McCain-Edwards-Kennedy bill will provide people access to mental health care they need to lead healthy, productive lives. I am pleased to support it.

HARKIN FEAR-REVIEW AMENDMENT

Mr. HARKIN. Mr. President, for too long, American families have been left in the waiting room while HMOs refuse to provide the health care services that families need and deserve. The results have often been tragic. Now we are on the verge of a big victory for the American people—passing a meaningful Patient’s Bill of Rights. S. 1052 represents the culmination of five long years of bi-partisan work to ensure that patients in managed care get the medical services they need, deserve, and have paid for. We have debated this issue for years. We have debated differences of opinion to find common ground, and worked across party lines to develop the best bill possible. S. 1052 truly represents the best of all our collective ideas and most important, meets the needs of the American people.

Let me say that again. This bill—the McCain-Edwards-Kennedy bill—meets the needs of the American people. And when you cut through the rhetoric and political posturing, that is what this debate is all about—guaranteeing the American people basic and fundamental health care rights.

One of the cornerstones of a meaningful Patient’s Bill of Rights is access to timely, expert, and independent external appeals process. Without a strong review system in place—where real medical experts make the decisions and not the HMO actuaries—all the other protections would be compromised.

Our amendment would strengthen the review system to ensure the integrity of the appeals process and protect patients by requiring that the appropriate health care professional makes the medical decision. It ensures that health care professionals who can best assess the medical necessity, appropriateness, and standard of care, make determinations regarding coverage of a denied service.

As currently drafted, S. 1052 only requires that physicians participate in the review process. While the bill does not prohibit non-physician providers from serving on a panel at a physician’s discretion, it does not guarantee their involvement in relevant medical reviews.

I think we all agree that the intent of the appeals process is to put medical decisions in the hands of the best and most appropriate health care providers. In many cases, this will undoubtably be a physician. However, when the treatment denied is prescribed by a non-physician provider, it is critical that the case be reviewed by someone with similar training and expertise.

For example, when a 59-year-old man fell in his home, he experienced increased swelling, decreased balance, decreased range of motion, decreased strength and increased pain in his right ankle and knee. A physical therapy treatment plan would have included specific exercises to increase strength, range of motion, and balance—enabling the patient to better perform activities of daily living and to prevent further deterioration of his health.

A reviewer who was not a licensed physical therapist, and did not have
the expertise, background, or experience as a physical therapist, denied physical therapy coverage.

Without physical therapy intervention, the patient was severely limited in activity and spent significant time in bed. The time in bed resulted in further deterioration of the original problems and the development of wounds from the prolonged static position in bed.

A physical therapist reviewer would have recognized the importance of patient mobility while in bed to prevent bedsores and interventions to improve the patient’s function with his right ankle and knee to enable him to independently walk.

Utilizing health care professionals with appropriate expertise and experience in the delivery of a service that has been identified by the health plan guarantees beneficiaries the best possible review of their appeal.

My amendment is supported by a wide range of health care professionals, including:

- The American Association of Nurse Anesthetists
- The American Chiropractic Association
- The American College of Nurse Midwives
- The American College of Nurse Practitioners
- The American Occupational Therapy Association
- The American Optometric Association
- The American Pharmacetical Association
- The American Physical Therapy Association
- The American Podiatric Medical Association
- The American Society for Clinical Laboratory Science
- The American Speech-Language-Hearing Association
- The National Association of Orthopaedic Nurses
- The National Association of Pediatric Nurse Practitioners
- The National Association of Social Workers
- The Center for Patient Advocacy

I do not believe that non-physician providers were deliberately excluded from the review process. In fact, just the opposite is true—I believe it was the intent of the bill’s authors to develop the best possible review process. However, unless my amendment is adopted, I worry that we will fall short of our shared goal of giving patients’ access to the best and most appropriate health care services in every instance.

Mr. MCConnell. Mr. President, I rise today to discuss the patient protection legislation currently before the Senate. Over the past decade, as private health coverage has shifted from traditional insurance towards managed care, many consumers have expressed the fear they might be denied health care they need by a health plan that focuses more on cost than on quality.

In response to these concerns, the Senate has considered several bills to provide sensible patient protections to Americans in managed care plans. During the last Congress, the Senate took at least 19 rollcall votes and passed two pieces of comprehensive patient protection legislation. Like many of my colleagues, I believe these items are constructive, in that they called the Senate’s attention to the numerous areas where there already exists a great deal of bipartisan agreement.

I believe that every American ought to have access to an emergency room. No parent should ever be forced to consider bypassing the nearest hospital for a desperately ill child in favor of one that is in their health plan’s provider network. If you have what any normal person would consider an emergency, you should be able to go to the nearest hospital for treatment, period.

I believe that every American ought to be able to designate a pediatrician as their child’s primary care physician. This common-sense reform would allow parents to choose one of their plan’s pediatricians without having to get a referral from their family’s primary care physician.

I believe a doctor should be free to discuss treatment alternatives with a patient and recommend them with their best medical advice, regardless of whether or not those treatment options are covered by the health plan. Gag clauses are contractual agreements between a doctor and an HMO that restrict the doctor’s ability to discuss freely with the patient information about the patient’s diagnosis, medical care, and treatment options. We all agree that this practice is wrong and have voted repeatedly to prohibit it.

I believe that consumers have a right to know important information about the products they are purchasing, and health insurance is no different. Health plans ought to provide their enrollees with written summaries of the plan’s benefits, cost sharing requirements, and definition of medical necessity. This will ensure that informed consumers can make the health care choices that are in their best interests and hopefully prevent disputes between patients and their plans.

In addition, the following examples highlight areas of bi-partisan agreement:

- Cancer Clinical Trials—Health plans ought to cover the routine costs of participating in clinical trials for patients with cancer.
- Point of Service Options—Health plans for large employers ought to offer a point of service option so that patient’s can go to a doctor outside their plan’s network, even if it means paying a little more.
- Continuity of Care—We ought to ensure that pregnant and terminally ill patients aren’t forced to switch doctor’s in the middle of their treatment.
- Formulary Reform—Health plans ought to include the participation of doctors and pharmacists when developing their prescription drug plans, commonly known as formularies; and
- Self-Pay for Behavioral Health Services—Individuals who want to pay for mental health services out of their own pockets ought to be allowed to do so.

There is broad support among Democrats, Republicans, the White House, and most importantly, the American people. While their may not be unanimous agreement on every detail, I believe these disagreements could be resolved in relatively short order.

This may lead one to ask one very important question, “If these ideas are so popular, why haven’t they already been enacted?” The answer is very simple, lawsuits. The Kennedy-McCain bill insists on vast new powers to sue. Leafing with abandon through the yellow pages under the word “attorney” is not what most Americans would call health care reform.

In response to these concerns, the Senate adopted Ms. SNOWE’s additional employer protections, an agreement that if every American ought to receive the health care they need. Far too many Americans are concerned that their health plan can deny them care. I believe that a health plan plan denies a treatment on the basis that it is experimental or not medically necessary, a patient needs the ability to appeal that decision.

The proper way to ensure that plans are held accountable is to provide strong, independent external appeals procedures to ensure that patients receive the care they need. Far too many Americans are concerned that their health plan cannot hold plans accountable. The proper way to ensure that plans are held accountable is to provide strong, independent external appeals procedures to ensure that patients receive the care they need. Far too many Americans are concerned that their health plan can deny them care.

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system. I might not be so passionate in my opposition to new medical malpractice lawsuits, if lawsuits were an efficient way for courts to sort patients who were truly harmed by negligent actions. Unfortunately, the data shows just the opposite. In 1996, researchers at the Harvard School of Public Health performed a study of 51 malpractice cases, which was published in the New England Journal of Medicine. In approximately half of those cases, the patient had not even been harmed, yet in many instances the doctor settled the matter out of court, presumably just to rid themselves of the nuisance and avoid lawyer’s fees and litigation costs. In the report’s conclusion, the researchers found that “there was no association between the occurrence of an adverse event due to negligence and the amount of ap-type and payment.” In everyday terms, this means that the patient’s injury had no relation to the amount of payment received or even whether or not payment was awarded.

The law is acting on for an average of 64 months—that is more than 5 years. Even if at the end of this 64 months, only 43 cents of every dollar spent on medical liability actually reaches the victims of malpractice, source: RAND Corporation, 1993. Most of the rest of the judgement goes to the lawyers. That is right, over half of the injured person’s damages are grabbed by the lawyers. Why would anyone want to expand this flawed system, which is so heavily skewed in favor of the personal injury lawyers?

Prior to the first extensive debate on this legislation in the Senate in 1999, The Washington Post said that the “threat of litigation is the wrong way to encourage or reward good medical practice” source: The Washington Post 3/16/99, and that the Senate should enact an external appeals process “before subjecting an even greater share of medical practice to the vagaries of litigation”. source: The Washington Post 7/13/99. More recently, the Post said that: “Our instinct has been, and remains, that increasing access to the courts should be a last resort that Congress should first try in this bill to create a feasible and mainly medical appellate system short of the courts for adjudicating the denial of care”, The Washington Post, 5/20/01, The Post is not alone in this view. My hometown paper, the Louisville Courier-Journal agreed when it stated that “there is good reason to be wary of giving patients a broad right to sue.”

Over the past two weeks, the Senate has had numerous opportunities to improve this legislation. Unfortunately, the Senate missed far too many of them. In particular, we missed an opportunity to improve Kennedy-McCain bill when the Senate rejected Mr. Frist’s Amendment, which would have established a more responsible mechanism for holding HMO’s accountable in court and ensuring that patient’s receive care immediately.

As I noted earlier, I support a majority of the patient protections included in this bill. That is why I take no joy in voting against this legislation. However, my concern for the 21,000 Kentuckians who will lose insurance because of the vast expansion of liability included in this bill prevents me from being able to support it. My colleague from Kentucky, Dr. ERNIE FLETCHER, has developed a compromise proposal in the House of Representatives which represents an improvement over the bill the Senate just passed. Therefore, I am hopeful that the House of Representatives will improve this product and that the Conference Committee report settled the matter in a way that I can support, and that the President can sign into law.

Mr. HATCH. Mr. President, this is an important bill.

I want to see a Patients’ Bill of Rights signed into law, but I am afraid some of my colleagues here, on the other side of the aisle, have rejected any efforts to move the reasonable Frist-Breaux-Jeffords bipartisan, or I should say tri-partisan bill. They have put lawyers and litigation ahead of patients and medical care.

I would like to say a few words on the liability provisions of this legislation.

We all recognize that the liability provisions of this legislation are critical. These elements are key to providing patients with quality health care instead of extended court time. When I refer to the liability provisions, of course I am talking about a family of issues, including: exhaustion of appeals, cap on damages, and class action lawsuits. Each of these is important, and indeed critical to patient care and health care delivery, and needs to be addressed and corrected before the President can sign a bill.

With regard to the provision on exhaustion of appeals, I believe the Thompson amendment, which we just approved is certainly a big improvement over the McCain-Kennedy language. The amendment will make clear that in the case of an occurrence of an adverse event due to medical negligence or an adverse event of any kind, by any means, the patient must exhaust all of the internal and external review mechanisms. This is purely a common sense amendment, which properly maintains emphasis on speedy resolution of patient problems without lengthy and costly court proceedings.

I want to emphasize that nothing in the amendment prohibits patients from having their day in court, Nor does this amendment prevent them from receiving immediate, needed care. It just requires them to go through the internal and external review process before going to court for damages. The amendment still allows for those patients who really need immediate care to get that care while they go through the administrative appeal process.

To reiterate, this amendment does not prohibit patients from going to court for care; it simply asks them to go through internal and external review before going to court to seek liability and damages. What is wrong with that?

If we go down the route of the McCain-Kennedy bill, we are not helping the patient get care. What we are doing is rendering both the internal and new external appeal process pointless. Why are we bothering to establish stricter standards for internal reviews and set up an external appeal process if there isn’t even an adverse event in the matter and can be bypassed through a judicial process? Unfortunately, that is exactly what McCain-Kennedy does—allows patients to bypass the administrative appeal process and go directly to court.

The main difference between the McCain-Kennedy bill and the Thompson amendment is this—with Thompson, we emphasize care over court. The Thompson amendment places the emphasis where it should be—on guaranteeing that people get the health care that they need, when they need it.

I believe the Thompson amendment is important in a number of ways. It will help curb unnecessary lawsuits. It provides patients with a fair review process. And most importantly, it codifies current law by allowing patients to file injunctive relief when they need immediate care.

The Thompson amendment will not only protect the rights of patients but will also improve the McCain-Kennedy legislation.

As far as employer liability is concerned, the language of the McCain-Kennedy legislation was completely unacceptable. The bill claimed to limit federal or state causes of action against a group health plan, employer, or plan sponsor, but it specifically authorizes a cause of action against an employer if such person or persons directly participated in the consideration of a claim for benefits and in doing so failed to exercise ordinary care. But, at the same time, the McCain-Kennedy bill specifically excluded any cause of action against a doctor or hospital.

I think the Snowe-DeWine amendment adopted yesterday starts to address these concerns. The Snowe-DeWine language includes protections for employers who delegate plan decision making to a third party. It helps strengthen the definition of the designated decision maker so that some employers will not be unfairly exposed to liability. However, other employers would not be protected. I am serious
when I say this could result in employers losing health coverage. Employers will not want to choose between offering health insurance to their employees and opening themselves up to liability and huge court costs.

I find it ironic that my colleagues on the other side of the aisle, who always claim they are trying to find ways to lower the uninsured population, are actually pressing for legislation that will dramatically increase the uninsured population.

And if you don’t believe me, talk to any expert who is not a trial lawyer because the message is loud and clear that unless the bill is improved, health coverage will be severely jeopardized, and employees will lose their insurance. Is this the result that we want, especially in legislation that claims to be a Patients’ Bill of Rights? I think not.

As far as damage caps are concerned, the Frist-Breaux-Jeffords legislation is a step in the right direction. The McCain-Kennedy language is not.

With the current McCaин-Kennedy legislation is that it allows patients to go both to federal and state court to collect damages. For federal causes of action, economic and non-economic damages are unlimited. And even though the bill’s proponents claim there are no punitive damages provisions, as a former medical malpractice attorney, I know punitive damages when I see them.

Supporters of the McCain-Kennedy approach claim their bill doesn’t allow punitive damages in federal court. That is absolutely not true. Under their bill, a defendant in federal court can be hit with up to $5 million in “civil assessment” damages. Let’s call it like it is. The purpose of the civil assessment is to punish providers, plain and simple. The bill includes no limits on state law damages. It is very apparent to everyone in this chamber that the trial lawyers have been principally involved in drafting these liability provisions and they have done so with their own interests in mind. This provision is simply not in the best interest of the American people.

The McCain-Kennedy language allowing for unlimited damages is unworkable. Economic and non-economic damages are uncapped. In my opinion, non-economic damages should be capped.

Another issue that is extremely important is class action. The McCain-Kennedy language had no restrictions on class actions on its newly permitted state causes of action nor for its newly created federal causes of action for damages. Fortunately, the DeWine language attempts to restrict the litigation nightmare that would have resulted from the McCain-Kennedy language.

Finding common ground on these issues—exhaustion of appeals, employer liability, caps on damages and class action is crucial to the success of the Patients’ Bill of Rights legislation. It is incumbent upon us to do this right and to do what is in the best interest of patients, not trial attorneys. I am confident that if we are all willing, we can make these provisions legally sound. We have spent far too many years on this issue and we need to do it right. We have a real opportunity to pass the best meaningful patients’ rights legislation. Let’s not squander this opportunity by acting expeditiously.

Mr. CORZINE. Mr. President, I rise to speak about an issue that has been touched upon by many people during this debate on the Patients’ Bill of rights, the problem of the uninsured.

Let me first say that I am very pleased that today we are passing a strong, enforceable Patients’ Bill of Rights.

I commend the bill’s authors, Senators McCaIN, Edwards and Kennedy, for the tremendous job they have done in crafting a bipartisan bill that will provide strong patient protections and curb insurance company abuses.

This legislation is an example of how, working together, we can improve the health care Americans receive. But it is just the first of many steps we should be taking to ensure that all Americans receive quality health care.

During the debate on the Patients’ Bill of Rights I have heard many Senators argue that this legislation will lead to more uninsured Americans. Indeed, some of my colleagues have faulted supporters of the bill for not doing anything to help the uninsured.

As someone who have been talking about this issue for several years, I am thrilled to hear that my colleagues are concerned about the problem of the uninsured.

It is a national disgrace that 42 million Americans do not have health insurance.

Who are the uninsured? They are 17.5 percent of our nonelderly population. A shameful 25 percent are children. The majority—83 percent—are in working families.

The consequences of our Nation’s significant uninsured population are devastating. The uninsured are significantly more likely to delay or forego needed care. The uninsured are less likely to receive preventive care. Delays or not receiving treatment can lead to more serious illness and avoidable health problems. This in turn results in unnecessary and costly hospitalizations. Indeed, my own state of New Jersey is in fact leading the way on the issue of enrolling parents with their kids.

Finally, I was pleased to be an original cosponsor of Senator BINGAMAN’s bipartisan legislation, the Start Healthy, Stay Healthy Act, which would expand coverage for children and pregnant women. It is based on the common sense principal that children deserve to start healthy and stay healthy.

I often say that we are not a nation of equal outcomes, but we should be a nation of equal beginnings.

Until we give all Americans access to health care, however, we cannot live up to that promise.

But although we cannot get to universal access this year, I believe we can and should be doing all that we can to make incremental progress.

In conclusion, I am heartened that in this debate on the Patient’s Bill of Rights so many of my colleagues have expressed concern about the problem of
the uninsured. Indeed, I am hopeful that we have turned a corner on this crisis issue.

As we move forward, I welcome the opportunity to work with any of my colleagues, on either side of the aisle, to find ways to significantly address the problem of the uninsured. There can be no greater purpose to our work in the Senate.

Mr. LIEBERMAN. Mr. President, I rise to speak about the McCain-Edward Kennedy Patients’ Bill of Rights. It has been 4 years since the first managed care reform bill was introduced in Congress. After years of unyielding and unproductive debate, we came together this week to find common ground for the common good, and pass a bill that will significantly improve the quality of medical treatments for 90 million Americans. We have worked very hard to get to this day, and with the unfailing commitment of my colleagues on both sides, we have produced a bill that I am very proud to support.

This bill does more than just provide new assurances to patients. It will provide a whole new framework for the delivery of health care in this country, helping to transform our managed care system from one in which health plans are immune for the life and death decisions they make every day to a more fair and accountable system for America’s families.

The purpose of this legislation has broad—and I emphasize broad—bipartisan support. According to a CBS news poll from 6/20/01, 90 percent of Americans support a Patients’ Bill of Rights.

Two years ago, 68 Republicans in the House of Representatives voted for the Norwood-Dingell Patients’ Bill of Rights. It allows patients to sue HMOs if they are denied a medical benefit that they need. The Ganske-Dingell bill in the House of Representatives currently has strong support from both Democrats and Republicans. I urge my colleagues in the House to take up the Ganske-Dingell Patients’ Bill of Rights and pass it without delay so that we can send a bill to the president for signature.

We need to enact a patients’ bill of rights now. Every day that goes by, nearly 200 American people with private insurance have benefits delayed or denied by their health plans. These critical decisions made by health plans impact thousands of families at times of great stress and worry. Our most fundamental well-being depends on our health. Anyone who has had a sick family member can tell you of the anxiety they experience during a medical emergency or prolonged illness. It is our obligation and within our ability to make it easier for these families.

This bill will do just that.

Opponents of this legislation express concern that if this bill is signed into law, we will see a flood of lawsuits. I would like to point out that in the 4 years since Texas enacted legislation allowing patients to hold their health insurers accountable, there have been very few lawsuits filed. Four million people in Texas are covered by that State’s patient protection law. Only 17 lawsuits have been filed.

The appeals process in this bill is fair and binding. With a strong and swift appeals process, patients should be able to receive the care they need, when they need it. The need for recourse in court should be minimal.

It was never the intent of this legislation to encourage more lawsuits. The sole purpose for this bill is to deliver health care to the people who need it. I remain hopeful that as it is the case in Texas, there will be very few lawsuits once this bill becomes law.

Rather, the Patients’ Bill of Rights, patients will get the care they need and deserve with less delay and less dispute. No longer will a cancer patient have to worry about access to clinical trials for new treatments. No longer will a family with a sick child have to worry about access to a pediatrician specialist. No longer will a pregnant woman have to worry about switching doctors mid-pregnancy if her doctor is dropped from a plan.

Doctors will be able to prescribe the care they feel is necessary without feeling pressured to make cost-efficient decisions. And managed care companies will be held responsible when their denials of care threaten the lives of patients.

In sum, under this legislation, our health care system will better reflect and respect our values, putting patients first and the power to make medical decisions back in the hands of doctors and other health care professionals.

We can all be proud of this outcome and the path we followed to get here. The Senate worked through a lot of complicated issues and problems, recognized legitimate policy differences, and reached principled compromise where we could. The result is real reform, and a bill of rights that is right for America.

Mr. LEVIN. Mr. President, I support the strong, enforceable Patients’ Bill of Rights which the Senate is finally going to vote on today. After years of consideration, and a hard legislative battle over the last few weeks, the bipartisan vote which this bill is about to receive on final passage reflects the overwhelming support the bill has from the American people.

The Patients’ Bill of Rights assures that medical decisions will be made by doctors, nurses and hospitals, not by someone in an insurance office somewhere, with no personal knowledge of the patient and no professional background to make medical judgments. It guarantees access to needed health care specialists. It requires continuity of care protections so that patients will not have to change doctors in the middle of their treatment. And, the bill provides access to a fair, unbiased and timely internal and independent external appeals process to address denials of needed health care. This legislation will hold HMOs accountable for their decisions like everyone else in the United States. The Patients’ Bill of Rights also assures that doctors and patients can openly discuss treatment options and includes an enforcement mechanism that ensures these rights are real.

We have taken a big step forward today on comprehensive managed care reform for 190 million Americans. I am hopeful that the House of Representatives will again pass a real Patients’ Bill of Rights and that the President will sign it.

Mr. McCaIN. Mr. President, I thank all my colleagues, both supporters and opponents of our legislation, for their patience, their courtesy, and their commitment to a full and fair debate on the many difficult issues involved in restoring to doctors and HMO patients the right to make the critical decisions that will determine the length and quality of their lives.

I think we are all agreed on this one premise, that the care provided by HMOs has been inadequate in far too many instances. This failure is attributable to the fact that virtually all the authority to make life and death decisions has been transferred from the people most capable of making medical decisions to those people most capable of making business decisions. I do not begrudge a corporation maximizing its profits, exercising due diligence regarding its fiduciary responsibility to its shareholders. The bottom line is their primary responsibility, and I respect that. But that is why, we should not grant them another, competing responsibility, especially when that secondary responsibility is the life and health of our constituents. I know that even the opponents of our legislation are agreed on returning more authority to doctors and their patients, and addressing many of the most distressing failures of managed health care reconsider his stated intention to veto the legislation.
June 29, 2001

CONGRESSIONAL RECORD—SENATE 12483

This has been a good, long, open, and interesting debate, distinguished by good faith on all sides. It has been a healthy debate, but we disagree on some points. We have achieved an important success today in addressing the health care needs of our constituents. We have much work to do, and I want to con- tinue working with other Members, our colleagues on the other side of the aisle, and with the President and his associates to make sure that we will enact into law these important protections for so many Americans who have waited for too long for them. We have been neg- ligent in addressing this problem, but today we have taken an important step forward in correcting our past mistake. With a little more good faith and hard work, we will give the American people reason to be as proud of their government as I am proud of the Senate today.

Mr. DASCHLE. Mr. President, it has been more than 5 years since we began this effort to make sure that Americans who have health insurance get the medical care they have paid for.

It has been more than three years since the first bipartisan Patients’ Bill of Rights was introduced in the House . . . and nearly 2 years since the last time we debated a real Patients’ Bill of Rights in the Senate.

Today—at long last—the Senate is doing what the American people want us to do. Today—at long last—we are standing up for America’s families.

Today—at long last—we are telling HMOs they are going to have to keep their promises and provide their pol- icyholders with the health care they’ve paid for.

The bill we are about to vote on provides comprehensive protections to all Americans in all health plans.

It is an example of the workable compromise that is in the best interests of the American people, as have Senator NICKLES, the Republican manager, Senator GREGG, and all the Senators who have disagreed with the majority over some provisions in this legislation. I commend them all for their principled opposition.

I am grateful for the leadership of Senators LOTT and DASCHLE, and the assistant majority leader, Senator REID, for their skill, courtesy, and fairness in managing this important legislation.

Finally, let me thank those who do most of the work around here but get the smallest share of the credit for our accomplishments, our staffs. I want to thank the majority staff director of the Commerce Committee, Mark Buse, the counsel Jeanne Bumpus, and most particularly, my health care legislative assistant, Sonya Sotak for their extraordinary hard work, and tal- ented counsel to me and other members of the staff of Senators EDWARDS and KENNEDY, leadership staff for the majority and minority, and all staff who have made our work easier and more effective.

This bill guarantees that people who have health insurance can get the care their doctors say they need and de- serve.

It ensures that doctors, not insurance companies, make medical decisions. It guarantees patients the right to hear of all their treatment options, not just the cheapest ones.

It says you have the right to go to the closest emergency room, and the right to see a specialist.

This bill says that women have the right to see an OB/GYN—without having to see another doctor first to get permission.

It guarantees that parents can choose a pediatrician as their child’s primary care provider. It allows families and individuals to challenge an HMO’s treatment deci- sions if they disagree with them.

And, it gives families a way to hold HMOs accountable for their decisions because serious injury or death—because rights without remedies are no rights at all.

This bill achieves every goal we set for it over the past 5 years, and we owe that to the stewardship and commit- ment of Senators McCaIN, Edwards, and Kennedy.

During these last 10 days, they have shown a seemingly limitless ability to find the workable middle ground with- out sacrificing people’s basic rights. They have put the Nation’s interests ahead of their own partisan interests. I thank them for their service to this Senate, and to our Nation.

I also want to thank Senators Nick- les and GREGG for being honest with us about their disagreements with this bill, and fair in the way they handled those disagreements.

This is the way the Senate should work. A Senate that brings up impor- tant bills and allows meaningful debate on them is a tribute to us all.

One final reason I found this debate so encouraging is the great concern we heard expressed by many opponents of this bill for the growing number of Americans who have no health insur- ance. We agree that this is a serious problem, and look forward to working with those Senators to address it as soon as possible.

I am pleased to pass a Patients’ Bill of Rights now returns to the House.

Last year, 68 House Republicans joined Democrats to pass a strong pa- tient protection bill very much like
this one. We urge our colleagues in the House to resist the special interests one more time. Together, we can send a strong endorsement of the Patients’ Bill of Rights to President Bush.

We hope that when that happens, the President will reconsider his threatened veto. We hope he will remember the promise he made last fall to the American people to pass a Patients’ Bill of Rights.

Texas has proven that we can protect patients’ rights—without dramatically increasing premiums. It is time—it is past time—to pass a Patients’ Bill of Rights to protect all insured Americans.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass?

Mr. STEVENS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado (Mr. CAMPTON) and the Senator from New Mexico (Mr. DOMENICI), the Senator from Texas (Mr. GRAMM), the Senator from Alaska (Mr. MUKKOWSKI), the Senator from Mississippi (Mr. LOTT) are necessarily absent.

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

The result was announced—yeas 59, nays 36, as follows:

(Rollcall Vote No. 220 Leg.)

YEAS—59

Akaka
Baucus
Bailey
 Bundy
Bingaman
Boxer
Brown
Byrd
Cantwell
Carper
Carnahan
Carper
Chefe
Chesn
Clinton
Collins
Conrad
Corzine
Daschle
Dayton
DeWine
NAYS—36

Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Cochran
Craig
Crapo
Ensign
Emsley
NOT VOTING—5

Campbell
Domenici

The bill (S. 1052), as amended, was passed.
June 29, 2001

CONGRESSIONAL RECORD—SENATE 12485

simply dies without even a hearing. This is just plain wrong.

I have watched the painful process over the last 9 years. During 6 of those years, the blue slip itself contained the words, “no further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee to the home State Senators.” As a result, I saw nominees waiting 1, 2, 3, even 4 years, often without as much as a hearing or even an explanation as to why the action was taken. These nominees put their lives on hold. Yet they never had a chance to discuss the concerns that may have been raised about them. These concerns remain secret and the nomination goes nowhere.

As a member of the Judiciary Committee, I believe our duty is either to confirm or reject a nominee based on an informed judgment that he or she is either fit or not fit to serve; to listen to concerns and responses, to examine the evidence presented at a hearing, and to have a rationale for determining whether or not an individual nominee should serve as a district court judge or circuit court judge or even a U.S. Supreme Court Justice. That duty, in my view, leaves no room for a secret process to be entered into with nominees put their lives on hold. Yet they never had a chance to discuss the concerns that may have been raised about them. These concerns remain secret and the nomination goes nowhere.

I believe in the last three Congresses, based on information I have been able to come upon, that the blue slip has been used at least 21 times. Consider this: An individual graduates college with honors, finishes law school at the top of the class; he or she may even clerk for a prestigious judge or join a large law firm, or maybe practice public interest law or even serve as staff of the Judiciary Committee. In fact, a nominee can spend years of his or her life honing skills and developing a reputation among peers, a reputation that finally leads to a nomination by the President of the United States to a lifetime appointment among peers, a reputation that finally leads to a nomination by the President of the United States to a Federal court judge or district court judge or even a U.S. Supreme Court Justice. That duty, in my view, leaves no room for a secret process to be entered into with nominees put their lives on hold. Yet they never had a chance to discuss the concerns that may have been raised about them. These concerns remain secret and the nomination goes nowhere.

I believe that many members of this Senate did not even realize they held the power of the blue slip until just recently.

In my view, the rationale behind the blue slip process is faulty. The process was designed to allow home state Senators—who may in some instances know the nominee better than the rest of the Senate—to have a larger say in whether the nominee moves forward. More often than not, however, this power is and will be used to stop nominees for political or other reasons having nothing to do with qualifications.

As a matter of fact, the Member who uses the blue slip, who doesn’t send it in, or sends it in negatively, may never have even met the nominee.

If legitimate reasons to defeat a nominee do exist, those reasons can be shared with the Judiciary Committee in confidence, and decisions can be made based on that information—by the entire Committee.

The blue slip process as it now stands is open to abuse. I would join with those—I am hopeful there are now those—on the Judiciary Committee who would move to abolish the blue slip.

Before I conclude, I want to read from a recent opinion piece by G. Calvin Mackenzie, a professor at Colby College and an expert on the appointment process. In the April 1, 2001 edition of the Washington Post, Mackenzie wrote:

The nomination system is a national disgrace. It encourages bullies and emboldens demagogues, silences the voices of responsibility, and nourishes the lowest forms of partisan combat. It uses innocent citizens as pawns in politicians' petty games and stains the reputations of good people. It routinely violates fundamental democratic principles, undermines the quality and consistency of public management, and breaches simple decency.

I find myself in agreement with every word in that quote. It is quite an indictment of our nominations process.

On both sides of the aisle, we hear: Well, they did it, so we are going to do it. Well, they blocked our nominee, so now we will block theirs.

I don’t believe that has any merit whatsoever. I believe at some point we have to stop this cycle. At some point, nominees have to come to the Senate Judiciary Committee, go promptly or as promptly as they can go to a hearing, have the questions asked, and we do our duty which we took our oath to do, which is to make the judgment whether that nominee qualifies to be a Federal court judge or district court judge.

I make these remarks to say that this is one Member of the Judiciary Committee who will happily vote to do away with the blue slip.

Thank you very much. I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. DASCHLE. Madam President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak for up to 5 minutes each.

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

EXPLANATION OF ABSENCE

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Pursuant to rule 6, paragraph 2, I ask unanimous consent the Senator from Alaska, Mr. Murkowski, be granted official leave of the Senate until July 9.

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

FORMAL OPENING OF THE NATIONAL JAPANESE AMERICAN MEMORIAL

Mr. AKAKA. Mr. President, earlier this afternoon, a few short blocks from this Chamber and in the shadow of the Capitol, hundreds of people gathered to celebrate the formal opening of the National Japanese American Memorial honoring the loyalty and courage of Japanese Americans during the Second World War.

As a World War II veteran and a native of Hawaii, I am well-acquainted with the exceptional contributions of Japanese Americans to the war effort, both at home and abroad. The battlefield exploits of the 442nd, 100th, and
the MIS immediately come to mind. Less known but equally deserving of recognition are the sacrifices of the civilian misei on the homefront, who continued to support the war effort while enduring the prejudice of fellow citizens as well as the wholesale violation of their civil rights by the U.S. Government.

This new memorial honors the valor and sacrifice of the hundreds of brave men who fought and died for their country, and it also speaks to the faith and perseverance of 120,000 Japanese Americans and nationals, who solely on the basis of race, regardless of citizenship or loyalty, without proof or justification, were denied their civil rights in what history will record as one of our Nation's most shameful acts. This memorial commemorates the resiliency of the human spirit over injustice confronted by Japanese Americans. The crane sculpture by Nina Akamu, a Hawaii-born artist, speaks to the prejudice and inhumanity faced by this particular group of veterans that was unique. As recognized in a unanimous joint resolution last year, all members of Congress stated their strong support for these brave Americans. As with many of our colleagues here today, I am committed to supporting these veterans in every way possible in their fight for justice.

I also want to take this occasion to recognize and honor a special group of brave, indeed extraordinary, soldiers who served this country so gallantly in WWII. I want to pay special tribute to those who served in the Pacific, were taken prisoner, and then enslaved, and who were forced to endure under most horrific conditions by Japanese companies.

While I in no way wish to suggest that other American troops did not suffer equally horrific hardships or served with any less courage, the situation faced by this particular group of veterans was unique. This memorial is my privilege to commend him for his thoughtful in hosting this event for the leader of Japan.

On this Independence Day, as we honor and appreciate America's freedom, we can but think of those who served our country. Freedom, indeed, is not free. The price is immeasurable. I hope the Prime Minister will understand, as I know he does, the value we place upon our veterans—the very people who fought and paid the price.

Our country appreciates the decades of friendship the United States and Japan have shared. Often, we probably do not recognize as we should the value of our bilateral relationship with Japan. On many occasions, we got bogged down in trade disputes. But ultimately we have found ways to resolve past trade differences, and I am confident we can address all current and future trade issues.

Mr. INOUYE. Mr. President, for their leadership in gaining Congressional authorization for the memorial and their support for the work of the National Japanese American Memorial Foundation.

For the unveiling of this Memorial to Patriotism by the National Japanese American Memorial Foundation in the Nation's capital is a timely and necessary endeavor, for it reminds us and future generations of Americans that courage, honor, and loyalty transcend race, culture, and ethnicity.

Mr. HATCH. Mr. President, as we move into recess for our annual Independence Day celebration, I wish to offer my deepest gratitude for all veterans of this country who took the call for arms in silent and noble duty and sacrificed more than we can ever repay. From the Revolutionary War to the Persian Gulf War, American men and women have always answered the call to secure and preserve independence and freedom both here and abroad. We are forever in their debt.

I also want to take this occasion to recognize and honor a special group of brave, indeed extraordinary, soldiers who served this country so gallantly in WWII. I want to pay special tribute to those who served in the Pacific, were taken prisoner, and then enslaved, and who were forced to endure under most horrific conditions by Japanese companies.

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This weekend the Prime Minister of Japan will be meeting with the President of the United States. I cannot praise this President enough for his thoughtful in hosting this event for the leader of Japan.

On this Independence Day, as we honor and appreciate America's freedom, we can but think of those who served our country. Freedom, indeed, is not free. The price is immeasurable. I hope the Prime Minister will understand, as I know he does, the value we place upon our veterans—the very people who fought and paid the price.

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It is with this sincere hope and appreciation that I raise the memory of injustices perpetrated by private companies in Japan against American servicemen, and I hope that we can find a resolution to this problem. There is no more appropriate time to open the door to this long overdue dialogue between the United States and Japan. This is a moral issue that will not go away. We can work with Japan to close this sad chapter in history. In so doing, we will fortify and continue our bilateral relationship with Japan.

In closing, I urge all Americans, during this next week as we celebrate our freedom and our great history, to thank our soldiers who gave their lives and their freedom to fight for our nation. I thank them and express my support that they will be helped and protected. I will fight for them as they fought for me, my children, and all other Americans.

Mr. LOTT. Mr. President, it is with great pleasure that I rise to take this opportunity to recognize the exemplary service and career of an outstanding naval officer, Vice Admiral James F. Amerault, upon his retirement from the United States Navy at the conclusion of more than 36 years of honorable and distinguished service. It is my privilege to commend him for outstanding service to the Navy and our great nation.

Vice Admiral Amerault embarked on his naval career thirty-six years ago, on the 29th of June 1965. In the years since that day, he has devoted great energy and talent to the Navy and protecting our national security interests. It would be hard to calculate the innumerable hours this man has stood watch to keep our nation safe. He has been steadfast in his commitment to the values and ideals that our country embodies and holds dear.

Following his commissioning at the United States Naval Academy, he embarked on the first of many ships that would benefit from his leadership and expertise. Vice Admiral Amerault served at-sea as Gunnery Officer and First Lieutenant on board USS Massey (DD 778). He then served as Officer in Charge, Patrol Craft Fast 52 in Vietnam, a challenging and dangerous assignment that kept him in harm's way. His courage and commitment to our nation was more than evident during these tumultuous years as he conducted more than 90 combat patrols in hostile waters off the coast of South Vietnam. One example of his valor and heroism is quoted from Commander Coastal Division Fourteen on 21 December 1967. "On the night of 4 August 1967 the patrol craft in the area adjacent to the one you were patrolling came under enemy fire. Disregarding your own safety, you directed your patrol craft to within 300 yards of the beach and bombarded the enemy position with intense .50 caliber and 81mm mortar fire. During this exchange your
patrol craft was narrowly missed by a barrage of recoilless rifle fire.” Again, his valor and heroism was established early in his career. He was awarded a Bronze Star Medal with Combat V and the Navy Combat Action Ribbon for his service.

Vice Admiral Amerault’s follow-on sea tours demonstrated the tactical brilliance that would become his trademark. His next tour was on board USS Taylor (DD 468) as Engineer Officer. During this tour he earned a coveted Shellback certificate for crossing the equator. He then reported as Chief Engineer on board USS Benner (DD 801) where he earned his first of three Navy Commendation Medals.

Several sea tours followed in steady progression. He was Executive Officer in USS Dupont (DD 941). He also was Executive Officer on USS Sirocco in the Persian Gulf. He served as Commanding Officer of USS Nicholas (FFG 47) and Commanding Officer of USS Samuel Gompers (AD 37). It is difficult to convey the challenges and hardships that were faced by this officer and his family during these many and arduous sea tours.

As Vice Admiral Amerault progressed in the Navy he served as Staff Combat Information Center Officer for Commander, Cruiser Destroyer Group TWO, and Command Destroyer Squadron SIX, Amphibious Group FOUR, and the Western Hemisphere Group. Again, these were all difficult tours of tremendous responsibility that required an incredible commitment to duty and country.

Vice Admiral Amerault’s shore assignments have included Director, Navy Program Resource Appraisal Division and Executive Assistant to the Director, Surface Warfare Division on the staff of the Chief of Naval Operations. His flag assignments have included Director, Operations Division, Office of Budget and Reports, Navy Comptroller; Director, Office of Navy Budget; and Director, Fiscal Management Division in the office of the Chief of Naval Operations.

His final tour in the Navy he served as Deputy Chief of Naval Operations (Plans, Readiness and Logistics) has demonstrated his blend of leadership and dynamic leadership he has refocused the Navy’s logistics systems to more accurately meet the needs of the warfighter and the Navy of the future.

A scholar as well, VADM Amerault is a graduate of the Naval Postgraduate School (MS Operations Research) and the University of Utah (MA Middle East Affairs and Arabic), and was the Navy’s 1986-87 Federal Executive Fellow at the RAND Corporation, Santa Monica. As he ascended to the highest echelons of leadership in the Navy, Vice Admiral Amerault garnered many commendations that further highlight his stellar career. They include the Distinguished Service Medal; Legion of Merit (seven awards); the Bronze Star with V; the Joint Service Commendation Medal; the Navy Commendation Medal (three awards); and Vietnam, Desert Storm, and numerous other campaign medals.

Vice Admiral Amerault also has the distinction of being the Navy’s “Old Salt”—the active duty officer who has been qualified as an officer of the deck underway the longest.

Standing beside this officer throughout his superb career has been his wife Cathy, a lady to whom he owes much. She has been his key supporter, devoting her life to her husband, to her family, and to the men and women of the Navy family. She has traveled by his side for those many years. They are the epitome of the Navy family team.

From the start of his career at the Naval Academy, through Vietnam, the Gulf War, Kosovo and beyond—thirty-six years—Vice Admiral Amerault has served with uncommon valor. He is indeed an individual of rare character and professionalism—a true Sailor’s Sailor! I am proud, Mr. President, to thank him on behalf of the United States of America for his honorable and most distinguished career in the United States Navy, and to wish him “fair winds and following seas”.

RECOGNIZING VOLUNTEER REFEREES FOR THE 2001 SIGMA NU CHARITY BOWL

Mr. LOTT. Mr. President, recently the Epsilon Xi Chapter of Sigma Nu at the University of Mississippi celebrated the eleventh anniversary of the Sigma Nu Charity Bowl in Oxford, Mississippi. Founded in 1989, the Sigma Nu Charity Bowl has helped many unfortunate men and women, who from accidents or injuries have been permanently paralyzed. Since 1990, over $500,000 has been raised to help these individuals.

Through the years, the Epsilon Xi Sigma Nu Charity Bowl has become one of the largest college philanthropy events in the nation. Every year, Sigma Nu competes in a football game against another fraternity from Ole Miss or another university. It has become an annual event that the citizens of Oxford, the parents of the players, and the Ole Miss community enjoy each year. This year’s recipient was a very deserving young man named James Havard, who enjoyed watching Sigma Nu defeat Phi Delta Theta 18-13. I would like to recognize some very special men who generously gave their time and talents in order to make the Charity Bowl a great success. Steve Beckstrom, Michael Miles, Kevin Roberts, Scott Steenson, and Michael Woodard are to be commended and honored for their efforts in serving as volunteer referees for the charity bowl football game. They graciously took time out of their busy schedules in order to make the game more enjoyable for the players and the fans. But more importantly they gave James Havard an opportunity to enjoy a better life.

These men belong to the Professional Football Referees Association. The PFRA is also very involved in helping other charitable organizations such as the Make-A-Wish Foundation. This distinguished organization has been very helpful in getting aid to individuals like James, and they have given many people a chance to have a better life.

These men and the PFRA are to be commended for a job well done, and for their continued efforts in improving the lives of others.

THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

Mr. LEAHY. Mr. President, one of the most significant accomplishments of the 106th Congress was the Electronic Signatures in Global and National Commerce Act, commonly known as “ESIGN.” This landmark legislation establishes a Federal framework for the use of electronic signatures, contracts, and records, while preserving essential safeguards protecting the Nation’s consumers. It passed both Houses of Congress by an overwhelming majority, and went into effect in October 2000.

I helped to craft the Senate version of the bill, which passed unanimously in November 1999, and I was honored to serve as a co-sponsor and help develop the conference report. I am proud of what we achieved and the bipartisan manner in which we achieved it. It was an example of legislators legislating rather than politicians posturing and unnecessarily politicizing important matters of public policy.

Much of the negotiations over ESIGN concerned the consumer protection language in section 101(c), which was designed to ensure effective consumer consent to the replacement of paper notices with electronic notices. We managed in the end to strike a constructive balance that advanced electronic commerce without terminating or mangling the basic rights of consumers.

In particular, ESIGN requires use of a “technological check” in obtaining consumer consent. The critical language that I developed and proposed, provides that a consumer’s consent to the provision of information in electronic form must involve a demonstration that the consumer can actually receive and read the information. Companies are left with ample flexibility to develop their own procedures for this demonstration. When the Senate passed ESIGN in June 2000, I expressed confidence that
the benefits of a one-time technological check would far outweigh any possible burden on e-commerce. I also predicted that this provision would increase consumer confidence in the electronic marketplace.

One year later, the Federal Trade Commission and the Department of Commerce have issued a report on the impact of ESIGN’s consumer consent provision. In preparing the report, these agencies conducted extensive outreach to the on-line business community, technology developers, consumer groups, law enforcement, and academia. The report concludes:

"Thus far, the benefits of the consumer consent provision of ESIGN outweigh the burdens of its implementation on electronic commerce. The provision facilitates e-commerce and the use of electronic records and signatures while enhancing consumer confidence. It preserves the right of consumers to receive written information required by state and federal law. The provision also discourages deception and fraud by those who might fail to provide consumers with information the law requires that they receive."

Significantly, the consumer consent provision is benefitting businesses as well as consumers. The report states that businesses that have implemented this provision are reporting several benefits, including “protection from liability, increased revenues resulting from increased consumer confidence, and the opportunity to engage in additional dialogue with consumers about the transactions.” The technological check has not been significantly burdensome, and “[t]he technology-neutral language of the provision encourages creativity in the structure of business systems that interface with consumers, and provides an opportunity for the business and the consumer to choose the form of communication for the transaction.

The report also finds that ESIGN’s consumer safeguards are helping to prevent deception and fraud, which is critical to maintaining consumer confidence in the electronic marketplace.

IN MEMORY OF OLIVER POWERS

Mr. NICKLES. Mr. President, I rise today to inform my colleagues of the passing of Oliver Bennett Powers a Senior Broadcast Engineering Technician for the Senate, and native of Chickasha, Oklahoma.

Oliver passed away suddenly while vacationing with friends and family near Norfolk, Virginia on June 23, 2001. He was a respected, well-liked, and dedicated member of the Senate Recording Studio staff. He is survived by his wife of 28 years, Anita; two sons, Isaiah and Lucas; his mother, Ella Belle Powers of Chickasha, Oklahoma, and brother, Roy Powers, of Norman. Our hearts go out to them.

Oliver was born in Chickasha, Oklahoma, where he graduated from high school in 1971. He was also a graduate of the University of Science and Arts of Oklahoma, also located in Chickasha, and went on to earn a Master’s Degree in Journalism from the University of Oklahoma. Oliver began his service to the U.S. Senate in 1986, when he became director of audio and lighting for the Senate.

Oliver will be missed by all of those who knew him through his community, his church, and his work here in the Senate. Oliver embodied the best of what we’ve come to expect from Oklahomans. He was hard working, yet soft-spoken and gentle; highly professional, yet humble, and always kind and respectful to those who work tirelessly and anonymously on behalf of many staff here that work respectfully to others. He was representative of so many staff here that work tirelessly and anonymously on behalf of the Senate.

On behalf of the United States Senate, let me say thank you to Anita, Isaiah, Lucas and the other members of the Powers family for sharing him with us these many years. He will be missed.

EXTRADITION OF SLOBODAN MILOSEVIC TO THE U.N. ICTY

Mr. LIEBERMAN. Mr. President, I rise today to commend the authorities of Serbia for, at long last, handing over Slobodan Milosevic to the International Criminal Tribunal. It is ironic, and perhaps fitting, that his arrest and transfer to the international court took place on June 28—one of the most noted dates in Serb history, when in 1389 the Serbs were defeated at the battle of Kosovo Polje, ushering in a period of Ottoman rule. My hope is that future generations of Serbs will remember June 28, 2001 with the same sense of historic importance and as the beginning of true and long-lasting democracy and respect for the rule of law.

Mr. Milosevic has been charged by an independent, impartial, international criminal tribunal with crimes against humanity and violations of the laws or customs of war against the ethnic Albanian population of Kosovo. And according to the tribunal, we can expect more indictments against him for earlier crimes in Croatia and Bosnia.

His extradition to the Hague is historic, if long overdue. As a former head of state, there were many who believed that he would never be made to answer for the charges against him. That this day finally came underscores the commitment of the international community to investigating and prosecuting individuals for war crimes. And it sets an important precedent in international law; namely, that the Geneva Conventions and their Protocols will be upheld and enforced regardless of one’s position or influence. The message in all of this is clear and inspiring: with patience and perseverance, democracy and the rule of law will prevail.

Serbian Prime Minister Djindjic deserves praise for his leadership on this issue and for recognizing that if Serbia wants to join the democratic family of nations, then it must uphold and respect the rule of law. Many others have contributed their efforts over the years leading up to this historic day and deserve mention: former Secretary of State Madeleine Albright, U.S. Ambassador-at-Large for War Crimes David Scheffer, and ICTY Prosecutors Justice Louise Arbour and Carla Del Ponte, to name just a few.

The wars that tore apart the former Yugoslavia—and which threaten Macedonia today—were large, although not exclusively, of Mr. Milosevic’s doing. He fomented extreme ethnic nationalism and unleashed his army and special police forces on the civilian populations of Croatia, Bosnia and Kosovo. Millions were driven from their homes and more than a quarter of a million are believed to have died. For his policies he earned himself the name, “the Butcher of Belgrade.” His victims deserve accountability and his former citizens deserve to know what was done in their name.

It must be stressed that the Serb people are not on trial; only Mr. Milosevic. The United States seeks friendship and partnership with all of the people of the former Yugoslavia. Our presence and contributions at the donor’s conference are evidence of our intentions. Yet while we welcome yesterday’s developments, we must also not forget that 26 accused remain on the run, most of them in Bosnia and Serbia. I call on the accused to turn themselves over to the jurisdiction of the Tribunal to answer the charges against them without further delay. It is the honorable thing to do. But failing that, the local authorities must take swift and decisive action, if necessary, with the support of international peacekeeping troops, to deliver these fugitives from justice to the court in the Hague.

There will never be lasting peace and stability in the region so long as these individuals remain on the run. The fact that they have evaded justice for so long—in the case of Radovan Karadzic and Ratko Mladic it’s already six years—makes a mockery of justice and it must end.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator Kennedy in March of this year. The Local law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.
I would like to describe a terrible crime that occurred November 6, 1998 in Seattle, Washington. A gay man was severely beaten with rocks and broken bottles in his neighborhood by a gang of youths shouting “faggot.” The victim sustained a broken nose and swollen jaw. When he reported the incident to police two days later, the officer refused to take the report.

I believe that government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

CELEBRATION OF CAPE VERDE INDEPENDENCE DAY

Mr. REED. Mr. President, I rise today to join Cape Verdeans in the July 5th celebration of Cape Verde Independence Day.

Every country is rich with its own history and unique story of how it achieved democracy, and Cape Verde is no exception. In 1462, Portuguese settlers arrived at Santiago and founded Ribeira Grande, now Cidade Velha, the first permanent European settlement city in the tropics. After almost three centuries as a colony, in 1951 Portugal changed Cape Verde’s status to an overseas province. Then in December 1974, an agreement was signed which provided for a transitional government composed of Portuguese and Cape Verdeans. In 1975, Cape Verdeans elected a National Assembly, which received the instruments of independence from Portugal.

For the first fifteen years of independence, Cape Verde was ruled by one party. Then in 1990 opposition groups came together to form the Movement for Democracy, which provided for a transitional government composed of Portuguese and Cape Verdeans. In 1995, Cape Verdeans elected a National Assembly, which received the instruments of independence from Portugal.

As we approach the independence day of our own country and reflect on freedom and democracy, it is especially fitting that we remember and celebrate those special independence days of other peaceful democracies, such as Cape Verde. Join with me in wishing all those with direct and ancestral ties to Cape Verde a happy independence day.

HEALTH CARE FOR THE GUARD AND RESERVE

Mr. JOHNSON. Mr. President, I rise today in support of S. 1119, a bill that would require the Secretary of Defense to conduct a study of the health care coverage of the military’s Selected Reserve.

Most South Dakotans know at least one of the 4,500 current members of the South Dakota Guard and Reserves—the so-called Selected Reserve—or the thousands of former Guardsmen and Reservists. Sometimes, the connection is even more direct. Before joining the Army, my oldest son was a member of the South Dakota Army Guard in Yankton. South Dakota’s Guard and Reserve members have supported overseas operations, including those in Central America, the Middle East, Europe and Asia. Members of the South Dakota Air Guard are currently preparing for its mission later this year, where it will patrol the “No-Fly Zone” in Iraq. South Dakota’s Guard and Reserve units consistently rank in the highest percentile of readiness and quality of its recruits. But keeping and recruiting the best of the best in the South Dakota National Guard and Reserves is becoming more of a challenge as our military’s operations tempo has remained high while the number of active duty military forces has decreased. This tempo places significant pressure on the members of the reserve component, and has exposed possible health care deficiencies.

Many deploying members and their families have experienced tremendous turbulence moving back-and-forth between their civilian health insurance plans and TRICARE Prime, the military’s health care system. Some junior reservists have no health insurance at all. Some figures, for example, have shown that upward of 200,000 Selected Reservists nationwide do not possess adequate insurance. The exact nature of these disturbances and the broader shortfalls of this system are unclear because examinations have not completed.

I am pleased to join with my colleagues in introducing this legislation, which will take a step towards understanding this problem and giving Congress direction on how to solve it. I am certain that we know how poor health care and broken promises can reduce morale within our military and their families. A poor “quality of life” among our reserve component and active duty personnel has a direct impact on recruitment and retention of the best and brightest in our Armed Services. I will do all I can to ensure our men and women in the military, veterans, and military retirees have the health care they deserve.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, June 28, 2001, the Federal debt stood at $5,663,970,068,775.88. Five trillion, six hundred sixty-three billion, nine hundred seventy million, sixty-eight thousand, seven hundred seventy-five dollars and eighty-eight cents.

One year ago, June 28, 2000, the Federal debt stood at $5,694,147,000,000. Five trillion, six hundred forty-nine billion, one hundred forty-seven million.

Five years ago, June 28, 1996, the Federal debt stood at $5,118,683,000,000. Five trillion, one hundred eighteen billion, six hundred eighty-three million.

Ten years ago, June 28, 1991, the Federal debt stood at $3,537,988,000,000. Three trillion, five hundred thirty-seven billion, nine hundred eighty-eight million.

Twenty-five years ago, June 28, 1976, the Federal debt stood at $610,417,000,000. Six hundred ten billion, four hundred seventeen million, which reflects a debt increase of more than $5 trillion, $5,053,553,068,775.88. Five trillion, fifty-three billion, five hundred fifty-three million, sixty-eight thousand, seven hundred seventy-five dollars and eighty-eight cents during the past 25 years.

ADDITIONAL STATEMENTS

TRIBUTE TO ABE SILVERSTEIN

Mr. DeWINE. Mr. President, I rise today to recognize a man who employed his knowledge and vision to take America into Space. I am speaking of Cleveland resident, Abe Silverstein, who just passed away this month at 92 years of age, leaving a legacy of invention and innovation in the field of space flight.

Abe Silverstein played a part in a number of “space firsts,” and received many prestigious honors for his work. In the company of Orville Wright, William Boeing, and Charles Lindbergh, Abe won the Guggenheim Award for the advancement of flight.

Abe Silverstein designed, tested, and operated the world’s first supersonic wind tunnel. It was the largest, fastest, and most powerful in the world. The research that was conducted with the tunnel allowed a new generation of fighter combat planes in World War II. This tunnel now resides in the NASA Glenn Space Research Facility in Cleveland, which Abe directed from 1961–1969.
CONGRESSIONAL RECORD—SENATE

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States and nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2605. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Bifenazate; Pesticide Tolerances for Emergency Exemptions” (FRL6788-5) received on June 21, 2001; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2606. A communication from the Director of the Office of Personnel Policy, Department of the Interior, transmitting, pursuant to law, the report of a nomination for the position of Commissioner, Reclamation, Bureau of Reclamation, received on June 28, 2001; to the Committee on Energy and Natural Resources.

EC–2607. A communication from the Director of the Office of Personnel Policy, Department of the Interior, transmitting, pursuant to law, the report of a nomination for the position of Director of the National Park Service, received on June 28, 2001; to the Committee on Energy and Natural Resources.

EC–2608. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Inspector General, received on June 28, 2001; to the Committee on Armed Services.

EC–2609. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2610. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of Defense, Civil Works, received on June 28, 2001; to the Committee on Armed Services.

EC–2611. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of the discontinuation of service in acting role for the position of Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2612. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of the designation of acting officer for the position of Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2613. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of the discontinuation of service in acting role for the position of Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2614. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of the designation of acting officer for the position of Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2615. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Air Force, Financial Management and Comptroller, received on June 28, 2001; to the Committee on Armed Services.

EC–2616. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, Manpower and Reserve Affairs, received on June 28, 2001; to the Committee on Armed Services.

EC–2617. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of General Counsel, received on June 28, 2001; to the Committee on Armed Services.

EC–2618. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Navy, Research, Development and Acquisition, received on June 28, 2001; to the Committee on Armed Services.

EC–2619. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Navy, Financial Management and Comptroller, received on June 28, 2001; to the Committee on Armed Services.

EC–2620. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Deputy Under Secretary of Defense, Acquisition and Technology, received on June 28, 2001; to the Committee on Armed Services.

EC–2621. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Deputy Under Secretary of Defense, Financial Management and Comptroller, received on June 28, 2001; to the Committee on Armed Services.

EC–2622. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of the Navy, Installations and Environment, received on June 28, 2001; to the Committee on Armed Services.

Edward M. Kennedy (D-MA) of the Senate Committee on Armed Services, June 29, 2001.

He was also the first director of NASA Space Flight Operations and worked on the Mercury, Gemini, Apollo, and Centaur projects. The Centaur project involved the launching vehicles that propelled spacecraft to Mars, Jupiter, Saturn, Uranus, and Neptune.

Serving his country in World War II by producing new technology and helping his country achieve its goals in Space was not enough for Abe Silverstein. After retiring from NASA, Abe went on to work for Republic Steel Corporation, where he developed pollution controls to help keep our air cleaner for future generations.

Abe Silverstein always was contributing to his country, whether it be through wind-tunnel research or in serving as a Trustee at Cleveland State University. He was a man of great personal virtue and strength of character. I am proud to honor this man today, who his NASA colleagues once described as a ‘man of vision and conviction, a man who contributed to the ultimate success of America’s unmanned and human space program’.

His innovative pioneering spirit lives on in the work we do today.

I thank Mr. Silverstein for all his hard work and sacrifice, and I hope that my colleagues will join me in my gratitude.

TRIBUTE TO LES AND MARILYN GORDON

Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to Les and Marilyn Gordon, owners of The Candlelite Inn in Bradford, NH, on being named as Inn of the Year by the Complete Guide to Bed & Breakfast Inns and Guesthouses in the United States, Canada and Worldwide.

Built in 1897, The Candlelite Inn has provided a relaxing atmosphere for visiting guests for over 100 years. The Gordons purchased the Inn in 1993, and have successfully continued the tradition of accommodating the needs of discriminating travelers touring the Lake Sunapee Region.

Throughout the year The Candlelite Inn hosts special weeks for their guests to enjoy including: Currier & Ives Maple Sugar Weekend in March, Old Glory Heritage Tours in July, August and September, Foliage Midweek Getaways in September and October, and Murder Mystery Parties throughout the year.

I commend Les and Marilyn for the economic contributions they have made to the hospitality and tourism industries in our state. The citizens of Bradford, and New Hampshire, have benefited from their dedication to quality and service at The Candlelite Inn. It is truly an honor and a privilege to represent them in the United States Senate.
EC–2623. A communication from the Assistant Director, Executive and Policy Management, Department of Veterans Affairs, Department of Veterans Affairs, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of Legislative Affairs, Department of Veterans Affairs, received on June 28, 2001; to the Committee on Armed Services.

EC–2624. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a nomination for the position of Special Assistant for Public Affairs, Drug Enforcement Administration, received on June 28, 2001; to the Committee on the Judiciary.

EC–2625. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a nomination for the position of Commissioner, Immigration and Naturalization Service, received on June 28, 2001; to the Committee on the Judiciary.

EC–2626. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a nomination for the position of Director, Community Relations Service, received on June 28, 2001; to the Committee on the Judiciary.

EC–2627. A communication from the Acting Secretary of the Federal Trade Commission, transmitting, pursuant to law, a report relative to Merger Review Procedures dated June 2001; to the Committee on the Judiciary.

EC–2628. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Withdrawal of Notice of Federal Tax Lien Certain Circumstances” (RIN1545–AY01) received on June 21, 2001; to the Committee on Finance.

EC–2629. A communication from the Chief of the Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Time Limitation for Requesting Refunds of Harbor Maintenance Fees” (RIN1515–AC04) received on June 26, 2001; to the Committee on Finance.

EC–2630. A communication from the Regulations Unit, International Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Medical: PHS–1500–0108” (RIN0938–AI70) received on June 29, 2001; to the Committee on Finance.

EC–2631. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Nondiscrimination Requirements for Certain Defined Contribution Plans” (RIN1545–AY36) received on June 28, 2001; to the Committee on Finance.

EC–2632. A communication from the Director of the Office of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Veterans Education: Increased Allowance for the Educational Assistance Test Program” (RIN2600–AKH4) received on June 27, 2001; to the Committee on Veterans’ Affairs.

EC–2633. A communication from the Director of the Office of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Increase in Rates Under the Montgomery GI Bill—Active Duty and Survivors’ and Dependent Educational Assistance” (RIN2900–AKH4) received on June 27, 2001; to the Committee on Veterans’ Affairs.

EC–2634. A communication from the Director of the Office of Regulations Management, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Grants to States for Construction and Activities for Special Needs” (RIN2900–AJ43) received on June 28, 2001; to the Committee on Veterans’ Affairs.

EC–2635. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled “Changes in Flood Elevation Determinations” (44 CFR Part 1–3183) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2636. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled “Suspension of Community Eligibility” (Doc. No. FEMA–P–7753) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2637. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled “Changes in Flood Elevation Determinations” (Doc. No. FEMA–P–7762) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2638. A communication from the Legislative and Regulatory Activities Division, Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, the report of a rule entitled “Investment Securities; Bank Activities and Operations; Leasing” (12 CFR Parts 1, 7, 23) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2639. A communication from the Legislative and Regulatory Activities Division, Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, the report of a rule entitled “Fiduciary Activities of National Banks” (RIN1557–AB19) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2640. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of a rule entitled “International Anti–Bribery and Fair Competition Act of 1998 dated July 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2641. A communication from the Acting Executive Secretary of the Agency for International Development, transmitting, pursuant to law, the report of a nomination for the position of Assistant Administrator, Bureau for Asia and the Near East, received on June 27, 2001; to the Committee on Foreign Relations.

EC–2642. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification regarding the proposed transfer of U.S. origin defense articles valued in terms of its original acquisition cost of approximately $1,000,000,000,000 to the Government of Israel; to the Committee on Foreign Relations.

EC–2643. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Sweden; to the Committee on Foreign Relations.

EC–2644. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–2645. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to France; to the Committee on Foreign Relations.

EC–2646. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to The Netherlands; to the Committee on Foreign Relations.

EC–2647. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to The Netherlands; to the Committee on Foreign Relations.

EC–2648. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to The Netherlands; to the Committee on Foreign Relations.

EC–2649. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to The Netherlands; to the Committee on Foreign Relations.

EC–2650. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the annual report required by Section 655 of the Foreign Assistance Act of 1961; to the Committee on Foreign Relations.

EC–2651. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area” received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2652. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 2 Period” received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2653. A communication from the Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the
CONGRESSIONAL RECORD—SENATE
INTRODUCTION OF BILLS AND
JOINT RESOLUTIONS
The following bills and joint resolutions were introduced, read the first time, and referred to the Committee on Energy and Natural Resources:

By Mr. ALLEN:
S. 1138. A bill to allow credit under the Federal Employees' Retirement System for certain employees who have performed abroad after December 31, 1988, and before May 24, 1998; to the Committee on Governmental Affairs.

S. 1139. A bill to direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, for use as cemeteries; to the Committee on Energy and Natural Resources.

By Mr. HATCH (for himself, Mr. FINKELDORF, Ms. SNOWE, Mr. SANGUIN, Mr. BURKETT, Mr. SULLIVAN, Mr. BURR, Mr. SCHUMER, Mr. STABENOW, and Mr. JOHNSON):
S. 1140. A bill to direct the Federal Government to proceed with its plans for the conveyance of certain land to Eureka County, Nevada, for use as cemeteries; to the Committee on Energy and Natural Resources.

S. 1141. A bill to amend the Internal Revenue Code of 1986 to treat distributions from publicly traded partnerships as qualifying income of regulated investment companies, and for other purposes; to the Committee on Finance.

By Mr. GRAHAM (for himself, Mr. NICKLES, Ms. HUTCHINSON, Mr. MURKOWSKI, and Mr. GRASSLEY):
S. 1141. A bill to amend the Internal Revenue Code of 1986 to require the Secretary of the Treasury to mint coins in commemoration of former President Ronald Reagan; to the Committee on Finance.

By Mr. LIEBERMAN:
S. 1142. A bill to amend the Internal Revenue Code of 1986 to repeal the minimum tax preference for exclusion for incentive stock options; to the Committee on Finance.

S. 1143. A bill to require the Secretary of the Treasury to establish and manage a Federal Employees' Retirement System; to the Committee on the Judiciary.

By Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. LEVIN, Mr. DURBIN, and Mr. ALLEN):
S. 1144. A bill to amend title III of the Omnibus Budget Reconciliation Act of 1990 to establish a grassland reserve program; to the Committee on Environment and Public Works.

S. 1145. A bill to amend the Food Security Act of 1985 to establish a grassland reserve program to assist owners in restoring and protecting grassland; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SMITH of New Hampshire (for himself and Mr. WARNER):
S. 1146. A bill to provide certain actions brought in Federal court against Japanese defendants by members of the United States Armed Forces held by Japan as prisoners of war during World War II; to the Committee on the Judiciary.

By Mr. LEVIN (for himself and Mr. WARNER) (by request):
S. 1147. A bill to amend section 205 of the Government Management Reform and Full Faith Amendment Act of 2001 to authorize certain grants to States for use in expanding the scope of full faith and credit coverage; to the Committee on Finance.

By Mr. SPECTER (for himself, Ms. LANDRUKI, Mr. COLLINS, Mr. SCHUMER, Ms. SNOWE, Mr. LEAHY, Mr. COCHRAN, Mr. BURKETT, Mr. SULLIVAN, Mr. BURR, Mr. SCHUMER, Mr. BIDEN, Mr. MURAKIMI, Ms. CARNAHAN, Mr. CARPER, Mr. SENSENIBERNER, Mr. LEVINE, Mr. SCHUMER, Mrs. MURRAY, Mr. CORZINE, Mr. DOLE, Ms. LATOURETTE, Mr. BINDER, and Mr. WARNER):
S. 1148. A bill to amend the Immigration Nationality Act to establish a new non-immigrant category for chefs and individuals in related occupations; to the Committee on the Judiciary.

By Mr. SMITH of New Hampshire:
S. 1149. A bill to amend the Immigration and Nationality Act to establish a new non-immigrant category for chefs and individuals in related occupations; to the Committee on Environment and Public Works.

By Mr. REID (for himself and Mr. ENZI):
S. 1150. A bill to amend the Immigration and Nationality Act to establish a new non-immigrant category for chefs and individuals in related occupations; to the Committee on the Judiciary.

By Mr. SMITH of New Hampshire:
S. 1151. A bill to amend the method for achieving quiet technology specified in the National Parks Air Tour Management Act of 2000; to the Committee on Commerce, Science, and Transportation.

By Mr. DURBIN (for himself, Mr. DASCHLE, Mrs. MURRAY, Mr. CORZINE, Ms. LANDRUI, Mr. FINKELDORF, Mr. LIEBERMAN, Mr. KENNEDY, Mr. SARABANES, Mr. MIKULSKI, Mr. TORSKILL, Mr. BREAUX, Mr. SCHUMER, Ms. STABENOW, and Mr. JOHNSON):

By Mr. CRAIG (for himself and Mrs. FINKELDORF):
S. 1153. A bill to amend the Food Security Act of 1985 to establish a grassland reserve program to assist owners in restoring and protecting grassland; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SMITH of Oregon (for himself and Mr. WARNER):
S. 1154. A bill to express the sense of the Senate that light-duty electric vehicles are consumer products subject to such act; to the Committee on Commerce, Science, and Transportation.

By Mr. SPECTER (for himself, Ms. LANDRUKI, Mr. COLLINS, Mr. SCHUMER, Ms. SNOWE, Mr. LEAHY, Mr. COCHRAN, Mr. BURKETT, Mr. SULLIVAN, Mr. BURR, Mr. SCHUMER, Mr. BIDEN, Mr. MURAKIMI, Ms. CARNAHAN, Mr. CARPER, Mr. CHAFFEE, Mr. CRAMER, Mr. CLELAND, Mrs. CLINTON, Mr. DODD, Mr. EDWARDS, Mr. FRIST, Mr. GREGG, Mr. HELMS, Mr. HOLLINGS, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. LIEBERMAN, Ms. LINCOLN, Ms. MIKULSKI, Mr. MILLER, Mr. REID, Mr. ROCKEFELLER, Mr. SARABANES, Mr. SENSENIBERNER, Mr. SHEPHERD, Mr. SMITH of New Hampshire, Mr. THOMPSON, Mr. THURMOND, Mr. TORRICELLI, and Mr. WARNER):
S. 1157. A bill to reaffirm the consent of Congress to the Northeast Interstate Dairy Compact and to grant the power to Congress to the Southern Dairy Compact, a Pacific Northwest Dairy Compact, and an
ADDITIONAL COSPONSORS

S. 170

At the request of Mr. REID, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 170, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 351

At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 351, a bill to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting use of mercury fever thermometers and improving collection, recycling, and disposal of mercury, and for other purposes.

S. 498

At the request of Mr. LEAHY, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 498, a bill to reduce the risk that innocent persons may be executed, and for other purposes.

S. 499

At the request of Mr. GREGG, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 499, a bill to amend the Family and Medical Leave Act of 1993 to clarify the Act, and for other purposes.

S. 497

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 497, a bill to express the sense of Congress that the Department of Defense should field currently available weapons, other combat tactics and operational concepts that provide suitable alternatives to anti-personnel mines and mixed anti-tank mine systems and that the United States should end its use of such mines and join the Convention on the Prohibition of Anti-Personnel Mines as soon as possible, to expand support for mine action programs including mine victim assistance, and for other purposes.

S. 530

At the request of Mr. GRASSLEY, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 530, a bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for producing electricity from wind.

S. 382

At the request of Mr. DODD, his name was added as a cosponsor of S. 382, a bill to prohibit the use of racial and other discriminatory profiling in connection with searches and detentions of individuals by the United States Customs Service personnel, and for other purposes.

S. 847

At the request of Mr. DAYTON, the names of the Senator from Georgia (Mr. CLELAND) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 860

At the request of Mr. GRASSLEY, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 860, a bill to amend the Internal
Revenue Code of 1986 to provide for the treatment of certain expenses of rural letter carriers.

At the request of Mr. Reid, the names of the Senator from Ohio (Mr. DeWine) and the Senator from Arkansas (Mrs. Lincoln) were added as cosponsors of S. 866, a bill to amend the Public Health Service Act to provide for a health national media campaign to reduce and prevent underage drinking in the United States.

At the request of Mr. Gregg, the name of the Senator from Georgia (Mr. Cleland) was added as a cosponsor of S. 952, a bill to provide collective bargaining rights for postal service officers employed by States or their political subdivisions.

At the request of Mr. Feingold, the name of the Senator from Maryland (Ms. Mikulski) was added as a cosponsor of S. 988, a bill to prohibit racial profiling. At the request of Mr. Dodd, his name was added as a cosponsor of S. 988, supra.

At the request of Mr. Dodd, his name was added as a cosponsor of S. 989, supra.

At the request of Mr. Bingaman, the names of the Senator from New Hampshire (Mr. Smith) and the Senator from Colorado (Mr. Allard) were added as cosponsors of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

At the request of Mr. Dodd, the name of the Senator from Minnesota (Mr. Dinkins) was added as a cosponsor of S. 1017, a bill to provide the people of Cuba with access to food and medicines from the United States, to ease restrictions on travel to Cuba, to provide scholarships for certain Cuban nationals, and for other purposes.

At the request of Mr. Conrad, the name of the Senator from Maine (Ms. Snowe) was added as a cosponsor of S. 1030, a bill to improve health care in rural areas by amending title XVIII of the Social Security Act and the Public Health Service Act, and for other purposes.

At the request of Mrs. Hutchison, the name of the Senator from Mississippi (Mr. Lott) was added as a cosponsor of S. 1037, a bill to amend title 10, United States Code, to authorize disability retirement to be granted posthumously for members of the Armed Forces who die in the line of duty while on active duty, and for other purposes.

At the request of Mr. Dayton, the name of the Senator from South Dakota (Mr. Johnson) was added as a cosponsor of S. 1058, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers and the producers of biodiesel, and for other purposes.

At the request of Ms. Mikulski, the name of the Senator from Nevada (Mr. Reid) was added as a cosponsor of S. 1083, a bill to amend title XVIII of the Social Security Act to exclude clinical social worker services from coverage under the Medicare skilled nursing facility prospective payment system.

At the request of Mr. Graham, the name of the Senator from Ohio (Mr. DeWine) was added as a cosponsor of S. 1104, a bill to establish objectives for negotiating, and procedures for, implementing certain trade agreements.

At the request of Mr. Lieberman, the name of the Senator from New Mexico (Mr. Domenici) was added as a cosponsor of S. 1134, a bill to amend the Internal Revenue Code of 1986 to modify the rules applicable to qualified small business stock.

At the request of Mr. Hatch, the name of the Senator from Colorado (Mr. Campbell) was added as a cosponsor of S. J.Res. 7, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

At the request of Mr. Harkin, the names of the Senator from Connecticut (Mr. Dodd) and the Senator from North Dakota (Mr. Conrad) were added as cosponsors of S. 1007, 100th Congress, 1st session, a resolution designating the Second Sunday in the month of December as “National Children’s Memorial Day” and the last Friday in the month of April as “Children’s Memorial Flag Day.”

At the request of Mr. Reid, the name of the Senator from Delaware (Mr. Biden) was added as a cosponsor of S. 109, a resolution designating the second Sunday in the month of December as “National Children’s Memorial Day” and the last Friday in the month of April as “Children’s Memorial Flag Day.”

At the request of Mr. Fitzgerald, the name of the Senator from Iowa (Mr. Harkin) was added as a cosponsor of S. Con. Res. 45, a concurrent resolution expressing the sense of Congress that the Humane Methods of Slaughter Act of 1958 should be fully enforced so as to prevent needless suffering of animals.

At the request of Mr. Johnson, his name was added as a cosponsor of S. Con. Res. 53, concurrent resolution encouraging the development of strategies to reduce hunger, and to promote free market economies and democratic institutions, in sub-Saharan Africa.

At the request of Mr. Hagel, the names of the Senator from Minnesota (Mr. Wellstone), the Senator from Michigan (Ms. Stabenow), the Senator from Maryland (Mr. Sarbanes) and the Senator from Nebraska (Mr. Nelson) were added as cosponsors of S. Con. Res. 53, supra.

At the request of Mr. Hagel, the names of the Senator from Minnesota (Mr. Wellstone), the Senator from Michigan (Ms. Stabenow), the Senator from Maryland (Mr. Sarbanes) and the Senator from Nebraska (Mr. Nelson) were added as cosponsors of S. Con. Res. 53, supra.

At the request of Mr. Allard, the names of the Senator from New Hampshire (Mr. Gregg), the Senator from Idaho (Mr. Craig), the Senator from Oklahoma (Mr. Nickles), the Senator from Virginia (Mr. Allen), the Senator from Oklahoma (Mr. Inhofe), the Senator from New Hampshire (Mr. Smith), the Senator from Texas (Mr. Gramm), the Senator from Maine (Ms. Collins), the Senator from Alabama (Mr. Sessions), the Senator from Wyoming (Mr. Enzi) and the Senator from Colorado (Mr. Campbell) were added as cosponsors of amendment No. 821 proposed to S. 1052, a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

STATMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. Hatch (for himself, Mr. Feingold, Mr. Grassley, Mr. Leahy, Mr. Breaux, Mr. Burns, Mr. Reid, Mr. Craig, Mr. Torricelli, Mr. Bennett, Ms. Snowe, Mr. DeWine, Mr. Thomas, and Mr. Hutchinson—S. 1140. A bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts; to the Committee on the Judiciary.

Mr. Hatch. Mr. President, I rise today to introduce S. 1140, “The Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001.” I am pleased to be joined in cosponsorship of this legislation by Senators Feingold, Grassley, Leahy, Warner, Breaux, Burns, Reid, Craig, Torricelli, Bennett, Snowe, DeWine, Thomas, and Hutchinson. Our bill is intended to allow automobile dealers their day in court when they have disputes with the manufacturers. As automobile dealers throughout Utah have pointed out to me, the
There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1140
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001”.

SEC. 2. ELECTION OF ARBITRATION.
(a) Motor Vehicle Franchise Contracts.—Chapter 1 of title 9, United States Code, is amended by adding at the end the following:

“§ 17. Motor vehicle franchise contracts
(a) For purposes of this section, the terms—
(1) ‘motor vehicle’ has the meaning given such term under section 30102(6) of title 49; and
(2) ‘motor vehicle franchise contract’ means a contract under which a motor vehicle manufacturer, importer, or distributor sells motor vehicles to any other person for resale to an ultimate purchaser and authorizes such other person to repair and service the manufacturer’s motor vehicles.
(b) Whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to the contract, arbitration may be used to settle such controversy only if after such controversy arises both parties consent in writing to use arbitration to settle such controversy.
(c) Whenever arbitration is elected to settle a dispute under a motor vehicle franchise contract, the arbitrator shall provide the parties to the contract with a written explanation of the factual and legal basis for the award.”.

(b) Technical and Conforming Amendment.—The table of sections for chapter 1 of title 9, United States Code, is amended by adding at the end the following:

“17. Motor vehicle franchise contracts.”.

SEC. 3. EFFECTIVE DATE.
The amendments made by section 2 shall apply to contracts entered into, amended, altered, modified, renewed, or extended after the date of the enactment of this Act.

Mr. GRASSLEY. Mr. President, over the years, I have been in the forefront of promoting alternative dispute resolution, (ADR), mechanisms to encourage alternatives to litigation when disputes arise. Such legislation includes the permanent use of ADR by Federal agencies.

Last Congress, we also passed legislation to authorize Federal court annexed arbitration. These statutes are based, in part, on the premise that arbitration should be voluntary rather than mandatory.

While arbitration often serves an important function as an efficient alternative to judicial proceedings, these statutes must be considered by both parties, such as a limited judicial review and less formal procedures regarding discovery and rules of evidence. When mandatory binding arbitration is forced upon a party, for example when it is placed in a boiler-plate agreement, it deprives the weaker party the opportunity to elect any other forum. As a proponent of arbitration I believe it is critical to ensure that the selection of arbitration is voluntary and fair.

Unequal bargaining powers exist in contracts between automobile and truck dealers and their manufacturers. The manufacturer drafts the contract and presents it to dealers with no opportunist to negotiate. Increasingly, these manufacturers are including compulsory binding arbitration in their agreements, and dealers are finding themselves with no choice but to accept it. If they refuse to sign the contract they have no franchise. This clause then binds the dealer to arbitration as the exclusive procedure for resolving any dispute. The purpose of arbitration is to reduce costly, time-consuming litigation, not to force a party to an adhesion contract to waive access to judicial or administrative forums for the pursuit of rights under State law.

I am extremely concerned with this industry practice that conditions the granting or keeping of motor vehicle franchises on the acceptance of mandatory binding arbitration. While several States have enacted statutes to protect weaker parties in “take it or leave it” contracts and attempted to prevent attack type of inequitable practice, these State laws have been held to conflict with the federal Arbitration Act (FAA).

In 1925, when the FAA was enacted to make arbitration agreements enforceable in Federal courts, it did not expressly provide for preemption of State law. Nor is there any legislative history to indicate Congress intended to occupy the entire field of arbitration. However, in 1984 the Supreme Court interpreted the FAA to preempt state law in Southland Corporation v. Keating. This, State laws that protect weaker parties from forced acceptance arbitration and to waive State rights, such as Iowa’s law prohibiting manufacturers from requiring dealers to submit to mandatory binding arbitration, are preempted by the FAA.

With mandatory binding arbitration agreements becoming increasingly common in motor vehicle dealer relationships, new and unique relationship between small business auto dealers and motor vehicle manufacturers, which is strictly governed by State law. This legislation is necessary to protect the State interest in regulating the dealer, manufacturer relationship.

All States, except for Alaska, have enacted laws specifically designed to regulate the economic relationship between motor vehicle dealers and manufacturers to prevent unfair manufacturer contract terms and practices. In most States, including my home State of Utah, effective State administrative boards specifically established to resolve dealer, manufacturer disputes.

I must note that this legislation is extremely narrow and affects only the unique relationship between small business auto dealers and the motor vehicle manufacturers, which is strictly governed by State law. This legislation is necessary to protect the State interest in regulating the motor vehicle dealer, manufacturer relationship.

I urge my colleagues to support this worthwhile legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.
The first State automobile statute was enacted in my home State of Wisconsin in 1937 to protect citizens from injury and damage from auto and truck manufacturers. If a distributor induced a Wisconsin citizen to invest considerable sums of money in dealership facilities, and then canceled the dealership without cause, since then, all States except Alaska have enacted substantive laws to balance the enormous bargaining power enjoyed by manufacturers over dealers and to safeguard small business dealers from unfair automobile and truck manufacturer practices. A little known fact is that under the Federal Arbitration Act, FAA, arbitrators are not required to apply the particular Federal or State law that would be applied by a court. That enables the stronger party, in this case the auto or truck manufacturer, to use arbitration to circumvent laws specifically enacted to regulate the dealer/manufacturer relationship. Not only is the circumvention of these laws inequitable, it also eliminates the deterrent to prohibited acts that State law provides.

The majority of States have created their own alternative dispute resolution mechanisms and forums with access to auto industry expertise that provide inexpensive, efficient, and non-judicial resolution of disputes. For example, in Wisconsin, mandatory mediation is required before the start of an administrative hearing or court action. Arbitration is also an option if both parties agree. These State dispute resolution forums, with years of experience and precedent, are greatly responsible for the small number of manufacturer-dealer lawsuits. When mandatory binding arbitration is included in dealer agreements, these specific State laws and forums established to resolve auto dealer disputes are effectively rendered null and void with respect to dealer agreements.

Besides losing the protection of Federal and State law and the ability to use State forums, there are numerous reasons why a dealer may not want to agree to binding arbitration. Arbitration lacks some of the important safeguards and due process offered by our judicial system. In short, this practice clearly violates the dealers’ fundamental due process rights and runs directly counter to basic principles of fairness.

Franchise agreements for auto and truck dealerships are typically not negotiable between the manufacturer and the dealer. The dealer accepts the terms offered by the manufacturer, or it loses the dealership, plain and simple. Dealers have been forced to rely on the States to pass laws designed to balance the manufacturers’ far greater bargaining power and to safeguard the rights of dealers.

Some years ago, it came to my attention that the automobile and truck manufacturers, which often present dealers with “take it or leave it” contracts, are increasingly including mandatory and binding arbitration clauses as a condition of entering into or maintaining an auto or truck franchise. This practice forces dealers to submit their disputes with manufacturers to arbitration. As a result, dealers are required to waive access to judicial or administrative forums, substantive contract remedy and protection. In short, this practice clearly violates the dealers’ fundamental due process rights and runs directly counter to basic principles of fairness.

Franchise agreements for auto and truck dealerships are typically not negotiable between the manufacturer and the dealer. The dealer accepts the terms offered by the manufacturer, or it loses the dealership, plain and simple. Dealers have been forced to rely on the States to pass laws designed to balance the manufacturers’ far greater bargaining power and to safeguard the rights of dealers.

The bill would not prohibit arbitration. On the contrary, the bill would encourage arbitration by making it a fair choice that both parties to a franchise contract may willingly and knowingly select. In short, this bill would ensure that the decision to arbitrate is truly voluntary and that the rights and remedies provided for by our judicial system are not waived under coercion. In effect, if small business owners today want to obtain or keep their auto or truck franchise, they may be able to do so only by relinquishing their legal rights and foregoing the opportunity to use the courts or administrative forums. I cannot say this more strongly, this is unacceptable; this is
wrong. It is at great odds with our tradition of fair play and elementary notions of justice. I therefore urge my colleagues to join in this bipartisan effort to put an end to this invidious practice.

By Mr. LIEBERMAN:

S. 1142. A bill to amend the Internal Revenue Code of 1986 to repeal the minimum tax preference for exclusion for incentive stock options; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, today I am reintroducing a proposal with regard to the perverse impact of the Alternative Minimum Tax, AMT, on Incentive Stock Options, ISOs. I previously introduced this proposal on April 30, 2001, as Section 5 of S. 798, the Productivity, Opportunity, and Prosperity Act of 2001. I am reintroducing this proposal as a separate bill to highlight the importance of this issue.

Incentive stock options and the AMT did not exist when Franz Kafka’s “The Castle” was first published in 1926. The book describes the Kafkaesque existence of the protagonist, K., to gain recognition from the mysterious authorities ruling from their castle a village where K. wants to establish himself. The world he inhabits is both absurd and real. Kafka’s characters are trapped, and punished or threatened with punishment before they even have offended the authorities.

The AMT/ISO interaction would be one that Kafka would appreciate. In the case of ISOs an employee who receives ISOs as an incentive can be taxed on the phantom paper gains the tax code deems to exist when he or she exercises an option, and be required to pay the AMT tax on these “gains” even if the “gains” do not, in fact, exist when the tax is paid. This means the taxpayer may have no gains, no profits or assets, with which to pay the AMT and might even have to borrow funds to pay the tax or even go into default on his or her ISO liability.

This Kafkaesque situation is unfair. It is not fair to impose tax on “income” or “gains” unless the income or gains exist. With the AMT tax on ISOs, it is not relevant if the “gains” exist in a financial sense. That they exist on paper is sufficient to trigger the tax.

This situation is also inconsistent with many well-established Federal Government policies. For example, our country favors stock options as an incentive for hard-working and productive employees of entrepreneurial companies. In most cases, entrepreneurs take enormous risks, receive less compensation than employees working for established companies, and have no company-sponsored pension plan. In addition, our country favors employee-ownership of firms. This ownership gives these employees a huge stake in the success of the company and motivates them to dedicate themselves to the firm’s success. Finally, our country also favors long-term investments that generate growth. We know that growth occurs when entrepreneurs take risks over the long-term and build fundamental value for their companies and shareholders and owners. The policy favoring long-term investments is reflected in the fact that capital gains incentives are available only if an investment is held for at least one year. An investment sold before the end of this “holding period” receives no capital gains benefit. The application of the AMT to ISOs is inconsistent with all three of these public policies.

Let me explain the difference between ISOs and NSOs. Incentive stock options are sanctioned by the Internal Revenue code. Under current law the employer pays no tax when he or she exercises the option and buys the company’s shares at the stock option price. The company receives no tax deduction on the spread, the difference between the option price and the market price for the stock of the employer. K holds the stock for two years after the grant of the option and one year after the exercise of the option, he or she pays the capital gains tax on the difference between the exercise and sale price on the sale of the stock. The tax payment is deferred until the stock is sold and the tax is paid on the real gains that are realized from the sale.

NSOs are stock options that do not satisfy the tax code requirements for ISOs. They are “non-qualifying stock options” or NSOs. With NSOs the employee is taxed immediately when the option is exercised on the spread between the grant and exercised price. This forces an employee to sell stock as soon as he or she exercise their options. The tax is paid at the ordinary income tax rates, not the preferential capital gains tax rates. The company receives a business expense deduction on the spread.

If this were the whole story, it is clear that companies would tend to offer ISOs rather than NSOs to their employees. Employees would be encouraged to hold their shares for at least a year after the option is exercised, which helps to bind them to the company. They would then qualify for capital gains tax rates on the realized gains.

The problem is that ISOs come with a major liability, the application of the Alternative Minimum Tax, AMT, to the spread at the time of exercise. This tax is imposed on the spread at the time the option is exercised. This tax at the time of exercise is imposed on the phantom gains the investment is sold with gains or losses. This tax at the time of exercise defeats the purpose of ISOs, forces employees to sell their stock, to pay the AMT tax, before the end of the holding period, and pay ordinary income tax rates. The difference between ordinary income tax rates and capital gains tax rates can be 15 percent or more.

The AMT tax is imposed on the spread at the time the option is exercised and it is irrelevant if the stock price at the time when the AMT tax is paid or when the stock is sold is a fraction of this price. The “gains” at the time of exercise are what count, not real gains in a financial sense when the investment is finally sold.

The application of the AMT at the time of exercise to ISOs is a major disincentive for companies to offer ISOs to their employees. The purpose of the ISO law when it was enacted by Congress was to encourage long-term holdings of the stock. This purpose is defeated by the AMT application at the time of exercise. Even if firms could educate their employees about the AMT liability, the fact that this tax is imposed at the time of exercise on phantom gains would remain a major disincentive for them to offer ISOs. The risks are too great that the employee will have no real gains with which to pay the tax, that employee will have to sell stock immediately at ordinary income tax rates to make sure that funds are available to pay the tax when it is due, or take the risk of holding the stock.

My understanding is that the firms that are most likely to face the AMT/ISO problem are those firms that have no ability to use the corporate deduction that is available for NSOs. These are small firms with no tax liability for which the deduction is simply a tax loss carryforward with no current year value. With these firms the ISO held out the possibility of the employees receiving capital gains tax treatment of their gains. It is particularly sad that it is these firms and these employees which are feeling the brunt of the AMT/ISO problem.

The application of the AMT to ISOs is strange because long-term holdings of stock, as required by the ISO law, are classic capital gains transactions and we do not apply the AMT to the capital gains tax that is paid when the stock is sold. This lower capital gains rate, is a tax benefit but that differential is not included in the AMT. Given all the problems we are now seeing with the AMT
the capital gains differential should not be included as a preference item. But, by an accident of history, the AMT applied to ISOs. This makes no sense and it is an anomaly in the tax code. When the Congress restored the capital gains differential, and did not include it as an AMT tax preference item, we should have enacted a conforming amendment reverting the AMT and ISOs. We didn’t, and we should do so now.

With the AMT applied to ISOs, taxpayers are caught in a Catch-22 situation. If they hold the stock for the required year, they can qualify for capital gains treatment on the eventual sale of the stock. But, in doing so they are taking a huge risk that the AMT tax bill will exceed the value of the stock when the AMT is paid. If the tax is too low, they may have to sell their stock before the capital gains holding period has run and pay ordinary income tax rates on any gains. This is a form of lottery that serves no public policy.

The case was created to ensure the rich cannot use tax shelters to avoid paying their “fair share.” Taxpayers are supposed to calculate both their regular tax and the AMT bill, then pay whichever is higher. The AMT is likely to snare 1.5 million taxpayers this year and nearly 36 million by 2010. But the case with ISOs is one where the taxpayers may never see the “gains,” and nonetheless owe a tax on them. Whatever the merits might be for the AMT for taxpayers with real gains, they have no bearing on taxpayers who may never see the gains. It is simply unfair to impose a tax on gains that exist only on paper. If the employee does realize gains, they should and will pay tax on them, but only if and when the gains are real.

Of course, with the recent huge drop in values for some stocks, many entrepreneurs are now being hit with immense AMT tax bills on the paper gains on stocks that are now worth a fraction of the price at the time of exercise. At a townhall meeting held in California by Representative LOFGREN and Representative BOB MATSUI, Kathy Swartz, a Mountain View woman, six months pregnant and soon to sell her “dream house” because she and her husband Karl owe $2.4 million in AMT, asked, “How many victims do you need before you say it’s horrible?” We are talking about taxpayers who in fact owe five- to seven-figure tax bills on gains they never realized.

My bill would change those tax rules so that the AMT no longer applies to ISOs and no tax is owed at the time when the entrepreneur exercises the option. This change would eliminate the unfairness that paper gains on ISOs. This would encourage long-term holdings of stock, not immediate sale of the stock as a hedge against AMT tax liability. It would do nothing to exempt entrepreneurs from paying tax on their real gains when they eventually sell the stock.

My bill would solve this problem going forward. It would not, as drafted, provide relief to the taxpayers who already have been hit with AMT taxes on phantom gains. There is a bipartisan group in the House and Senate focusing on this group of taxpayers. This group has a strong claim for relief based on the inherent unfairness of the AMT as applied to ISOs. The unfairness of this law leads me to call for reform going forward should be remedied for current, and as well as future taxpayers.

Let me be clear about the cost and budget implications of my bill. The Joint Tax Committee on Taxation has found that my proposal would reduce government tax revenues by $12.412 billion. This number is likely to rise, depending on the market for stock options exercised at the time options are exercised as firms move from NSOs to ISOs, those employees with ISOs would not be paying the AMT, and there will be more employees who hold the stock and pay capital gains tax rates. Offsetting this, there will be fewer companies taking the deduction for NSOs. The revenue loss year-by-year is as follows: $1.821 billion (2002), $1.126 (2003), $0.858 (2004), $0.825 (2005), $0.841 (2006), $1.106 (2007), $1.341 (2009), $1.629 (2010), and $1.910 (2011). The loss during the 2002-2006 period is $5.494 billion. I will not propose to enact my bill unless this sum is financed and will have no impact on the Federal budget.

I am pleased that Rep. ZOE LOFGREN (D-CA) has sponsored legislation on AMT/ISO in the other body (H.R. 1497). Her bill has attracted a bipartisan group of cosponsors. I look forward to working with her and other Members to remedy this inequity in the tax code and to do so with regard to current as well as future taxpayers.

Let me note that I have proposed in S. 798 to provide a special capital gains tax rate, in fact to set a zero tax rate, for stock purchased by employees in Initial Public Offerings, and similar purchases of company treasury stock. This zero rate would be effective, however, only if the shares are held for at least three years, so the AMT gamble would be even more dramatic. During the first year of that holding period, the AMT would have to be paid and during the remaining period the value of the stock could well dive from the exercise price creating an even more invidious trap.

Kafka “The Castle” should remain as magnificent fiction. We have no place for taxes on phantom income and paper gains. Our taxpayers should be able to communicate effectively with the castle, not be caught in a bureaucratic nightmare that makes no sense and serves no policy.

By Mr. CAMPBELL:
S. 1143. A bill to require the Secretary of the Treasury to mint coins in commemoration of former President Ronald Reagan; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CAMPBELL. Mr. President, today I introduce the “Ronald Reagan Commemorative Coin Act of 2001.”

The bill I am introducing today would accomplish two worthy goals. First, it would help honor Ronald Reagan, the 40th President of the United States. Second, it would also help raise much needed resources to help families across the United States provide care for their loved ones who have been stricken by Alzheimer’s disease.

I believe that a commemorative coin program would honor Ronald Reagan’s life and contributions to our nation, while also raising funds to help American families in their day to day struggle against this terrible disease.

This legislation’s worthiness and timeliness were underscored just last night when ABC televised a powerful program in which Diane Sawyer interviewed Nancy Reagan. Watching Mrs. Reagan as she so openly and eloquently shared touching insights about their ongoing struggle with Alzheimer’s disease was moving. There is no doubt about the truly deep bonds that unite Ronald and Nancy Reagan and that we need to do what we can to fight the disease that has slowly taken its terrible toll on the Reagans and so many other American families.

Ronald Reagan has worn many hats in his life, including endeavors as a sports announcer, actor, governor and President of the United States. He was first elected president in 1980 and served two terms, becoming the first president to serve two full terms since Dwight Eisenhower.

Ronald Reagan’s boundless optimism and deep-seated belief in the people of the United States and the American Dream helped restore our Nation’s pride in itself and brought about a new “Morning in America.” His challenge to Gorbachev to “tear down this wall,” his successful revival of our economic power, his determination to rebuild our armed forces in order to contain the spread of communism, and his international summitry skills as seen at Reykjavik, Iceland, combined to help bring an end to the Cold War. Ronald Reagan left our Nation in much better shape than it was when he took office.

As Alzheimer’s sets in, brain cells afflicted by the disease gradually lose their cognitive ability. Patients eventually become completely helpless and dependent on those around them for...
even the most basic daily needs. Each of the millions of Americans who is now affected will eventually, barring new treatments, lose their ability to remember recent and past events, family and friends, even simple things like how to take a bath or turn on lights. Ronald Reagan, one of the most courageous and optimistic Presidents in American history, is no exception.

Shortly after being shot in an assassination attempt, Ronald Reagan's courage and good humor in the face of a life threatening situation were evident when he famously apologized to his wife Nancy saying “Sorry honey, I forgot to duck.” Unfortunately, once Alzheimer's disease takes hold, it delivers a slow mind destroying bullet that none of us can duck to avoid. As Ronald Reagan learned when his hearing of his diagnosis “I only wish there was some way I could spare Nancy from this painful experience.” From the moment of diagnosis, it's “a truly long, long, goodbye,” Nancy Reagan said.

Fortunately, funding for Alzheimer's research has increased significantly over the past several years. Ronald Reagan's courage in coming forward and publically announcing his condition played an important role in raising public awareness of Alzheimer's and paved the way for the recent increases in research funding. This bill would complement these efforts.

Once again, the legislation I am introducing today authorizes the U.S. Mint to produce commemorative coins honoring Ronald Reagan while raising funds to help families care for their family members suffering from Alzheimer's disease. I urge my colleagues to support passage of this legislation.

Ronald Reagan's eternal optimism and deep seated belief in an even better future for our Nation was underscored when he said, "I know that for America, there will always be a bright future ahead." This bill, in keeping with this quote's spirit, will help provide for a better future for many American families.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) MINT FACILITY.—Only one facility of the United States Mint may be used to strike any particular combination of designs, finishes, and materials.

(c) PERIOD FOR ISSUE.—The Secretary shall obtain platinum and gold for minting coins under this Act only during the period beginning on January 1, 2005 and ending on December 31, 2005.

SEC. 6. SALE OF COINS.

(a) SALES PRICE.—The coins issued under this Act shall be sold at a price equal to the sum of—

(1) the face value of the coins;

(2) the surcharge provided in subsection (d) with respect to such coins; and

(3) the cost of design and issuance of the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) PREPAID ORDERS.—In general.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(d) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

(e) SURCHARGES.—All sales of coins issued under this Act shall include a surcharge established by the Secretary, in an amount equal to not more than—
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(1) $50 per coin for the $10 coin or $35 per coin for the $5 coin; and
(2) $10 per coin for the $1 coin.

SEC. 7. DISTRIBUTION OF SURCHARGES.

(a) IN GENERAL.—Subject to section 5134(f) of title 31, United States Code, the proceeds from the coins issued under this Act shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to such funds.

(b) AUDITS.—Any organization or entity that receives funds from the Secretary of Health and Human Services under subsection (a) shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to such funds.

SEC. 8. FINANCIAL ASSURANCES.

(a) IN GENERAL.—Subject to subsection (b), the Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

(b) PAYMENT FOR COINS.—A coin shall not be issued under this Act unless the Secretary has received

(1) full payment for the coin;
(2) security satisfactory to the Secretary to indemnify the United States for full payment; or
(3) a guarantee of full payment satisfactory to the Secretary from a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

By Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. LEVIN, Mr. DURBIN, and Mr. AKAKA):

S. 1145. A bill to amend the Internal Revenue Code of 1986 to extend the work opportunity credit to encourage the hiring of certain veterans, and for other purposes; to the Committee on Finance.

Mrs. BOXER. Mr. President, I am introducing legislation to help the estimated 1.5 million veterans who are now living in poverty by giving a tax credit to those employers who hire them and put them on the road to financial independence. This idea was proposed and is supported by the National Coalition for Homeless Veterans and the Non-Commissioned Officers Association.

This legislation is based upon the current tax credit offered for employers who hire those coming off welfare. Veterans groups tell me that the current tax credit is underutilized by veterans because many are not receiving food stamps or are not on welfare. Because the bill I am introducing today bases eligibility on the poverty level, more veterans will be able to benefit from this credit.

My bill would allow employers to receive a hiring tax credit of 50 percent of the veteran's first year wages and a retention credit of 25 percent of the veteran's second year wages. Only the first $20,000 of wages per year will count toward the credit.

I offered this legislation as an amendment to the tax bill. While my amendment failed on a procedural vote, 49–50, opponents indicated that enacting this legislation would be a good thing to do. This being the case, I am hopeful that the Senate will take up and pass the bill I am introducing today in a bipartisan manner. It is the least we can do for our veterans who so bravely served our Nation and deserve our help.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1145

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

Section 322 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11332) is amended to read as follows:

"S. 322. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title $150,000,000 for fiscal year 2002, $160,000,000 for fiscal year 2003, and $170,000,000 for fiscal year 2004."

"SEC. 2. NAME CHANGE TO NOMINATING ORGANIZATION.

Section 301(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331(b)) is amended by striking paragraph (5) and inserting the following:

"(5) United Jewish Communities.".

"SEC. 3. PARTICIPATION OF HOMELESS INDIVIDUALS IN CREDIT.

Section 316(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11346(a)) is amended by striking paragraph (6) and inserting the following:

"(6) guidelines requiring each local board to include in their membership not less than 1 homeless individual, former homeless individual, homeless advocate, or recipient of shelter services, except that such guidelines may waive such requirement for any board unable to meet such requirement if the board consults with homeless individuals, former homeless individuals, homeless advocates, or recipients of food or shelter services.".

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members of targeted groups) is amended by striking (A) of subparagraph (G) by striking the period at the end of subparagraph (H) and inserting “; or”, and by adding at the end the following: “(J) qualified low-income veteran.”

(b) Qualified Low-Income Veteran.—Section 51(d) of the Internal Revenue Code of 1986 (relating to members of targeted groups) is amended by inserting paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following: “(10) QUALIFIED LOW-INCOME VETERAN.—

(A) IN GENERAL.—The term ‘qualified low-income veteran’ means any veteran whose gross income for the taxable year preceding the taxable year including the hiring date, was below the poverty line (as defined by the Office of Management and Budget) for such preceding taxable year.

(B) VETERAN.—The term ‘veteran’ has the meaning given such term by paragraph (3)(B).

(c) Special Rules for Determining Amount of Credit.—For purposes of applying this subpart to wages paid or incurred to any qualified low-income veteran—

(I) subsection (a) shall be applied by substituting “qualified first-year wages and 25 percent of the qualified second-year wages” for “40 percent of the qualified first-year wages”, and

(II) in paragraph (2) and (3) of section 51(c)(4) of the Internal Revenue Code of 1986 (relating to termination) is amended by inserting “(except for wages paid to a qualified low-income veteran)” after “individual”.

(1) QUALIFIED FIRST-YEAR WAGES.—The term ‘qualified first-year wages’ means—

(I) with respect to any individual, qualified wages attributable to service rendered during the first year beginning with the day the individual begins work for the employer.

(II) with respect to any individual, qualified wages attributable to service rendered during the first year beginning on the day after the last day of the 1-year period with respect to such individual determined under subsection (I).

(III) only first $20,000 of wages per year taken into account.—The amount of the qualified first-year wages which may be taken into account with respect to any individual shall not exceed $20,000 per year.

(c) Permanence of Credit.—Section 51(c)(4) of the Internal Revenue Code of 1986 (relating to termination) is amended by inserting “(except for wages paid to a qualified low-income veteran)” after “individual”.

(d) Effective Date.—The amendments made by this section shall apply to individuals who begin work for the employer after the date of the enactment of this Act.

By Mr. ALLARD

S. 1146. A bill to amend the Act of March 3, 1875, to permit the State of Colorado to use land held in trust by the State as open space; to the Committee on Energy and Natural Resources.

Mr. ALLARD. Mr. President, today I am introducing legislation to fulfill the wishes of my fellow Coloradans to allow the State to protect 300,000 acres of State land as open space.

This amendment has issue date back to 1875 when Congress passed the legislation which authorized the Territory of Colorado to form a constitution, State government and be admitted into the Union. The 1875 Enabling Act established that Sections 16 and 36 of each township in the new State would be “granted to the several public schools of the common schools.” The Federal directive to the State was clear: provide a sound financial basis for the long-term benefit of public schools. The Colorado State Constitution further strengthened this position and required that the new State Board of Land Commissioners manage its land holdings “in such a manner as will secure the maximum possible amount” for the public school fund.

Today, there are some three million surface acres of State trust lands which are leased for ranching, farming, oil and gas production and other uses. Some of these lands are the most beautiful parcels in the State and offer a tremendous natural resource.

Through the years, the lands have been a reliable, but a dwindling source of funds to the overall education budget. Currently, the State of Colorado spends approximately $3.5 billion annually on public schools, of which about $22 million revenues from State trust lands account for about $22 million.

Now, however, Coloradans priorities have changed, including a strong desire to protect open space and the environment. These changes became evident in a 1996 voter approved State Constitutional Amendment which gave more flexibility in the management of the trust lands. Among other things, the Amendment established a 300,000 acre Stewardship Trust. The voters recognized that certain State trust lands may be more valuable in the future if they are kept in the trust land portfolio rather than disposed of for a short term financial gains. The lands in the trust trust, how Stewardship Trust is fully implemented.

It is also clear that Colorado voters and ensure that these lands receive special protection from sale or development.

This is a unique bill and ensures the state’s flexibility in managing the trust lands. It does not change the intent of the Stewardship Trust, just ensures that the Enabling Act and the State Constitution are consistent.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

By Mr. ALLARD


Mr. NICKLES. Mr. President, I rise today to introduce legislation, the Thorium Remediation Reauthorization Act of 2001. This bill will provide authorization for the Federal Government to pay its share of decommissioning and remediation costs for a thorium facility in West Chicago, Illinois. In a DOE proceeding, it was determined that the government is responsible for 55.2 percent of all West Chicago cleanup costs because 55.2 percent of West Chicago tailings resulted from Federal contracts. Under Title X of the Energy Policy Act of 1992 (“EPACT”), the thorium licensee pays for all West Chicago cleanup costs, and is then reimbursed, though annual appropriations, the government’s share of those costs.

There is already more than a $60 million shortage in authorized funding for the Federal share of West Chicago cleanup costs. Despite that, the thorium licensee has continued to pay all decommissioning costs at the West Chicago factory site, as well as remediation costs at vicinity properties known as Reed-Keppler Park, Residential Properties, and Kress Creek. Remediation of Reed-Keppler Park was finished late last year and remediation of
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number 37,600,000.

By Mr. BURNS:
S. 1148. A bill to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Project, and the Intake Irrigation Project to the appurtenant irrigation districts; to the Committee on Energy and Natural Resources.

S. 1148. A bill to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Project, and the Intake Irrigation Project to the appurtenant irrigation districts; to the Committee on Energy and Natural Resources.

Mr. BURNS. Mr. President, I rise today to introduce a piece of legislation that helps a large number of family farmers on the border of Montana and North Dakota. The Lower Yellowstone Irrigation Projects Title Transfer moves ownership of these irrigation projects from Federal control to local control. Both the Bureau of Reclamation and those relying on the projects for their livelihood agree there is little value in having the Federal Government retain ownership.

I introduced this legislation in the last Congress, and continue to believe it helps us to achieve the long term goals of Montana irrigators, and the mission of the Bureau of Reclamation. Just this week I attended the confirmation hearing of John W. Keys, III, who is the designate for Commissioner of the Bureau of Reclamation. I asked his position on title transfers of irrigation projects like the Lower Yellowstone, where local irrigation districts have reasonable return rights on the Federal properties, and where the Bureau has encouraged the transfer of title to the Districts. His response to me was very encouraging. He stated this type of title transfer "makes sense and is an opportunity to move facilities from Federal ownership to more appropriate control." He has promised to work with me and the Irrigation District to make this a reality, and I look forward to it.

The history of these projects dates to the early 1900's with the original Lower Yellowstone project being built by the Bureau of Reclamation between 1906 and 1910. The Savage Unit was added in 1947-48. The end result was the creation of fertile, irrigated land to help spur economic development in the area. To this day, agriculture is the number one industry in the area.

The local impact of the projects is measurable in numbers, but the greatest impacts can only be seen by visiting the area. The family farms rely on these projects for economic substance, and the entire area relies on them to create stability in the local economy. In an area that has seen booms and busts in oil, gas, and other commodities, these irrigated lands continued producing and offering a foundation for the businesses in the area.

As we all know, the agricultural economy is not as strong as we'd like it to be, but these irrigated lands offer a reasonable return in the family farm. The 500 family farms continue to produce and offer a foundation for strong communities based upon the ideals that have made this country successful. The 500 families impacted are hard working, honest producers, and I can think of no better people to manage their own irrigation projects.

Every day, we see an example of where the Federal Government is taking on a new task. We can debate the merits of these efforts on an individual basis. I think we all agree that while the government gets involved in new projects there are many that we can safely pass on to state or local control. The Lower Yellowstone Projects are a prime example of such an opportunity, and I ask my colleagues to join me in seeing this legislation passed as quickly as possible.

By Mr. SMITH of New Hampshire:
S. 1150. A bill to waive tolls on the Interstate System during peak holiday travel periods; to the Committee on Environment and Public Works.

Mr. SMITH of New Hampshire. Mr. President, I rise to introduce the Interstate Highway System Toll-Free Holiday Act.

As we move into this Fourth of July holiday to celebrate our nation's 225th birthday, many will do so in true American fashion by loading up the kids and the dog in the family car and heading out for a fun family vacation. Unfortunately, many of these family trips will quickly turn into frustration. Just as you get on the road and begin that family outing, you are greeted by a screeching halt, faced with what seems to be an endless line that is not moving. Soon, the kids will grow restless and angry. You've just reached the end of the line of the first toll booth and the delay and frustration begins. Of course, when you do finally make it to the booth, they take your money. Every holiday, no exception, I want to help make those holiday driving vacations more enjoyable by removing that toll booth frustration. My legislation will provide the much deserved relief from all of that holiday grief.

The Interstate Highway System Toll-Free Holiday Act provides that no tolls will be collected and no vehicles will be stopped at toll booths on the Interstate System during peak holiday travel periods. The exact duration of the toll waiver will be left to the States to determine, but will include, at a minimum, the entire 24 hour period of each legal Federal holiday. The bill will also authorize the Secretary of Transportation to reimburse the State, at the State's request, for lost toll revenues out of the Highway Trust Fund, which is funded by the tax that we all pay when we purchase gas for our cars. I want to keep the State highway funds whole, and, at the same time, provide relief to all those who simply want a hassle-free holiday trip.

There are currently some 2,200 miles of toll facilities on the 42,800 mile Interstate System. On peak holiday travel days, traffic increases up to 50 percent over a typical weekday. In New Hampshire last year, the I-95 Hampton toll booth had a 10 percent average increase in traffic over the four-day Fourth of July weekend compared to the previous weekend. That is equivalent to an additional 8,000 vehicles passing through this one toll booth every day. That increase in volume at the toll sites is not only an inconvenience in time and money, but also adds to safety concerns and, because vehicle
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emissions are higher when idling, air quality suffers. I am pleased that this bill will alleviate transportation headaches and problems associated with increased toll booth traffic on holidays.

This is just one of what will be a series of bills that I will be introducing, as the Ranking Member of the Environment and Public Works Committee, to address transportation needs in New Hampshire and across the Nation, as we prepare for the reauthorization of the next major comprehensive highway bill in 2003.

I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1130

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Interstate Highway System Toll-Free Holiday Act of 2001."

SEC. 2. WAIVER OF TOLLS ON THE INTERSTATE SYSTEM DURING PEAK HOLIDAY TRAVEL PERIODS.

(a) DEFINITIONS.—In this section, the terms "Interstate System", "public authority", "Secretary", "State", and "State transportation department" have the meanings given the terms in section 101(a) of title 23, United States Code.

(b) WAIVER.—

(1) IN GENERAL.—No tolls shall be collected, and no vehicle shall be required to stop at a toll booth, for any toll highway, bridge, or tunnel on the Interstate System during any peak holiday travel period determined under paragraph (2).

(2) PEAK HOLIDAY TRAVEL PERIODS.—For the purposes of paragraph (1), the State transportation department or the public authority having jurisdiction over the toll highway, bridge, or tunnel shall determine the number and duration of peak holiday travel periods, which shall include, at a minimum, the 20 local legal holidays specified in section 6103(a) of title 5, United States Code.

(c) FEDERAL REIMBURSEMENT.—

(1) IN GENERAL.—For each fiscal year, upon request by a State or public authority and approval by the Secretary, the Secretary shall reimburse the State or public authority for the amount of toll revenue not collected by reason of subsection (b).

(2) REQUESTS FOR REIMBURSEMENT.—On or before September 30 of each fiscal year, each State or public authority that desires a refund described in paragraph (1) shall submit to the Secretary a request for reimbursement, based on actual traffic data, for the amount of toll revenue not collected by reason of subsection (b) during the fiscal year.

(d) USE OF REIMBURSED FUNDS.—A request for reimbursement under paragraph (2) shall include a certification by the State or public authority that the amount of the reimbursement will be used only for debt service or for operation and maintenance of the toll facility, reconstruction, re-facing, restoration, and rehabilitation.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this subsection.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1130 is amended to amend the method for achieving quiet technology specified in the National Parks Air Tour Management Act of 2000; to the Committee on Commerce, Science, and Transportation.

Mr. REID, Chairman. I rise today along with my good friend and colleague from Nevada, Senator Ensign because I am deeply concerned that the Federal Aviation Administration has failed to develop the incentives for quiet technology aircraft.

The bill we are introducing today, the "Grand Canyon Quiet Technology Implementation Act," completes the Congressional mandates contained in the National Park Air Tour Management Act of 2000 which called for the implementation of "reasonably achievable" quiet technology standards for the Grand Canyon air tour operators.

Key provisions of the Act called for the Federal Aviation Administration, by April 5th of this year, to: 1. Designate reasonable standards for fixed-wing and helicopter aircraft necessary for such aircraft to be considered as employing quiet aircraft technology; and 2. Establish corridors for commercial air tour operations by fixed-wing and helicopter aircraft that employ quiet aircraft technology, or explain to Congress why they can't. The agency has failed to comply with any of these provisions.

The Act also provides that operators employing quiet technology shall be exempted from operational flight caps. This relief is essential to the very survival of many of these air tour companies. By not complying with these Congressional mandates, the Federal Aviation Administration places the viability of the Grand Canyon air tour industry in jeopardy.

While Senator Ensign and I along with the air tour community have sought to work with the Federal agencies in a cooperative manner, our repeated overtures have been summarily ignored, which forces us to take further legislative action.

Our bill simply requires the Federal Aviation Administration to do its job. It identifies "reasonably achievable" quiet technology provisions contained in the National Park Air Tour Management Act of 2000. It was Senator McCaIN who wanted to ensure that these air tour companies which have already made huge investments in current technology quiet aircraft modifications were rewarded for their initiative. It was Senator McCaIN, an advocate for restoring natural quiet to the Grand Canyon, who took the lead in seeking to ensure that the elderly, disabled and time-constrained visitor still would be able to enjoy the magnificence of the Grand Canyon by air. The legislation we are introducing today, supports Senator McCaIN's vision. The National Park Air Tour Management Act of 2000 is clear. It calls for the implementation of "reasonably achievable" quiet technology incentives. Our Grand Canyon Quiet Technology Implementation legislation is built on today's best aircraft technology.

Some may ask what is "reasonably achievable"? It constitutes the following: replacing smaller aircraft with larger and quieter aircraft with more seating capacity reducing the number of passengers needed to carry the same number of passengers; adding propulsion systems with high-tech mufflers to absorb engine noise; modifying helicopter tail rotors with high-tech components for quieter operation. These modifications typically reduce the sound generated by these aircraft by more than 50 percent.

This is what is "reasonably achievable" in aviation technology. In the year 2001, this is essentially all that can be done to make aircraft quieter. Operators which have spent millions of dollars to make these modifications, in our view, have complied with the intent of the law and deserve relief.

Let us not forget the original intent of this legislation to help restore natural quiet to the Grand Canyon and, as the 1916 Organic Act directs, to provide for the enjoyment of our national parks "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

Air touring is consistent with the Park Service mission.

Based on current air tour restrictions, more than 1.7 million tourists will be denied access to the Grand Canyon during the next decade at a cost to air tour operators conservatively estimated at $250 million.

Senator Ensign and I agree that, to the extent possible and practical, that the quieter these air tour aircraft can be made to be, the better for everyone. That's why it is so important that the Grand Canyon Quiet Technology Implementation Act become the law.
I ask unanimous consent that the text of the Grand Canyon Quiet Technology Implementation Act be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be referred to as the “Grand Canyon Quiet Technology Implementation Act”.

SEC. 2. AMENDMENTS TO QUIET AIRCRAFT TECHNOLOGY.

(a) IN GENERAL.—Section 804 of the National Parks Air Tour Management Act of 2000 (49 U.S.C. 40128 note) is amended by adding at the end the following new subsection:

“(f) ALTERNATIVE QUIET AIRCRAFT TECHNOLOGY—

“(1) GENERAL RULE.—Notwithstanding any other provision of law, an air tour operator based in Clark County, Nevada or at the Grand Canyon National Park Airport shall be treated as meeting the requirements for quiet aircraft technology that apply with respect to commercial air tour operations for tours described in subsection (b), if the air tour operator has met the following requirements:

“(A) The aircraft used by the air tour operator for such tours—

“(i) meet the requirements designated under subsection (a); or

“(ii) if not previously powered by turbine engines, have been modified to be powered by turbine engines and, after the conversion—

“(I) have a higher number of propellers (in the case of fixed-wing aircraft) or main rotor blades (in the case of helicopters) than the aircraft had before the conversion, thereby resulting in a reduction in prop or blade tip speeds and engine revolutions per minute;

“(II) have current technology engine exhaust mufflers;

“(III) in the case of helicopters, have current technology quieter tail rotors; or

“(IV) have modifications, approved by the Federal Aviation Administration, that significantly reduce the aircraft’s sound; or

“(B) The air tour operator has replaced, for use for the tours, smaller aircraft with larger aircraft that have more seating capacity, thereby reducing the number of flights needed to transport the same number of passengers;

“(C) The air tour operator can safely demonstrate, through flight testing administered by the Federal Aviation Administration that applies a sound measurement methodology accepted as standard, that the tour operator can fly existing aircraft in a manner that achieves a sound signature in the same noise range or having the same or similar sound effect as the aircraft that satisfy the requirements of subparagraph (A) or (B).

“(2) EXEMPTION FROM FLIGHT CAPS.—Any air tour operator that meets the requirements described in paragraph (1), shall be—

“(A) exempt from the operational flight locations referred to in subsection (c) and from flight curfews and any other requirement not imposed solely for reasons of aviation safety; and

“(B) granted air tour routes that are preferred for the quality of the scenic views for—

“(i) tours from Clark County, Nevada to the Grand Canyon National Park Airport; and

“(ii) ‘local loop’ tours referred to in subsection (b)(2).

“(b) RESTATEMENT OF CERTAIN AIR TOUR ROUTES.—Any air tour route from Clark County, Nevada, to the Grand Canyon National Park Airport, Tusayan, Arizona, that was eliminated for any reason, by regulation or by action by the Federal Aviation Administration, on or after January 1, 2001, and before the date of enactment of this Act shall be reinstated effective as of such date of enactment and no further changes, modifications, or elimination of any other air tour route by an air tour company based in Clark County, Nevada or at the Grand Canyon National Park Airport, Tusayan, Arizona may be made after such date of enactment without the approval of Congress.

By Mr. CRAIG (for himself and Mrs. FEINSTEIN):

S. 1153. A bill to amend the Food Security Act of 1985 to establish a grassland reserve program to assist owners in restoring and protecting grassland; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. CRAIG. President, I rise today to introduce the “Grassland Reserve Act”, a bill to authorize a voluntary program to purchase permanent or 30 year easement from willing producers in exchange for protection of ranches, grasslands, and lands of high resource value. I am pleased that Senators FEINGOLD and THOMAS, have joined as original cosponsors.

Grasslands provided critical habitat for complex plant and animal communities throughout much of North America. However, many of these lands have been, and are under pressure to be, converted to other uses, threatening and eliminating plant and animal communities unique to this continent. A significant portion of the remaining land is currently or working ranches. Ranchland provides important open-space buffers for animal and plant habitat. Moreover, ranching forms the economic backbone for much of rural western United States. Loss of this economic activity will invariably lead to the loss of the open space that is indispensable for plant and animal communities and for citizens who love the western style of life.

As a rancher from a rural community in Idaho, I have noticed the changes taking place in some parts of my State where, for a number of reasons, working ranchers have been sold into ranchette leaving the landscape divided by fences and homes where cattle and wildlife once roamed. Currently, no Federal programs exist to conserve grasslands, ranches, and other lands of high resource values, other than wetlands, on a national scale. I believe the United States needs a voluntary program to conserve these lands, and the Grasslands Reserve Act does just that.

Specifically, this bill establishes the Grasslands Reserve program through the Natural Resources Conservation Service to assist owners in restoring and conserving eligible land. To be eligible to participate in the program an owner must enroll more than 1,000 acres of land west of the 90th meridian or 50 contiguous acres of land east of the 90th meridian. A maximum of 1,000,000 acres may be enrolled in the program in the form of a permanent or a 30-year easement. The eligible property program includes: native grasslands, working ranches, other areas that contain animal or plant populations of significant ecological value, and land that is necessary for the efficient administration of the easement.

The terms of the easements allow for grazing in a manner consistent with maintaining the viability of native grass species. All uses other than grazing, such as hay production, may be implemented according to terms of a written agreement between the landowner and easement holder. Easements prohibit the production of row crops, and other activities that disturb the surface of the land covered by the easement. The Secretary will work with the State technical committee to establish criteria to evaluate and rank applications for easements which will emphasize support for grazing operations, plant and animal biodiversity, and native grass and shrubland under the greatest threat of conversion. The Secretary may prescribe terms to the easement outlining how the land shall be restored including duties of the land owner and the Secretary. If the easement is violated, the Secretary may require the owner to refund all or part of the payments including interest. The Secretary may also conduct periodic inspections, after providing notice to the owner, to determine that the landowner is in compliance with the terms of the easement.

This legislation requires the Secretary to make payments for permanent easements based on the fair market value of the land less the grazing value of the land encumbered by the easement, and for 30-year easements the payment will be 30 percent of the fair market value of the land less the grazing value of the land encumbered by the easement. Payments may be made in one lump sum or over a 10 year period. Landowners may also choose to enroll their land in a 30-year rental agreement instead of a 30-year easement where the Secretary would make thirty annual payments which approximate the value of a lump sum payment the owner would receive under a 30-year easement. The Secretary is required to assess the payment schedule every five years to make sure that the payments do approximate the value of
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “National Defense Authorization Act for Fiscal Year 2002.”

SEC. 2. TABLE OF CONTENTS.
The table of contents for this Act is as follows:

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Sec. 102. Navy and Marine Corps.
Sec. 103. Air Force.
Sec. 104. Defense-Wide Activities.
Sec. 106. Defense Health Program.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION
Sec. 201. Authorization of Appropriations.

TITLE III—OPERATION AND MAINTENANCE
Subtitle A—Authorization of Appropriations
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Sec. 316. Reimbursement for Non-Commissary Use of Commissary Facilities.
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Sec. 501. Limitation on Number of Non-Dual Status Technicians.

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Congressional Record—Senate
June 29, 2001

Subtitle B—Reports
Sec. 101. Army.
TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

SEC. 301. Operation and Maintenance Funding.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the use of the Armed Forces of the United States and other activities and agencies of the Department of Defense, for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

(1) For the Army, $21,919,680,000.
(2) For the Navy, $29,261,392,000.
(3) For the Air Force, $2,892,314,000.
(4) For the Marine Corps, $2,134,160,000.
(5) For the Defense-wide activities, $12,018,600,000.
(6) For the Army Reserve, $1,787,246,000.
(7) For the Naval Reserve, $1,003,690,000.
(8) For the Marine Corps Reserve, $1,44,023,000.
(9) For the Air Force Reserve, $2,029,866,000.
(10) For the Army National Guard, $3,677,359,000.
(11) For the Air National Guard, $3,867,361,000.
(12) For the Defense Inspector General, $150,221,000.
(13) For the United States Court of Appeals for the Armed Forces, $1,096,000.
(14) For Environmental Restoration, Army, $389,800,000.
(15) For Environmental Restoration, Navy, $257,517,000.
(16) For Environmental Restoration, Air Force, $385,457,000.
(17) For Environmental Restoration, Defense-wide, $23,492,000.
(18) For Environmental Restoration, Formerly Used Defense Sites, $190,355,000.
(19) For Oceans, Humanitarian, Disaster, and Civic Aid programs, $49,700,000.
(20) For Drug Interdiction and Counterdrug Activities, Defense-wide, $320,381,000.
(21) For the Hooper Sands Site, in South Berwick, Maine, pursuant to the Interagency Agreement entered into by the Department of the Navy and the Environmental Protection Agency in full for the remaining Past Response Costs incurred by the agency for actions taken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.), for the Hooper Sands Site in South Berwick, Maine, pursuant to an Interagency Agreement entered into by the Department of the Navy and the Environmental Protection Agency in January 2001.
(22) For the Defense Health Program, $17,565,750,000.
(23) For Cooperative Threat Reduction programs, $403,000,000.
(24) For Overseas Contingency Operations Transfer Fund, $1,344,226,000.
(25) For Support for International Sporting Competitions, Defense, $15,800,000.

SEC. 302. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the use of the Armed Forces of the United States and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

(1) For the Defense Working Capital Funds, $65,304,000.
(2) For the National Defense Sealift Fund, $506,408,000.

SEC. 303. ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2002 from the Armed Forces Retirement Home Trust Fund the sum of $71,440,000 for the operation of the Armed Forces Retirement Home, including the United States Soldiers’ Home and Airmen’s Home and the Naval Home.

SEC. 304. ACQUISITION OF LOGISTICAL SUPPORT FOR SECURITY FORCES.

Section 5 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1629; 123 Stat. 3424) is amended by adding at the end the following new subsection:

“(d) The United States may use contractors or other means to provide logistical support to the Multinational Force and Observers under this section in lieu of providing such support through a logistical support unit comprised of members of the armed forces. Notwithstanding subsections (a) and (b) and section 7(b), support by a contractor or other means under this subsection may be provided without reimbursement, whenever the President determines that such action enhances or supports the national security interests of the United States.”

SEC. 305. CONTRACT AUTHORITY FOR DEFENSE WORKING CAPITAL FUNDS.

Contract authority in the amount of $427,100,000, to remain available until September 30, 2002, is hereby authorized and appropriated to the Defense Working Capital Fund for the procurement, lease-purchase with substantial private sector risk, capital or operating multiple-year lease, of a capital asset, multiple-year lease, or long-term commercial vessel or commercial lease. Notwithstanding subsections (b) and (c) of such section, the Department of Defense is authorized to enter into a lease-purchase, multiple-year lease, or long-term commercial vessel or commercial lease agreement for the purpose of providing_Logistical Support for Security Forces.

Subtitle B—Environmental Provisions

SEC. 309. Reimburse EPA for Certain Costs.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the collection of the Hooper Sands Site, in South Berwick, Maine.


Funds are hereby authorized to be appropriated for fiscal year 2002 for the collection of the Hooper Sands Site, in South Berwick, Maine.

(a) AUTHORITY TO REIMBURSE EPA.—Using funds described in subsection (b), the Secretary of the Navy shall reimburse the Environmental Protection Agency in full for the remaining Past Response Costs incurred by the agency for actions taken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.), for the Hooper Sands Site in South Berwick, Maine, pursuant to the Interagency Agreement entered into by the Department of the Navy and the Environmental Protection Agency in January 2001.

(b) SOURCE OF FUNDS.—Any payment under subsection (a) shall be made using the amounts authorized to be appropriated by paragraph (15) of title 10, United States Code.
SEC. 312. ELIMINATION OF REPORT ON COMMISSARY CONTRACTS AND OTHER FEDERAL AGENCIES FOR SERVICES PROVIDED TO THE DEFENSE COMMISSARY AGENCY.

Section 2482(b)(1) of title 10, United States Code, is amended by striking "“However, the Defense Commissary Agency may not pay for any service provided for the United States Transportation Command any amount that exceeds the price at which the service could be procured through full and open competition." and inserting "The Defense Commissary Agency may not pay for any service provided by a Defense working capital fund activity which exceeds the price at which the service could be procured through full and open competition by the Defense Commissary Agency, as such term is defined in section 4(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(b))." and inserting "‘The Defense Commissary Agency may not pay for any service provided by a Defense working capital fund activity which exceeds the price at which the service could be procured through full and open competition by the Defense Commissary Agency, as such term is defined in section 4(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(b))." in determining the cost for providing such service the Defense Commissary Agency may pay a Defense working capital fund activity those administrative and handling costs it would be required to pay for the provision of such services had the Defense Commissary Agency acquired them under full and open competition. Under no circumstances will any costs associated with mobilization, demobilization, maintenance of infrastructure, or establishment or maintenance of infrastructure be included in such charged the Defense Commissary Agency.”.

SEC. 316. REIMBURSEMENT FOR NON-COMMISSARY USE OF COMMISSARY FACILITIES.

(a) IN GENERAL.—Chapter 147 of title 10, United States Code, is amended by inserting at the beginning of the chapter the following new section:

“§ 2481. Reimbursement for non-commissary use of commissary facilities

“If a commissary facility acquired, constructed or improved (in whole or in part) with commissary surcharge revenues is used for non-commissary purposes, the Secretary of the military department concerned shall reimburse the commissary surcharge revenue for the commissary’s share of the depreciated value of the facility.”.

(b) CLERICAL AMENDMENT.—The table of sections of the section listing of chapter 147 is amended by inserting before the item relating to section 2481 the following new item: “2481. Reimbursement for non-commissary use of commissary facilities.”.

SEC. 317. COMMISSARY CONTRACTS AND OTHER AGENCIES AND INSTRUMENTALITIES.

Section 2482(b) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph:

“(2) Where the Secretary of Defense authorizes the Defense Commissary Agency to sell limited exchange surplus or disposed of as commissary surplus authorized to be sold limited exchange surplus or disposed of as commissary store inventory under section 2486(b)(11) of this title, the Defense Commissary Agency may enter into a contract or other agreement to obtain such merchandise available from the Armed Service Exchanges, provided that such merchandise shall be sold at a price of no more than the exchange retail price less the amount of commissary surcharge authorized to be received by the Defense Commissary Agency from other than the Armed Service Exchanges, the limitations provided in section 2486(e) of this title apply.”.

SEC. 318. OPERATION OF COMMISSARY STORES.

Section 2480(b) of title 10, United States Code, is amended by striking “A contract with a private person” and all that remains to the end of the subsection.

SEC. 320. REIMBURSEMENT FOR RESERVE INTELLIGENCE SUPPORT.

Sec. 320. Reimbursement for Reserve Intelligence Support.


SEC. 329. REIMBURSEMENT FOR RESERVE INTELLIGENCE SUPPORT.

(a) Appropriations available to the Department of Defense for operations and maintenance may be used to reimburse National Guard and Reserve units or organizations for the pay, allowances, and other expenses which are incurred by the National Guard and Reserve units or organizations when members of the National Guard or Reserve provide intelligence, including counterintelligence, support to Combatant Commands, Defense Agencies and Joint Intelligence Activities, including the activities and programs included within the National Foreign Intelligence Program, the Joint Military Intelligence Program, and the Tactical Intelligence and Related Activities aggregate, under full and open competition.

(b) Authorization of appropriations for the Defense Intelligence Agency for the fiscal year ending September 30, 2002, for Intelligence, Surveillance, and Reconnaissance, to include intelligence collected by the National Reconnaissance Program, is increased by the amount of the amount provided from the proceeds of sales of intelligence by the National Reconnaissance Program.

SEC. 330. DISPOSAL OF OBsolete AND EXCESS MATERIALS CONTAINED IN THE NATIONAL DEFENSE STOCKPILE.

Subject to the conditions specified in section 10(e) of the Strategic and Critical Materials Act (42 U.S.C. §58b-3(c)), the President may dispose of the following obsolete and excess materials contained in the National Defense Stockpile in the following quantities:

- Bauxite, Refractory: 40,000 short tons.
- Chromium Metal: 3,512 short tons.
- Iridium: 25,140 Troy ounces.
- Jewel Beads: 30,775.221 pieces.
- Palladium: 11 Troy ounces.
- Quarts Crystal: 216,648 pounds.
- Tantalum Metal Ingot: 120,228 pounds contained tantalum.
- Tantalum Metal Powder: 36,029 pounds contained tantalum.
- Thorium Nitrate: 600,000 pounds.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Sec. 401. End Strengths for Active Forces.

Sec. 401. END STRENGTHS FOR ACTIVE FORCES.

The Secretary is authorized to set authorized strengths for active duty personnel as of September 30, 2002, as follows:

(1) The Army, 480,000.
(2) The Navy, 370,000.
(3) The Marine Corps, 112,600.
(4) The Air Force, 358,800.

Subtitle B—Reserve Forces

Sec. 405. End Strengths for Selected Reserve.

Sec. 405. End Strengths for Reserve on Active Duty in Support of the Reserve.

Sec. 407. End Strengths for Military Technicians (Dual Status).

Sec. 408. Fiscal Year 2003. Limitation on Number of Non-Dual Status Technicians.

Sec. 409. Authorized Strengths: Reserve Officers and Enlisted Members on Active Duty or Full-time National Guard Duty for Administration of the Reserves or National Guard.

Sec. 410. Increase in Authorized Strengths for Air Force Officers on Active Duty in the Grade of Major.

Sec. 405. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2002, as follows:

(1) The Army National Guard of the United States, 350,000.
(2) The Army Reserve, 205,000.
(3) The Naval Reserve, 87,000.
(4) The Marine Corps Reserve, 39,558.
(6) The Air Force Reserve, 74,700.
(7) The Coast Guard Reserve, 8,000.

(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year, and

(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be increased proportionately by the total authorized strengths of such units and by the total number of such individual members.

Sec. 406. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVE.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2002, the following number of Reserves to be serving on full-time active duty or, in the case of members of the National Guard, full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

(1) The Army National Guard of the United States, 22,974.
(2) The Army Reserve, 13,108.
(3) The Naval Reserve, 14,811.
(4) The Marine Corps Reserve, 2,261.
(5) The Air National Guard of the United States, 11,591.
(6) The Air Force Reserve, 1,437.

CONGRESSIONAL RECORD—SENATE
June 29, 2001
SEC. 407. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS).

The Reserve Components of the Army and the Air Force are authorized strengths for military technicians (dual status) as of September 30, 2002, as follows:

(1) For the Army Reserve, 9,000.
(2) For the Army National Guard of the United States, 23,128.
(3) For the Air Force Reserve, 9,818.
(4) For the Air National Guard of the United States, 22,422.

SEC. 408. FISCAL YEAR 2002 LIMITATION ON NUMBERS OF NON-DUAL STATUS TECHNICIANS.

The number of civilian employees who are non-dual status technicians of a reserve component of the Army or Air Force as of September 30, 2002, may not exceed the following:

(1) For the Army Reserve, 1,095.
(2) For the Army National Guard of the United States, 1,600.
(3) For the Air Force Reserve, 0.
(4) For the Air National Guard of the United States, 350.


(a) In General.—Section 12011 of title 10, United States Code, is amended by amending the body of the section to read as follows:

"(a) ceilings for full-time reserve component field grade officers.—The number of reserve officers of the reserve components of the Army, Navy, Air Force, and Marine Corps who may be on active duty or full-time National Guard duty in a controlled grade authorized pursuant to section 502(f) of title 32, or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) in connection with organizing, administrating, recruiting, instructing, or training the reserve components or the National Guard may not, at the end of any fiscal year, exceed a number determined in accordance with the following tables:

**U.S. Army Reserve**

<table>
<thead>
<tr>
<th>AGR Population</th>
<th>0–4 (MAI)</th>
<th>0–5 (LTC)</th>
<th>0–6 (COL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000</td>
<td>987</td>
<td>347</td>
<td>154</td>
</tr>
<tr>
<td>12,000</td>
<td>967</td>
<td>367</td>
<td>153</td>
</tr>
<tr>
<td>13,000</td>
<td>980</td>
<td>360</td>
<td>152</td>
</tr>
</tbody>
</table>

**U.S. Marine Corps Reserve**

<table>
<thead>
<tr>
<th>AGR Population</th>
<th>0–4 (MAI)</th>
<th>0–5 (LTC)</th>
<th>0–6 (COL)</th>
</tr>
</thead>
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<tr>
<td>10,000</td>
<td>50</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>11,000</td>
<td>55</td>
<td>14</td>
<td>13</td>
</tr>
<tr>
<td>13,000</td>
<td>60</td>
<td>13</td>
<td>13</td>
</tr>
</tbody>
</table>

figures listed in the first column of the appropriate table, the corresponding authorized strengths for each of the grades shown in that table at the same proportion as reflected in the nearest limit shown in the table.

"(d) secretarial waiver.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may increase the number of reserve officers that may be on active duty or full-time National Guard duty in a controlled grade authorized pursuant to subsection (a) for the current fiscal year for any of the Reserve components by a number equal to not more than 5% of the authorized strength in that controlled grade.

United States Code, is amended by amending the body of the section to read as follows:

C4 (a) ceilings for full-time reserve component senior enlisted members.—The number of enlisted members in pay grades of E-8 and E-9 for who may be on active duty under section 10211 or 12310, or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) in connection with organizing, administrating, recruiting, instructing, or training the reserve components or the National Guard may not, at the end of any fiscal year, exceed a number determined in accordance with the following tables:

**Army National Guard**

<table>
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<tr>
<th>AGR Population</th>
<th>E-8 (MSG)</th>
<th>E-9 (SSM)</th>
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<td>550</td>
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<tr>
<td>22,000</td>
<td>1,775</td>
<td>615</td>
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<td>24,000</td>
<td>1,900</td>
<td>645</td>
</tr>
<tr>
<td>26,000</td>
<td>1,945</td>
<td>675</td>
</tr>
<tr>
<td>28,000</td>
<td>1,985</td>
<td>705</td>
</tr>
<tr>
<td>30,000</td>
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<td>735</td>
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**U.S. Air Force Reserve**

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<th>AGR Population</th>
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<th>0–5 (LTC)</th>
<th>0–6 (COL)</th>
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<tbody>
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<td>1,100</td>
<td>106</td>
<td>56</td>
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<tr>
<td>1,200</td>
<td>110</td>
<td>60</td>
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<tr>
<td>1,300</td>
<td>114</td>
<td>63</td>
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<tr>
<td>1,400</td>
<td>118</td>
<td>66</td>
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<tr>
<td>1,500</td>
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<tr>
<td>1,600</td>
<td>126</td>
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<td>75</td>
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</tr>
<tr>
<td>2,000</td>
<td>139</td>
<td>84</td>
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<tr>
<td>2,100</td>
<td>143</td>
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<td>2,300</td>
<td>149</td>
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<tr>
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<td>2,600</td>
<td>158</td>
<td>102</td>
<td>35</td>
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</table>

**U.S. Navy Reserve**

<table>
<thead>
<tr>
<th>AGR Population</th>
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<th>0–5 (LTC)</th>
<th>0–6 (COL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>14,000</td>
<td>1,035</td>
<td>521</td>
<td>183</td>
</tr>
<tr>
<td>15,000</td>
<td>1,086</td>
<td>538</td>
<td>193</td>
</tr>
<tr>
<td>16,000</td>
<td>1,137</td>
<td>555</td>
<td>203</td>
</tr>
<tr>
<td>17,000</td>
<td>1,189</td>
<td>572</td>
<td>213</td>
</tr>
<tr>
<td>18,000</td>
<td>1,240</td>
<td>589</td>
<td>223</td>
</tr>
<tr>
<td>19,000</td>
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</tr>
<tr>
<td>20,000</td>
<td>1,343</td>
<td>623</td>
<td>243</td>
</tr>
<tr>
<td>21,000</td>
<td>1,394</td>
<td>640</td>
<td>253</td>
</tr>
<tr>
<td>22,000</td>
<td>1,445</td>
<td>657</td>
<td>263</td>
</tr>
<tr>
<td>23,000</td>
<td>1,496</td>
<td>674</td>
<td>273</td>
</tr>
</tbody>
</table>

"(d) grade substitutions for lower grade ceilings.—Whenever the number of officers serving in any grade for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

**U.S. Marine Corps Reserve**

<table>
<thead>
<tr>
<th>AGR Population</th>
<th>E-8 (STG)</th>
<th>E-9 (SGM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,100</td>
<td>50</td>
<td>12</td>
</tr>
<tr>
<td>1,200</td>
<td>55</td>
<td>13</td>
</tr>
<tr>
<td>1,300</td>
<td>60</td>
<td>13</td>
</tr>
</tbody>
</table>
"(b) GRADE SUBSTITUTION FOR LOWER GRADE CEILINGS.—Whenever the number of members serving in pay grade E-8 for any designated grade in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for pay grade E-8.

(c) DETERMINATION OF AUTHORIZED CEILINGS.—If the total number of members serving in AGR duty in the first column of the appropriate table, the corresponding authorized strengths for each of the grades shown in that table, for that component, are determined by mathematical interpolation between the respective numbers of the two strengths. If the total numbers of members serving in AGR duty in pay grade E-8 are greater or less than the figures listed in the first column of the appropriate table, the Secretary concerned shall fix the corresponding strengths for the grades shown in that table at the same proportion as reflected in the nearest limit shown in the table.

(d) SECRETARIAL WAIVER.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may increase the number of senior reserve enlisted members that may be on active duty or full-time National Guard duty in a controlled grade authorized pursuant to subsection (a) for the current fiscal year for any of the Reserve components by a number equal to not more than 5% of the authorized strengths so determined.

"Air National Guard"

<table>
<thead>
<tr>
<th>AGR Population</th>
<th>E-8 (1ST SGT)</th>
<th>E-9 (SMAE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5,000</td>
<td>650</td>
<td>325</td>
</tr>
<tr>
<td>7,000</td>
<td>1,070</td>
<td>535</td>
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<td>9,000</td>
<td>1,590</td>
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<td>13,000</td>
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<td>1,280</td>
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<tr>
<td>15,000</td>
<td>3,150</td>
<td>1,530</td>
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<tr>
<td>17,000</td>
<td>3,670</td>
<td>1,780</td>
</tr>
<tr>
<td>19,000</td>
<td>4,190</td>
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<td>21,000</td>
<td>4,710</td>
<td>2,280</td>
</tr>
</tbody>
</table>

"U.S. Air Force Reserve"

<table>
<thead>
<tr>
<th>AGR Population</th>
<th>E-8 (SMSGT)</th>
<th>E-9 (CMSGT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>75</td>
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<tr>
<td>1,000</td>
<td>145</td>
<td>75</td>
</tr>
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<td>1,500</td>
<td>206</td>
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<td>2,500</td>
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<td>300</td>
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<tr>
<td>6,500</td>
<td>887</td>
<td>340</td>
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<tr>
<td>7,000</td>
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<td>380</td>
</tr>
<tr>
<td>8,000</td>
<td>1,090</td>
<td>400</td>
</tr>
</tbody>
</table>

SECTION 501. ELIMINATION OF CERTAIN MEDICAL AND DENTAL REQUIREMENTS FOR ARMED FORCES RESERVE.

Section 501(a) of title 10, United States Code, is amended by striking subsection (d); and by redesignating the following subsections as subsections (a), (b), and (c):

(a) DETAIL AND GRADE.—Chapter 565 of title 10, United States Code, is amended by inserting after section 5621 the following new section:

SEC. 5621. OFFICER IN CHARGE; UNITED STATES NAVY BAND.

"An officer serving in a grade not below lieutenant commander may be detailed as officer in charge of the United States Navy Band. While so serving, an officer who holds a grade lower than captain shall hold the grade of captain if he is appointed to that grade by the President, by and with the advice and consent of the Senate. Such appointment may occur notwithstanding the limitation of subsection 559(d) of this title."

SEC. 504. REMOVAL OF REQUIREMENT FOR CERTIFICATION FOR CERTAIN FLAG OFFICERS TO RETIRE IN THEIR HIGHEST GRADE.

Section 570(c)(1) of title 10, United States Code, is amended—

(1) by striking "certifies in writing to the President and Congress" and inserting "determines in writing"; and

(2) by adding at the end of the paragraph the following new sentence:

"The Secretary of Defense shall issue regulations to implement this paragraph."

SEC. 505. THREE-YEAR EXTENSION OF CERTAIN FORCE DRAWDOWN TRANSITION AUTHORITY RELATING TO PERSONNEL MANAGEMENT AND BENEFITS.

(a) EXTENSION OF EARLY RETIREMENT AUTHORITY FOR ACTIVE DUTY MEMBERS.—Section 4403(l) of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 1550 note) is amended by striking "October 1, 2001" and inserting "October 1, 2004".

(b) EXTENSION OF AUTHORITY FOR SPECIAL SEPARATION BENEFIT AND VOLUNTARY EARLY RETIREMENT AUTHORITY RELATING TO NURSES.—Section 1774a(h)(1) of title 10, United States Code, is amended by striking "December 31, 2001" and inserting "September 30, 2004".

(c) EXTENSION OF AUTHORITY FOR SELECTIVE EARLY RETIREMENT BOARDS.—Section 63 8a(a) of such title is amended by striking "December 31, 2001" and inserting "September 30, 2004".

(d) TIMED GRADE REQUIREMENT FOR RETENTION OF GRADE UPON VOLUNTARY RETIREMENT.—(1) Section 1370(a)(2)(A) of such title is amended by striking "December 31, 2001" and inserting "September 30, 2004".

(2) Section 1370(d)(5) of such title is amended by striking "December 31, 2001" and inserting "September 30, 2004".

(e) MINIMUM COMMISSIONED SERVICE FOR VOLUNTARY RETIREMENT AS AN OFFICER.—(1) ARMY.—Section 301 of such title is amended by striking "December 31, 2001" and inserting "September 30, 2004".

(2) NAVY.—Section 6323(a)(2) of such title is amended by striking "December 31, 2001" and inserting "September 30, 2004".

(3) AIR FORCE.—Section 8911(b) of such title is amended by striking "December 31, 2001" and inserting "September 30, 2004".

(f) TRAVEL, TRANSPORTATION, AND STORAGE BENEFITS.—(1) Section 406(c)(1) of title 37, United States Code, is amended by striking "December 31, 2001" and inserting "September 30, 2004".

(2) Section 406(c)(2)(B) of such title is amended by striking "December 31, 2001" and inserting "September 30, 2004".

June 29, 2001


(h) Transitional Health Benefits.—Section 1146 of title 10, United States Code, is amended—

(1) in subsection (a)(1), by striking “December 31, 2001” and inserting “September 30, 2004”;

(2) in subsection (c)(1), by striking “December 31, 2001” and inserting “September 30, 2004”;

(3) in subsection (e), by striking “December 31, 2001” and inserting “September 30, 2004”;

(i) Transitional Commissary and Exchange Benefits.—Section 1146f of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “December 31, 2001” and inserting “September 30, 2004”;

(2) in paragraph (2), by striking “December 31, 2001” and inserting “September 30, 2004”;


(m) Temporary Special Authority for Force Reduction Period Retirements.—Section 4111(b)(1) of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 12681 note) is amended by striking “October 1, 2001” and inserting “October 1, 2004”.

(n) Retired Pay for Non-Regular Service.—(1) Section 12731(f) of title 10, United States Code, is amended by striking “December 31, 2001” and inserting “September 30, 2004”.

(2) Section 12731a of such title is amended—

(A) in subsection (a)(1)(B), by striking “the end of the period described in subsection (b)” and inserting “October 1, 2004”;

(B) in subsection (b), by striking “December 31, 2001” and inserting “October 1, 2004”;

(o) Affiliation with Guard and Reserve Uwts.—(1) Section 1503a of title 10, United States Code, is amended—

(A) in subsection (a)(1)(A), by striking “December 31, 2001” and inserting “September 30, 2004”;

(p) Reserve Montgomery GI Bill.—Section 16163(b)(1)(B) of such title is amended by striking “December 31, 2001” and inserting “September 30, 2004”.

SEC. 506. REVIEW OF ACTIONS OF SELECTION BOARDS.

(a) In General.—Chapter 79 of title 10, United States Code, is amended by adding at the end of the following:

"§ 1555. Exclusive Remedies in Cases Involving Selection Boards.

"(a) Correction of Military Records.—The Secretary concerned may correct a person’s military records in accordance with a recommendation of the special board. Any such correction shall be effective, retroactively, as of the effective date of the action taken on a report of a previous selection board that resulted in the action corrected in the person’s record.

"(b) Relief Associated with Corrections of Certain Actions.—(1) The Secretary concerned shall ensure that a person receives relief under paragraph (2) or (3), as the person may elect, if the person—

"(A) was separated or retired from an armed force before the effective date of the retired reserve or to inactive status in a reserve component, as a result of a recommendation of a selection board; and

"(B) becomes entitled to retention on or restoration to active duty or active status in a reserve component as a result of a correction of the person’s military records under subsection (a).

"(2) A person referred to in paragraph (1), the person shall be retroactively and prospectively restored to an active or reserve status (less appropriate offsets against back pay and allowances) in the person’s armed force as the person would have had if the person had not been separated, retired, or transferred to the retired reserve or to inactive status in a reserve component, as the case may be, as a result of an action corrected under subsection (a). An action under this subparagraph is subject to subparagraph (B).

"(B) Nothing in subparagraph (A) shall be construed to permit a person to be on active duty or in an active status in a reserve component after the date on which the person would have been separated, retired, or transferred to the retired reserve or to inactive status in a reserve component, as the case may be, in an action of a selection board that is corrected under subsection (a).

"(3) In the case of a person referred to in paragraph (2), the person shall receive back pay and allowances (less appropriate offsets) and service credit for the period beginning on the earlier of—

"(i) the date on which the person would have been so restored under paragraph (2), as determined by the Secretary concerned; or

"(ii) the date on which the person would otherwise have been separated, retired, or transferred to the retired reserve or to inactive status in a reserve component, as the case may be, and ending on the earlier of—

"(i) the date on which the person would have been so restored under paragraph (2), as determined by the Secretary concerned; or

"(ii) the date on which the person would otherwise have been separated, retired, or transferred to the retired reserve or to inactive status in a reserve component, as the case may be

"(c) Finality of Unfavorable Action.—If a special board makes a recommendation not to correct the military records of a person regarding action taken in the case of that person on the basis of a previous report of a selection board, the action previously taken on that report shall be considered as final as of the date of the action taken on that report.

"(d) Regulations.—(1) The Secretary concerned may prescribe regulations to carry out this section, including regulations with respect to the armed force or armed forces under the jurisdiction of the Secretary concerned.

"(2) The Secretary may prescribe in the regulations the circumstances under which consideration by a special board may be provided for under this section, including the following:

"(A) The circumstances under which consideration of a person’s case by a special board is contingent upon application by or for that person.

"(B) Any time limits applicable to the filing of an application for consideration.

"(3) Regulations prescribed by the Secretary of a military department under this subsection shall be subject to the approval of the Secretary of Defense.

"(e) Judicial Review.—(1) A person challenging the approval or disapproval of a recommendation of a selection board, or the action taken by the Secretary concerned on the report of a selection board, is not entitled to relief in any judicial proceeding unless the person has first been considered by a special board under this section or the Secretary concerned has denied such consideration.

"(2) A court of the United States may review a determination by the Secretary concerned under this section not to convene a special board, only if it finds the determination to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law. A court may set aside a recommendation or action, or the denial of a recommendation or action, only if it finds the recommendation or action contrary to law or involved a material error of fact or a material administrative error.

"(f) Exclusivity of Remedies.—Notwithstanding any other provision of law, but subject to subsection (g), the remedies provided under this section are the only remedies available to a person for correcting an action or recommendation of a selection board regarding that person or an action taken on the report of a selection board regarding that person.

"(g) Existing Jurisdiction.—(1) Nothing in this section limits the jurisdiction of any court of the United States under any provision of law to determine the validity of any statute, regulation, or policy relating to selection boards, except that, in the event that any such statute, regulation, or policy is held invalid, the remedies prescribed in this section shall be the sole and exclusive remedies available to any person challenging the recommendation of a special board on the basis of the invalidity.

"(h) Timeliness of Action.—(1) For the purposes of subsection (e)—

"(A) If, not later than six months after recommendation of a complete application for consideration by a special board, the Secretary concerned shall have neither convened a special board, the person may correct a person’s military records under section 1555 of this title;

"(B) If, after six months have expired and no special board has been convened, the person may correct a person’s military records under section 1555 of this title;
June 29, 2001

CONGRESSIONAL RECORD—SENATE

Sec. 516. Reserve Health Professionals Stipend Program Expansion.

Sec. 517. Reserve Officers on Active Duty for a Period of Three Years or Less.

Sec. 519. Active Duty End Strength Exemption for National Guard and Reserve Personnel Performing Funeral Honors Functions.

Sec. 520. Clarification of Functions That May Be Assigned to Active Guard and Reserve Personnel on Full-Time National Guard Duty.

Sec. 521. Authority for Temporary Waiver of the Requirement for a Baccalaureate Degree for Promotion of Certain Reserve Officers of the Army.

Sec. 522. Authority of the President to Suspend Certain Laws Relating to Promotion, Retirement and Separation of Reserve Officers of the Army.

Sec. 511. Retirement of Reserve Personnel.

(a) RETIRED RESERVE.—Section 10154(2) of title 10, United States Code, is amended by striking “upon their request” and inserting “unless the officer requests not to be transferred to the Retired Reserve”.

(b) RETIREMENT FOR FAILURE OF SELECTION OR PROMOTION.—Section 14513 of such title 10 is amended—

(A) in the heading, by inserting “or retirement” after “Separation”; and

(B) in paragraph (2), by striking “and applies” and inserting “unless the officer requests not to be transferred to the Retired Reserve”.

(2) The table of sections at the beginning of chapter 1407 of such title 10 is amended by striking the item relating to section 14513 and inserting the following new item:

“14513. Separation or retirement for failure of selection or promotion.”

(c) RETIREMENT FOR YEARS OF SERVICE OR AFTER SELECTION FOR EARLY REMOVAL.—Section 14514 of such title 10 is amended—

(1) in paragraph (1), by striking “and applies” and inserting “unless the officer requests not to be transferred to the Retired Reserve before the semicolon; and

(2) in paragraph (2), by striking “does not apply for such transfer” and inserting “has requested not to be transferred to the Retired Reserve after “is not qualified or”.

(d) RETIREMENT FOR AGE.—Section 14515 of such title 10 is amended—

(1) in paragraph (1), by striking “and applies” and inserting “unless the officer requests not to be transferred to the Retired Reserve before the semicolon; and

(2) in paragraph (2), by striking “does not apply for transfer” and inserting “has requested not to be transferred” following “is riot qualified or”.

(e) DISCHARGE OR RETIREMENT OF WARRANT OFFICERS FOR YEARS OF SERVICE OR AGE.—(1) Chapter 1207 of such title 10 is amended by adding at the end the following new section:

“12244. Warrant officers: discharge or retirement for years of service or for age—

Each reserve warrant officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the Secretary concerned shall—

(1) be transferred to the Retired Reserve, if the warrant officer is so qualified for such transfer, unless the warrant officer requests not to be transferred to the Retired Reserve; or
(2) if the warrant officer is not qualified for such transfer or requests not to be transferred to the Retired Reserve, be discharged.

(c) The table of sections at the beginning of such title 10 is amended by adding at the end the following new item: “12244. Warrant officers: discharge or retirement for years of service or for age.”

(2) by redesignating paragraphs (3), (4) and (5) as paragraphs (4), (5) and (6), respectively, and-(b) by inserting after paragraph (2) the following new paragraph:—

“(3) the authorized total number of commissioned officers in pay grades E-7, E-8 and E-9 in a fiscal year pursuant to subsection (a) by the number equal to the number of members of the reserve components on active duty under section 12301(d) of this title in support of a contingency operation as defined in section 101(a)(13) of this title.”

(b) INCREASE IN AUTHORIZED DAILY AVERAGE STRENGTH OF NATIONAL GUARD AND RESERVE FOR PAY GRADES E-3, E-4, E-5 AND O-1 TO O-3; AND FOR PAY GRADES E-7, E-8 AND E-9 ON ACTIVE DUTY UNDER CERTAIN CIRCUMSTANCES.—Section 520 of title 10, United States Code, is amended—

(1) in subsection (a)(1), by striking “three years” and inserting “two years”;

(2) by redesignating paragraphs (2), (3) and (4) respectively as paragraphs (3), (4) and (5) respectively; and

(3) by inserting after paragraph (4) the following new paragraph:—

“(5) The term ‘funeral honors duty’ means—

“(A) A duty prescribed for Reserves by the Secretary concerned under section 12303 of title 10 to prepare for or perform funeral honors functions at the funeral of a veteran; or

“(B) in the case of members of the Army National Guard or Air National Guard of any State, duty under section 115 of title 32 to prepare for or perform funeral honors functions at the funeral of a veteran; and

“(C) Authorized travel to and from such funeral honors duty.”

(b) BENEFITS FOR DEPENDENTS OF A DECEASED RESERVE COMPONENT MEMBER.—Section 1061 of such title 10 is amended—

(1) in subsection (b)(1), by striking “or” the first time it appears and inserting “, or”;

(2) in subsection (b)(2), by striking “or” the first time it appears and inserting “, or”;

(3) redesignating paragraphs (1) and (2) each as paragraphs (2) and (3) respectively; and

(4) by inserting at the end of paragraph (1) the following new subparagraph:—

“(B) in paragraph (1)(A), by striking ‘‘or’’ the first time it appears and inserting ‘‘or’’; and

“(C) in paragraph (4) (as redesignated in subsection (c)(1)) by—

(i) striking ‘‘or’’ both time it appears;

(ii) inserting ‘‘or funeral honors duty’’ after ‘‘Public Health Service.’’;

(iii) inserting a comma before and after ‘‘inactive duty training’’ the first time it appears in the sentence; and

(iv) inserting ‘‘or funeral honors duty’’ before the semicolon.

(2) Section 176 of such title 10 is amended—

(1) in paragraph (1), by striking “or”;

(2) in paragraph (2), by striking the period and inserting “;”;

(3) by adding at the end of paragraph (1) the following new subparagraph:

“(C) funeral honors duty.”

(3) redesignating paragraphs (1) and (2) each as paragraphs (2) and (3) respectively; and

(4) by inserting after paragraph (2) the following new paragraph:—

“(B) in the case of members of the Army National Guard or Air National Guard of any State, duty under section 115 of title 32 to prepare for or perform funeral honors functions at the funeral of a veteran; and

“(C) Authorized travel to and from such funeral honors duty.”

5. SEC. 512. AMENDMENT TO RESERVE PERSTEMPO DEFINITION.—Section 101(b) of title 10, United States Code, is amended—

(1) in paragraph (1), by inserting ‘‘active’’ before ‘‘service’’ and adding at the end the following new sentence:

“(A) in paragraph (1)(A), by striking ‘‘or’’ the first time it appears and inserting ‘‘or’’;

“(B) in paragraph (1)(B), by striking the period and inserting ‘‘;’’;

“(C) by adding at the end of paragraph (1) the following new subparagraph:

“(D) the term ‘Funeral Honors Duty’ means—

“(1) any period of funeral honors duty during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty before the period; and

“(2) by adding at the end the following new paragraph:

“(3) redesignating paragraphs (1), (2) and (3) as paragraphs (4), (5) and (6) respectively; and

“(4) by inserting after paragraph (2) the following new paragraph:

“(A) a funeral honors duty status’’ after ‘‘on inactive-duty training’’.
SEC. 517. RESERVE HEALTH PROFESSIONALS STIPEND PROGRAM EXPANDED.

(a) PURPOSE OF PROGRAM.—Section 1201(a) of title 10, United States Code, is amended to read as follows:

’’(a) Establishment of Program.—For the purpose of obtaining adequate numbers of commissioned officers in the reserve components who are qualified in health professions, the Secretary of each military department may establish a program to provide financial assistance under this chapter to persons engaged in training that leads to a degree in medicine or dentistry and to a health professions specialty critically needed in wartime. Under such a program, the Secretary concerned may agree to pay a financial stipend to persons engaged in health care education and training in return for a commitment to subsequent service in the Ready Reserve.’’

(b) MEDICAL AND DENTAL STUDENT STIPEND.—Section 1201(b) of such title 10 is amended by—

(1) redesignating subsections (b), (c), (d) and (e) as subsections (c), (d), (e) and (f); and

(2) inserting the following new subsection:

’’(b) Medical and Dental School Stipend.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is eligible to be appointed as an officer in a Reserve component;

(B) is enrolled or has been accepted for enrollment in an institution in a course of study that results in a degree in medicine or dentistry;

(C) signs an agreement that, unless sooner separated, the person will—

(i) complete the educational phase of the program;

(ii) accept a reappointment or redesignation within his reserve component, if tendered, based upon his health profession, following satisfactory progress toward a degree in the educational and intern programs; and

(iii) participate in a residency program; and

(D) if required by regulations prescribed by the Secretary of Defense, agrees to apply for, if eligible, and accept, if offered, residency training in a health profession skill which has been designated by the Secretary of Defense as a critically needed wartime skill.

(2) Under the agreement—

(A) the Secretary of the military department concerned shall agree to pay the participant a stipend, in the amount determined under subsection (f), for the period of the remainder of the period the student is satisfactorily progressing toward a degree in medicine or dentistry while enrolled in an accredited medical or dental school; and

(B) the participant shall not be eligible to receive such stipend before appointment, designation, or assignment as an officer for service in the Ready Reserve;

(C) the participant shall be subject to such active duty, service, or periods of service as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon successful completion of the program, one year in the Selected Reserve for each six months, or part thereof, for which the stipend was provided while enrolled in medical or dental school.’’

(c) WARTIME CRITICAL SKILLS.—Section 1201(c), as redesignated by section (b), is amended—

(1) by inserting “WARTIME” following “CRITICAL” in the heading; and

(2) in paragraph (2), by striking “or has been appointed as a medical or dental officer in the Reserve of the armed force concerned” before the semicolon at the end of the paragraph.

(d) SERVICE OBLIGATION REQUIREMENT.—Subparagraph (2)(D) of subsection (c), as redesignated by section (b), and subparagraph (2)(D) of subsection (d), as redesignated by section (b), are amended by striking “two years” in the Ready Reserve for each year,” and inserting “two years in the Ready Reserve for each six months.’’

(e) CLERICAL AMENDMENTS.—Subparagraphs (2)(A) of subsection (c), as redesignated by section (b), and subparagraph (2)(A) of subsection (d), as redesignated by section (b), are amended by striking “subsection (e)” and inserting “subsection (f).”

SEC. 518. RESERVE DUTY FOR A PERIOD OF THREE YEARS OR LESS.

(a) CLARIFICATION OF EXEMPTION.—Section 611(d)(1) of title 10, United States Code, is amended to read as follows:

’’(1)(D) on active duty under section 12301(d) of title 10 and provided under subparagraph (C), provided the call or order to active duty, as prescribed in regulations of the Secretary concerned, specifies a period of three years or less and continued placement on the reserve active-status list;’’.

(b) RETROACTIVE APPLICATION.—(1) Officers who were placed on the reserve active status list under section 641(d)(2), as redesignated by section 512(b) of title 10, United States Code, are amended by striking ''subsection (e)'' after ''section 512(b)’’ and inserting ''section 512(c)’’.

(2) (A) Officers—’’(1) active duty members whose mandatory separations or retirements incident to section 12301 or sections 632-637 of this title are delayed pursuant to invocation of this section, will be afforded up to 90 days following termination of the suspension before being separated from active duty.’’

Subtitle C—Education and Training

Sec. 531. Authority for the Marine Corps University to Award the Degree of Master of Strategic Studies.

Sec. 532. Reserve Component Distributed Learning.

Sec. 533. Repeal of Limitation on Number of Junior Reserve Officers’ Training Corps (JROTC) Units.

Sec. 534. Modification of the Nurse Officer Candidate Accession Program Restriction on Students Attending Civilian Educational Institutions with Senior Reserve Officers’ Training Programs.

Sec. 535. Defense Language Institute Foreign Language Center.

Sec. 536. Authority for the Marine Corps University to Award the Degree of Master of Strategic Studies.

(a) AUTHORITY TO CONFER DEGREE.—Upon the recommendation of the Director and faculty of the Marine Corps War College of the Marine Corps University, the President of the Marine Corps University may award the degree of master of strategic studies upon graduates of the college who fulfill the requirements for the degree.

(b) REGULATION.—The Secretary of the Navy shall promulgate regulations under which the Director of the faculty of the Marine Corps War College of the Marine Corps University shall administer the authority in subsection (a).

(e) EFFECTIVE DATE.—The authority to award degrees provided by subsection (a) shall become effective on the date on which the Secretary of Education determines that the requirements established by the Marine Corps War College of the Marine Corps University for the degree of master of strategic studies are in accordance with generally applicable requirements for a degree of master of arts.
SEC. 532. RESERVE COMPONENT DISTRIBUTED LEARNING.—
(a) COMPENSATION FOR DISTRIBUTED LEARNING.—Section 206(d) of title 37, United States Code, is amended to read as follows:

"(d) A Reserve Component may be paid compensation under this section for the successful completion of courses of instruction undertaken by electronic, paper-based, or other distributed learning. Distributed Learning is structured learning that takes place without 55 requiring the physical presence of an instructor. To be compensable, the requirements must be required by law, Department of Defense policy, or service regulation and may be accomplished either independently or as part of a group.".

(b) DEFINITION OF INACTIVE-DUTY TRAINING.—Section 101(22) of title 37, United States Code, is amended by striking "., but does not include work or study in connection with a correspondence course of a uniformed service".

SEC. 533. REPEAL OF LIMITATION ON NUMBER OF OFFICERS' TRAINING CORPS (JROTC) UNITS.
Section 2631a(a)(1) of title 10, United States Code, is amended by striking the second sentence.

SEC. 534. MODIFICATION OF THE NURSE OFFICER CANDIDATE ACCESSION PROGRAM REGARDING STUDENTS ATTENDING CIVILIAN EDUCATIONAL INSTITUTIONS WITH SENIOR RESERVE OFFICERS' TRAINING PROGRAMS.
Section 2130a of title 10, United States Code, is amended—
(1) in paragraph (a)(2), by striking "that does not have a Senior Reserve Officers' Training Program established under section 2102 of this title;" and
(2) in paragraph (b), by adding at the end "or that has a Senior Reserve Officers' Training Program for which the student is ineligible.".

SEC. 535. DEFENSE LANGUAGE INSTITUTE FOREIGN LANGUAGE CENTER.
(a) Subject to subsection (b), the Commandant of the Defense Language Institute Foreign Language Center may certify to the Secretary of a language upon graduates of the Institute who fulfill the requirements for the degree.
(b) The certification may be conferred upon any student under this section unless the Pro-vost certifies to the Commandant of the Institute that the student has satisfied all the requirements prescribed for such degree.
(c) The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of Defense.

Subtitle D—Decorations, Awards, and Commendations
Section 3253 of title 10, United States Code, is amended—
(1) in the section heading, by adding at the end "or that has a Senior Reserve Officers' Training Program for which the student is ineligible.".

SEC. 551. REVISION OF PUNITIVE UCMJ ARTICLE REGARDING DRUNKEN OPERATION OF VEHICLE, AIRCRAFT, OR VESSEL.
(a) STANDARD FOR DRUNKEN OPERATION OF VEHICLE, AIRCRAFT, OR VESSEL.—Paragraph (2) of section 911 of title 10, United States Code, is amended to read as follows:

"(2) In determining whether a person has committed an offense against subsection (a) of this section, the Secretary of the Army, the Navy, or the Air Force may consider, in addition to the factors prescribed in subsection (b), the following factors:

(A) the presence of an instructor. To be compensable, the requirements must be required by law, Department of Defense policy, or service regulation and may be accomplished either independently or as part of a group.".

(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Army may issue such person, without charge, one duplicate medal of honor, with ribbons and appurtenances. Such duplicate shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under the authority of this subsection shall not constitute the award of more than one medal of honor with the meaning of section 3744(a) of this title.H.

(c) ISSUANCE OF MEDAL OF HONOR TO MILITARY MEMBERS.—Section 3744(a) of title 10, United States Code, is amended—
(1) in the section heading, by striking "stolen," before "lost or destroyed," and
(2) by inserting "stolen," before "lost or destroyed," and
(3) by adding at the end the following new subsection:

"(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Army may issue such person, without charge, one duplicate medal of honor, with ribbons and appurtenances. Such duplicate shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under the authority of this subsection shall not constitute the award of more than one medal of honor with the meaning of section 3744(a) of this title.".

(d) DUPLICATE MEDAL OF HONOR.—Section 6253 of title 10, United States Code, is amended—
(1) in the section heading, by adding at the end "issued of duplicate medal of honor";
(2) by striking "The Secretary of the Army may replace" and inserting "(a) REPLACE-
MENT OF MEDALS.—The Secretary of the Army may replace";
(3) by inserting "stolen," before "lost or destroyed," and
(4) by adding at the end the following new subsection:

"(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Army may issue such person, without charge, one duplicate medal of honor, with ribbons and appurtenances. Such duplicate shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under the authority of this subsection shall not constitute the award of more than one medal of honor within the meaning of section 3744(a) of this title.."

(e) DUPLICATE MEDAL OF HONOR.—Section 3747 of title 10, United States Code, is amended—
(1) in the section heading, by adding at the end "issued of duplicate medal of honor";
(2) by striking "The Secretary of the Navy may replace" and inserting "(a) REPLACE-
MENT OF MEDALS.—The Secretary of the Navy may replace";
(3) by inserting "stolen," before "lost or destroyed," and
(4) by adding at the end the following new subsection:

"(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Navy may issue such person, without charge, one duplicate medal of honor, with ribbons and appurtenances. Such duplicate shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under the authority of this subsection shall not constitute the award of more than one medal of honor within the meaning of section 3744(a) of this title.".

(f) DUPLICATE MEDAL OF HONOR.—Section 3748 of title 10, United States Code, is amended—
(1) in the section heading, by adding at the end "issued of duplicate medal of honor";
(2) by striking "The Secretary of the Army may replace" and inserting "(a) REPLACE-
MENT OF MEDALS.—The Secretary of the Army may replace";
(3) by inserting "stolen," before "lost or destroyed," and
(4) by adding at the end the following new subsection:

"(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Army may issue such person, without charge, one duplicate medal of honor, with ribbons and appurtenances. Such duplicate shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under the authority of this subsection shall not constitute the award of more than one medal of honor within the meaning of section 3744(a) of this title.".

(g) DUPLICATE MEDAL OF HONOR.—Section 3749 of title 10, United States Code, is amended—
(1) in the section heading, by adding at the end "issued of duplicate medal of honor";
(2) by striking "The Secretary of the Army may replace" and inserting "(a) REPLACE-
MENT OF MEDALS.—The Secretary of the Army may replace";
(3) by inserting "stolen," before "lost or destroyed," and
(4) by adding at the end the following new subsection:

"(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Army may issue such person, without charge, one duplicate medal of honor, with ribbons and appurtenances. Such duplicate shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under the authority of this subsection shall not constitute the award of more than one medal of honor within the meaning of section 3744(a) of this title.".

SEC. 601. INCREASE IN BASIC PAY FOR FISCAL YEAR 2002.
See. 603. Funeral Honors Duty, Allowance for Retirees.
See. 604. Basic Pay Rate for Certain Reserve Commissioned Officers with Prior Service as an Enlisted Member or Warrant Officer.
See. 605. Family Separation Allowance.
See. 606. Housing Allowance for the Chaplain for the Corps of Cadets, United States Military Academy.
See. 607. Clarify Amendment that Space-Required Travel for Annual Training Reserve Duty Does Not Obviate Transportation Allowances.
SEC. 601. INCREASE IN BASIC PAY FOR FISCAL YEAR 2002.
(a) WAIVER OF SECTION 1009 ADJUSTMENT.—The adjustment to become effective during fiscal year 2002 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized members of the uniformed services shall not be made.
SEC. 602. PARTIAL DISLOCATION ALLOWANCE AUTHORIZED UNDER CERTAIN CIRCUMSTANCES.

(a) Authorization of Partial Dislocation Allowance.—Section 427 of title 37, United States Code is amended—

(1) by redesignating subsections (c) through (g) as subsections (d) through (h), respectively;

(2) in subsections (a)(1) and (b)(1), by striking "subsection (c)" and inserting "subsection (d)";

(3) by inserting after subsection (b) the following new subsection:

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(c) Partial Dislocation Allowance.—(1) Under regulations prescribed by the Secretary concerned, a member ordered to occupy or to vacate Government family housing for the convenience of the Government (including pursuant to the privatization or renovation of housing), and not pursuant to a permanent change of station, may be paid a partial dislocation allowance of $500.

(2) Effective on the same date that the monthly rates of basic pay for members are increased for a subsequent calendar year, the Secretary of Defense shall adjust the rate for the partial dislocation allowance for that calendar year by the percentage equal to the percentage increase in the rate of basic pay for that calendar year.

(3) Payments made under this subsection are not subject to the fiscal year limitations in subsection (e); and

(4) in subsection (d)(1) as redesignated by paragraph (1), by striking at the beginning "(The amount)" and inserting "Except as provided in subsection (c), the amount:
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addition to any other compensation author-  
ized under this title and title 38 to which the retired member may be entitled.”.

SEC. 604. BASIC PAY RATE FOR CERTAIN  
SERVE-COMMISSIONED OFFICERS  
WITH CERTIFIED MEDICAL REASONS  
LISTED MEMBER OR WARRANT OFFICER.  

Section 309(c) of title 37, United States Code, is amended by inserting “or” after “who earns” and inserting “a warrant officer” after “or warrant officer” and inserting “a warrant officer or enlisted member” after “or as a warrant officer and enlisted member.”

SEC. 605. FAMILY SEPARATION ALLOWANCE.  

Section 427(c) of title 37, United States Code, is amended by amending the first sentence to read as follows: “A member who elects to serve an unaccompanied tour of duty because dependent movement to the permanent station is denied for certified medical reasons is entitled to an allowance under subsection (a)(1)(A). In all other cases, a member who elects to serve a tour unaccompanied by his dependents at a permanent station to which movement of his dependents is authorized at the expense of the United States under section 406 of this title is entitled to an allowance under subsection (a)(1)(A).”

SEC. 606. HOUSING ALLOWANCE FOR THE CHAP- 
LAIN FOR THE CORPS OF CADETS, UNITED STATES MILITARY ACADEMY.  

Section 4337 of title 10, United States Code, is amended by striking “under the second sentence and inserting “Notwithstanding any other provision of law, the chaplain is entitled to the same basic allowance for housing allowed to an active duty colonel, and to fuel and light for quarters in kind.”

SEC. 607. CLARIFYING AMENDMENT THAT SPACE- 
REQUIRED TRAVEL FOR ANNUAL  
TRAINING RESERVE DUTY DOES NOT  
OBLIGATE TRANSPORTATION ALLOW- 
ANCES.  

Section 1095(a) of title 10, United States Code, is amended by striking “annual training duty or” each time such term appears.

Subtitle B—Bonuses and Special and Incentive Pays  

Sec. 611. Authorize the Secretary of the Navy to Prescribe Submarine Duty Incentive Pay Rates.  

Sec. 612. Extension of Authorities Relating to Payment of Other Bonuses and Special Pays.  

Sec. 613. Extension of Certain Bonuses and Special Pay Authorities for Nurse Officer Candidates, Registered Nurses, Nurse Anes- 

Sec. 614. Extension of Authorities Relating to Nuclear Officer Special Pays.  

Sec. 615. Extension of Special and Incentive Pays.  

Sec. 616. Accession Bonus for Officers in Critical Skills.  

Sec. 617. Critical Skill Requirement for Eligibility for the Individual Ready Reserve Bonus.  


Sec. 619. AUTHORIZE THE SECRETARY OF THE NAVY TO PRESCRIBE SUBMARINE DUTY INCENTIVE PAY RATES.  

(a) IN GENERAL.—Section 301(c) of title 37, United States Code, is amended by striking subsection (b) and inserting the following: “(b) A member who meets the requirements prescribed by section (a) is entitled to monthly submarine duty incentive pay in an amount prescribed by the Secretary of the Navy, but not more than $1,000 per month.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

SEC. 612. EXTENSION OF AUTHORITIES RELAT- 
ING TO PAYMENT OF OTHER BO- 
NUSES AND SPECIAL PAYS.  

(a) AVIATION OFFICER RETENTION BONUS.  

Section 308(h)(f) of title 37, United States Code, is amended by striking “December 31, 2001” and inserting “September 30, 2003.”

(b) REENLISTMENT BONUS FOR ACTIVE MEM- 
BERS.—Section 309(e)(2)(F)(x) of title 37 is amended by striking “December 31, 2001” and inserting “September 30, 2003.”

(c) ENLISTMENT BONUS.—Section 309(e) of such title 37 is amended by striking “December 31, 2001” and inserting “September 30, 2003.”

(d) RETENTION BONUS FOR MEMBERS QUALI- 
FIED IN A CRITICAL MILITARY SKILL.—Section 323(1) of such title 37 is amended by striking “December 31, 2001” and inserting “September 30, 2003.”

SEC. 613. EXTENSION OF CERTAIN BONUSES AND 
SPECIAL PAY AUTHORITY FOR 
NURSE OFFICER CANDIDATES, REG- 
ISTERED NURSES, NURSE ANES-

Sec. 614. EXTENSION OF AUTHORITIES RELAT- 
ING TO NUCLEAR OFFICER SPECIAL 
PAYS.  

(a) SPECIAL PAY FOR NUCLEAR-QUALIFIED OFFICERS EXTENDING PERIOD OF ACTIVE SERV- 
ICE.—Section 312(e) of title 37, United States Code, is amended by striking “December 31, 2001” and inserting “December 31, 2003.”

(b) NUCLEAR CAREER ACCESSION BONUS.—Section 312(c) of such title 37 is amended by striking “December 31, 2001” and inserting “December 31, 2003.”

(c) NUCLEAR CAREER ANNUAL INCENTIVE BONUS.—Section 312(d) of such title 37 is amended by striking “December 31, 2001” and inserting “December 31, 2003.”

SEC. 615. EXTENSION OF SPECIAL AND INCEN- 
TIVE PAYS.  

(a) SPECIAL PAY FOR RESERVE HEALTH PRO- 
FESSIONALS IN CRITICALLY SHORT WA 
TER SPECIALTIES.—Section 302(g)(f) of such title 37, United States Code, is amended by striking “December 31, 2001” and inserting “December 31, 2002.”

(b) SELECTED RESERVE RETENTION BONUS.—Section 310(h)(f) of such title 37, United States Code, is amended by striking “December 31, 2001” and inserting “December 31, 2002.”

(c) SELECTED RESERVE ENLISTMENT BONUS.—Section 309(f) of such title 37, United States Code, is amended by striking “December 31, 2001” and inserting “December 31, 2002.”

(d) SPECIAL PAY FOR ENLISTED MEMBERS 
ASSIGNED TO CERTAIN HIGH PRIORITY UNITS.

(e) SELECTED RESERVE AFFILIATION BONUS.—Section 308(f) of such title 37, United States Code, is amended by striking “December 31, 2001” and inserting “December 31, 2002.”

(f) READY RESERVE ENLISTMENT AND RE- 
ENLISTMENT BONUS.—Section 309(f) of such title 37, United States Code, is amended by striking “December 31, 2001” and inserting “December 31, 2002.”

(g) PRIOR SERVICE ENLISTMENT BONUS.— 
Section 309(f) of such title 37, United States Code, is amended by striking “January 1, 2003” and inserting “January 1, 2004.”

SEC. 616. ACCESSION BONUS FOR OFFICERS IN 
CRITICAL SKILLS.  

(a) IN GENERAL.—Chapter 5 of title 37, United States Code, is amended by inserting after section 323 the following new section: "§ 324. Special Pay: officer critical skills ac- 
cession bonus.  

(a) ACCESSION BONUS AUTHORIZED.—Under regulations prescribed by the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, and in accordance with the limitations in subsection (b), an individual who executes a written agree- 
ment to accept a commission as an officer of an armed force and serve on active duty in an officer critical skill for the period specified in the agreement may be paid an accession bonus not to exceed $20,000 upon accept- 
ance of the written agreement by the Sec- 
retary concerned.

(b) LIMITATION ON ELIGIBILITY FOR BONUS.—An individual may not be paid a bonus under subsection (a) if the individual has received, or is receiving, an accession bonus for the same period of service under subsections 302, 302c, or 312b.

"(C) PROHIBITION.—The term of an agree- 
ment and the amount of the payment under subsection (a) may be prorated.

"(d) PAYMENT METHOD.—Upon acceptance of the written agreement by the Secretary concerned, the total amount payable pursuant to the agreement under subsection (a) becomes fixed and may be paid by the Sec- 
retary concerned upon completion of a tour of active duty in an officer critical skill.

"(e) REPAYMENT.—(1) If an individual who has entered into an agreement under subsection (a) has received all or part of a bonus under this section fails to accept an appoint- 
ment or to commence or complete the total period of active duty in the designated critical skill specified in the agreement, the Sec- 
retary concerned may require the individual to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, any or all sums paid to the indi- 
vidual under this section.

"(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

"(3) A discharge in bankruptcy under title II of that is entered less than five years after the termination of a written agreement ent- 
tering into payment under subsection (a) shall not dis- 
charge the individual signing the agreement from a debt arising under such agreement or under paragraph (1) of this section. For the purposes of this section, the term ‘officer critical skill’ means a skill desig- 
nated as critical with respect to accession to the Navy by the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.
SEC. 622. PAYMENT OF VEHICLE STORAGE COSTS IN ADVANCE.

Section 233(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(4) Storage costs payable under this subsection may be paid in advance.”

SEC. 623. TRAVEL AND TRANSPORTATION ALLOWANCES FOR FAMILY MEMBERS TO ATTEND THE BURIAL OF A DECEASED MEMBER OF THE ARMED FORCES.

(a) CONSOLIDATION OF AUTHORITIES.—

Section 411f of title 37, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “ALLOWANCES AUTHORIZED.—(1) after “(a)”; and

(B) by inserting at the end following new paragraph:

“(2) If a dependent of a deceased member who is authorized travel and transportation allowances under this section is unable to travel unattended to the burial ceremonies of the deceased member—

(A) because of—

(i) age;

(ii) physical condition; or

(iii) other justifiable reason, as determined by the Secretary concerned, the travel available and qualified to serve as an attendant for the dependent while traveling to and attending the burial ceremonies, an attendant may be paid roundtrip travel and transportation allowances under this section.”

(2) in subsection (b)—

(A) by striking “(b)(1) Except as provided in paragraph (2)” and inserting “(b) LIMITATION ON ALLOWANCES.—(1) Except as provided in paragraphs (2) and (3); and

(B) by inserting before the period: “, or if otherwise authorized under applicable regulations”.

(3) in subsection (b)(2), by striking “be extended to accommodate” and inserting “not exceed the rates for 2 days and time necessary for such travel.”

(4) by adding at the end of subsection (b) the following new paragraph:

“(3) If a deceased member is interred in a cemetery maintained by the American Battle Monuments Commission, the allowances authorized under this section may be paid to and from such cemetery and may not exceed the rates for 2 days and time necessary for such travel.”

(5) by amending subsection (c) to read as follows:

“DEFINITIONS.—(1) In this section, the term “dependents” means—

(A) the surviving spouse (including a remarried surviving spouse) of the deceased member and any child of the deceased member as defined in section 401(a);

(B) if no person described in subparagraph (A) is paid travel and transportation allowances under this section, the parents (as defined in section 401(b));

(C) if no person described in subparagraph (A) is paid travel and transportation allowances under this section, the person or persons described in subparagraph (B) who are a member of the deceased member’s immediate family and who are closely related to the deceased member, or

(D) if no person described in subparagraph (A) is paid travel and transportation allowances under this section, the person or persons described in subparagraph (B) who are a member of the deceased member’s immediate family and who are closely related to the deceased member.

SEC. 624. SHIPMENT OF PRIVATELY OWNED VEHICLES WHEN EXECUTING CONUS PERMANENT CHANGE OF STATION MOVES.

Section 234(h)(1) of title 10, United States Code, is amended by inserting before the period: “, or if otherwise authorized under applicable regulations”.

SEC. 625. MONTGOMERY GI BILL—SELECTED RESERVE ELIGIBILITY PERIOD.

Section 16133(a)(1) of title 10, United States Code, is amended by striking “10-year” and inserting “14-year”.
if otherwise authorized under applicable regulations.

SEC. 633. ACCEPTANCE OF SCHOLARSHIPS BY OFFICERS PARTICIPATING IN THE FUNDED LEGAL EDUCATION PROGRAM.

(a) ACCEPTANCE OF SCHOLARSHIP.—Section 2603 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(g) An officer detailed at a law school under this section also may accept a fellowship, scholarship, or grant in accordance with subsection (b)."

(b) CONFORMING AMENDMENT.—Section 2603 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(b) served, on or before September 30, 2004 of Public Law 106–259 is amended—"

(c) SEVEN.—Acquisition Milestone Changes.

SEC. 702. Clarification of Inapplicability of the Requirement for Core Logistics Capabilities Standards to the Nuclear Refueling of an Aircraft Carrier.

Section 2435(c) of title 10, United States Code, is amended—

(1) by striking "nuclear aircraft carriers";

(2) by adding at the end the following new sentences:

"Core logistics capabilities identified under paragraphs (1) and (2) shall not include nuclear refueling of an aircraft carrier."

SEC. 705. Acquisition Workforce Qualifications.

(a) AMENDMENTS TO AUTHORITY.—Section 1724 of title 10, United States Code, is amended—

(1) in subsection (a) by striking "contracting officer" and inserting "acquisition program manager"; and

(2) in subsection (d) by striking "acquisition program manager" and inserting "acquisition program manager and program manager".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(c) CONTINGENCY CONTRACTING FORCE.—(1) Notwithstanding subsection (a) and (b), the Secretary of Defense may establish a Contingency Contracting Force consisting of employees and members of the armed forces whose mission, as determined by the Secretary, is to deploy in support of contingency operations and other Department of Defense operations.

(2) The Secretary of Defense shall establish qualification requirements for such Contingency Contracting Force, to include—

"(A) completion of at least 24 semester credit hours of study from an accredited institution of higher education, or similar educational institution as determined by the Secretary, in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management;

"(B) passing an examination considered by the Secretary to demonstrate skills, knowledge, or abilities comparable to those required for an individual who has completed and passed an examination for an assistant military officer of at least 24 semester credit hours (or the equivalent) of study in any of the disciplines listed in subparagraph (A); or

"(C) the successful completion of any combination of (A) and (B) equaling 24 semester hours or the equivalent as determined by the Secretary; and

"(D) such additional education and experience requirements as the Secretary may prescribe.

(d) DEVELOPMENTAL OPPORTUNITIES.—Not withstanding other provisions of law, the Secretary of Defense may establish one or more programs for the purpose of recruiting, selecting, appointing, educating, qualifying, and developing the careers of personnel to meet the requirements of this section.


(a) ADMINISTRATIONS TO AUTHORITY.—Section 2366(c) of this title, a person must (except as provided in subparagraph (A); or

(1) completed at least 24 semester credit hours of study from an accredited institution of higher education, or similar educational institution as determined by the Secretary, in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management;

"(e) EXCEPTION.—(1) The requirements imposed under subsection (a) or (b) shall not apply to an employee or member who—

"(A) served as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title; or

"(B) served, on or before September 30, 2000, in a position in an Executive agency either as an employee in the GS-1102 series or as a member of the armed forces in similar occupational specialty; or

"(C) is determined by the Secretary of Defense to be a member of the Contingency Contracting Force.

(2) The requirements imposed under subsection (a) or (b) of this section shall not
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apply to an employee for purposes of qualifying the position in which the employee was serving on October 1, 1903, or any other position in the same or lower grade and involving the same or lower level of responsibility as the position in which the employee was serving on such date.

3. To qualify for the exceptions in subparagraphs (A) or (B) of paragraph (1) of this subsection, a civilian employee must have met one of the following requirements, or have been granted a waiver under subsection (f), on or before September 30, 2000:

(A) if the employee received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees;

(B) completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management;

(C) passed an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study in any of the disciplines listed in subparagraph (B); or

(D) on October 1, 1991, had at least 10 years of experience in acquisition positions, in comparable positions in other government agencies or the private sector, or in similar positions in which an individual obtains experience directly relevant to the field of contracting.

4. (f) Waiver.—The acquisition career program may waive all of the requirements of subsections (a) and (b) with respect to an individual if the board certifies that the individual possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. With respect to each waiver granted under this subsection, the board shall set forth in a written document the rationale for its decision to waive such requirements. The document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.

SEC. 706. TENURE REQUIREMENT FOR CRITICAL ACQUISITION POSITIONS.

Section 734(a) of title 10, United States Code, is amended—

(1) in paragraph (a)(1), by inserting—

(as a program manager, deputy program manager, or senior contracting official of a major system, if that term is defined in section 2302(5) of this title, and any person assigned to such other critical acquisition position as the Secretary of Defense may prescribe by regulation) after critical acquisition position;

(2) in paragraph (a)(2), by inserting—

(as a program manager, deputy program manager, or senior contracting official of a major system, as that term is defined in section 2302(5) of this title, and any person assigned to such other critical acquisition position as the Secretary of Defense may prescribe by regulation) after critical acquisition position.

Subtitle C—General Contracting Procedures

Sec. 710. Amendment of Law Applicable to Contracts for Architectural and Engineering Services and Construction Design.

Sec. 711. Streamlining Procedures for the Purchase of Certain Goods.

Sec. 712. Repeat of the Requirement for the Limitations on the Use of Air Force Civil Engineering Supply Function Contracts.

Sec. 713. One-Year Extension of Commercial Items Test Program.

Sec. 714. Modification of Limitation on Renting or Dismantlement of Strategic Nuclear Delivery Systems.

Sec. 715. Exclusion of Unforeseen Environmental Harm Remediation from the Limitation on Cost Increases for Military Construction and Family Housing Construction Projects.

Sec. 716. Increase of Overseas Minor Construction Threshold Using Operations and Maintenance Funds.

Sec. 717. Leasebacks of Base Closure Property.

Sec. 718. Alternative Authority for Acquisition of Certain Goods.

Sec. 719. Annual Report to Congress on Department of Defense Construction.

Sec. 720. Exclusion of Unforeseen Environmental Harm Remediation from the Cost Incurrence for Construction Projects.

Sec. 721. Amendment of Law Applicable to Construction Design.
SEC. 802. CONSOLIDATION OF AUTHORITIES RELATING TO DEPARTMENT OF DEFENSE REGIONAL CENTERS FOR SECURITY STUDIES AND TERMINATING REGIONAL CENTERS.—The

(a) IN GENERAL.—Chapter 6 of title 10, United States Code, is amended, by adding at the end the following new section:

"§ 169. Regional centers for security studies

"(a) AUTHORITY TO ESTABLISH, OPERATE AND TERMINATE REGIONAL CENTERS.—The Secretary of Defense may establish, operate and terminate regional centers for security studies to serve as forums for bilateral and multilateral security cooperation and military and civilian exchanges. Such regional centers shall use professional military education, civilian defense education, and related academic and other activities, as the Secretary deems appropriate, to pursue such communication and exchanges. The Secretary of Defense annually, in writing, shall evaluate the performance and value to the United States of each such regional center and determine whether to continue to operate such regional center.

"(b) ACCEPTANCE OF GIFTS AND CONTRIBUTIONS.—The Secretary may accept, hold, administer, and use gifts and contributions of funds, property, rights (including loans of property), and services for the purpose of defraying the costs or enhancing the operations of one or more of the Regional Centers, and may pay all reasonable expenses in connection with the conveyance or transfer of any such gifts. Contributions of money and proceeds from the sale of property accepted by the Secretary under this subsection shall be credited to funds available for the operation or support of the Center or Centers intended to benefit from such contributions and shall remain available until expended. No gift or contribution may be accepted under this subsection from a foreign state, or instrumentality or national thereof, or organization domiciled therein, nor anyone acting on behalf of any of them.

"(c) LIMITATION.—The Secretary may not accept a gift or donation under subsection (b) if the acceptance of the gift or donation would compromise or appear to compromise—

"(1) the ability of the Department of Defense, any employee of the Department or members of the armed forces to carry out the responsibility or duty of the Department in a fair and objective manner; or

"(2) the integrity of any program of the Department of Defense or any person involved in such a program.

"(d) ADMINISTRATION.—The Secretary may take the following actions in the discharge of the mission of Regional Centers operated under this section:

"(1) EMPLOYMENT AND COMPENSATION OF FACULTY.—Notwithstanding the provisions of title 5, United States Code, regarding appointment, pay and classification, the Secretary may employ such civilian directors, faculty and staff members for Regional Centers operated under this section as the Secretary determines necessary.

(b) CONFORMING AMENDMENTS.—(1) Section 1006 of the National Defense Authorization Act for Fiscal Year 1995, (Public Law 103–337; 107 Stat. 3379) is repealed.

(2) Section 1005 of the National Defense Authorization Act for Fiscal Year 1997, (Public Law 104–201; 110 Stat. 2633) is amended as follows—

(A) by striking subsection (a) and (b); and

(B) by striking the subsection designator "(c)".

(c) Section 1505 of title 10, United States Code, is amended as follows—

(A) in subsection (c), by striking paragraphs (3) and (5);

(B) by redesigning subparagraph (c)(4) as subparagraph (c)(3); and

(C) by striking subsection (e).

(d) Section 2611 of title 10, United States Code, is repealed.

(e) CLERICAL AMENDMENTS.—(1) The table of sections at the beginning of chapter 155 of title 10 is amended by striking the item relating to section 2611 and

(2) The table of sections at the beginning of chapter 6 of such title 10 is amended, by adding at the end the following new item:

"169. Regional Centers for Security Studies".

SEC. 803. CHANGE OF NAME FOR AIR MOBILITY COMMAND.

(a) Section 254(d) of title 10, United States Code, is amended by striking "Military Airlift Command" and inserting "Air Mobility Command".

(b) Section 254(a) of such title 10 is amended by striking "Military Airlift Command" and inserting "Air Mobility Command".

(c) Section 8074 of such title 10 is amended by striking subsection (c).

(a) Section 309 of title 37, United States Code, is amended by striking "Military Airlift Command" and inserting "Air Mobility Command".

(b) Section 432(b) of such title 37 is amended by striking "Military Airlift Command" and inserting "Air Mobility Command".
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SEC. 804. TRANSFER OF INTELLIGENCE POSITIONS, FUNCTIONS, AND MANDATORY FUNCTIONS TO THE NATIONAL IMAGERY AND MAPPING AGENCY.

Section 106(b) of title 10, United States Code, is amended by striking “51F” and inserting “54F”.

Subtitle B—Reports

Sec. 811. Amendment to National Guard and Reserve Component Equipment: Annual Report to Congress.

Sec. 812. Elimination of Triennial Report on the Roles and Missions of the Armed Forces.

Sec. 813. Change in Due Date of Commercial Activities Report.

SEC. 811. AMENDMENT TO NATIONAL GUARD AND RESERVE COMPONENT EQUIPMENT: ANNUAL REPORT TO CONGRESS.

Section 1641a of title 10, United States Code, is amended to read as follows:

“(a) The Secretary of Defense shall submit to the Congress each year, not later than March 1, a written report concerning the equipment of the National Guard and the Reserve components of the armed forces, to include the U.S. Coast Guard Reserve. This report shall cover the current fiscal year and three succeeding years. The focus should be on major items of equipment which address large dollar-value requirements, critical Reserve component shortages and major procurement items. Specific major items of equipment shall include ships, aircraft, combat vehicles and key combat support equipment.

“(b) Each annual report under this section should include the following:

(1) Major items of equipment required and on-hand in the inventories of each Reserve component.

(2) Major items of equipment which are expected to be procured from commercial sources or transferred from the Active component to the Reserve components of each Service.

(3) Major items of equipment in the inventories of each Reserve component which are substitutes for a required major item of equipment.

(4) A narrative explanation of the plan of the Secretary concerned to equip each Reserve component, including an explanation of the plan to equip units of the Reserve components that are short major items of equipment that would be called for in the event of a mobilization or the outbreak of war or a contingency operation.

(5) A narrative discussing the current status of the compatibility and interoperability of equipment between the Reserve components and the active forces, the effect of that level of compatibility or interoperability on combat effectiveness, and a plan to achieve full equipment compatibility and interoperability.

(6) A narrative discussing modernization shortfalls and maintenance backlogs within the Reserve components and the effect of those shortfalls on combat effectiveness.

(7) A narrative discussing the overall age and condition of equipment currently in the inventories of Reserve component.

(c) Each report under this section shall be expressed in the same format and with the same level of detail as the information presented in the Future Years Defense Program Procurement Annex prepared by the Department of Defense.

SEC. 812. ELIMINATION OF TRIENNIAL REPORT ON THE ROLES AND MISSIONS OF THE ARMED FORCES.

(a) REPEAL OF REQUIREMENT FOR REPORT ON ASSIGNMENTS AND ROLES AND MISSIONS.—Section 153 of title 10, United States Code, is amended—

(1) in subsection (a), by striking the catchline and section designator; (a) PLANNING; ADVICE; POLICY FORMULATION.; and

(2) by striking subsection (b).

(b) ROLES AND MISSIONS AS PART OF DOD Quadrennial Review.—Subsection 118(e) of such title 10 is amended by inserting after the first sentence the following two new sentences: “The Chairman shall also include his assessment of the assignment of functions (or roles and missions) to the Armed Forces and recommendations for change the Chairman considers necessary to achieve the maximum efficiency of the Armed Forces. This roles and missions assessment should consider the unnecessary duplication of effort among the armed forces and changes in technology that can be applied effectively to warfare.”.

SEC. 813. CHANGE IN DUE DATE OF COMMERCIAL ACTIVITIES REPORT.

Section 2361(g), title 10, United States Code is amended by striking “February 1” and inserting “June 30”.

Subtitle C—Other Matters

Sec. 821. Documents, Historical Artifacts, and Records of the Armed Forces.

Sec. 822. Charter Air Transportation of Members of the Armed Forces.

SEC. 821. DOCUMENTS, HISTORICAL ARTIFACTS, AND OBSOLETE OR SURPLUS MATERIALS: DONATION, OR EXCHANGE.

(a) In General.—Section 2572 of title 10, United States Code, is amended—

(1) in subsection (a), by striking “subsection (c)” and inserting “subsection (b)(1)”;

(2) in subsection (b), by striking “subsection (c)” and inserting “subsection (b)(2)”;

(3) in subsection (c)—

(A) by striking “(c) This section” and inserting “(c)(1) Subsection (a)” and

(B) by adding at the end the following new paragraph:

“(2) Subsection (b) applies to the following types of property held by a military department or the Coast Guard: books, manuscripts, works of art, historical artifacts, drawings, plans, models, and obsolete or surplus material.”;

(b) CONFORMING AMENDMENT.—The heading of such section is amended by striking “consigned or obsolete combat” and inserting “obsolete or surplus”.

SEC. 822. CHARTER AIR TRANSPORTATION OF MEMBERS OF THE ARMED FORCES.

Section 2461(g), title 10, United States Code, is amended by—

(1) in subsection (a), by striking “(i)(A), by striking “an” after “contract with” and inserting “a domestic or foreign’’;

(2) in subsection (b), by striking “checkrides” and inserting “cockpit safety observations”;

(3) in subsection (c), by striking “Military Airlift Command” and inserting “Air Mobility Command”;

(4) in subsection (g), by striking “in an emergency”;

(5) in subsection (j)(1), by striking “air carrier”;

TITLE IX—GENERAL PROVISIONS

Subtitle A—Matters Relating to Other Agencies

Sec. 901. Test and Evaluation Initiatives.

Sec. 902. Cooperative Research and Development Projects: Allied Countries.

Sec. 903. Recognition of Assistance from Foreign Nationals.

Sec. 904. Personal Service Contracts in Foreign Countries.

SEC. 901. TESTS AND EVALUATION INITIATIVES.

(a) AUTHORITY TO ENGAGE IN COOPERATIVE TESTS AND EVALUATION AT U.S. AND FOREIGN BASES AND OTHER FACILITIES WHERE TESTS ARE CONDUCTED BY THE COMBAT ARMED FORCES OF THE CONGRESS—Subsection 106(c) of title 10, United States Code, is amended by adding at the end the following new section:

“523501. Agreements for the cooperative use of ranges and other facilities where testing may be conducted

“(a) AUTHORITY TO ENTER INTO INTERNATIONAL AGREEMENTS.—The Secretary of Defense, with the concurrence of the Secretaries of the Armed Forces, may enter into a memorandum of understanding or the other formal agreement) with an eligible country or international organization for the purpose of reciprocal use of ranges and other facilities where testing of defense equipment may be conducted.

“(b) GENERAL NATURE OF AGREEMENT.—Formal agreements reached under subsection (a) shall require reciprocal use of test ranges and other facilities where testing is conducted in the United States and at such ranges and facilities operated by an eligible country or international organization.

“(c) PAYMENT OF COSTS.—Any agreement for the reciprocal use of ranges and other facilities where testing may be conducted shall contain the following pricing principles for reciprocal application:

“(1) The price charged a recipient country for test and evaluation services furnished by the officers, employees, or governmental agencies of the supplying country or international organization, shall be the direct costs to the supplying country or international organization that are incurred as a result of the test and evaluation services acquired by the recipient country or international organization.

“(2) The recipient country or international organization may be charged for indirect costs related to the use of the range or other facility where testing may be conducted only as specified in the memorandum of understanding or the other formal agreement.

“(d) RETENTION OF FUNDS COLLECTED FROM ELIGIBLE COUNTRIES AND INTERNATIONAL ORGANIZATIONS.—Amounts collected under sub-subsection (c) from an eligible country or international organization shall be credited to the appropriation accounts under which such costs were incurred.

“(e) DEFINITIONS.—In this section:

“(1) Direct cost means any item of cost that is easily and readily identified to a specific unit of work or output within the range or facility where such testing and evaluation occurred, that would not have been incurred if such testing and evaluation had not taken place. Direct cost may include labor, material, facilities, utilities, equipment, supplies, and any other resources of the range or facility where such test and evaluation occurred that is consumed or damaged during such test and evaluation, or maintained for the recipient country or international organization.

“(2) Indirect costs means any item of cost that cannot readily, or directly, be identified to a specific unit of work or output within the range or facility where such testing and evaluation occurred.

“(3) Operating cost includes all direct and indirect costs related to the use of the range or facility where testing took place.

“(4) Range includes a weapon range, firing range, testing range, or other test and evaluation range.

“(5) Range may include property or facilities owned by the United States or any foreign country or international organization.”

(5) in subsection (j)(1), by striking “air carrier”.
of Defense and to the head of one designated office or agency of the Department of Defense, as the Secretary may designate, to determine the appropriateness of the amount of indirect costs included in such charges.

(b) CLERICAL AMENDMENT.—The table of sections at the end of this Act is amended by adding at the end the following new item:

"23501. Agreements for the cooperative use of ranges and other facilities entered into by the Department of Defense.

(c) AUTHORITY TO USE MAJOR RANGE AND TEST FACILITY INSTALLATIONS OF THE MILITARY ALLIES OF THE UNITED STATES.

The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, and the Under Secretary of Defense for Research and Engineering. The authority of the Secretary to make a determination under paragraph (1) may be delegated only to the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, and the Under Secretary of Defense for Research and Engineering, or to any other official the Secretary so determines.

(7) Paragraph (e)(1)(B)(2)(A) in amended by striking "one or more of the major allies of the United States or NATO organizations." and inserting "a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization."; and

(8) Paragraph (e)(1)(B)(2)(C) in amended by striking "one or more major allies of the United States or NATO organizations." and inserting "a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization.".

(9) Paragraph (e)(1)(B)(2)(C) in amended by striking "a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization." and inserting "a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization.".

(10) Paragraph (e)(1)(B)(2)(D) in amended by striking "one or more major allies of the United States or NATO organizations." and inserting "a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization.".

(11) Paragraph (f)(1)(B)(1) in amended by striking "(1)".

(22) Paragraph (f)(1)(B)(2) in amended by striking "The Secretary of Defense and the Secretary of State, whenever they consider such action to be warranted, shall jointly submit to the Senate and the Committee on Foreign Relations of the House of Representatives a report—(A) enumerating those countries to be added or removed from the existing designation of countries designated major non-NATO allies, and major non-NATO allies for purposes of this section; and (B) specifying the criteria used in determining the eligibility of a country to be designated as a major non-NATO ally for purposes of this section."

(13) Paragraph (g)(1)(A) in amended by striking "major allies of the United States or NATO organizations." and inserting "a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization.".

(14) Paragraph (h)(1) in amended by striking "The term ‘major ally of the United States’ means—(A) a member nation of the North Atlantic Treaty Organization (other than the United States); or (B) a major non-NATO ally.

(15) Paragraph (i)(1) in amended by striking "one or more major allies of the United States or NATO organizations." and inserting "a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization.

SEC. 903. RECOGNITION OF ASSISTANCE FROM FOREIGN NATIONALS.

(a) In GENERAL.—Chapter 7 of title 10, United States Code, is amended by inserting after section 1133 the following:

"§ 1134. Recognition of assistance from foreign nationals.

"The Secretary of Defense may issue regulations, with the concurrence of the Secretary of State, authorizing members of the armed forces or civilian officials of the Department of Defense to present foreign currency coins, certificates, or other suitable commemorative items or mementos to recognize achievements or performance involving combat, that assists the armed forces of the United States.

(b) CLERICAL AMENDMENT.—The table of sections at the end of this Act is amended by inserting after the item relating to section 1133 the following new item:

"(i) INAPPLICABILITY WHEN ALL DIRECTLY AFFECTED DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES ARE RESIGNED TO COMPAREABLE FEDERAL POSITIONS.

SEC. 904. PERSONAL SERVICE CONTRACTS IN FOREIGN AREAS.

Under such regulations as the Secretary of State, with the concurrence of the Secretary of Defense, may prescribe, the Department of State may enter into services contracts with individuals to perform services in support of the Department of Defense in foreign countries.

Subtitle B—Department of Defense Civilian Personnel


Sec. 912. Authority for Designated Civilian Employees Abroad To Act as a Notary.

Sec. 913. Inapplicability of Requirement for Studies and Reports When All Directly Affected Department of Defense Civilian Employees Are Reassigned to Comparable Federal Positions.

Sec. 914. Preservation of Civil Service Rights for Employees of the Former Defense Mapping Agency.

Sec. 915. Financial Assistance to Certain Employees in Acquisition of Critical Skills.

Sec. 916. Pilot Program for Payment of Reimbursement Expenses.


Sec. 918(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398, 114 Stat. 1654A–323) is amended—

(1) in paragraph (1), by striking "(1) Sub-

(2) by striking paragraph (2), and

(3) by redesignating paragraphs (A) and (B) as paragraphs (1) and (2).

Sec. 918. AUTHORITY FOR DESIGNATED CIVILIAN EMPLOYEES ABROAD TO ACT AS A NOTARY.

(a) CLARIFICATION OF STATUS OF CIVIL LAWYERS ACTING AS A NOTARY.—Section 104(a)(b)(2) of title 10, United States Code, is amended by striking "legal assistance offices." and inserting "legal assistance attorneys.

(b) AUTHORITY FOR DESIGNATED CIVILIAN EMPLOYEES ABROAD TO ACT AS A NOTARY.—Subsection (b)(4) of such section is amended by inserting, after the word "outside" the United States, the word "counsel." and "of the armed forces of suitable training," after "duty status,"

SEC. 919. INAPPLICABILITY OF REQUIREMENT FOR STUDIES AND REPORTS WHEN ALL DIRECTLY AFFECTED DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES ARE REASSIGNED TO COMPARABLE FEDERAL POSITIONS.—The provisions of this section shall not apply to the directly affected Department of Defense civilian employees serving on permanent appointments.
are reassigned to comparable Federal positions for which they are qualified.

SEC. 914. PRESERVATION OF CIVIL SERVICE RIGHTS FOR EMPLOYEES OF THE FORMER DEFENSE MAPPING AGENCY.

Notwithstanding section 162 of title 10, United States Code, the provisions of subchapters II and IV (sections 751 through 754 and sections 755 through 756, respectively) of chapter 75 of title 5, United States Code, continue to apply, for as long as the employee continues to serve as a Department of Defense employee of the National Imagery and Mapping Agency without a break in service, to each of those former Defense Mapping Agency employees who occupied positions established under title 5, United States Code, and who on October 1, 1996, became employees of the National Imagery and Mapping Agency under paragraph 1601(a)(1) of title 10, United States Code pursuant to Title XI of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-20; 110 Stat. 2675, et seq.) and for whom the provisions of chapter 75 of title 5, United States Code, applied before October 1, 1996. Each such employee, at any time, may elect in writing to waive the provisions of this section, in which case the employee shall be permanent as to that employee.

SEC. 915. FINANCIAL ASSISTANCE TO CERTAIN EMPLOYEES IN ACQUISITION OF CRITICAL SKILLS.

The Secretary of Defense may provide the Director, National Imagery and Mapping Agency, the authority to establish and administer a graduate training program with respect to civilian employees of the National Imagery and Mapping Agency that is similar in purpose, content, and administration to the program which the Secretary of Defense is authorized to establish for civilian employees of the National Security Agency under section 1655 of the National Security Act of 1953 (50 U.S.C. 402 note).

SEC. 916. PILOT PROGRAM FOR PAYMENT OF RETRAINING EXPENSES.

(a) In General.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

``2410b. Pilot program for payment of retraining expenses.

(1) Eligibility.—The Secretary of Defense may establish a pilot program for the payment of retraining expenses in accordance with this section to facilitate the reemployment of eligible employees of the Department of Defense who are being involuntarily separated due to a reduction-in-force or due to relocation resulting from transfer of function, realignment, or change of duty station. Under the pilot program, the Secretary may pay retraining incentives to encourage non-Federal employers to hire and retain such employees.

(2) Eligible Employers.—For purposes of this section, an eligible employee is an employee of the Department of Defense, serving under an appointment to a reducing-in-force, except that such term does not include—

(1) a re-employed annuitant under subchapter III of chapter 83 of title 5, United States Code, chapter 84 of such title, or another retirement system for employees of the Government;

(2) an employee who, upon separation from Federal service, is eligible for an immediate annuity under subchapter III of chapter 83 of title 5, United States Code, or subchapter II of chapter 84 of such title; or

(3) an employee who is eligible for disability retirement under any of the retirement systems referred to in paragraph (1).

(c) RETRAINING INCENTIVE.—(1) Under the pilot program, the Secretary may enter into an agreement with a non-Federal employer under which the non-Federal employer agrees—

(A) to employ an eligible person referred to in subsection (a) for at least 12 months for a salary that is mutually agreeable to the employer and such person; and

(B) to cover any necessary training incurred by the employer for any necessary training, as defined by the Secretary, provided to such eligible employee in connection with the employment by that employer.

(2) The Secretary may pay a retraining incentive to the non-Federal employer upon the employee’s completion of 12 months of continuous employment with that employer. Subject to this section, the Secretary shall prescribe the amount of the incentive.

(3) The Secretary may pay a prorated amount of the incentive to the non-Federal employer for an employee who does not remain employed by the non-Federal employer for at least 12 months.

(4) In no event may the amount of retraining incentive paid for the training of any one person under the pilot program exceed the amount certified for that person under paragraph (1) or $10,000, whichever is greater.

(d) DURATION.—No incentive may be paid under the pilot program for training commenced after September 30, 2005.

(e) DEFINITIONS.—The following definitions apply in this section:

(1) The term “non-Federal employer” means an employer that is not an Executive agency, an agency established under title 5, United States Code, or the legislative or judicial branch of the Federal Government.

(2) “Reduction-in-force” and “transfer of function” shall have the same meaning as in chapter 41 of title 5, United States Code.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter 141 is amended by adding at the end the following new section:

``2410b. Pilot program for payment of retraining expenses."

Subtitle C—Other Matters

Sec. 921. Authority to Ensure Demilitarization of Significant Military Equipment Formerly Owned by the Department of Defense.

Sec. 922. Motor Vehicles: Documentary Requirements for Transportation for Military Personnel and Federal Employees on Change of Permanent Station.

Sec. 923. Department of Defense Gift Initiatives.

Sec. 924. Repeal of the Joint Requirements Oversight Council Semi-Annual Report.

Sec. 925. Access to Sensitive Unclassified Information.

Sec. 926. Water Rights Conveyance, Acquisition, and Mapping Agency under paragraph 1601(a)(1) of title 10, United States Code, is amended by adding after section 2572 the following new section:

``2573. Continued authority to require—

(a) AUTHORITY TO REQUIRE DEMILITARIZATION OF SIGNIFICANT MILITARY EQUIPMENT.—The Secretary of Defense may require any person in possession of significant military equipment formerly owned by the Department of Defense—

(1) to demilitarize the equipment;

(2) to have the equipment demilitarized by a third party;

(3) to return the equipment to the Government for demilitarization;

(b) COST AND VALIDATION OF DEMILITARIZATION.—When the demilitarization of significant military equipment is carried out by the person in possession of the equipment pursuant to paragraph (1) or (2) of subsection (a), the person shall be liable for all demilitarization costs, and the United States shall have the right to validate that the equipment has been demilitarized.

(c) RETURN OF EQUIPMENT TO GOVERNMENT.—When the Secretary of Defense requires the return of significant military equipment for demilitarization by the Government, the Secretary shall bear all costs to transport and demilitarize the equipment. If the person in possession of the significant military equipment obtained the property in the manner authorized by law or regulation and the Secretary determines that the cost to demilitarize and return the property to the person is prohibitive, the Secretary shall reimburse the person for the purchase costs of the property and for the reasonable transportation costs incurred by the person to purchase the equipment.

(d) ESTABLISHMENT OF DEMILITARIZATION STANDARDS.—The Secretary shall issue regulations to prescribe what constitutes demilitarization for each type of significant military equipment, including ensuring that the equipment does not pose a significant risk to public safety and does not provide a significant weapon capability or other functional capability that makes it likely that any person from whom private property is taken for public use under this section receives just compensation.

(e) EXCEPTIONS.—This section does not apply—

(1) when a person is in possession of significant military equipment formerly owned by the Department of Defense for the purpose of demilitarizing the equipment pursuant to a Government contract;

(2) to small arms weapons issued under the Defense Civilian Marksmanship Program established in Title 36, United States Code.

(3) to issues by the Department of Defense to museums where modified demilitarization has been performed in accordance with the Department of Defense Demilitarization Manual, DoD 4160.21-M-1; or

(4) to other issues and un-demilitarized significant military equipment in accordance with the provisions of the provisions of the Department of Defense Demilitarization Manual, DoD 4160.21-M-1.

(e) DEFINITION.—In this section, the term ‘‘significant military equipment’’ means—

(1) an article for which special export controls are warranted under the Export Control Act (22 U.S.C. 2751 et seq.) because of its capacity for substantial military utility
or capability, as identified on the United States Munitions List maintained under section 121.1 of title 22, Code of Federal Regulations; and 46
(2) any other article designated by the Department of Defense as requiring demilitarization before its disposal.”;
(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended to read as follows:
SEC. 922. MOTOR VEHICLES: DOCUMENTARY REQUIREMENTS FOR TRANSFERS TO MILITARY PERSONNEL AND FEDERAL EMPLOYEES ON BADGE OF THE UNITED STATES.
(a) MILITARY PERSONNEL.—Section 2634 of title 10, United States Code, is amended as follows:
(1) by redesiging subsecions (f), (g) and (h) as subsections (g), (h), and (i) respectively;
and
(2) by inserting after subsection (e) the following new subsection:
“(f) Motor vehicles transported under this section are not subject to the provisions of the Anti Car Theft Act of 1992, as amended, or any implementing regulations. The Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a Service in the Navy) will prescribe regulations designed to ensure members do not present for shipment stolen vehicles.”;
(b) CIVILIAN EMPLOYEES.—Section 5727 of title 5, United States Code, is amended as follows:
(1) by redesiging subsection (f) as subsection (g); and
(2) by inserting after subsection (e) the following new subsection:
“(f) Motor vehicles transported under this section are not subject to the provisions of the Anti Car Theft Act of 1992, as amended, or any implementing regulations. Regulations prescribed under section 5738 of this title on the regulations designed to ensure employees do not present for shipment stolen motor vehicles under subsection (b) of this section.”;
SEC. 923. DEPARTMENT OF DEFENSE GIFT INITIATIVES.
(a) LOAN OR GIFT OF OBSOLETE MATERIAL AND ARTICLES OF HISTORICAL INTEREST.—Section 7545 of title 10, United States Code, is amended—
(1) in subsection (a)—
(A) by inserting the following after the subsection designation: “ADDITIONAL ITEMS TO BE DONATED BY THE SECRETARY OF THE NAVY.”;
(B) by striking “books, manuscripts, works of art, drawings,” and all that follows to the dash and inserting “obsolete combat or shipboard material not needed by the Department of the Navy,”; and
(C) by striking “World War I or World War II” and inserting “a foreign war.”;
(D) in paragraph (5), by striking “World War I or World War II” and inserting “a foreign war.”;
(E) in paragraph (8), by inserting “or memorial” after “a museum”; and
(2) in subsection (b), by inserting the following after the subsection designation: “MAINTENANCE OF THE RECORDS OF THE GOVERNMENT.”;
(C) by inserting the following after the subsection designation: “SECRETARIAL AUTHORITY TO MAKE GIFTS OR LOANS.”; and
SEC. 924. REPEAL OF THE JOINT REQUIREMENTS OVERSIGHT COUNCIL SEMI-ANNUAL REPORT.
SEC. 925. ACCESS TO SENSITIVE UNCLASSIFIED INFORMATION.
(a) In General.—Section 137 of title 10, United States Code, is amended by adding at the end the following new section:
“§2332. Limited access to sensitive unclassified information by administrative support contractors.
“(a) AUTHORITY.—Notwithstanding sections 552a of title 5, 2320 of title 10, and 1905 of title 18, United States Code, the Secretary of Defense may authorize administrative support contractors with limited access to, and use of, sensitive unclassified information, provided that—
“(1) such disclosure is not otherwise prohibited by law;
“(2) access shall be limited to sensitive unclassified information that is necessary for the administrative support contractor to perform contractual duties;
“(3) administrative support contractors shall be subject to the same restrictions on accessing, modifying, destroying, retaining, using, disclosing, or releasing such sensitive unclassified information as are applicable to employees of the United States; and
“(4) administrative support contractors shall be subject to the same civil and criminal penalties for unauthorized disclosure or use of such sensitive unclassified information as are applicable to employees of the United States.”;
(b) DEFINITIONS.—The following definitions apply to this section:
“(1) ‘The term ‘sensitive unclassified information’ means all unclassified information for which disclosure to an administrative support contractor is prohibited by the Privacy Act (5 U.S.C. §552a); section 2320 of this title; or the Trade Secrets Act (18 U.S.C. §1950).
“(2) ‘The term ‘administrative support contractors are employees of a contractor or subcontractor who performs any of the following for or on behalf of the Department of Defense: secretarial or clerical support, data entry, document reproduction, scanning, or imaging; operation, management, or maintenance of paper-based or electronic systems; installation, operation, management, or maintenance of internet or intranet systems, networks, or computer systems; and facilities or information security.’”;
SEC. 926. WATER RIGHTS CONVEYANCE, ANDERSEN AIR FORCE BASE.
(a) AUTHORITY TO CONVEY.—In conjunction with the conveyance of a utility system under the authority of section 2688 of title 10, United States Code, and in accordance with all the requirements of that section, the Secretary of the Air Force may convey all right, title, and interest of the United States, or such lesser estate as the Secretary considers appropriate to serve the interests of the United States, in the water rights related to Andy South (also known as the Andersen Administrative Annex, MARBO (Marianas Bonis Base Command), and the Andersen Water Supply Annex (also known as the Tumon Water Well or the Tumon Maui Well), Air Force properties located on Guam, and the United States of the value of such excess water sold to the Secretary.
(b) ADDITIONAL REQUIREMENTS.—The Secretary may require any agreement for the transfer of a vessel stricken from the Navah Vessel Register and designated for scrapping to a qualified organization listed under subsection (a). The terms and conditions of any agreement for the transfer of a vessel under this section shall include a requirement the transferee to maintain the material conveyed in a condition that preserves a historical or commercial value of the material or bring discredit upon the Navy.”;
(b) LOAN, GIFT, OR EXCHANGE OF DOCUMENTS, HISTORICAL ARTIFACTS, AND CONDEMNED OR OBSOLETE, COMBAT MATERIAL.—
Section 2572(a)(1) of such title 10 is amended by striking the period after “A municipal corporation” and inserting county or other political subdivision of a state.”;
SEC. 927. SALE OF EXCESS WATER AUTHORIZED.
(a) If the Secretary exercises the authority contained in subsection (a), he may provide in any such conveyance that the conveyee of any new replacement water system shall sell field of Andersen Air Force Base, as determined by the Secretary.
(b) INTERIM WATER SUPPLIES.—If the Secretary determines that it is in the best interest of the United States to transfer title to the water rights and utility systems at Andy South and Andersen Water Supply Annex prior to placing into service a new replacement water system and well field of Andersen Air Force Base, the Secretary may require that the United States have the primary right to all water produced from Andy South and Andersen Water Supply Annex and the Andersen Water Supply Annex (also known as the Tumon Water Well or the Tumon Maui Well), Air Force properties located on Guam, and the United States of the value of such excess water sold to Andersen Air Force Base, as determined by the Secretary.
(b) ADDITIONAL REQUIREMENTS.—The Secretary may receive in the form of reduced charges at the Secretary.
(c) SALE OF EXCESS WATER AUTHORIZED.—
(1) If the Secretary exercises the authority contained in subsection (a), he may provide in any such conveyance that the conveyee of any new replacement water system shall sell field of Andersen Air Force Base as the Secretary determines to be in the United States of the value of such excess water sold to Andersen Air Force Base as the Secretary determines to be in the interest of the United States.
(b) ADDITIONAL REQUIREMENTS.—The Secretary determines to proceed with a water utility system conveyance under section 2688
Participation Resolution, to authorize the
amounts equal to the budget authority in-
United States Soldiers’ and Airmen’s Home
ment Home Trust Fund for the Armed
Defense Sealift Fund in amounts equal to
the Working Capital Funds and the National
budget authority included in the President’s
fense-wide activities in amounts equal to the
tions of the Military Departments and De-
the operation and maintenance appropria-
year 2002.
(e) DEFINITIONS.—(1) For purposes of this
section, “Andersen Air Force Base” means
the Main Base and Northwest Field.
(2) The water rights referred to in sub-
section (a) shall be considered as part of a
“utility system” as that term is defined in
section 268b(g)(2) of title 10, United States
Code.
(f) A PPLICATION OF THE OTHER LAND DIS-
RFOR ACTS.—The water rights related to
Andy South and Andersen Air Force Water Supply
ments of the Act of November 13,
nee shall not be considered as real prop-
cess water sold by the conveyee, which re-
turn the Secretary may receive in the form
of reduced charges for utility services pro-
vided by the conveyee.
SEC. 927. REPEAL OF REQUIREMENT FOR SEPA-
RATORY BUDGET REQUEST FOR PRO-
UREMENT OF RESERVE EQUIP-
ment.
Section 1140 of title 10, United States
Code, is repealed.
SEC. 928. REPEAL OF REQUIREMENT FOR TWO-
YEAR BUDGET CYCLE FOR THE DE-
MENT OF DEFENSE.
Section 1405 of the Department of Defense
is repealed.
SEC. 929. SECTIONAL ANALYSIS
Sections 101 through 106 provide procure-
ment authority for the Military Depart-
ments and for Defense-wide appropriations in
amounts equal to the budget authority in-
cluded in the President’s Budget for fiscal
year 2002.
Section 201 provides for the authorization of
each program, development, test, and evalua-
tion appropriations for the Mili-
tary Departments and the Defense Agencies
in amounts equal to the budget authority in-
cluded in the President’s Budget for fiscal
year 2002.
Section 301 provides for authorization of
the operation and maintenance appropri-
ations of the Military Departments and De-
fense-wide activities in amounts equal to the
budget authority included in the President’s
Budget for fiscal year 2002.
Section 302 authorizes appropriations for
the Working Capital Funds and the National
Defense Sealift Fund in amounts equal to
the budget authority included in the Presi-
dent’s Budget for fiscal year 2002.
Section 303 authorizes appropriations for
fiscal year 2002 for the Armed Forces Retire-
ment Home Trust Fund for the Armed
Forces Retirement Home, including the
United States Soldiers’ and Airmen’s Home
and the United States Naval Home in
amounts equal to the budget authority in-
cluded in the President’s Budget for fiscal
year 2002.
Section 304 would amend section 5(a) of
the Multinational Force and Observers (MFO)
Participation Resolution, to authorize the
President to approve contracting out
logistical support functions in support of the
MFO that are currently performed by U.S.
 military personnel and equipment. The reso-
nation was enacted December 1981, in
order to authorize the United States to de-
ploy peacekeepers and observers to Sinai,
Egypt to assist in the fulfillment of the
Peace Agreement. It should be noted that section 5(a)
authorizes any agency of the United States to provide
administrative and logistical support and
services to the MFO without reimbursement
when the provision of such support or ser-
VICES would not result in significant incre-
mental costs to the United States.
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Administrative and technical support is
provided under section 5(a) by the U.S.
Army’s 1st Support Battalion pursuant to
international agreements with the Arab
Republic of Egypt, the State of Israel, and
the MFO. These agreements stipulate the types
of unit functions required to be performed by
the MFO in order for it to comply with its
treaty verification mission. The two primary
support functions currently provided by the
United States to the MFO, are aviation and
logistical support. Aviation support, is pro-
vided to the MFO by ninety-nine soldiers and
ten U.S. Army UH-1H helicopters. General
logistical support to the MFO is provided by
the hundreds of supplies assigned to the
U.S. Logistical Support Unit.
Section 305 would authorize the Secretary
of Defense to designee to enter into mul-
tiple-year operating contracts or leases or
charters of commercial craft, where eco-
nomically feasible, in advance of the avail-
ability of funds in the working capital fund.
The contract authority is available for obli-
gation for one year and cannot exceed in its
entirely $27,100,000. In subsequent years, the
Department may submit requests for addi-
tional contracts or charters. This contract
authority is appropriate for working capital funds where
a history of use indicates an annual utiliza-
tion of these items by DoD customers will be
more than sufficient to pay for the annual
 costs. The use of annual leases, charters or
contracts is not cost effective in obtaining
capital items, or the use of commercial
logistical services for DoD, the authority to enter into multiple-year leases
and charters is needed. Additional annual appropria-
tions funds, however, are not needed.
DoD would not be able to modify the use of
these items to fill customer orders will cover
these costs.
Section 1301 of title 31, United States
Code, discusses the application of appropriations
and requires, in subsection (d), that to au-
thorize making a contract for the payment of
money in excess of an appropriation a new
law must specifically state that such a con-
tract may be made. As the change specifi-
cally addresses only multiple-year leases,
charters or contracts by working capital
funds, the contract authority granted by this
proposal would not impact other programs.
Similar authority, successfully utilized by
the Navy Industrial Fund in connection with
the long term vessel charters of T-5 tankers,
was approved by Congress as part of the Sup-
plemental Appropriations Act of 1983. That
program and the use of contract authority
was issued by the Office of the Comptroller
General in B-174839, March 20, 1984. As
indicated in the opinion, working capital funds are
precluded from negotiating cost effective
multiple year charters or contracts by working
capital funds, the contract authority granted by this
proposal would not impact other programs.
Section 310. The Navy and the U.S. Envi-
ronmental Protection Agency (EPA) entered
into an agreement in January 2001 for pay-
ing the EPA for the Anthropogenic
Sands Site, South Berwick, Maine for EPA’s
remaining past response costs incurred by the
agency for the period from May 12, 1992
through July 31, 2000. Activities of the Navy
are liable under the Comprehensive Environ-
mental Response, Compensation and Liabil-
ity Act of 1980 as generators who arranged for
disposal of the hazardous substances that
ended up at the site, and there are no other
viable responsible parties. Under the agree-
ment, the Navy would pay for EPA’s final
response actions that were undertaken to pro-
tect human health and the environment at
this site. The agreement also stipulated that
the Navy would seek authorization from Congress in the FY02 legislative program for
payment of costs previously incurred by EPA
at the site. Should Congress approve this legis-
latively proposa, the Navy would pay EPA’s
response costs from the FY02 Legislative
Restoration Account, Navy’ in an amount
equal to the principle ($399,978.00) and inter-
($596,400.00), or a total of $1,096,378.00.
DoD has the capability to conduct the pilot program from September
30, 2001 to September 30, 2003. The original
legislation authorized the pilot program
to conduct for two years from the date of enactment
on November 18, 1997. Section 325 of the Na-
tional Defense Authorization Act for Fiscal
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Year 2000 (Public Law 106-55; 113 Stat. 512) extends the statutory two-year deadline an additional two years.

The initial extension was requested because the Department of Defense implementation guidance, required by the statute, had not been issued as of June 30, 1999. In order to fulfill the purpose of the legislation and adequately assess the feasibility and advisability of the sale of economic incentives, the pilot program was extended another two years from its original deadline. We are requesting an additional two-year extension to allow for another opportunity for the Department to assess the feasibility of the program. States have been slower to develop emission-trading programs than initially anticipated and more time is desired to allow military installations to become familiar with the benefits of economic incentive programs.

Section 351 also provides authority to the Department of Defense (DoD) to retain proceeds from the sale of Clean Air Act emission reduction credits, allowances, offsets, or comparable state and federal incentives established and required by federal law and regulations generally require proceeds from the sale of government property to be deposited in the U.S. Treasury. These include an additional way for states to keep the funds generated by reducing air emissions and selling the credits as private industry. This inhibits the reinvestment of those funds to purchase air credits needed in other areas and eliminates any incentive for installations to spend the money required to generate the credits in order to sell them.

The Clean Air Act (CAA) mandates that states establish state implementation plans (SIPs) to attain and maintain the national ambient air quality standards for certain criteria air pollutants, e.g., ozone, particulate matter, carbon monoxide. To further this mandate, the 1990 Clean Air Act Amendments provided language encouraging the states to include “economic incentive” programs in their SIPs. Such programs encourage greater reductions in air pollution by offering monetary incentives for the reduction of emissions of criteria air pollutants.

A significant and growing number of state and local air quality districts have established various types of emission trading systems. Absent the proposed legislation, the military services would be required to remit any proceeds from the sale of economic incentives to the U.S. Treasury. The proposed legislation grants military installations authority to sell the economic incentives and to retain the proceeds in order to create a local economic incentive to reduce air pollution above and beyond legal requirements. Retention and use of proceeds at the installation level is a key component of the pilot program.

Section 312 would remove the requirement for the Department of Defense to submit an annual report to Congress on its reimbursement of environmental response action costs for the top 20 defense contractors, as well as on the amount and status of any pending requests for such reimbursement by those same firms. This reporting requirement was slated to end in December 1999 pursuant to section 311 of the Federal Reserve System and Sunset Act of 1995, Pub. L. 104-66; however, it was reinstated by section 1831 of the National Defense Authorization Act for Fiscal Year 1999, P.L. 106-45.

The Department strongly recommends removal of this statutory reporting requirement because the data collected are not necessary for determining allowable environmental response action costs on Government contracts. Moreover, the Department does not routinely collect data on two categories of contractor overhead costs.

This reporting requirement is very burdensome on both the Department and contractors, diverting limited resources for data collection efforts that do not benefit the procurement process. Not only are there 20 different firms involved, but for most of these firms, a contract price is also awarded for multiple locations in order to get an accurate company-wide total. In many cases the data costs must be derived from company records because it is not normally maintained in contract accounting systems. After the data is collected, Department contractors are required to review, assemble, and forward the data through their respective chains of command to the Defense Contract Audit Agency for validation. After validation, the data is provided to Department staff for consolidation into the summary report provided to Congress.

In addition, the summary data provided to Congress in the annual report to Congress has shown that the Department is not expending large sums of money to reimburse contractors for such costs. The Department’s share of such costs in FY99 was approximately $11 million. In the preceding years the costs were, $13 million in FY98, $17 million for FY97, and $4 million for FY96.

Section 315 would amend section 2482(b)(1) of title 10, to extend its reach to all Defense working capital fund financial activities that provide products and services to other agencies, and allow them to recover those administrative and handling costs the Defense Commissary Agency would be required to pay for acquiring such services.

Currently, section 2482(b)(1) restricts the amount that the United States Transportation Command could charge to the Defense Commissary Agency for such services to the price at which the service could be obtained through full and open competition, as section 46 of the Office of Federal Procurement Policy Act (41 U.S.C. 403(b)) defines such terms. These same restrictions, however, do not apply to other Defense working capital fund financial activities and preclude the United States Transportation Command from recovering “freight forwarding” costs that the Defense Commissary Agency would ordinarily have had to pay a commercial carrier.

If enacted, the proposed amendment would end this inequity, by applying a single cost-effective guideline for such charges to all Defense working capital fund activities. It should also be noted that the last sentence of the proposed amendment continues the current policy of insuring that costs associated with mobilization requirements, maintenance of readiness, or establishment or maintenance of the infrastructure to support mobilization or readiness requirements, are not passed on to the customers of the Defense Commissary Agency.

This proposal will not increase the budgetary requirements of the Department of Defense.

Section 316 requires that the Defense Commissary Agency surcharge account be reimbursed for non-commissary related purposes of up to one percent of the depreciated value of the stores when a Military Department allows the occupation of a facility—previously acquired, constructed or improved—under agreements to lease the facilities to be used for non-commissary related purposes.

Section 317 would permit the Defense Commissary Agency (DECA) to purchase exchange merchandise at locations where no exchange facility is operated by an Armed Service Exchange. Under Section 2486(b) of title 10, United States Code, the Secretary of Defense may acquire, purchase and sell as commissary store inventory a limited line of exchange merchandise. This amendment is required to obtain the necessary authority for DECA to procure the exchange merchandise items from the Armed Service Exchange. The Armed Service Exchange (AS Exchange) would have a procurement item that would not exceed the normal exchange retail cost less the amount of the commissary surcharge, so that the amount paid by the patron would be the same. If the Exchange cannot supply the items authorized to be sold by DECA, DECA may procure them from any authorized source subject to the limitations of section 2486(e) of title 10 (i.e., that such items are only exempt from competitive procurement if they comply with the brand name sale requirements of being sold in the Armed Service Exchange). Items whom such items are procured, they must be sold in commissaries at cost plus the amount of the surcharge.

Section 318 would amend a portion of section 2482 (a) of title 10 that is entitled “Private Operation” to delete overly restrictive language. The current section authorizes Defense Commissary stores operated by private persons under a contract, but prohibits the contractor from carrying out functions for the procurement of products to be sold in the commissary or from engaging in transactions related to the actual management of the stores. Consequently, the Department is precluded from realizing the potential benefits that could be derived from the operation and management of the stores. By deleting this language a private contractor selected to operate Commisary stores would be allowed to apply best commercial practices in both store operations and supply chain management, and to achieve economy of scale savings in procurement, distribution and operations. Thus, the surcharges could be sold in the Commissary stores. This change will allow the Department to initiate pilot programs to test these potential benefits at selected Commissary stores.

Section 320 would establish permanent authority for active Department of Defense units and organizations to reimburse National Guard and Reserve units and organizations for the expenses incurred when Guard and Reserve personnel provide them intelligence and counterintelligence support. For the last five years, Congress has authorized such reimbursement in each year’s defense appropriations act. See e.g., section 8059 of the Department of Defense Appropriations Act, 2001 (Public Law 106-55; 113 Stat. 656, 687). For the past several years the language of these annual provisions has remained unchanged, and the Department proposes to establish authority for such reimbursement on a permanent basis.

Such reimbursement constitutes an exception to the general principle that funds for active DoD organizations be expended to pay the expenses of Guard and Reserve units, and vice versa. By their training and experience, reserve intelligence personnel make unique contributions to the intelligence and counterintelligence programs of active DoD units and organizations. They also provide invaluable surge capability to meet the demands of contingencies. In this way, Guard and Reserve units do not program funds for such support of active DoD units.
Section 410. The proposed amendment to section 523 of title 10, United States Code, increases Defense Officer Personnel Management Act sections 502 and 503 to authorize for the active force a limited number of active duty Air Force officers with the grade of major. This would continue progress toward achieving an appropriate distribution of officers within the active force. An appropriate distribution may be achieved by increasing the authorized strengths of commissioned officers in the grade of major by seven percent starting in fiscal year 2002. This proposed amendment would not increase the total number of commissioned officers authorized for the Air Force and would not affect the officer-to-enlisted ratio.

The budgetary impact of this proposal on Air Force Military Personnel Appropriations Act budget requirements would be a net increase of $310 million in fiscal year 2002. This is phased in, and a net increase of approximately $20 million per year thereafter.

Section 501 would repeal subsection 1025a(d) of title 10, United States Code, which requires certain health care for Selected Reserve members of the Army assigned to units scheduled to deploy within 75 days after mobilization. Specific provisions were enacted, the Department has implemented several programs to ensure Reserve component members are medically ready.

The Army developed a program called FEDS-HERAL, which is an alliance with the Department of Veterans Affairs (DVA) and the Department of Health and Human Services (DHHS) that allows Army Reserve and National Guard members to complete physical examinations, receive inoculations and other medical requirements to acquire facilities across the country. This significantly enhances access for Reserve component members of the Army to meet medical and dental readiness requirements.

DoD policy now requires an annual dental examination. To track Reserve component dental readiness, the Department has developed a standard dental examination form that can be completed by a member’s personal civilian dentist. Moreover, the recently expanded TRICARE Dental Program provides Reserve component members with an affordable means of completing dental examinations and receiving dental care through a much larger provider network. This cost to the member to participate in this insurance program is only $7.63 per month with the Department paying the remaining 60 percent of the premium share.

Section 405 prescribes the maximum end strengths for the Reserve component of the Army and Air Force for dual-status military technicians for fiscal year 2002.

Section 404 describes the end strengths for the reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President’s budget for fiscal year 2002.

Section 403 describes the maximum end strengths for the reserve component of the Army and Air Force for dual-status military technicians in fiscal year 2002.

Section 402 prescribes the minimum end strengths for the reserve component of the Army and Air Force for dual status military technicians for fiscal year 2002.
Section 504. General/flag officers serving above the grade of O-8 serve in a temporary grade that is authorized by the position. Such officers generally hold a permanent grade of O-8. Under current law, for the officer to retire in a grade other than O-8, the Secretary of Defense must determine and then certify to the President and the Congress that such officer served satisfactorily on active duty in the higher grade. Most officers who serve in grades above O-8 are approved for retirement in a grade above O-8. Section 504 would retain the requirement for the Secretary of Defense to certify that the service of an officer on active duty in a grade above O-8 was satisfactory in order for the officer to be retired in the grade above O-8, but would do away with the requirement for the Secretary of Defense to provide that certification to the President and the Congress. Further, Section 504 would require the Secretary of Defense to issue written regulations to implement these procedures.

Section 1558 of title 10, United States Code contains authority to extend temporary military drawdown authorities through Fiscal Year (FY) 2004. Most of these authorities were initially established in the FY 1991 through FY 1993 National Defense Authorization Acts (NDAA). They were designed to enable the Services to reduce their military forces through a variety of voluntary and involuntary programs and to provide benefits to assist departing members in their transition to civilian life. The FY 1994 NDAA extended these authorities through FY 1999. The Department later requested a further extension through FY 2003, but the FY 1999 NDAA only extended them through FY 2001.

Section 505 would add no new or changed programs. Rather, it would extend the expiration date by three years for existing programs that expired or are scheduled to expire in FY 2004. These programs include military drawdown authorities, voluntary and involuntary separation authority, and a review of involuntary discharges that have been denied under section 1558(j) of title 10. The extension of these programs will result in a savings of one billion dollars over FY 2004-

Section 506. Subsection (a) adds a new section 1558 to the end of chapter 79 of title 10: The Secretary of Defense, or the Secretary concerned, may determinate that an individual who served in the armed forces after June 29, 2001, but for the selection board recommendation, would have been entitled to separation, retirement, or other benefits.

Section 507. Subsection (b) repeals section 1558(f) of title 10, which provides that the remedies provided in section 1558(j) are the exclusive remedies available to a person challenging the action or recommendation of a selection board, as that term is defined in section 1558(j).
status in a reserve component for the purpose of calculating the number of persons serving in that term.

Subsection (b) adds new subsections (g), (h) and (i) to section 628 of title 10, the section authorizing special selection boards for promotion of active duty list commissioned and warrant officers (redesignating existing subsection (g) as subsection (j)). New subsections (g) and (h) correspond exactly to subsections (g) and (h) of section 15402 of title 10, the ROPMA provision authorizing special selection boards for promotion of reserve active status list commissioned officers.

New subsection (g) provides that no court or official of the United States shall have power or jurisdiction over any claim by an officer or former officer based on his or her failure to be selected for promotion unless the officer has first been considered by a special selection board, or his claim has been rejected by the Secretary concerned without consideration by a special selection board. In addition, this subsection precludes any official or court from granting relief on a claim for promotion to or from their status list selected for promotion by a special selection board.

Subsection (h) permits judicial review of a decision to consider or not to consider a claim for promotion at a special selection board. A court may overturn such a decision and remand to the Secretary concerned to convene a special selection board if it finds the decision to be arbitrary, capricious, not based on substantial evidence, or otherwise contrary to law. The term “contrary to law” is intended to encompass constitutional as well as statutory violations.

Subsection (i) also provides that if a court finds that the action of a special selection board was contrary to law or involved material error or clear deviation from proper procedures, it shall remand to the Secretary concerned for a new special selection board. No other form of judicial relief is authorized.

Subsection (j) provides that nothing in this legislation limits the existing jurisdiction of any court to determine the validity of any statute, regulation or policy relating to selection boards or cases to that provided for in this legislation, and (2) that nothing in this legislation limits the existing authority of the Secretary of a military department to correct a military record under section 1552 of title 10.

Subsection (c) provides that the amendments made by this legislation are retroactive in effect, except that they do not apply to any judicial proceeding commenced in a federal court before the date of enactment.

Section 511 would allow the Service Secretaries to routinely transfer Reserve officers to the Retired Reserve—without requiring that the officer request such a transfer—for those officers who are required by statute to be removed from the reserve active status list because of failure of selection for promotion, length of service, or age. This section would add a similar authority with respect to warrant officers and enlisted members who have reached the maximum age or years of service as prescribed by the Secretary concerned. Giving the Service Secretaries the authority to remove these members from the active status list would allow these members to request discharge or, in some cases, transfer to an inactive status list in lieu of transfer to the Retired Reserve. The Secretary concerned, acting alone, would also allow these members to request discharge if they have reached the age or years of service as prescribed by the Secretary concerned. This authority would also help protect those members who entered military service after September 7, 1980. Members who entered military service that date and any subsequent date and were charged after qualifying for a non-renewal reten-

for Reserve Component members, which was sent to Congress on October 17, 2000.

Section 511 would amend titles 10, 14 and 38, United States Code (U.S.C.), to provide the same benefits and protections for Reserve Component officers as those in a funeral honors duty status as provided when RC members perform inactive duty training (IDT) or traveling to or from IDT. Sections to be amended are:

1. 10 U.S.C. 802—persons subject to the Uniformed Code of Military Justice. Section 511 would specify that Reserve Component members are subject to the Uniformed Code of Military Justice while performing funeral honors duty under 10 U.S.C. 12903.

2. 10 U.S.C. 1061—eligibility for commissary and exchange benefits for dependents of a deceased Reserve Component member. Section 514 would specify that the dependents of a Reserve Component member who died while in a funeral honor duty status, or while traveling to or from such duty would be eligible for commissary and exchange benefits, as well as the surviving dependents of an active duty member.

3. 10 U.S.C. 1475 and 1476—payment of a death gratuity. Section 514 would authorize payment of a death gratuity of a Reserve Component member who died while in a funeral honor duty status, or while traveling to or from such duty.

4. 14 U.S.C. 704—authority over any claim by an officer or former officer based on his or her status. Section 512 would add the term “funeral honors duty” to section (g) as subsection (j). New subsections (g), (h) and (i) would be added to section (g) as subsection (j).

5. 14 U.S.C. 705—benefits for members of the Coast Guard Reserve. Section 514 would specify that a member of the Coast Guard Reserve would have the same authority, rights and privileges as a member of the Regular Coast Guard of a corresponding grade or rating when the member is in a funeral honors duty status.

6. 38 U.S.C. 101—definitions. Section 514 would add the term “funeral honors duty” and define that term, and then include that term in the definition of “military, naval, or air service.” Including the definition of funeral honors duty in the term “military, naval and air service” would ensure that Reserve members receive the same benefits and protections for Reserve Component members, as those in a funeral honors duty status.

7. 38 U.S.C. 12503—entitlement to be appointed to, or to receive retired pay, but that pay is calculated on the pay scale in effect when discharged, rather than the pay scale in effect when they request retired pay. This is significant since the retired pay for a former member in most cases is significantly less than the pay of a member of the Regular Reserve because of the pay scale used to determine the amount of retired pay. This amendment would modify the regulations to make such a positive election to be discharged with the full understanding of the possible economic consequences of that decision.

Section 513, subdivision with respect to Reserve component members was added as section 991(b)(2) of title 10, United States Code, by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–569). The purpose of this definition was to ensure consistent treatment of Active and Reserve component members serving under comparable circumstances and preclude Reserve component members from being credited with deployed days when they could spend off-duty time in their home stations.

As provided in the National Defense Authorization Act for Fiscal Year 2001, the Active component will count “home station training” as time in which the member is not in active duty. However, the member is unable to spend off-duty hours in the housing in which he or she resides while on garrison duty at his or her permanent duty station to maintain consistency between Active and Reserve component members, the definition of deployment with respect to Reserve component members must be amended.

Absent the proposed change in Section 512, an active duty member who is not able to spend off-duty time in the housing in which he or she resides while in a funeral honors duty status, will be credited with a day of deployment, while a Reserve component member serving under comparable circumstances will not because they will be within the 100-mile or three-hour limit. Section 513 would eliminate the periodic physical examinations for members of the Individual Ready Reserve (IRR), which is required once every five years. In lieu of conducting a physical examination every five years, these members would receive a physical examination upon a call to active duty, if they have not had a physical examination within the previous five years. However, the Secretary concerned would have the authority to provide a physical examination when necessary to meet military requirements. There is little return on investment for any program to conduct physical examinations for the more than 450,000 members of the IRR. The annual cost of ensuring that IRR members are examined as to physical condition at least every five years is approximately $2.3 million. This cost reflects approximately 10 percent of what the Department would be able to pay for the annual medical examinations for nearly 11,000 of the more than 90,000 required physical exams for IRR members each year. In lieu of this, it would be far more cost-effective to conduct physical exams on these Reserve members at the time they are ordered to active duty. This amendment to section 513 would require the Secretary of Defense to report to Congress on the means of improving medical and dental care for Reserve Component members, which was sent to Congress on October 17, 2000.

Amending the various statutes to add funeral honors duty as a duty status in which these benefits are provided is important to ensure a viable program of rendering honors at the funerals of our veterans.

Section 515 would amend the Uniformed Code of Military Justice to authorize special selection boards for the purpose of promoting those Reserve Component members who, while in a funeral honors duty status, are discharged or, in some cases, transfer to an inactive status list commissioned and warrant officers (redesignating existing subsection (g) as subsection (j)). New subsections (g) and (h) correspond exactly to subsections (g) and (h) of section 15402 of title 10, the ROPMA provision authorizing special selection boards for promotion of reserve active status list commissioned officers.

(1) 10 U.S.C. 802—persons subject to the Uniformed Code of Military Justice. Section 511 would specify that Reserve Component members are subject to the Uniformed Code of Military Justice while performing funeral honors duty under 10 U.S.C. 12903.

(2) 10 U.S.C. 1061—eligibility for commissary and exchange benefits for dependents of a deceased Reserve Component member. Section 514 would specify that the dependents of a Reserve Component member who died while in a funeral honor duty status, or while traveling to or from such duty would be eligible for commissary and exchange benefits, as well as the surviving dependents of an active duty member.

(3) 10 U.S.C. 1475 and 1476—payment of a death gratuity. Section 514 would authorize payment of a death gratuity of a Reserve Component member who died while in a funeral honor duty status, or while traveling to or from such duty.

(4) 14 U.S.C. 704—authority over any claim by an officer or former officer based on his or her status. Section 512 would add the term “funeral honors duty” to section (g) as subsection (j). New subsections (g), (h) and (i) would be added to section (g) as subsection (j).

(5) 14 U.S.C. 705—benefits for members of the Coast Guard Reserve. Section 514 would specify that a member of the Coast Guard Reserve would have the same authority, rights and privileges as a member of the Regular Coast Guard of a corresponding grade or rating when the member is in a funeral honors duty status.

(6) 38 U.S.C. 101—definitions. Section 514 would add the term “funeral honors duty” and define that term, and then include that term in the definition of “military, naval and air service.” Including the definition of funeral honors duty in the term “military, naval and air service” would ensure that Reserve members receive the same benefits and protections for Reserve Component members, as those in a funeral honors duty status.

Section 513 would require the Secretary of Defense to report to Congress on the means of improving medical and dental care
Section 516 would authorize Reserve Component members who are involuntarily called to active duty under section 12301(d) of title 10, United States Code (U.S.C.), to serve in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)), to be added to the authorized active-duty end strength. The authority used, a voluntary call to active duty for 90 days or less under section 12301(d) of title 10, United States Code, is not available to Reserve Component members who are placed on the reserve active-status list to serve as a volunteer called to active duty for three years or less under the provisions of title 10 U.S.C. 526(b)(2).

Finally, Section 518 would allow the Secretary of Defense to return a Reserve component officer to the reserve active status list who otherwise met the criteria of this exemption, for the fact that the officer was on active duty for a period of three years or less under the provisions of title 10 U.S.C. 526(b)(2).

Section 519 would permit Reserve component members on active duty and members of the National Guard on full-time National Guard duty to prepare for and perform funeral honors for veterans as required by section 1491 of title 10, United States Code, without counting against active duty end strength. The delivery of funeral honors to veterans is a continuous peacetime mission that has escalated from its recent inception in 2003 to over 10,000 missions in 2007. funeral honors mission requirements are projected to continue their expansive growth in the years to come. Section 519 would allow the Secretary of Defense to remove an impediment to greater Reserve component participation in funeral honors, provide greater latitude in manpower application, and greatly assist the Department in meeting the expanding requirements of the veterans’ funeral honors law.

Section 520. Section 555 of the National Defense Authorization Act for Fiscal Year 2000 amended section 12310(b) of title 10, United States Code, to expand the duties that may be assigned to Reserves, who are on active duty in connection with operations, administering, recruiting, instructing, or training the reserve components. While the apparent intent of the amendment was to expand the permissible activities of Guard and Reserve (AGR) personnel, practically, the amendment applies only to AGR person non-performing active duty under section 12301(d) of title 10 and does not include AGR personnel performing full-time National Guard duty under title 32 of the United States Code. Therefore, Section 520 seeks to clarify the current law, aligning the current practices in these missions with the legislative authority governing them. This change is necessary because, effectively, there are few distinctions between the roles of AGR personnel serving on active duty and the roles of reservists performing full-time National Guard duty, outside of the different chains of command that each respective group must report to.
immediate separation or retirement of those
life.
following termination of suspensions made
a period of time—not to exceed 90 days fol-
incident to sections 1251 or 632–637 are de-
section (c) to afford active duty members
retirement were delayed due to stop loss ac-
gaged either in intense training or deploy-
timated through the Army Officer Can-
problems experienced by some officers com-
commissioned through the Army Officer Can-
candidate School without regard to the date
recognized in a grade above the grade of lieu-
Force Reserve, or Marine Corps Reserve or to
a grade above the grade of lieutenant (junior
grade) in the Naval Reserve, or be federally
recognized in a grade above the grade of lieu-
tenant as a member of the Army National
Guard or Air National Guard, unless that
person has been awarded a baccalaureate de-
degree by a baccalaureate institution.
Section 516 authorized the Secretary of the
Army to waive the applicability of section
12205(a) to any officer who before the enac-
tement of Public Law 105–261 was commis-
sioned through the Army’s Officer Candidate
School. The waiver may continue in effect
for no more than two years. A waiver under
the section may not be granted after Sep-
Section 521 would amend section 516 to per-
mit the Secretary of the Army to extend the
applicability of section 12205(a) to any officer who was
commissioned through the Army’s Officer Candidate
School without regard to the date of commissioning. The
Secretary’s authority under the section to Sep-
This additional period would enable the
Army to determine how to alleviate the
problems experienced by some officers com-
misioned through the Army Officer Can-
didate School, to obtain a baccalaureate
degree during the relatively short period be-
fore they are eligible for promotion to cap-
tain and during times when they may be en-
gaged in intense training or deploy-
ments for long periods.
Section 522 would amend section 12305 of
title 10, United States Code, to afford mem-
ers whose mandatory dates of separation or
retirement were delayed due to stop loss ac-
tion, a period of time to transition to civil-
ian life following termination of stop loss.
Specifically, section 522 would add sub-
cussion (c) to afford active duty members
whose mandatory separations or retirements
incident to sections 1251 or 632–637 are de-
layed due to stop loss action, a period of
a period of time—to not exceed 90 days fol-
lowing termination of suspensions made
under section 12305—to transition to civilian
life.
As currently written, section 12305 requires
immediate separation or retirement of those
affected by stop loss, who, without stop loss,
were required to separate or retire under this title for age
(section 1251), length of service (sections 633–
636), or promotion (sections 632, 637). An ab-
rupt termination of stop loss may cause undue hardship to
those whose planned de-
parture to civilian life was unexpectedly in-
terrupted and now must be resumed post-
haste. For example, the Air Force invoked
stop loss in support of Operation Allied
Force in 1998. Following the termination of
stop loss on 22 June 1998, eight officers with
mandatory separation dates were required to retire upon their original date of
separation (1 July 1998); another three of-
cers were required to separate/retire by 1
August 1998. On the other hand, members with a date of separation set by policy were given
the option of either extending their dates of
separation up to 6 months or withdrawing
them. Some leeway must also be provided for
members with dates of separation estab-
lished by law to reschedule the many details incident to final departure from military
life.
Section 531. The Marine Corps War College
seeks Congressional authority and regional
accreditation to issue a master’s degree in
Strategic Studies. It seeks this authority to begin
in this process is vested in the Commanding
General of the Marine Corps Combat Devel-
opments Command and was authorized on 1
June 2000. In The Marine Corps University
achieved a seven-year goal
by becoming accredited by the Southern As-
sociation of Colleges and schools to award a
master’s degree in Military Studies. While
this accreditation was awarded to the Ma-
 Marine Corps University, it specifically ad-
dressed only the degree awarded by the Com-
mand and Staff College. The Marine
Corps War College now seeks similar authority.
The uniqueness of the Marine Corps War College’s curriculum and program of study
is unparalleled by other civilian universities or
Federal War Colleges. Most of the Marine
graduates of the Marine Corps War College
become faculty members of the Command and Staff College. The Command
and Staff College already awards a master’s
degree, it would be very beneficial for these
future faculty members to possess the re-
quired advanced training and then be able to
perform their duties and functions at the
level of faculty competence as first rate scholars and speak-
ers. Section 531 is intended only as a tech-
nical amendment to the existing legislation.
Enactment of this section would not result in
an increase in the budgetary requirements of
the Marine Corps.
Section 532. Section 206(d) of title 37,
United States Code, states that “[t]his sec-
tion does not authorize compensation
for work or study by a member of a reserve
component in connection with consequence
of operations and missions being assigned in
whole or in part to the National Guard. Such
duties include operational airlift support ac-
tivities, standby air defense operations, an-
ticipated ballistic missile defense operations,
land information warfare activities, and the
use of National Guard instructors to train
both active duty and reserve component
personnel. Thus, this section is impor-
tant because, while some of these duties
have been periodically performed by AG
duty training’’ found in 37 U.S.C. 101(22),
the limitation in the definition of ‘‘inactive-
duty training’’ has been periodically per-
Source requirements because budgetary deci-
sions associated with the compensation and/
or credit for Reserve component members for
work performed through non-traditional methods is left up to the discretion of
the Service Secretaries.
Section 533 would modify section 2031 of
title 10, United States Code, to strike the
second sentence in paragraph (a)(1) which reads as follows: “The total number of units
made up of members of all of the military departments under au-
tority of this section, including those units
already established on October 13, 1961, may
not exceed 5,500.”
JROTC is DoD’s largest youth program with over 450,000 students enrolled in more
than 2,900 secondary schools. The statutory mission appears to instill in students the value of citizenship, service to the United States, personal responsibility, and a sense of accomplishment. Surveys of JROTC cadets indicate about 40 percent of the graduating high school seniors with more than two years participation in the JROTC program are interested in some type of military commission (active duty enlistment, officer program participation, or service in the Reserve or Guard). Translating this to hard recruiting numbers, in Fiscal Years (FY) 1996–2000, about 40 percent of new recruits entered active duty after completing two years of JROTC. The proportion of JROTC graduates who enter the military following completion of high school is roughly five times greater than the proportion of non-JROTC students. Therefore, the program pays off in citizenship as well as recruiting.

Recognizing the merits of the JROTC program, the Military Services have undertaken an aggressive expansion program and are committed to reaching the statutory maximum of 3,500 by FY 2006. As a result of this planned growth, the Military Services have witnessed a marked increase in the number of school enlistment and JROTC units. We now face the real potential that DoD and a waiting school might both wish to proceed with an activation, yet face a legislative cap that prevents execution of such a mutually-desirable course of action. Enactment of Section 533 would permit DoD to be responsive to mutually agreeable school needs which might exceed the present 3,500-unit cap set in law.

Section 534 would extend eligibility for the Nurse Officer Candidate Accession Program to students enrolled at civilian educational institutions with a Senior Reserve Officers’ Training Program (SROTP) who are not eligible for Senior Reserve Officers’ Training Programs.

The Nurse Officer Candidate Accession Program (NCP) is a primary accession source of new nurse officers and provides a hedge against the direct procurement market. It provides financial assistance to students enrolled in a baccalaureate nursing program in exchange for an active duty commitment upon graduation.

Market projections indicate increasing difficulty in recruiting students for the NCP due to a civilian career opportunities and declining nursing school enrollment. Evidence from nursing journals and employment industry statistics confirm that a tightening job market for nurses is expected over the next few years.

Section 230a of title 10, United States Code, currently restricts eligibility for the NCP to students enrolled in a nursing program at a civilian educational institution “that does not have a Senior Reserve Officers Training Program.”

Eligibility requirements for the SROTP limit age to 27 years. SROTP scholarships for junior or senior level students are limited to a quota each year only to replace students lost through attrition. The NCP age limit is up to 34 years and only bars those within six months of graduation. Recruiters report interest in the NCP by SROTP-ineligible students.

Extending NCP eligibility to SROTP-ineligible students would expand the potential applicant pool and establish stronger Congressional support and commitment to providing future nurse officers with the necessary skills to meet our healthcare mission around the world.

Section 535. The Defense Language Institute Foreign Language Center serves as the Defense Department’s primary foreign language program. The Institute has been accredited by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges (Commission) since 1979. The Commission has indicated that the Institute obtain degree-granting status to maintain its accreditation. The Secretary of Education has endorsed that recommendation. Section 535 would provide the authority for the Institute to grant an Associate of Arts degree. There are no resource implications associated with this requirement to produce a diploma suitable for presentation upon graduation.

Section 541 is pursuant to the provisions and procedures of section 1330 of title 10, United States Code. The Honorable Sherrod Brown of the House of Representatives requested the Secretary of the Army, the appropriate official under section 1330, to review the circumstances of this case. Section 541 follows the determination made under section 1330(b)(2) that the award of the decoration does not substantiate an act of valor. It further requires an act to be accepted by the recipient and recommends a waiver of the specified time restrictions prescribed by law. The Secretary of the Army and the Chairman of the Joint Chiefs of Staff are directed to recommend that Humbert R. Versace be awarded the Medal of Honor. Section 541 would waive the period of time limitations under Section 3744 of title 10 that prohibit a living recipient to the award Humbert R. Versace the Medal of Honor.

Section 541 would authorize the President to award the Medal of Honor to Humbert R. Versace, who served in the United States Army during the Vietnam War and who was assigned as a Captain with A Detachment, 225th Special Forces Group. It would waive the specific provisions of section 3744 of title 10 that the award be made within three years of the date of the act upon which the award is based. The acts of then-Captain Humbert R. Versace clearly distinguish him conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty, as required by section 1130 of title 10, to merit this legislation and the award.

Section 542 would amend sections 3747, 6253 and 8747 of title 10, United States Code, to authorize the Secretaries of the military departments to replace certain medals if stolen or to issue one duplicate medal of honor, with ribbons and appurtenances.

Sections 3747, 6253 and 8747 currently authorize free replacement of any medal of honor, distinguished service cross, distinguished service medal, silver star, Navy cross, Navy and Marine Corps Medal, or Air Force cross that is lost or destroyed or becomes unfit for use without the fault or neglect of the recipient. Enactment of Section 542 would also clarify the intent of these sections to authorize specifically the replacement of medals that are stolen, subject to the limitation that the theft was without the fault or neglect of the recipient.

If enacted, Section 542 would also authorize the Service Secretaries to issue one duplicate medal of honor to a service member who was in a combat zone. It would waive the requirement to produce a diploma suitable for display while retaining the duplicate to wear at events. Medal of honor recipients are expected to wear their medals at many of the events to which they are invited. According to the Congressional Medal of Honor Society, many of the 152 living recipients would like to donate or otherwise safeguard their original medals because the value of the medals and their black market potential would be an attractive target for theft. Medals marked as duplicates, by contrast, would presumably have little or no “black market” value and would be less attractive targets for theft.

The cost of issuing duplicate medals of honor would be minimal. The current cost of a medal of honor is approximately eighty-five dollars. If a recipient requested a duplicate, the cost would not exceed $15,000, including shipping.

Section 543. Section 541 of the Floyd D. Spence National Defense Authorization Act for FY 2001 (114 Stat. 1654A–114) enacted section 1133 of title 10, United States Code (U.S.C.), that restricts eligibility for the Medal of Honor to Armed Forces who are in receipt of special pay under section 310 of title 37, U.S.C., at the time of the events for which the decoration is to be awarded or who receive such pay as a result of those events. “Special pay” under section 310 includes both hostile fire pay (HFP) and imminent danger pay (IDP). The requirement eliminates the option for the Secretary of Defense to believe that someone whose duties never took them away from home did not perform the same kind of service as someone who was in the direct line of hostile fire or imminent danger. HFP is awarded when a service member is subject to hostile fire or explosion of hostile mines; or on duty in an area in which he is in imminent danger of being exposed to hostile fire or explosion of hostile mines; or is killed, injured, or wounded by hostile fire or explosion of hostile mines while in hostile action. The decision to declare an area eligible for receipt of IDP or HFP is not immediate. A recommendation is made by the Secretary of Defense and approved by the Joint Chiefs of Staff, and then approved by DoD Force Management Policy.

No other higher-level valor award, e.g., the Medal of Honor, Silver Star, Purple Heart, Navy Cross, Distinguished Flying Cross, has similar eligibility criteria. Historically, the Bronze
Star Medal has been awarded outside of con-

flict among the Korean conflict when it was approved for personnel stationed in Okinawa for meritorious service in connection with military operations against North Korea, limiting eligibility for the Bronze Star Medal to only those members serving in an area where imminent danger pay is authorized or to those receiving pay who would exclude many deserving members of the Armed Forces.

Awarding of the Bronze Star Medal should be discontinued and any requirement for IDP or HFP and should instead stand alone. The revolution in military warfare has changed the way the U.S. has traditionally viewed force application and the decorations, many of whose origins recognized traditional ground combat operations, must also keep up and recognize the changes in the way the U.S. conducts warfare.

Section 501 would amend the Uniform Code of Military Justice to lower the blood alcohol concentration (BAC) standard for the establishment of drunken operation of a motor vehicle from 0.1 to 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams per 210 liters of breath. This change would bring military practice in line with the recently enacted nationwide drunk driving standard found in section 351 of the Department of Translated Agencies Appropriations Act for Fiscal Year 2001, Public Law 106-346, 114 Stat. 3356-A34.

On March 3, 1998, President Clinton directed the Secretary of Transportation to develop a plan to promote a .08 BAC legal limit, which would include "setting a .08 BAC standard on Federal property, including... on Department of Defense installations, and ensuring strong enforcement and publicity of this standard.

Consistent with this planning effort, DoD legislation was proposed in its omnibus legislation package in the spring of 1999 to amend the Uniform Code of Military Justice to reduce the blood and breath alcohol levels for the offense of drunken operation of a vehicle, aircraft, or vessel from 0.10 to 0.08 grams. The U.S. Senate adopted section 562 of S. 1800, conforming changes to the United States Code, H.R. 1401, as adopted by the U.S. House of Representatives, contained in a similar provision. The House exceeded the Senate provision. S. 1059 was then substituted and enacted, signed by the President, and became Public Law 106-65.

The Conference Committee Report to S. 1059, National Defense Authorization Act for Fiscal Year 2000, requested the Secretary of Defense to submit a report to the Armed Services Committees "on the Department's efforts to reduce alcohol-related disciplinary infractions, traffic accidents, and other such incidents. The report should include the Secretary's recommendations with any appropriate changes."

The Conference Report noted that a recent General Accounting Office (GAO) study concluded that statutory reductions, by themselves, did not appear sufficient to reduce the number and severity of alcohol-related accidents.

The GAO study cited by the Conference Report included the "Highway Safety: Warning of State .08 Blood Alcohol Laws" (June 1999). This GAO report concludes that ".08 BAC laws in combination with other drunk driving laws as well as sustained public education and information efforts and strong enforcement can be effective, but the evidence does not conclusively establish that .08 BAC law is sufficient to reduce the number and severity of crashes involving alcohol." GAO Report at 22-23.

The GAO report further found that "it is not possible to attribute the number of alcohol-related fatal and non-fatal crashes involving drunk driving were saved if all states passed .08 BAC laws. The effect of a .08 BAC law depends on a number of factors, including the degree to which the law is publicized; how well it is enforced; other drunk driving laws in effect; and the unique culture of each state, particularly public attitudes concerning alcohol." GAO Report at 23. "A .08 BAC law can be an important component of a state's overall highway safety program, but a .08 BAC law is not a "silver bullet". Highway safety research shows that the best countermeasure against drunk driving is a combination of laws, sustained public education, and vigorous enforcement." GAO Report at 23.

Since 1983, DoD has pursued a "comprehensive approach" to reduce drunk driving, believing that the best countermeasure against drunk driving is a combination of laws, public education, and enforcement. This comprehensive range of programs currently include: a .10 blood alcohol concentration (BAC) standard for court-martial; strong policies to achieve a reduction in impaired driving; a system for preliminary and mandatory suspension of licenses in cases of impaired driving; educational and training programs; a screening program for identifying alcohol dependent individuals; a process to notify State driver's license agencies regarding licenses suspended for impaired driving; a local awards program for successful impaired driving programs; and a system to monitor and ensure quality control for impaired driving programs.

Together, these programs have resulted in a reduction in alcohol-related traffic accidents for DoD personnel which compares favorably to analogous statistics from the National Highway Traffic Safety Administration (NHTSA) for the 50 states and the District of Columbia.

DoD recommends that the effectiveness of the existing DoD programs be further enhanced through the amendment of Article 112(c) of the Uniform Code of Military Justice, 10 U.S.C. § 932(e) to reduce the enforceable BAC level to 0.08. Reducing the BAC level to 0.08 would be consistent with statutes or administrative policies already in effect in 19 States, the District of Columbia, and Puerto Rico. Six additional States currently have under consideration legislation to change to the 0.08 BAC level. If enacted, DoD believes the 0.08 BAC limit would be an important component of our overall traffic safety program and support a significant reduction in the annual number of alcohol-related fatal and non-fatal crashes involving DoD personnel, with corresponding human and economic savings.

Section 601 The primary purpose of military compensation is to provide a force structure that can support defense manpower requirements and policies. To ensure that the unified services can recruit and retain a force of sufficient numbers and quality to support the military, strategic, and operational plans of this nation, military compensation must be adequate. Compensation levels of the enlisted members of the Armed Forces, as compared to the civilian work force, have been below the comparable-educated civilian counterparts, and this has limited retention among the junior enlisted members. This increase reflects the importance of preventing further deterioration in the percentage of high-quality junior enlisted personnel.

Provide for structural changes in selected pay cells for E3, E4, and E5 to motivate members to seek early promotion in the junior enlisted ranks.

Raise basic pay for grades O-3 and O-4 to provide increased retention incentives.

Provide a modest increase in basic pay for junior enlisted members. This increase will reflect the importance of preventing further deterioration in the percentage of high-quality junior enlisted personnel.

Provide for structural changes in selected pay cells for E3, E4, and E5 to motivate members to seek early promotion in the junior enlisted ranks.

Raise basic pay for grades O-3 and O-4 to provide increased retention incentives.

Provide a modest increase in basic pay for junior enlisted members. This increase reflects the importance of preventing further deterioration in the percentage of high-quality junior enlisted personnel.

Section 602 would amend section 407 of title 37, United States Code. Subsection (b) provides a pay table describing the changes in basic pay. These increases are summarized in the table on the following page:

<table>
<thead>
<tr>
<th>Grade</th>
<th>Percentage Increase</th>
<th>Grade</th>
<th>Percentage Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-1</td>
<td>6.0</td>
<td>W-1</td>
<td>8.5*</td>
</tr>
<tr>
<td>E-2</td>
<td>6.0</td>
<td>W-2</td>
<td>8.5*</td>
</tr>
<tr>
<td>E-3</td>
<td>6.0</td>
<td>W-3</td>
<td>8.0</td>
</tr>
<tr>
<td>E-4</td>
<td>6.5*</td>
<td>W-4</td>
<td>7.5</td>
</tr>
<tr>
<td>E-5</td>
<td>7.5*</td>
<td>W-5</td>
<td>7.0</td>
</tr>
<tr>
<td>E-6</td>
<td>8.5*</td>
<td>W-6</td>
<td>6.5</td>
</tr>
<tr>
<td>E-7</td>
<td>8.5*</td>
<td>W-7</td>
<td>6.0</td>
</tr>
<tr>
<td>E-8</td>
<td>9.0</td>
<td>W-8</td>
<td>5.0</td>
</tr>
</tbody>
</table>

*The following pay cells are increased by a different percentage for structural purposes:

- E-2 <2: 12.0
- E-4 <6 (through >26): 6.0
- E-5 <18: 9.0
- E-6 <18: 10.0
- W-4 <8: 11.0
- W-6 <14: 9.0
- W-7 <16: 11.0
- W-8 <20: 11.0

Section 602 would amend section 407 of title 37, United States Code, to authorize payment of a partial disallowance allowance of $500 to members who are ordered, for the convenience of the Government (including pursuant to the privatization or renovation of housing), to move into or out of military family housing. Section 601 would allow members to receive a partial disallowance allowance for a government-directed move at the current permanent duty station. Currently, a member directed to move due to privatization or renovation of government housing does so at the member's personnel allowance to set-up the new home. Section 601 would allow members to receive a partial disallowance allowance for a government-directed move at the current permanent duty station. Currently, a member directed to move due to privatization or renovation of government housing does so at the member's personnel allowance to set-up the new home. Section 601 would allow members to receive a partial disallowance allowance for a government-directed move at the current permanent duty station. Currently, a member directed to move due to privatization or renovation of government housing does so at the member's personnel allowance to set-up the new home.

Source: Congressional Record, June 29, 2001, page 12534. The full text of the legislation is available from the official website of the United States Congress.
consistent with the full dislocation allowance. The costs incurred by military personnel resulting from the increased pay authorized by DoD regulation to travel in a family separation tour, Section 18505(c) would provide averted with the addition of annual training duty to section 18505 is the applicability of section 18505(b) to members performing such duty.

Section 606 would amend section 4337 of title 10, United States Code, to authorize a housing allowance for the chaplain for the Corps of Cadets at the United States Military Academy. The chaplain, who is a civilian employee of the Academy, would receive the same allowance for housing as is allowed to a lieutenant colonel. The chaplain would also receive fuel and light for quarters in kind.

Section 604 would authorize Reserve Component commissioned officers in the O-1, O-2 or O-3 pay grades, who have accumulated at least 1,460 points (the equivalent of four years of active duty) to be paid at the O-1E, O-2E or O-3E rate. Currently, a company grade officer with at least four years of prior active duty service as a warrant officer or as an enlisted member is entitled to be paid at a slightly higher rate. The increase in pay recognizes the additional experience these officers have gained and would provide an incentive to retain or召回 officer or an enlisted member and reward them accordingly. A Reserve commissioned officer has accumulated at least 1,460 points in the past four years of active duty, and has gained significant military experience similar to that of a member who qualifies for this increase in pay because of prior active duty service. Moreover, because of the part-time nature of their service, these officers have gained that experience over a longer period of time and are generally more mature. Allowing these officers to receive this increased pay recognizes and rewards that experience on the same basis as officers who gained their experience purely through active duty service.

Section 605 would modify section 427 of title 10, United States Code, to authorize the payment of a Family Separation Allowance to those members who elect to serve a unaccompanied tour because travel of the individual’s dependents to the new station is denied due to space requirements. This change would provide a waiver to the statutory requirement that the Secretary concerned must provide a waiver for a military member who elects to serve a tour of duty to which travel of the individual’s dependents due to certified medical reasons. This change would remove the statutory requirement that the Secretary concerned must issue a waiver in these circumstances before the Family Separation Allowance is payable. This program efficiency would ease the administration of the Family Separation Allowance program. In addition, adoption of Section 604 would provide an incentive to retirees for the Family Separation Allowance program.

Section 606 would amend section 4337 of title 10, United States Code, to authorize a housing allowance for the chaplain for the Corps of Cadets at the United States Military Academy. The chaplain, who is a civilian employee of the Academy, would receive the same allowance for housing as is allowed to a lieutenant colonel. The chaplain would also receive fuel and light for quarters in kind.

Section 607 would amend section 4337 to read as follows: “There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain’s duties shall be to provide an incentive to retirees who, in the vast majority of cases, would otherwise actually receive less compensation than that provided by their retiree pay in lieu of travel and to forfeit that pay in order to receive the personal.
Section 615 would extend the authorization for critical recruiting and retention Reserve component incentive programs. Recruiting has become increasingly more challenging and the incentives provided by the Selected Reserve affiliation and enlistment bonuses are not sufficient to meet the recruiting effort. Absent these incentives, the Reserve components may experience difficulty in meeting skilled manpower and strength requirements. Moreover, the Reserve components rely heavily on being able to recruit individuals with prior military service. The incentive provided by the Selected Reserve components since assessing individuals with prior military experience reduces training costs and retains a valuable, trained military asset in the Total Force. The prior service enlistment bonus offers an incentive to those individuals with prior military service to transition to the Selected Reserve.

Equally important to the recruiting effort is retaining members of the Selected Reserve. The Selected Reserve reenlistment bonuses would be increased from $5,000 to $8,000, is necessary to ensure the Reserve components maintain the required manning levels by retaining members who are valuable to the Services reserve. Moreover, the special pay for enlisted members assigned to certain high priority units provides the Services with an incentive to transition the Selected Reserve to support sustainable levels of military manpower.

The Reserve components have historically found it challenging to meet the required manning in the health care professions. The incentive that targets those healthcare professionals who possess a skill that has been identified as critically short is essential if the Reserve component maintain the required manning levels in these skill areas.

The expanded role of the Reserve components requires not only a robust Selected Reserve force, but also a robust manpower pools—the Individual Ready Reserve. Extending the Individual Ready Reserve bonus authority would allow the Reserve component to target this bonus at individuals who possess skills that are under-subscribed, but are critical in the event of mobilization.

Combined, the Reserve component bonuses and incentives could provide a more effective incentive to meet the manning requirements. Extending these authorities would ensure continuity of these programs. Since these incentive programs are recurring Servicewide budget items, there is no additional cost for extending these authorities.

Section 616 would amend title 37, United States Code, by establishing a broad authority for an Officer Critical Skill Accession Bonus to provide needed flexibility for Servicewide recruitment efforts. The authority would allow the Services to target incentives that are necessary if the Reserve components are to meet manning requirements. Extending these authorities would ensure continuity of these programs. Since these incentive programs are recurring Servicewide budget items, there is no additional cost for extending these authorities.

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marketplace. Examples of specialties currently facing such shortfalls have no, or inadequate, statutory bonus authority for use to target the shortages include the Air Force’s declining cumulative continuation rates among officers in communications, information and control (CIC) and computer sciences (39 percent in 1999), electronics engineers (39 percent in 1999 for developmental engineers, and 31 percent for civil engineers in 1999), scientists (33 percent in 1999), and acquisitions (averaged 38 percent from 1997-1999). Shortfalls in retention in these skills are occurring while Air Force accession rates are also continuing below the Air Force goal. As of June 30, 2000, the Air Force accessed 74 percent of its goal for weather officers, 69 percent for developmental engineers, 62 percent for air traffic control and combat operations, and 90 percent for CIC. Authority for the Air Force to offer a financial incentive to boost manning in the Engineering and Scientific career and CIC specialties is particularly critical.

Further, the Navy is experiencing shortages in its Civil Engineer Corps (CEC) career, as a result of the drawdown and restructuring of the force over the past decade, the Reserve components have asssumed the required number of CEC officers in the past three fiscal years (1998 through 2000). In Fiscal Year 2000, the Navy only accessed 54 percent of its accession goal; it needs to increase this to meet only 67 percent of the Fiscal Year 2001 CEC accession goal, and projects to remain short in the out-years. Shortages of that magnitude need to be understood in an unusually sensitive mission area. Authority to offer CEC officer-recruits an accession bonus is critical if the Navy is to have the compensation it needs to ensure the number of CEC officer-recruits to levels needed to man future CEC force structure requirements. An accession bonus authority would provide needed incentives for this critical specialty to levels needed to attract the highest qualified candidates to the Navy CEC.

Rather than seeking additional individual statutory authorities for these critical officer specialties, and any others that may emerge in the future, this proposal seeks a broad accession pay authority. Under such statutory authority, the Secretary would establish program parameters and implementation strategies to ensure the Service Secretaries are provided the flexibility they need to compete with the private sector for this critical specialty shortfall in a timely manner.

Based on current projections, the net effect of adoption of Section 616 would be an increase of $18.65M in Fiscal Year 2002 ($18M for Navy and $18M for Air Force), Army and Marine Corps do not anticipate they would utilize this authority in Fiscal Year 2002.

Section 617 would allow the Secretary concerned to target this bonus to individuals who possess a skill that is critically short to meet wartime requirements and who agree to enlist, remain, or voluntarily extend an enlistment in the Individual Ready Reserve. The current statute authorizes payment of this bonus to individuals who possess a skill that is critically short in a combat or combat support mission. However, this bonus is not authorized for individuals who possess a critically short skill in a combat service support mission requirement of the Army. To meet manpower requirements, the Army expanded its support and combat service support role, the Army Reserve must rely heavily on members of the Individual Ready Reserve. Expanding the authority for advancement bonus to those concerned to target this bonus to those skill areas that are critically short, regardless of the type of mission, would help reduce critical mobilization manning shortfalls. This proposal provides a proper access to the proper ac- tive duty and Selected Reserve bonus authori- ties, which provide the Service Secretary with the authority to identify those skill areas that are critically short and re- quire added incentives to achieve the nec- essary manning level to meet mission re- quirements.

Section 618 would amend section 301 of title 37, United States Code, to authorize payment of hazardous duty incentive pay for members of Visit Board Search and Seizure teams conducting operations in support of maritime interdiction operations. Boarding crews participating in these oper- ations face several hazards inherent to the duty involved. These include the hazards of physically boarding a vessel at sea from a small boat while carrying weapons, inspecting the vessel’s contents, and working from a small boat to inspect areas on the vessel. Further hazards exist in the actual conduct of the inspec- tions, such as hazards connected with crew hostilities, pest infestations, and nu- merous others. For example, containers must be accessed, which often re- quires climbing considerable distances above the deck, balancing in precarious positions with one hand while the other hand faces the risk the container contents may have shifted during the transit. In addition, cargo may have mixed, causing a hazard (for example, bulk cargo such as fertilizer, when mixed with salt water or oil, can emit hazardous fumes). Hazardous Duty Incentive Pay would provide a financial recognition to personnel participating in these operations for this unusually hazardous duty.

The net effect of adoption would be an in- crease of $0.2 million for the Navy.

Section 621 would amend section 430 of title 37, United States Code, to extend the entitlement of funded student dependent travel to members stationed outside the con- tinental United States and their dependents under the age of 23 who are enrolled in a school in the continental United States but are attending a school outside the United States. This would be a reform of the existing ex- change program. At present, members sta- tioned overseas are entitled to funding for this program, but only if the student is physically located in the United States. This cre- ates an inequity for those members whose dependents attend school in the United States, but are part of a temporary exchange program located outside the United States. Both sets of members deserve equal treat- ment.

Section 621 would reimburse travel ex- penses for student dependents under the age of 23 of a member stationed outside the con- tinental United States when the dependents are enrolled in a school in the central- United States but are attending a school outside the United States as part of a school sponsored-exchange program for less than a year. Section 621 would further limit reim- bursement of these expenses to the amount of trav- el between the school in the continental United States where the student dependent is enrolled and the member’s overseas duty station.

Section 622 would amend section 2634 of title 10, United States Code, by adding a new subsection 2634(b)(4) authorizing payment of transportation costs to allow the Secretary concerned to store a member’s vehicle at government expense under certain circumstances, but does not provide for advance payment of those costs. Vehicle storage costs at a commercial facil- ity can range from $100 to $300 per month, and many of these facilities require deposits equivalent to two or three months’ storage rate. The Military Traffic Manage- ment Command estimates there are approxi- mately 20,000 vehicles that are stored in commercial facilities.

Having to pay for these advance payments out of pocket comes at the worst possible time for the military member—during a per- manent change of station move. The variety of expenses associated with a move put a signif- icant strain on the financial condition of members, often requiring them to acquire significant debt while they wait for govern- ment reimbursement to catch up. At no addi- tional cost to the Government, Section 622 under the section, including per diem, are reducing to some degree the hardship associ- ated with a military life that requires fre- quent moves.

Section 623 would amend section 411f of title 37, United States Code; strike subsection (d) of section 1482 of title 10, United States Code, and repeal the Funeral Trans- portation and Living Expense Benefits Act of 1974 (Public Law 93-257).

Currently, the three statutes cited above authorize allowances to members, dependents, and others to attend burial ceremonies of decease- members of the armed forces. The statutes differ in scope and application. For example, section 1482(b) prohibits the pay- ment of per diem, while per diem may be paid under the other two sections. The pur- pose of Section 622 is to establish uniform author- ity.

Section 411f of title 37 authorizes round trip travel and transportation allowances for dependents of a member, as well as on active duty or inactive duty in order that such dependents may attend the burial cere- monies of the deceased member. Allowances under the section, including per diem, are limited to travel and transportation to a loca- tion in the United States, Puerto Rico, or United States possessions and “may not ex- ceed the amount of the round trip travel and transpor- tation to and from the place where the deceased was buried.” If a deceased member was ordered to active duty from a place outside the United States, allowances may be provided for travel and transpor- tation to and from the place where the deceased was buried. The member’s dependents are not ex- tended to account for the time necessary for such travel. Dependents include the sur- viving spouse, unmarried children under 21 years of age, unmarried children incapable of self-support, and unmarried children en- rolled in school and under 21 years of age. Section 411f(c) provides that if no person qualifies as a surviving spouse or unmarried child, the parents of a member may be paid the travel and transportation allowances au- thorized under the section.

Section 1482(b) of title 10 applies when, as a result of a disaster involving multiple deaths of members of the armed forces, the Secretary of the military department has possession of mingled remains that can- not be individually identified and must be buried in a common grave in a national cem- etery. Under section 1482(d), the Secretary may pay the expenses of round trip transpor- tation to the cemetery for a person who would have been authorized under section 1482(c) to direct the disposition of the re- mains if the notification or identifica- tion had been made. Also, the Secretary may pay the expenses of transportation for two additional persons closely related to the deceased who would have been designated under section 1482(c). No per diem may be paid.
The Funeral Transportation and Living Expenses Beneficiary Act of 1974 (Title 10, United States Code, section 2634) authorizes the Departments of the Army, Navy, and Air Force to pay travel and transportation allowances to the surviving family members of a deceased soldier, sailor, or airman to enable them to attend the funeral. The Act is designed to provide for the families in the manner in which the President provides for his family and to provide a new basis for authorizing travel and transportation allowances to attend the burial. As noted above, under section 411f, dependents who may receive travel and transportation allowances for attending a funeral ceremony of a member of the Armed Forces are currently confined to the following: survivors of unmar- ried children, primarily those under 21 years of age, and parents if there is no surviving spouse or qualifying child. However, in the event that a surviving spouse or parent may be deceased and no child may qualify because of their age, section 623 would amend section 411f and add a new pro- vision similar to the provision in section 1482(d) of title 10, concerning the burial of re- mains that are commingled and cannot be identified. Under section 623, if there is no surviving spouse or child and the parent, then the person designated to direct disposition of the remains could receive travel and transportation allowances along with two additional persons closely related to the deceased member selected by the per- son who directs disposition of the remains. In many cases, this would likely include an adult child or children of the deceased mem- ber.

Section 623 would also amend section 411f to authorize the payment of travel and transportation allowances for a person who can provide a family member who qualifies for travel and transportation allowances but who is unable to travel alone to the burial ceremonies because of age, physical condi- tion, or other justifiable reason as deter- mined under uniform regulations prescribed by the Secretaries concerned. Allowances would be payable under these circumstances only if there is no other person qualified for allowances available to assist the family member.

Section 623 would also amend section 411f to provide a new basis for authorizing travel and transportation allowances outside the United States, Puerto Rico, and United States possessions. Currently, the only ex- ception is when the member was ordered to active duty from a place other than in the United States, Puerto Rico, or the United States possessions and the member must be at sea while being deployed. Section 623 would change section 411(f)(b) to authorize the payment of travel and transportation allowances to a cemetery maintained by the American Bat- tle Monuments Commission outside the United States.

Section 620 would amend section 411f(b) to make uniform the rule concerning the time periods for which allowances may be paid. Currently, section 411f(b) restricts the period to two days for travel within the United States, Puerto Rico, and United States possessions. For an overseas trip, the two-day period may be extended “to accom- modate the time necessary for such travel.” Under Section 620, all travel and transpor- tation allowances, regardless of where the funeral travel occurs, including “a burial of two days and the time necessary for travel.” Section 623 would also strike subsection (d) from section 1482 of title 10, relating to the burial of commingled remains in a common grave. Section 411f would be amended by adding a new subsection (d) to define burial ceremonies as including “a burial of com- mingled remains that cannot be individu- ally identified in a common grave in a national cemetery.” Thus, the authority in section 411f would provide the basis for travel and transportation allowances under these circum- stances. Unlike section 1482(d), this au- thority would include the payment of per diem.

Finally, Section 623 would repeal the Fu- neral Transportation and Living Expenses Benefits Act of 1974. The Act, enacted in 1974, authorized the Secretary of Defense to provide uniform allowances for the family of any deceased member of the armed forces who died while classified as a prisoner of war or as missing in action during the Vietnam conflict. This section was enacted in 1985. Both statutes provide simi- lar authority. The Act’s authority is some- what broader because eligible family mem- bers include the surviving spouse and all chil- dren (regardless of age), parents, and sib- lings. The Act would be repealed to provide uniform treatment among all family mem- bers of persons who die while on active duty or inactive duty.

Section 624 would modify section 2634 of title 10, United States Code, to authorize service members who depart for CONUS (Continental United States) duty stations only when physically incapacitated or capable of being driven, would be limited to two days for travel in the United States (CONUS) duty station to the new CONUS duty station when the cost of shipment and commercial transportation would not exceed the cost of driving the POV to the new station is as currently authorized. Currently, when executing a permanent change of station (PCS) travel, service members are allowed to ship POVs between CONUS duty stations only when physically incapacitated of driving, there is a change of a ship POV and shipping the other did not exceed the cost driving two POVs. Cost comparisons would take into account mile- age rates by the most direct regularly trav- eled route, per diem, cost of commercial transportation and the cost of shipping the car by commercial car carrier. Section 624 would be cost-neutral, and enhance force protection by minimizing the number of miles driven by members making permanent changes of station, thereby limiting expo- sure to accidents. Civilian employees of DoD are currently authorized to ship POVs in CONUS when it is determined to be more ad- vantageous and cost-effective to the Govern- ment.

Section 631 would extend the maximum pe- riod that a member of the Selected Reserve would be authorized to use the educational benefits provided under the Montgomery GI Bill-Active Duty (MGIB-AD) or the Montgomery GI Bill-Special Education (MGIB-SE) from the current 10-year limit to 14 years. With the increased use of the Reserve compo- nents, members of the Selected Reserve are unable to use their educational benefits due to the time spent performing military service reduces the amount of time they have available for other activities—be it attending college, attending a job, pursuing other leisure activities, or civilian education. Bal- ancing a full-time civilian career and a mili- tary career is becoming increasingly more challenging. One area is that of to develop the Reserve component to military service and provide them with an extended opportunity to use this benefit. Addi- tionally, since membership in the Selected Reserve is required to remain in the MGB-SR educational benefit, it would also serve as a retention incentive for those who have not been able to use the benefit by the current period limitation.

Section 622 would add overnight health care coverage when authorized by regula- tions for Reserve Component members who, although they may reside within a reason- able commuting distance from their post of active duty training, are required to remain overnight between successive drills at that training site because of mission require- ments. Reserve Component members are required to remain overnight in the field when performing inactive duty training. Others may be training late into the evening or for training duties requiring work, which could make commuting to and from their residence impractical. On those occa- sions when it is not feasible for members who live in the area to return to their resi- dence between successive drills because of mission requirements, they are currently protected if they become injured or ill during overnight overnights. In May 2001, Defense report to Congress on the means of improving medical and dental care for Re- serve Component members, which was sent to Congress on November 5, 1999, recognized this shortcoming and recommended that the law be amended to provide medical coverage when the member remains overnight be- tween successive training periods, even if they reside within reasonable commuting distance.

Section 633. Section 2004 of title 10, United States Code, authorizes the Secretary of a Military Department to detail selected com- missioned officers at accredited law schools for training leading to the degree of bachelor of laws or juris doctor. No more than 25 offi- cers from each Military Department may commence such training in any single year. Officers detailed for legal training must agree to serve on active duty following comple- tion of the training for a period of two years for each year of legal training. This service obligation is in addition to any serv- ice obligation incurred by the officer under any other provision of law or agreement.

Section 2603 of title 10 authorizes any member of the Armed Forces to accept a scholarship in recognition of outstanding performance in the previous school year. Members may under- take a project that may be of value to the United States, or for development of the member’s recognized potential for future ca- reer service. Section 2603(b) requires a mem- ber of the Armed Forces who accepts a schol- arship under section 2603 to serve on active duty for a period at least three times the length of the period of the education or training.

Section 2004 does not specifically author- ize an officer attending law school under the Funded Legal Education Program to accept the scholarship from another entity. Also, section 2603 does not indicate that the authority to accept a scholarship to
obtain education or training under the sec-
tion of the law for Milestone C (planned de-
velopment). This revision intends to apply this
exclusion solely to the process of refueling.
Nuclear aircraft carrier work, other than nu-
clear refueling, is currently—and will con-
tinue to be—a core logistics capability that
is maintained in accordance with the provi-
sions of 10 U.S.C. § 2464. Furthermore, every
other nuclear aircraft carrier (i.e., 10 NUC-4) cur-
tently utilized is required to maintain core
logistics capabilities. To completely exclude
these carriers from the requirement to main-
tain core logistics capabilities, this proposed
amendment would also establish a Contingency Con-
tractor exclusion from the statute to actual
satisfaction of 10 U.S.C. § 2464 to refuel these
carriers apart from other naval surface com-
batants, which was not the intention of the
Navy in formulating its original legislation.
Moreover, this amendment, which is intended
to both clarify the original intent of the draft-
ers for 10 U.S.C. § 2464 and to discourage situ-
ations which could result in future problems,
such as the privatization of any core carrier
items which were not meant to be excluded from
the requirement for maintaining core logistics
capabilities.

Section 703. The Department is committed
to fully utilizing its organic depots in order
to maintain a core logistics capability. There
are circumstances, however, when a depot is utilized to its maximum capability
and, because of the limitations imposed by 10
U.S.C. § 2466, the Department is prohibited
from contracting out the work. The work could be performed in-house, resulting in delays and excess costs. This
provision would expand the waiver author-
ity, permitting the Secretaries to waive the
requirement to maintain core logistic capa-
ibilization. This will result in savings to the
customers and in more timely accomplish-
ment of the work. In situations where mul-
tiple depots can perform the same type of
maintenance activity, it may not be eco-
nomical to transfer the work from a fully-
utilized depot to one that is operating at less
than maximum capacity but in a different
geographic region. The Secretary may waive
the limitations if he makes a determination
that it would be uneconomical, due to rea-
sions such as cost or logistical constraints, to transfer such workload.

Section 705 would clarify the intent of amendments to section 1724 of title 10,
United States Code, that were made by Sec-
tion 808 of the Floyd D. Spence National De-
fense Authorization Act for Fiscal Year 2001
(Public Law 106–398; 114 Stat. 1654A–208). It
was intended to establish a Contingency Con-
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applicable to military members in similar occupational specialties.

Section 1734(a) of title 10, United States Code, amended the exception provision in section 1724 of title 10, United States Code, to exempt from the new requirements persons "for the purpose of qualifying to serve in a position in which the person is serving on September 30, 2000." The legislative history accompanying this change stated that the new requirements were intended to apply only to new entrants into the GS–1102 occupational series in the Department of Defense and to contracting officers with authority above the small business participation thresholds, not to new entrants into the GS–1102 series, but not military personnel. This proposal would make clear this intent by excluding from the new requirements those persons who were serving, or had served, as contracting officers, employees in the GS–1102 series, or military personnel in such occupational specialties as they are excluded from the new requirements.

This proposal would also provide the Secretary with flexibility to establish one or more developmental programs, which would educate personnel about the statute and the minimum qualification requirements of a degree and 24 credit hours in business. Their purpose would be to enable personnel to obtain the education necessary to meet the performance requirements of the future acquisition workforce. A significant number of the Department's current, seasoned acquisition workforce personnel will be eligible to retire within five years. This makes imperative that the Department have access to the maximum number of superior applicants. We anticipate that the Secretary of Defense would establish one or more programs in which candidates that meet some, but not all, of the minimum requirements could be educated to meet the remaining requirements within a specified period of time. For example, a candidate may have a four-year degree, but not the twenty-four credit hours. This candidate may be close to a degree, including 24 credit hours in business. Each would be provided a specified period of time (in no case more than two years) to meet the statutory requirements. We would anticipate that any person who failed to meet all of the statutory requirements within the time specified would be subject to separation from federal service. This flexibility will give the Department the necessary mechanisms for accessing the greatest number of superior applicants, while retaining its goal of maintaining a high-quality, professional contracting workforce.

This proposal would also address the need to recognize a contracting force whose mission is to deploy in support of contingency operations and other Department of Defense operations. This force, which consists primarily of enlisted personnel, but which includes both military officers and civilian employees, meets a unique need within the Department and has unique training and organizational needs.

This proposal would maintain the requirement for 23 semesters hours of business-related course work or the equivalent and give the Secretary of Defense the authority to establish one or more minimum requirements to meet the unique needs of persons performing contracting in support of contingency and other Department of Defense operations.

Section 706. The current language in section 1734(a) of title 10, United States Code, applies to the tenure requirement of over 30 years, which applies to A&E contracts. This proposal would retain the qualifications to occupy a CAP. The proposed change would require tenure only for personnel in those critical acquisition positions who do not intend to contribute to the success of DoD's acquisition programs. Ensuring the tenure of these individuals assigned to program offices and the associated systems acquisition functions like systems engineering, logistics, contracting, etc., provides the stability originally sought by section 1734. This provision further more provides the flexibility to meet organizational mission priorities; enhance career development programs for those holding the remaining critical acquisition positions who perform other functions outside of a program office or functions not related to systems acquisitions (such as acquiring spare parts or policy formulation); and would ensure DoD develops the best-qualified individuals for CAPS in program offices and systems acquisition functions.

The current section 1734 undertakes to improve the quality and professionalism of the DoD acquisition workforce in part through a career development program for acquisition workforce personnel retained at that intent, while emphasizing the importance of specific job experience and program continuity, responsibility, and accountability for acquisition personnel working in program offices or supporting system acquisition programs who are performing critical acquisition functions. This proposal also would expand the broadening opportunities for personnel in other CAPS and would result in a reduction of waiver reporting requirements. The proposal balances the needs for personnel quality, accountability, and career development, while eliminating an unnecessary administrative burden, increasing productivity, and allowing the workforce to be responsive to changing organizational needs.

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Section 710 would amend section 2855 of title 10, United States Code, to repeal a provision that requires the Department of Defense (DOD) from achieving its goal of 40 percent of the dollar value of architectural & engineering (A&E) service contracts when the estimated organizational needs.

The Small Business Competitiveness Demonstration Program was established to see if small business concerns could maintain a reasonable percentage of dollars awarded in four Designated Industry Groups (digs) in an unrestricted competitive environment. A&E services is one of the DIGS. The Program establishes a small business participation goal of 40 percent of the dollars awarded in each of the aforementioned DIGS. The statute further states that if small business concerns fail to achieve the 40 percent goal during a twelve month period, the agency shall re-establish set-aside procedures to the extent necessary to achieve the 40 percent goal (Section 712(a) of Pub. L. 106–566).

Notwithstanding the authority of the Demonstration Program, section 2855(b) generally prohibits DOD from using small business set-aside procedures in the awarding of A&E contracts if the estimated award price is greater than $85,000. This section 2855(b)(2) provides for revision of the $85,000 threshold if the Secretary of Defense determines that continuing DOD's economic analysis to assess the merits of combining these services to increase efficiencies at Air Force installations.
The committee also directed the Secretary of the Air Force to change the procurement of environmental remediation costs from the applicability of simplifying reprogramming criteria for military construction and family housing construction projects whenever the cost increase for any single contract does not exceed 25 percent of the amount appropriated for the project or 20 percent of the minor construction project costs without requiring the submission of a report to Congress. This provision would make it unnecessary to provide an advance congressional review for projects involving environmental remediation costs from the application of reprogramming criteria for military construction and family housing construction projects.

The test program was enacted into law on February 10, 1996. Final changes to the Federal Acquisition Regulation (FAR) to implement the test program were issued on the statutory deadline of January 1, 1997. The due date for the Comptroller General reviews the report and submits to Congress a briefing regarding whether the cost savings and efficiencies projected in the CE effort were achieved. The authority to provide suitable materials on schedule, when the cost of procuring these materials from multiple sources or specialized suppliers is not reasonably anticipated at the time the contract is awarded, would be allowed only when the rate charged to the Federal government is lower than the rate charged by private industry. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both Government and industry.

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grounds keeping, utilities, capital maintenance, and allowances for utilities to be provided by a landlord. Compliance with the procurement laws and regulations may result in a third party contractor providing such services for facilities leased from the LRA for off-site, off-center and off-center facilities of the LRA. In many cases, this may conflict with the LRA's or its assignee's arrangements for providing such services to the various tenants on property owned or held by the LRA. The LRA usually prefers that its contractor perform such services on behalf of the tenant. The LRA is hesitant in using leaseback arrangements due to the Federal tenants' inability to obtain these services directly from the LRAs or share the common area maintenance costs with other tenants of the LRAs.

Under current law, only property at BRAC '91, '96, and '98 closure installations can be transferred under the leaseback authority. To help minimize small Federal land holdings within larger parcels transferred to the LRA on BRAC '88 bases, the leaseback authority should be expanded to apply to BRAC '88 installations.

Section 718. The proposed change would allow the Military Departments to reimburse the Military Personnel appropriations for Military Construction. Family housing appropriations during the first year of execution of a military family housing privatization project. Members occupying privatized housing are entitled to, and receive, housing allowances. Since housing allowances are paid from the Military Personnel appropriations, the Military Department needs to reimburse these appropriations for the increased housing allowance bill caused by privatization from the funds previously programed for the Military Construction, Family Housing appropriations. Providing the flexibility to reimburse these funds at the time of execution will enable the Services to accurately determine how much should be reimbursed to meet housing allowance requirements.

It is extremely difficult to predict when the privatization process will begin or the amount of funds required to program the correct amount of funds at the correct time. Transferring funds into military personnel appropriations early has proven to be a hindrance to the privatization of the Army and Family Housing. For example, the Army estimates that Family Housing, Army will lose approximately $100 million from FY98 through FY01 due to the premature transfer of funds to Military Pay and subsequent slippage in privatization awards. Such losses cannot be reversed since there is no mechanism to reprogram from the Military Personnel appropriations back into Family Housing following the passage of the respective appropriation bills into law. This proposal precludes unnecessary shortfalls in the family housing appropriations created when premature transfers leave the Military Departments without the resources to continue funding installations experiencing privatization slippage.

Section 719. The report requires an extensive manpower effort. The Department's budget request and the Senate report contain numerous responses to other report and statutory requirements, etc., provide Congress with much of the same information as required in this report. These responses can provide specific data more efficiently on an as-needed basis.

In addition, this report was recommended for termination in 1995 based on survey data collected by the Department of Defense's Procurement Act, with estimated cost savings of at least $50,000 per year.

Section 801 amends section 5038(a) of title 10. Under current law, if there is a Director for Expeditionary Warfare within the Office of the Deputy Chief of Naval Operations for Resources, Warfare Requirements and Assessments, the Director of Naval Operations is responsible for the Vice Director of Naval Operations for Warfare Requirements and Programs. A recent organizational alignment split the functions of the Deputy Chief of Naval Operations for Warfare Requirements and Assessments into two distinct Deputy Chiefs of Naval Operations. In this alignment, the Director for Expeditionary Warfare maintains the same role and responsibilities of the Deputy Chief of Naval Operations for Warfare Requirements and Programs. This proposal reflects that organizational change.

Section 802 amends chapter 6 of title 10, United States Code, by adding a new section 169 to consolidate the various existing legal authorities governing the DoD Regional Centers to ensure each of the Regional Centers can operate under the same set of authorities, which will ensure they can operate effectively.

The Department of Defense Regional Centers for Security Studies are an important national security initiative developed by the Assistant Secretary of Defense for International Security Affairs, William Perry. These Centers, which serve as essential institutions for bilateral and multilateral communication and military and civilian exchanges, now exist for each major region—Europe, Asia, Latin America, Africa and most recently for the Middle East.

The Regional Centers are very important tools for achieving U.S. foreign and security policy objectives, both for the Secretary of Defense and for the regional CINCs. The Centers allow the Secretary and the CINCs to reach out directly and effectively to militaries and defense establishments around the world to lower regional tensions, strengthen civil-military relations in developing nations and address critical regional challenges. The Department has had extremely good results with the Centers in each region. For example, more than twenty Marshall Center graduates or foreign policy advisors or defense attaches for their countries and another twenty serve as service chiefs or in other similarly influential positions.

Currently, the Centers operate under a patchwork of existing legal authorities. As each new center was established, new legislation was passed to govern each center. As a result, no single center has the same set of legal rules guiding how it can operate. The patchwork of authorities hinders effective management and oversight of the Centers, and provides broad authority for some Centers but only limited authority for other Centers.

A central component of the department's proposal would ensure that all DoD Regional Centers are able to waive reimbursement of the costs of conferences, seminars courses of instruction and other activities associated with the Centers. The proposal also would ensure that all Centers could accept foreign and domestic gifts, hire faculty and staff, including directors and deputy directors, and hire interns and associates for the Centers. Without these authorities, the Regional Centers will not be able to operate at maximum effectiveness.

Both the Marshall Center and the Asia-Pacific Center for Security Studies, the oldest of the five Centers, have specific authority to waive reimbursement of costs associated with the Centers' activities. The United States Institute of Peace and the Near East-South Asia-Pacific Center for Hemispheric Defense Studies also has authority to waive costs, but its authori-
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apply them to all of the Centers will further improve the DISES service and confirm that the Regional Centers are thoroughly incorporated into the Department’s broader engagement strategy and funded appropriately.

This proposal provides no new spending authority. No additional resources are needed to implement these changes and as the existing Departmental management structure matures, the Department expects to realize greater efficiencies in the management of the Regional Centers.

Section 813 would repeal subsection 153(b) of title 10 and amend section 118(e) to consolidate redundant reporting requirements related to the assessment of service roles and missions. Subsection 153(b) requires the Chairman to submit to the Secretary of Defense, a review of the assignment of roles and missions to the armed forces. The review would include: examination of new force structures, training, and integration of the armed forces; joint experimentation, force structure readiness posture, military modernization programs, defense infrastructure, and other elements of the defense program. Amending subsection 118(e) would require the Secretary of Defense and the Chairman to conduct a Quadrennial Defense Review (QDR) in conjunction with the Chairman. The Department of Defense has designed the QDR to be a fundamental and comprehensive examination of America’s defense needs from 1997-2015; to include assessments of potential threats faced by the United States, unnecessary duplication of effort among the armed forces, and changes in technology that can improve the ability of the MRB to ensure the President’s budget projections into the report, thus making the Secretary of Defense for Reserve Affairs to analyze the report and process. Key changes have been made to the Commercial Activities Reform Act (FAIR Act) as required by section 12461(g), title 10, United States Code, its territories and possessions.

Specifically, subsection (a) would adjust the date of June 30th of each fiscal year to June 30th of each fiscal year. The Commercial Activities Report to Congress on national guard and reserve component equipment. During the preparation of the Commercial Activities Report, reports to Congress on national guard and reserve component equipment. The Commercial Activities Report to Congress on national guard and reserve component equipment. Subsection (b) would eliminate the requirement for data that is no longer viable, such as the full wartime requirement of equipment over successive 30-day periods and non-deployable reserve components. It would also expand the report for the current status of equipment compatibility to all Reserve Components, instead of just for the Army. Overall, the revised subsection (b) is written to expand the scope and remove the restrictive nature of the language. This revision would provide the ability to present a clearer and more complete picture of the Reserve Component equipment needs.

Section 811 would change the due date for the Commercial Activities Report to Congress, required by section 12461(g), title 10, United States Code, from February 1st of each fiscal year to January 31st of each fiscal year. The Commercial Activities Report is developed using the same in-house inventory database as the Department’s Federal Activities Inventory (FAIR) Act submission. Under the FAIR Act, the Department is required to submit an inventory of commercial functions each Fiscal Year. That inventory would be contained in the Commercial Activities Report to Congress, not later than March 15, 2001, on how the additional senior executive service positions are allocated within the defense intelligence community. H.R. Rep. No. 106-945 at 865 (2000).

Based on this guidance, the 25 new DISES positions are being reviewed for use and distribution to all components of the Intelligence Community. This expansion of DISES positions within the general DCIPS community, how-
but because of operational necessity a waiver (1) would extend the inspection requirements based on the recommendation of the Command to its successor Air Mobility command name from Military Airlift Command is a technical change to update the designated authority within the Department of the armed forces.

Section 282 would amend section 2572 of title 10. Section 2572(a) authorizes the Secretary of Transportation to exchange the items described in section 2572(c) with any individual, organization, institution, agency, or nation if the exchange will directly benefit the historical collection of the armed forces.

Section 282 would amend section 2640 of title 10, United States Code. This section requires the Secretary of Transportation to exchange the items described in section 2640 with any individual, organization, institution, agency, or nation if the exchange will directly benefit the historical collection of the armed forces.

Section 282 would amend title 18 by adding a new section 23501 to authorize the Secretary of Defense, with the concurrence of the Secretary of Transportation, to enter into an agreement for the reciprocal use of ranges and facilities under its control.

One way to develop the next generation of U.S. weapons, and of those of our friends and allies, is to take full advantage of the unique test capabilities available here and abroad. For example, the United Kingdom has a unique Artillery Recovery Range in Shoeburyness where we may recover rounds undamaged after firing for $1 million less than it would cost to conduct the same testing. As the Secretary of Defense observed in a review of the Commercial Activities Report indicating a response to Congress regarding the Commercial Activities Report indicating that the report would not be submitted until June.

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Section 821 would amend section 2681 of title 10, United States Code, “Use of Test and Evaluation Installations by Commercial Entities,” by amending section 2681 to provide greater access for commercial activities operated by the Military Department to specified entities, such as military defense contractors are charged as commercial entities to reimburse the Department for all direct costs related to the use of the installation, as deemed appropriate.

The Major Range and Test Facility Base (MRTFB) is a set of installations and organizations operated by the Military Departments principally to provide T&E support to defense acquisition programs. Historically, defense acquisition programs used the MRTFB for testing, with the Department of Defense component serving as the actual customer. The acquisition program approved the work statement and provided funding directly to the test organization. In response to acquisition reform initiatives, most program managers now leave the decision of where to test a defense acquisition program to the prime contractor. Nonetheless, many contractors choose to test at MRTFB activities because of the facilities and expertise available. In addition, the MRTFB is the only source of adequate T&E support. Under section 2681, defense contractors are charged for direct costs related to the use of the installation, as deemed appropriate.

Section 822(2) would require “check-rides” to be accomplished on carriers. As DOD personnel conducting the inspection are usually not qualified pilots in all the various types of aircraft they are required to inspect, the term “check safety observations” more accurately describe the process involved.

Section 822(3) of the proposal would designate authority within the Department of Defense to delegate a representative to make determinations to leave unsafe aircraft. This change is a technical change to update the command name from “Military Airlift Command” to its successor “Air Mobility Command.”

Section 822(4) of the proposal would authorize the Secretary of Defense to waive the requirements in subsection (c) of section 2821 if the command determines that there are no circumstances that do not constitute an emergency but because of operational necessity a waiver may be appropriate. An example would be submission of a waiver request to the Air Force alone in the foreign country but the host government will not allow an inspection on sovereignty principals. If all other information available to the Commercial Airlift Review Board indicate the waiver is appropriate for safe air carrier, a waiver may be appropriate.

Section 822(5) would amend subsection (j) of section 2681 of title 10 that states certain terms listed therein have the same meanings as defined in title 49 as a “citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.” Deleting “air carrier” from the definition section in addition to the change in paragraph (1) will allow the safety standards to be applied equally to foreign and domestic carriers.

If enacted, this proposal will not increase the budgetary requirements of the Department of Defense.

Section 901 would amend title 10 by adding a new section 25301 to authorize the Secretary of Defense, with the concurrence of the Secretary of Transportation, to enter into agreements with United States or international organizations, for the reciprocal use of ranges and facilities where testing may be conducted. As military equipment becomes more complex, so does the need for more advanced, complex, and costly test and evaluation capabilities. In this environment, it is increasingly difficult and expensive for one nation to fulfill all of its legitimate research, development, test and evaluation (RDT&E) requirements at ranges and facilities under its control.

One way to develop the next generation of U.S. weapons, and of those of our friends and allies, is to take full advantage of the unique test capabilities available here and abroad. For example, the United Kingdom has a unique Artillery Recovery Range in Shoeburyness where we may recover rounds undamaged after firing for $1 million less than it would cost to conduct the same testing. As the Secretary of Defense observed in a review of the Commercial Activities Report indicating a response to Congress regarding the Commercial Activities Report indicating that the report would not be submitted until June.

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Conversely, under current authority, it is often unequaled anywhere in the world. Unfortu-
Forces unit was activated on June 19, 1952, of the United States Army Special Forces American servicemembers is the experience Guard. paid out of the pockets of soldiers, sailors, and cooperation between U.S. or heroic acts, but unit-level engagement support of the national Security Strategy, 3746, 3749, 6244–46, 8746, and 8749–50, of title 10, the United States. See sections 1121, 3742, military campaign of the Armed Forces of distributed to the successful prosecution of a achievement or meritorious achievement, attaches and other foreign nationals for individual acts of heroism, extraordinary achievement or meritorious service as outlined above plac- ing first, second or third in competitions, graduating at the top of formal training courses, and other acts meriting recognition by U.S. officials. Since the authority to present military awards for valor, heroism or meritorious service as outlined above generally does not apply to such expenses, the men and women of the command have a long tradition of paying such expenses out of their own pockets, or from funds received from private organizations such as the Special Forces Association. Assuming that the expenditures for such items during the 328 deployments conducted by the Special Forces Command in fiscal year 2002, would be over $10 million, and incur additional expenses in the future, the command has, to date, paid for ceremonies and other tokens of appreciation or commendation through the existing MCSF budget authority (VERA) for workforce restructuring for three years. In the past, VERA and VSIP could only be used in conjunction with reduction in force. Under this new authority, it is no longer necessary to use the authority to grant early retirement or pay the incentive. The vacant position may be re- filled with an employee with skills critical to the Department. This is necessary to shape the Defense workforce of the future. Section 913 authorized these programs to be carried out for workforce restructuring during FY 2002 and FY 2003 “only to the extent pro- vided in a law enacted by the One Hundred Seventh Congress.” This provision would satisfy that requirement. Section 912 would amend section 1044a title 10 to clarify the status of civilian attorneys to perform notarial acts. Section 912 authorizes “civilian attorneys serving as legal assist- ance officers” to perform notarial services. Civilian attorneys have no designation under Office of Personnel Management position descriptions as legal assistance “offi- cers.” Within Department of Defense docu- ments, civilian attorneys providing legal as- sistance services are referred to as legal as- sistance attorneys. For this and other rea- sons related to the efficient management of legal assistance offices, subsection (b) would amend section 1044a(b)(2) to refer to legal as- sistance attorneys.

The vast majority of engagement programs conducted by the Department of Defense, in support of the national Security Strategy, however, do not involve diplomatic contacts, or heroic acts, but unit-level engagement and cooperation between U.S. servicemembers and foreign nationals, in a variety of training, exercise, and peacetime operational settings. In these instances, many of the actions that would otherwise be authorized by this proposal are currently being paid out of the pockets of soldiers, sailors, airman, Marines, and members of the Coast Guard.

One of many examples of how this gap in legislative authority adversely impacts on American servicemembers is the experience of the United States Army Special Forces Command (Airborne). Since the first Special Forces unit was activated on June 19, 1902, Special Forces personnel have routinely de- ploy, with a personal travel authority to pay for themselves and counter the threat of dan- gerous insurgents, in so doing, Special Forces personnel often serve as teachers and ambassadors. As a result, the Special Forces Command has conducted operations in both regional combatant commanders, American Ambas- sadors, and other agencies to participate in a wide variety of peace-time engagement events, because of its global reach, regional focus, cultural awareness, language skills and military expertise.

During Fiscal Year 2000, the command had 2162 personnel deployed on 61 missions in 51 countries. The activities conducted during these deployments included peace operations in the Balkans, humanitarian demining opera- tions worldwide, deployments in support of the Department of State, African Crisis Re- sponse Initiative, joint and combined exer- cise training, counterdrug operations, and mobile training team deployments. In addi- tion, elements of the command host annual marksmanship and other international com- petitions under the auspices of the United States. See sections 1121, 3742, military campaign of the Armed Forces of distributed to the successful prosecution of a achievement or meritorious achievement, attaches and other foreign nationals for individual acts of heroism, extraordinary achievement or meritorious service as outlined above plac- ing first, second or third in competitions, graduating at the top of formal training courses, and other acts meriting recognition by U.S. officials. Since the authority to present military awards for valor, heroism or meritorious service as outlined above generally does not apply to such expenses, the men and women of the command have a long tradition of paying such expenses out of their own pockets, or from funds received from private organizations such as the Special Forces Association. Assuming that the expenditures for such items during the 328 deployments conducted by the Special Forces Command in fiscal year 2002, would be over $10 million, and incur additional expenses in the future, the command has, to date, paid for ceremonies and other tokens of appreciation or commendation through the existing MCSF budget authority (VERA) for workforce restructuring for three years. In the past, VERA and VSIP could only be used in conjunction with reduction in force. Under this new authority, it is no longer necessary to use the authority to grant early retirement or pay the incentive. The vacant position may be re- filled with an employee with skills critical to the Department. This is necessary to shape the Defense workforce of the future. Section 913 authorized these programs to be carried out for workforce restructuring during FY 2002 and FY 2003 “only to the extent pro- vided in a law enacted by the One Hundred Seventh Congress.” This provision would satisfy that requirement. Section 912 would amend section 1044a title 10 to clarify the status of civilian attorneys to perform notarial acts. Section 912 authorizes “civilian attorneys serving as legal assist- ance officers” to perform notarial services. Civilian attorneys have no designation under Office of Personnel Management position descriptions as legal assistance “offi- cers.” Within Department of Defense docu- ments, civilian attorneys providing legal as- sistance services are referred to as legal as- sistance attorneys. For this and other rea- sons related to the efficient management of legal assistance offices, subsection (b) would amend section 1044a(b)(2) to refer to legal as- sistance attorneys.

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The program, which may be created at the discretion of the DoD, is now a three-year pilot program. In order to院校equipping the costs it incurs in training an employee for a job with that company. The purpose of this incentive is to encourage non-federal employees to hire and retain individuals whose employment with DoD is terminated. To be eligible for the reimbursement, a company must have employed the former DoD employee for at least 12 months. In short, this proposal allows for training for a specific job; it is not designed to fill a generic, non-critical need.

Expanded use of incentives such as contained in this proposal would provide DoD with an enhanced management tool to reduce adverse impacts on employees. Availability of this option would also reduce costs associated with VSIP payments and the placement of employees through the DoD Priority Placement Program.

Title 921 responds to section 1051 of the Strom Thurmond National Defense Authorization Act for Fiscal year 1999 (Public Law 105–261), which required DoD to conduct improvements for demilitarizing excess and surplus defense property. The proposal would amend Title 10, United States Code, to permit the Director of the National Imagery and Mapping Agency to enter into an interservice support agreement without cost to the entity providing the support. The proposed statutory change would allow DoD to convert a function to contract performance without incurring the potential length and cost of an A–76 study. This revision would not alter the requirements where an A–76 study is undertaken. It would not alter the rights of employees who are subject to an A–76 study.

Section 914 clarifies that former Defense Mapping Agency personnel transferred into the National Imagery and Mapping Agency pursuant to the National Defense Authorization Act for Fiscal Year 1997, Public Law 104–201, retain third party appeal rights under chapter 75 for as long as they remain Department of Defense employees employed without a break in service in the National Imagery and Mapping Agency. The section also permits the employees so affected to waive the provisions of this section. However, by doing so, the employee forfeits his or her rights under this section. Personnel who have those rights and who are assigned or detailed by NIMA to positions of the CIA or other agencies retain their rights vis-à-vis NIMA while assigned or detailed to those positions.

Section 922 would allow the Secretary of Defense to provide the Director, NIMA, the authority to set up a critical skills undergraduate training program parallel to those authorized to NSA, CIA, and the military departments. These proposals are intended to further the goal of enhanced recruitment of minorities for careers in the intelligence and defense communities. Under these proposals agencies recruit high school graduates who otherwise would not qualify for employment and then send them to obtain undergraduate degree in areas such as computer science. These employees are required to commit to remaining in the Government for specified payback periods. No costs are anticipated in fiscal year 2002. Fiscal year 2003 costs are currently estimated at less than $1,000,000. This proposal imposes no costs on other organizations.

Section 923 would add new stipulations to Title 10, United States Code, and would establish a three-year pilot program permitting payment of retraining expenses for DoD employees affected by BRAC. This new provision would be established for employees affected by BRAC. (See Public Law 103–337, Section 348.)
and may result in savings from not having to store the material elsewhere.

Section 232 concerns Department of Defense gift initiatives. The amendments would clarify items which may be loaned or gifted under section 195 of title 10, United States Code. Amendments to section 2325(a) of title 10 would clarify that the Secretary may donate either obsolete ordinance material or obsolete class items to qualified organizations under section 195 of title 10.

The deletion of “World War I or World War II” acknowledges a fact which will allow coverage of other wars, such as the Korean, Vietnam, and Persian Gulf wars as well as any future war. The deletion of “soldiers and marines” would clarify that associations related to any branch of military service are qualified organizations.

A new subsection (d) is added because currently no federal statute expressly addresses the loan or gift of a major portion of the hull or superstructure of a Nuclear submarine or other surface combatant. The Navy has received two requests for large portions of vessels currently slated for scrapping. These requests pertain to the sail of a Navy submarine, which is frequently sought from the Navy for use as display items. The deletion of “World War I or World War II” acknowledges a fact which will allow coverage of other wars, such as the Korean, Vietnam, and Persian Gulf wars as well as any future war. The deletion of “soldiers and marines” would clarify that associations related to any branch of military service are qualified organizations.

The Secretary of the Navy has existing authority under 10 U.S.C. § 7306 to donate vessels. The Navy has received two requests for large portions of vessels currently slated for scrapping. These requests pertain to the sail of a Navy submarine, which is frequently sought from the Navy for use as display items. The deletion of “World War I or World War II” acknowledges a fact which will allow coverage of other wars, such as the Korean, Vietnam, and Persian Gulf wars as well as any future war. The deletion of “soldiers and marines” would clarify that associations related to any branch of military service are qualified organizations.

The amendment to section 2527 of title 10 would clarify that the Secretary may donate either obsolete ordnance material or obsolete class items to qualified organizations under section 195 of title 10.

The deletion of “World War I or World War II” acknowledges a fact which will allow coverage of other wars, such as the Korean, Vietnam, and Persian Gulf wars as well as any future war. The deletion of “soldiers and marines” would clarify that associations related to any branch of military service are qualified organizations.

A new subsection (d) is added because currently no federal statute expressly addresses the loan or gift of a major portion of the hull or superstructure of a Nuclear submarine or other surface combatant. The Navy has received two requests for large portions of vessels currently slated for scrapping. These requests pertain to the sail of a Navy submarine, which is frequently sought from the Navy for use as display items. The deletion of “World War I or World War II” acknowledges a fact which will allow coverage of other wars, such as the Korean, Vietnam, and Persian Gulf wars as well as any future war. The deletion of “soldiers and marines” would clarify that associations related to any branch of military service are qualified organizations.

The Secretary of the Navy has existing authority under 10 U.S.C. § 7306 to donate vessels. The Navy has received two requests for large portions of vessels currently slated for scrapping. These requests pertain to the sail of a Navy submarine, which is frequently sought from the Navy for use as display items. The deletion of “World War I or World War II” acknowledges a fact which will allow coverage of other wars, such as the Korean, Vietnam, and Persian Gulf wars as well as any future war. The deletion of “soldiers and marines” would clarify that associations related to any branch of military service are qualified organizations.
By Mr. SMITH of Oregon.

S. 1156. A bill to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH of Oregon. Mr. President, today I rise to introduce the Electric Bike Safety Act of 2001. This bill will encourage and provide more opportunities for Americans to enjoy the leisure and health benefits provided by bicycles. This legislation would amend the Consumer Product Safety Act CPSA, to provide that low-speed electric bicycles are consumer products subject to such Act. As the CPSA is now written, low-speed electric bicycles are considered consumer products, but rather a motorized vehicle subject to all regulations set by the National Transportation Safety Administration, NTSA, which regulates automobiles and motorcycles.

As a result of low-speed electric bicycles being treated as motorcycles, they are required to meet burdensome and unnecessary standards, making low-speed electric bicycles more difficult to produce. Subjecting electric bicycles to motor vehicle requirements would mean the addition of a large array of costly and unnecessary equipment, brake lights, turn signals, automotive grade headlights, and rearview mirrors.

Making electric bicycles accessible for more Americans will benefit the lives of thousands of Americans. Electric bicycles provide disabled riders the freedom of mobility without the cost or stigma of an electric wheelchair. Electric bicycles provide older riders with increased lifestyle flexibility due to increased mobility that electric bicycles allow them. Electric bicycles provide law enforcement officers with a practical way to patrol neighborhoods and towns in a manner consistent with the highly successful emphasis on “Community Policing”. Electric bicycles provide short and medium distance, environmentally friendly and healthy way to get to work. In short, this bill is pro-Americans with disabilities, pro-elderly, pro-safety, and pro-environment. Electric bicycles will prove beneficial to many more Americans if we help our country to make electric bicycles affordable.

In my home State of Oregon, there are thousands of people who ride bicycles each day, whether as a means of transportation, exercise, or recreation. The City of Corvallis, OR, has many miles of bike lanes and paths and as a result has a very high number of people who commute to work on their bicycles. Area companies such as Hewlett-Packard and CHEM-Hill even offer changing areas and showers to their employees to encourage their employees to ride bicycles to work. The Corvallis Police Department is also able to utilize electric bicycles as a community friendly way to patrol the city.

I believe that placing electric bicycles under the regulation of the Consumer Product Safety Commission will only ensure the safety of electric bicycles, but will promote their use by making electric bicycles an affordable alternative form of transportation to millions of Americans.

By Mr. SPECTER (for himself, Ms. Landrieu, Ms. Collins, Mr. Schumer, Ms. Snowe, Mr. Leahy, Mr. Cochran, Mr. Breaux, Mr. Allen, Mr. Biden, Mr. Bond, Mrs. Carnahan, Mr. Carper, Mr. Chafee, Mr. Cleland, Mrs. Clinton, Mr. Dodd, Mr. Edwards, Mr. Frist, Mr. Gregg, Mr. Helms, Mr. Hollings, Mr. Jeffords, Mr. Kennedy, Mr. Kerry, Mr. Lieberman, Mrs. Lincoln, Ms. Mikulski, Mr. Miller, Mr. Reed, Mr. Rockefeller, Mr. Sarbanes, Mr. Sessions, Mr. Shelby, Mr. Smith of New Hampshire, Mr. Thompson, Mr. Thurmond, Mr. Torricelli, and Ms. Warren).

S. 1157. A bill to reauthorize the consent of Congress to the Northeast Interstate Dairy Compact and to grant the consent of Congress to the Southern Interstate Dairy Compact, a Pacific Northwest Dairy Compact, and an Intermountain Dairy Compact; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I join today with thirty-eight of my colleagues to introduce legislation authorizing interstate dairy compacts. Members of the U.S. House of Representatives have introduced similar legislation with 162 cosponsors, including 17 members of the Pennsylvania delegation.

This legislation will create a much needed safety net for dairy farmers in the Northeast and other regions and will bring greater stability to the prices paid to farmers. The bill authorizes an Interstate Dairy Commission to take such steps as necessary to assure consumers of an adequate local supply of fresh fluid milk and to assure the continued viability of dairy farming within the compact region. Specifically, states that choose to join a compact would enter into a voluntary agreement to create a minimum farm-price for milk within the compact region to form a safety net for dairy farmers.
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farmers when farm milk prices fall below the established compact price. This price would take into account the regional differences in the cost of production for milk, thereby providing dairy farmers with a fair and equitable price for their product.

Specifcally, the bill would authorize Pennsylvania, New Jersey, Delaware, New York, Maryland, and Ohio to join the existing Northeast Interstate Dairy Compact, which has been in operation since July 1997. Most of these States have already agreed to join the Compact with strong support from their governors and legislatures. In the Commonwealth of Pennsylvania, Governor Ridge has been a very strong supporter and advocate of the Compact. The Pennsylvania Senate and House of Representatives have sent a clear signal to Congress as to their overwhelming majorties of 44 to 6 and 181 to 20, respectively, to authorize the Commonwealth's participation in the Northeast Dairy Compact.

In addition to expanding the current Northeast Dairy Compact to form a similar compact to provide price stability in their region, I am pleased to join so many of my colleagues from the South in introducing this legislation. Finally, the legislation would allow formation of other compacts in the Pacific Northwest and Intermountain region within three years. We have included language in this bill to recognize the efforts in these States to support dairy compacts and to avoid their exclusion if these efforts lead to passage of compact legislation by their State governments.

In total, twenty-five States have already approved dairy compact legislation. This bill would authorize additional States that are attempting to meet the needs of dairy farmers, processors, consumers and other citizens concerned with the future of their milk supply. These States recognize the many positive aspects of dairy compacts. The benefits include providing dairy farmers with a fairer and more stable price structure; providing consumers with price stability and a steady, reliable source of local milk for their consumption; enhancement of conservation efforts; and the overall technical assistance; and maintenance of rural economies that have been suffering for quite some time from the loss of income-generating farmers.

Over the past several years, I have worked closely with my colleagues in the Senate in order to provide a more equitable price for our nation's milk producers. I supported amendments to the Farm Bills of 1981 and 1985, the Emergency Supplemental Appropriations Act of 1991, the Balanced Budget Resolution of 1995 and the most recent Farm Bill in 1996 in an effort to ensure that dairy farmers receive a fair price. As a member of the U.S. Senate Agriculture Appropriations Subcommittee, I have worked to ensure that dairy programs have received the maximum possible funding based upon dairy research conducted at Penn State University. I have also been a leading supporter of the Dairy Export Incentive Program which facilitates the development of an international market for United States dairy products.

In recent years, however, dairy farmers have faced low prices for dairy products. Prices have fluctuated greatly over the past several years, thereby making any long-term planning impossible for farmers. These economic conditions have placed our Nation's dairy farmers in an all but impossible position and this is borne out in dairy farmers' declining ranks.

Our Nation's farmers are some of the hardest-working and most dedicated individuals in America. During my tenure as a United States Senator, I have visited numerous small dairy farms in Pennsylvania. I have seen these hard working men and women who have dedicated their lives to their farms. The downward trend in dairy prices is an issue that directly affects all of us. We have a duty to ensure that our Nation's dairy farmers receive a fair price for their milk. If we do nothing, many small dairy farmers will be forced to sell their farms and leave the agriculture industry. This will not only impact the lives of these farmers, but will also have a significant negative impact on the rural economies that depend on the dairy industry for support. Further, the large-scale departure of small dairy farmers from agriculture could place our nation's steady supply of fresh fluid milk in jeopardy, thereby affecting every American.

We must recognize the importance of this problem and take prompt action. Twenty-five States have asked us to pass this legislation and provide a necessary tool for their dairy farmers. I urge my colleagues to cosponsor and support this legislation as we continue to work in Congress to bring greater stability to our Nation's dairy industry.

I ask unanimous consent that the text of the bill be printed in the Record.

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

SEC. 1. SHORT TITLE. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE. This Act may be cited as the "Dairy Consumers and Producers Protection Act of 2001".

SEC. 2. NORTHEAST INTERSTATE DAIRY COMPACT. Section 147 of the Agricultural Market Transition Act (7 U.S.C. 7256) is amended—

(1) by striking "States", and all that follows through "Vermont" and inserting "State of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont";

(2) by striking paragraphs (1), (3), and (7); and

(3) in paragraph (2), inserting "Class III-A" and inserting "Class IV";

(4) by striking paragraph (4) and inserting the following:

SEC. 3. SOUTHERN DAIRY COMPACT. "SOUTHERN DAIRY COMPACT.—In general. Congress consents to the Southern Dairy Compact entered into among the States of Alabama, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, subject to the following conditions:

(1) LIMITATION OF MANUFACTURING PRICE REGULATION.—The Southern Dairy Compact Commission may not regulate Class II, Class III, or Class IV milk used for manufacturing purposes or any other milk, other than Class I fluid milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Act of 1987 (referred to in this section as a "Federal milk marketing order") unless Congress has first consented to and approved such authority by a law enacted after the date of enactment of this joint resolution.

(2) ADDITIONAL STATES.—Florida, Nebraska, and Texas are the only additional States that may join the Southern Dairy Compact, individually or otherwise.

(3) COMPENSATION OF COMMODITY CREDIT CORPORATION.—The Southern Dairy Compact Commission shall compensate the Commodity Credit Corporation for any purchases of milk and milk products by the Corporation that result from the operation of the Compact price regulation during the fiscal year, as determined by the Secretary (in consultation with the Commission) using notice and comment procedures provided in section 533 of title 5, United States Code; and

(4) MILK MARKETING ORDER ADMINISTRATOR.—At the request of the Southern Dairy Compact Commission, the Administrator of the applicable Federal milk marketing order shall provide technical assistance to the Compact Commission and be compensated for that assistance.

(b) COMPACT.—The Southern Dairy Compact is substantially as follows:

"ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY

1. Statement of purpose, findings and declaration of policy. "The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogatives of the States under the United States Constitution to make an interstate compact for the southern region. The mission of the commission is to take such steps as are necessary to
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assure the continued viability of dairy farm-

ing in the south, and to assure consumers of an ade-
quate, local supply of pure and whole-

some milk.

“The participating states find and declare that milk is an es-

sential element of our agricul-
tural activity of the south. Dairy farms, and

associated suppliers, marketers, proc-

ers and retailers are an integral compo-

nent of our nation’s economy. Their ability to provide a sta-

cble, local supply of pure, wholesome milk is a matter of great im-

portance to the health and welfare of the region.

“The participating states find and declare that dairy farms are essential and they are an in-

tegral part of the region’s rural commu-
nities. The farms preserve land for agricul-
tural purposes and provide needed economic stimu-

lum for rural communities.

“In establishing their constitutional regu-

latory authority over the region’s fluid milk mar-

ket by this compact, the participating states

declare their purpose that this compa-

ct neither displace the federal order sys-

tern nor encourage the merging of federal or-
ders. The participating states declare that the compact itself set forth this basic principle.

“Designed as a flexible mechanism able to

adjut, in a regulated marketplace, the compact also contains a con-

tinency provision should the federal order sys-
tem be discontinued. In that event, the

interest in this compact is authorized to regu-

late the marketplace in replacement of the

order system. This contingent authority does not anticipate such a change, however, and

should not be so construed. It is only provided should developments in the market

other than establishment of this compact re-

sult in discontinuance of the order system.

“The participating states find and declare

that the purpose of this compact is to

provide a stable, local supply of pure, wholesome milk, and therefore the participating states as pro-

vided by the laws of those states.

“The participating states affirm that their ability to

provide milk to the market and the vitality of the southern dairy indus-

try, with all the associated benefits.

“Recent, dramatic price fluctuations, with a

pronounced downward trend, threaten the viability and stability of the southern dairy region. Individual state regu-

latory action had been an effective emer-

gency remedy available to farmers con-

fronting a distressed market. The federal

order system, as established by the Agricul-
tural Marketing Agreement Act of 1937, es-

established only minimum prices paid to pro-
ducers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

“In today’s regional dairy marketplace, co-

operative, rather than individual state ac-
tion is needed to more effectively address

the market disarray. Under our constitu-
tional system, properly authorized states acting independently may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states

find that the authority to act in com-

mon agreement, with the consent of Con-

gress, under the compact clause of the Con-

stitution.

* * * * *

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION

§ 2. Definitions

“For the purposes of this compact, and of

any supplemental or concuring legislation enacted pursuant thereto, except as may be otherwise provided in this context:

“(1) ‘Class I milk’ means milk disposed of in fluid form or as a fluid milk product, sub-

ject to further definition in accordance with the principles expressed in subdivision (b) of section three.

“(2) ‘Commission’ means the Southern Dairy Compact Commission established by

this compact.

“(3) ‘Commission marketing order’ means regulations adopted by the commission pur-
suant to sections nine and ten of this compa-
t. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations adopted by the commission. Such order may establish or terminate a marketing order or otherwise.

“(4) ‘Compact’ means this interstate compa-
t.

“(5) ‘Compact over-order price’ means a minimum price required to be paid to pro-
ducers for Class I milk established by the commission in regulations adopted pursuant to sections nine and ten of this compact, which is above the price established in fed-

eral marketing orders or by state farm price regulations within such area. Such order may apply throughout the region or in any part or parts thereof as defined in the regu-

lations of the commission.

“(6) ‘Milk’ means the lacteral secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.

“(7) ‘Partially regulated plant’ means a milk plant not located in a regulated area but having the authority to administer within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

“(8) ‘Pricing area’ means a state which has become a party to this compact by the enactment of concurring legislation.

“(9) ‘Pool plant’ means any milk plant lo-
cated in a regulated area.

“(10) ‘Region’ means the territorial limits of the states which are parties to this compa-
t.

“(11) ‘Regulated area’ means any area within the region governed by and defined in regu-
lations establishing a compact over-

order price or commission marketing order.

“(12) ‘State dairy regulation’ means any state regulation of dairy prices, and associ-
at ed assessments, whether by statute, mar-

keting order or otherwise.

* * * * *

ARTICLE III. COMMISSION ESTABLISHED

§ 3. Rules of construction

“(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discon-
tinued, the compact shall be construed to provide the commission the option to replace them with one or more commission mar-

keting orders pursuant to this compact.

“(b) The compact shall be construed lib-

erally in order to achieve the purposes and intent enunciated in section one. It is the in-
tent of this compact to establish a basic structure by which the commission may achieve those purposes through the applica-
tion, adaptation and development of the regu-

latory techniques historically associated with milk marketing and to afford the com-

mission broad flexibility to devise regu-

latory techniques, consistent with the purposes of this compact. In accordance with this in-

tent, the technical terms which are associ-

ated with market order regulation and which are used in this context shall include other than establishment of this compact requiring also the affirmative vote of that state’s delegation. A majority of the delega-
tions from the participating states shall con-

stitute a quorum for the conduct of the com-

mission’s business.

§ 4. Commission established

“There is hereby created a commission to

administer the compact, composed of delega-
tions from each state as provided by the laws of those states. The commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three nor more than five persons. Each delegation shall in-

clude at least one dairy farmer who is en-
gaged in the production of milk at the time of appointment or reappointment, and one representative member shall be residents and voters of, and subject to such confirmation process as is pro-

vided for in the appointing state. Delegation members shall serve no more than three con-
secutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall be treated as if they were members of the state legislatures. The laws of the state represented. The compensa-
tion, if any, of the members of the state dele-

gations shall be determined and paid by each state. The expenses shall be paid by the commission.

§ 5. Voting requirements

“All actions taken by the commission, ex-

cept for the establishment or termination of an over-order price or commission mar-

keting order, and the adoption, amendment or rescission of the commission’s by-

laws, shall be by majority vote of the delegations present. Each state delegation shall be enti-

tled to one vote in the conduct of the com-

mission’s affairs. Establishment or termi-

nation of an over-order price or commission mar-

keting order shall require at least a two-

thirds vote.

The establishment of a regulated area which cov-

ers all or part of a participating state shall require also the affirmative vote of that state’s delegation. A majority of the delega-
tions from the participating states shall con-

stitute a quorum for the conduct of the com-

mission’s business.

§ 6. Administration and management

“(a) The commission shall elect annually

from among the members of the partici-

pating state delegations a chairperson, a vice-chairperson, and a treasurer. The com-

mission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the

pleasure of the commission, and together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its by-

laws an executive committee composed of one member elected by each delegation.

“(b) The commission shall adopt by-

laws governing meetings and hearings of the commission. The by-

laws shall provide for appro-

priate notice to the delegations of all com-

mission meetings and hearings and of the busi-

ness to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

“(c) The commission shall file an annual

report with the Secretary of Agriculture of the United States, and to each of the partici-

pating states by submitting copies to the
governor, both houses of the legislature, and
the head of the state department having re-
sponsibility for agriculture.

(7) To adopt, create, and carry into effect any provisions of this compact, or to make and enforce such additional rules and regulations as provided by this compact over-order price or commission marketing orders.

(8) To provide for the rights of the holders thereof and to pledge the revenue of the commission as security therefor, subject to the provisions of section eighteen of this compact.

(9) To appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties and qualifications; and to create and abolish such offices, employments and positions as it deems necessary for the purposes of the compact and provide for their continuance, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The commission may also retain personal services by independent contractors on a per diem basis.

7. Rulemaking power

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. POWERS OF THE COMMISSION

8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation

The commission is hereby empowered to:

(1) Investigate or provide for investigations or research projects designed to review the existing structure of the participating states, to consider their administration and costs, and to measure their impact on the production and marketing of milk and their effect on the price of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the commission’s efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, handling, processing, distributing, selling and for all other services performed with respect to milk.

(7) Examine current economic forces affecting trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions in the dairy industry.

9. Equitable farm prices

(a) The powers granted in this section and section ten shall apply only to the establishment of a compact over-order price, so long as such milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall apply to all jurisdictions to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed one dollar and sixty cents per gallon at Atlanta, Ga., however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in production and consumption, the level of dairy farm prices, the shipment of milk, and the value of milk used in other use classifications.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The commission is hereby empowered to establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The commission is also empowered to establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area and sold in a pooled marketing zone. The compact over-order price shall be adjusted either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established, such price shall be the basis for calculation of the obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession or any other factors not related to the purposes of the regulation and the compact. Producer-handlers as defined in an applicable federal marketing order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of producing such milk, processing, marketing, and distribution of milk and milk products, the price of feed, the cost of labor including the reasonable value of the producer’s own labor and management, machinery expense, and minimum federal order prices. The price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer shall be determined.

(f) When establishing a compact over-order price, the commission shall take such other action as is necessary and feasible to help ensure that the price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or other services for the purpose of reducing the regulatory burden and cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing such services.

10. Optional provisions for pricing order

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification by the commission. Such minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials and for competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require the payment of the amount by which the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulations is less than the Class I price established by the compact over-order price or commission marketing order.
"(7) Provisions specially governing the pricing and pooling of milk handled by partially or substantially different methods.

"(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or any other federal or state marketing order in the same dairy regulation within the regulated area.

"(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to Article VII, Section 18(a).


"(11) Other provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

**ARTICLE V. RULEMAKING PROCEDURE**

**§ 11. Rulemaking procedure**

"(a) The commission shall terminate any regulations establishing an over-order price or a commission marketing order, including any provision with respect to milk supply under subsection (c), or amendment thereof, as provided in Article IV, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The commission shall commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, handlers, or handlers of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

**§ 12. Findings and referendum**

"(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553(c)), the commission shall make findings of fact with respect to:

"(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

"(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the immediate requirements of the regulated area and for manufacturing purposes.

"(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

"(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section thirteen.

**§ 13. Producer referendum**

"(a) For the purpose of ascertaining whether the adoption of the regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection (c), or amendment thereof, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the official register of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

"(b) An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which is regulated by such order; but no order or amendment shall be approved if it is announced on or before such date as may be specified in such marketing agreement or order.

"The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rulemaking prescribed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

**ARTICLE VI. ENFORCEMENT**

**§ 15. Records; reports; access to premises**

"(a) The commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, a person authorized by the commission is authorized to examine the books and records of any regulated person relating to his or her milk business and for that purpose, the commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

"(b) Information furnished to or acquired by the commission, employees, or its agents pursuant to this section shall be confidential and not subject to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements concerning the number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the commission of the names of those engaging in any regulation of the commission, together with a statement of the particular provisions violated by such person.

"(c) No officer, employee, or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than one thousand dollars or to imprisonment for not more than one year, or to both.

**§ 16. Subpoena; hearings and judicial review**

"(a) The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

"(b) Any person to whom a subpoena is served may file a written petition with the commission stating that any such order or any provision
of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

"(C) The district courts of the United States in any district in which such handler is an inhabitant, or has its principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within thirty days from the time of such withdrawal. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the complaint. If the court determines, after a hearing, that such withdrawal is not in accordance with law, it shall remand such proceedings to the commission with directions either (1) to make such ruling as the court shall determine, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the commission from obtaining relief pursuant to section nineteen. Any proceedings brought pursuant to section seventeen, except those for a mandatory stay of court proceedings in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and concerning the same subject matter, instituted pursuant to this section.

"§ 17. Enforcement with respect to handlers

"(a) Any violation by a handler of the provisions of regulations establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of any of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

"(b) With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted pursuant to this compact shall:

(1) Make a ruling upon the prayer of such handling state or order of the participating state, that result from the operation of such compact.

(2) Refer to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

"(c) With respect to handlers, the commission may bring an action for injunction to enjoin such handler from violating the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

"ARTICLE VII. FINANCE

"§ 18. Finance of start-up and regular costs

(a) To provide for its start-up costs, the commission may borrow money pursuant to its general power under section six, subdivision (d), paragraph (2), (3), and (4), to defray the costs of administration and enforcement of this compact, including payback of start-up costs, the commission is hereby empowered to collect an assessment from each handler subject to the provisions of this compact upon such terms and conditions as may be adopted.
By ratifying the Southern Dairy Compact we have the opportunity to assure consumers an adequate, affordable and nutritious supply of milk while preserving the health of farms, whose social and economic contributions remain so critical to the vitality of our country’s rural communities.

In my State of Louisiana, over four hundred dairy farmers help maintain economic stability in one of our Nation’s poorest regions. In the past ten years, nearly a quarter of the dairy farms in my State have gone out of business, and many more are in danger of shutting down unless we authorize the return of milk pricing power back to the States. Had Louisiana been a member of a Southern Dairy Compact last year, its 468 dairy farms would have received $11.9 million in compact payments, in comparison to the compact being of decreasing milk production and milk farmers by nearly thirteen percent. This, at a time when dairy farmers are faced with depressed prices not seen in the last 25 years.

There are those in Congress who have opposed dairy compacts and the idea was introduced. However, dairy compacts are not antitrust, do not increase milk production and milk from outside the compact region is not excluded from sale in the compact region. Over the past five years, New England’s dairy farmers have put into practice the compact’s promise of providing stable prices for farmers and consumers, strengthening rural communities and preserving our environment. It is time to allow the States the opportunity to provide their farmers the stability they so desperately need.

Ms. LANDRIEU. Mr. President, today I rise, along with thirty-eight of my colleagues, to introduce legislation which would reauthorize the Northwest Dairy Compact, enacted 1986, to include the Southern, Pacific and Inter-mountain Compacts.

State officials and dairy producers across the country are concerned that the current Federal milk marketing order pricing system does not fully account for regional differences in the costs of producing milk. As a result, 25 States, including my State of Louisiana, have passed legislation requesting that Congress approve their right to form regional compacts. The compact, when ratified by Congress, authorizes creation of an interstate compact commission which would guide the pricing of fluid milk sold in the region. Consumers, processors, retailers, and dairy farmers by maintaining milk price stability and doing so at no cost to taxpayers.
of such uncertainty, the current Federal price support system was designed to provide basic levels of assistance to dairy farmers. Unfortunately, the support provided, while helpful, is often inadequate. Many dairy farmers in New York and elsewhere are unable to operate at a profit. As a remedy, the Dairy Compact was designed to provide producers with supplemental support, through assessments to processors, when the Marketing Order price is low. Most importantly, the price stability afforded by the Compact is especially important to farmers as a planning tool.

As originally implemented, the Dairy Compact did not include New York. The Bill that has been introduced would allow New York State and other States in the Northeast, Southeast and elsewhere to expand the Compact. The New York Legislature, like 25 other State Legislatures, has voted to join the Compact. Why? Because over the 4 years that the Compact has been in existence it has made the difference for many families by helping them survive as a dairy producer or selling their land for development which is slowly decimating our rural landscape. It has helped keep a local supply of affordable milk for consumers including women and children throughout the Compact region at no cost to the government and without placing an undue burden on consumers.

New York is an important dairy producing and consuming State. As of the year 2000, we had about 7,200 dairy herds and produced 11.9 billion pounds of milk. That year, New York ranked third behind California and Wisconsin in both the number of milk cows and total milk produced. The viability of dairy farms is very important to my State. If New York had been a member of compact that year when dairy prices were at rock bottom, they would have received an average payment per farm of $18,200. While that size payment will not lead to prosperity, it will help keep the farm going. Several New York dairy farms sell milk to the Compact, and thus receive some of these benefits. I want to ensure that all dairy farms are in the State that can participate, and the only way to do that is to expand the Compact.

Opponents of the Compact claim that if it were to be expanded, farmers in the Compact region would overproduce fluid milk thus driving prices down in other parts of the country. This is not the case. The Compact legislation that we propose today specifically acts to prevent such an overproduction through a supply management feature that rewards dairy producers in the Compact who maintain relatively stable levels of production. If needed, this tool could be used to control overproduction from an expanded Compact and thus minimize negative impacts elsewhere.

Other important features of the Compact that are important to remember include the following: It has been fully reviewed and found to be legal. It includes a feature to protect disadvantaged women, infant and children, and in fact, in the year 2000, the Compact paid the WIC program close to $1.8 million to reimburse WIC for any extra expense the program incurred under the Compact. Approximately 1 percent of Compact payments are similarly set aside to reimburse school lunch programs.

I am concerned about the move towards consolidation in the dairy industry. While some concentration is to be expected, recent trends indicate that a very large dairy operations and processing plants are grabbing up more and more. Many dairy operations are also expanding into other areas. By helping small at-risk farms stay afloat, the Compact is a hedge against unhealthy amounts of consolidation. It also helps to preserve the rural lifestyle, the countryside settings with open spaces, and the economic core of communities that are so important to my New York and so many others.

In sum, the Dairy Compact is an effective way for States, New York and others, to obtain from Congress the regulatory authority over the region’s interstate markets for milk. It offers a price stability that is incredibly helpful, and it helps to slow the demise of a tradition that our country holds dear, the family farm.

Ms. SNOWE. Mr. President, I rise today to join Senator SPECTER of Pennsylvania in support of the Dairy Consumers and Producers Protection Act of 2001. We are joined by 37 of our colleagues from New England and throughout the Mid-Atlantic and the Southeast.

This legislation reauthorizes the very successful Northeast Interstate Dairy Compact which allows the producers of milk to, as a dairy farmer from York County, ME, recently said, set a little higher bottom for the price of locally produced fresh milk. The current Compact only adds a small incremental cost to the current Federal milk marketing order system that already sets a floor price for fluid milk in New England. The bill also gives approval for States contiguous to the participating New England States to join, in this case, Pennsylvania, New York, New Jersey, Delaware, and Maryland.

The legislation also grants Congressional approval for a new Southern Dairy Compact, made up of 14 States: Alabama, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia.

The legislation also grants Congressional approval for a new Southern Dairy Compact, made up of 14 States: Alabama, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia.

This issue is a really a State rights issue more than anything else. Mr. President, as the only action the Senate needs to take is to give its congressional consent under the Compact Clause of the United States Constitution, Article I, section 10, clause 3, to allow the 25 States to proceed with their two independent compacts.

All of the legislatures in these twenty-five States have ratified legislation that allows their individual States to join a Compact, and the Governor of every State has signed a compact bill into law. Half of the States in this country, await our Congressional approval to address farm insecurity by stabilizing the price of fresh fluid milk on grocery shelves and to protect consumers against volatile price swings.

All of the Northeast and Southern Compact States together make up about 28 percent of the Nation’s fluid milk market—New England production is only about 31.2 percent of this. This Dairy Compact originated as Minnesota and Wisconsin which together make up to 24 percent of the fluid milk market. California makes up another 20 percent.

Over ninety-seven percent of the fluid milk market in New England is contained within the area, and fluid milk markets are local due to the demand for freshness and because of high transportation costs, so any complaints raised in other areas about unfair competition simply does not hold water. The existence of the Northeast Dairy Compact does not threaten or financially harm any other dairy farmer in the country. Nor is there one penny of Federal funds involved—not one cent.

Only the consumers and the processors in the New England region pay to support the minimum price to provide for a fairer return to the area’s family dairy farmers and to protect a way of life important to the people of the Northeast. Importantly, under the Compact, New England retail milk prices have been among the lowest and the most stable in the country. No wonder other States want to follow our lead.

When Congress wants to try something new, it often sets up a pilot program to test out an idea in a particular locality or region, and then appraises the outcome to see if the project was successful. This is how the Northeast Dairy Compact originated as Minnesota and Wisconsin. It was included in the 1996 Farm bill as a three year pilot program—to sunset on April 4, 1999—at the same time as the adoption of the required consolidation of Federal milk marketing orders. The milk marketing orders were extended until October 1, 1999 in the Omnibus Appropriations of FY 1999, which also automatically extended the Compact until October 1, 1999.

Because of efforts by myself and other Compact supporters, we fought to receive a two-year extension of the Northeast Compact, which was incorporated in the Omnibus spending bill funding several government agencies.
June 29, 2001

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for FY 2000. The Compact will expire on September 30 of this year if no further action is taken by this body.

I want to make it clear to my colleagues how important the continuation of the Northeast Dairy Compact is to me and the dairy farmers and consumers in Maine. I stand here not with my hand outstretched for federal farm dollars for Maine—of all income received by farmers in my State, only about 9 percent comes from Federal funding, unlike other States whose income received through Federal dollars is well over 75 percent—rather to urge you to support a very successful program that does not cost the federal government one penny—not one cent, and is supported by the very people who are affected by it.

I plan to use every avenue open to me to maintain this fluid milk in check, and operate as, once the Compact Commission is shut down even temporarily, it cannot magically be brought back to life again. It would take many months if not a year to restore the successful process that is in place. I will not gamble with the livelihoods of the dairy farmers of Maine in that irresponsible fashion.

All during the time of the Northeast Compact, fluid milk prices in New England have been among the lowest and have reflected great price stability. The consumers of New England have been spending a few extra pennies for fresh fluid milk—a recent University of Connecticut report recently estimated no more than 4.5 cents a gallon—to ensure a safety net for dairy farmers so that they can continue a historic way of life that is helpful to the regional economy.

I have been pleasantly surprised that, while I generally reflect the content when gasoline prices rise by pennies, I have not received any swell of outrage from consumer complaints about milk prices over the last 31/2 years that the Compact has been in place. The reality is that the initial pilot Compact project we so thoughtfully created has been a huge success.

In 2000, dairy farmers in Maine received on average, $10,500 per dairy farm from the Compact Commission, the governing body set up to keep overproduction of fluid milk in check, and among other duties, ensure that the Federal nutrition programs, such as the Women, Infants, and Children Program, or WIC, are held harmless under the Compact. In fact, the advocates of these federal nutrition programs support the Compact and serve on its commission.

The Northeast Interstate Dairy Compact has provided the very safety that we had hoped for when the Compact was in its infancy. The 30-day milk bill of 1996. The Dairy Compact has helped farmers maintain a stable price for fluid milk during times of volatile swings in farm milk prices.

Also, consider what has happened to the number of dairy farms staying in business since the formation of the Compact. It is clear that, throughout New England, there has been a decline in the number of dairy farmers going out of business. In Maine, for instance, the loss of dairy farms was 16 percent from 1993 to 1997. The Compact then went into effect and from that time until now, the loss of dairy farms has dropped to 9 percent.

The Compact has given dairy farmers a measure of confidence in the near-term for the price of their milk so they have been willing to reinvest in their operations by upgrading and modernizing facilities, acquiring more efficient equipment, purchasing additional cropland and improving the genetic base of their herds. Without the Compact, milk prices do not have the courage to do these things and their lenders would not have had the willingness to meet their capital needs.

The Compact has also protected future generations by helping local milk markets stabilize and preventing their dependence on milk a single source of milk that can lead to higher milk prices through increased transportation costs and increased vulnerability to natural catastrophes.

The bottom line is, theCompact has helped the economies of the New England States. The presence of farms are protecting open spaces critical to every State's recreational, environmental and conservation interests. These open spaces also serve as a buffer to urban sprawl and boost tourism so important to my home state of Maine.

Through its bylaws, the Compact has also preserved State sovereignty by adopting the principle of "one state—one vote." Only a two-thirds change be approved by two-thirds of the participating states in the Compact.

There are compensation procedures that are implemented by the New England Dairy Commission to protect against increased production of fresh milk. The Compact requires that the Compact Commission take such action as necessary to ensure that a minimum price set by the commission for the region over the Federal milk marketing order floor price does not create an incentive for producers to generate additional supplies of milk. When there has been a rise in the Federal floor price for Class I fluid milk, the Compact has automatically shut itself off from the pricing process. Since there is no incentive to overproduce, there has been no rush to increase milk production in the Northeast as was feared by Compact opponents. No other region should feel threatened by a dairy compact for fluid milk produced and sold mainly at home.

The consumers in the Northeast Compact area, the now in the Mid-Atlantic area and the Southeast area, have shown their willingness to pay a few pennies more for their milk if the additional money is going directly to the dairy farmer. Environmental organizations have also supported dairy compacting as Compacts help to preserve dwindling agricultural land and open spaces.

I urge my colleagues not to look success in the face and turn the other way, but to support us in passing this legislation that half of our states have requested.

Mrs. CLINTON. Mr. President. I am pleased to join with my colleagues today as an original cosponsor of the Dairy Consumers and Producers Protection Act of 2001. This legislation is vitally important to New York dairy farmers, New York's economy, and rural communities around the country.

In addition, New York farmers, like those in Watertown and Glen Falls to Ithaca and Jamestown, NY farmers and New York farms are an invaluable part of our State's economy and its landscape. Agriculture is one of New York's top industries. What is grown in our State's fields and orchards and pastures makes its way to homes and kitchen tables across the country, and around the world.

In particular, the dairy industry is a pillar of New York's economy. Milk is New York's leading agricultural product, creating almost $2 billion in receipts. And New York ranks third in the country in terms of the value of dairy products sold, surpassed only by California and Wisconsin.

Yet, as I travel throughout New York State, I meet dairy farmers who are working harder, but still struggling to make ends meet. Volatile milk prices make it very difficult for New York dairy farmers to negotiate loans, to invest in expansion, and to plan for the future.

That is why it is so important that we join with our colleagues from other States to expand the Northeast Dairy Compact to include New York. If New York had been a member of the Northeast Dairy Compact last year, the over 7,000 dairy farmers in New York would have received an estimated $132.6 million in payments, an average of $18,200 for each farm, thereby increasing income for the average New York dairy farm by approximately eight percent.

In addition, New York's farms are growing and farms have become prime land for development and sprawl. We must make sure that farmers all across New York and around the country get the help that they need to hold onto their farms, and to preserve our fields and open spaces. They are an important part of what makes New York so unique and so beautiful.

Helping to preserve New York's dairy farms by expanding the Northeast Dairy Compact is the right thing to do. Not only does it ensure the security of our dairy farmers in New York and in other parts of the country, it guarantees an adequate supply of fresh milk.
at reasonable prices and helps to preserve precious open space.

Mr. President, today, I rise today to express my support for the Dairy Consumers and Producers Protection Act of 2001, important legislation that would re-authorize and expand the Northeast Dairy Compact, and ratify a Southern Compact. Growing support and recognition of the effectiveness and ingenuity of the Northeast Dairy Compact has led twenty-five States to enact compact legislation. These States now look to Congress to grant them the right to join the Northeast Compact, or to form a Southern Compact.

It is critical that we keep pace with the demands of State governments, and provide them with the authority to develop a regional pricing mechanism for Class I (fluid) milk. The States that form the Northeast Dairy Commission face radically different conditions and factors of production. Differences in climate, transportation, feed, energy and land value validate the need for regional pricing. Compacts allow States to address these differences and create a price level that is appropriate for producers, processors, retailers, and consumers.

The Northeast Dairy Compact was originally authorized as a three-year pilot program in the 1996 Farm Bill. Since July of 1997, when the Compact Commission first set the Class I over-order price at $16.94, the Northeast Dairy Compact has proven to be a great success, providing farmers with a fair price for their milk, protecting consumers from price spikes, reducing market dependency upon milk from a single source, controlling excess supply, and helping to preserve rural landscapes by strengthening farm communities. And, unlike so many of our country’s regional programs, the benefits of the dairy compact are realized at no cost to the Federal Government.

The Northeast Dairy Compact is managed by the Compact Commission. The Commission, comprised of 26 delegates from the six New England member States, includes producers, processors, retailers and consumer representatives. Each State governor appoints three or five delegates to represent their State's vote on the Commission. The Commission meets monthly to evaluate and establish the current Compact over-order price for Class I (fluid) milk. Using a formal rule-making process, the Commission hears testimony to establish a price that takes into account the purchasing power of the public, and the price necessary to yield a reasonable return to producers and distributors. Any price change proposed by the Commission is subject to a two-thirds vote by the State delegations as well as a producer referendum.

The Compact Commission’s price regulation works in conjunction with the Federal Government’s pricing program, which establishes minimum prices paid to dairy farmers for their raw milk. Under the Federal program, processors pay the difference between the Compact over-order price for fluid milk, currently $16.94, and the price established monthly by federal regulation for the same milk. The over-order premium is paid on class I (fluid) milk, and is only paid when the Compact over-order price is higher than the price set by the Federal milk marketing orders. Processors purchasing milk for other dairy products such as cheese or ice cream are not subject to the Compact’s pricing regulations, although all farmers producing milk in the region, for any purpose, share equally in the Compact’s benefits.

In order to protect low-income consumers from any increases in cost caused by the Compact, the Compact legislation imposes regulations on the Commission requiring that the Women, Infants and Children, WIC program, as well as School Lunch Programs, must be reimbursed for any additional costs they may incur as a result of compact activity. Three percent of the pooled proceeds are set aside to fulfill these obligations.

Compact legislation also contains a clause that holds the Commission responsible for any purchases of milk or milk products by the Commodity Credit Corporation, CCC, that result from the operation of the Compact. The Secretary of Agriculture has the authority to determine those costs and ensure that the Commission honors its obligations.

After money is withheld for the WIC and School Lunch programs, as well as school milk programs, the CCC gives the funds back to the Compact Commission, effectively creating a floor for milk prices. This, in turn, decreases price volatility in the region.

The stability created by the Compact pricing mechanism is important for farmers who are trying to stay in business. It guarantees farmers a fair price for their product and allows them to plan for the future. Farmers, knowing that they can count on a fair price, can allocate money to purchase and repair machinery, improve farming practices, and above all, stay in business.

Throughout our great Nation, the family farm continues to be a vital part of our rural community and agricultural infrastructure. In New England and across our country, farmers continue to support our rural economies. Farms create economic stability by supporting local businesses such as feed stores, farm equipment suppliers and local banks. The continuing disappearance of small farms is making life very difficult for agribusinesses and all across the overall rural economic infrastructure.

The importance of the family farm extends well beyond the rural economy, however. Preservation of the family farm has important environmental consequences as well. Numerous environmental organizations have expressed their support for dairy compacts. They recognize the ability of compacts to protect our farms and preserve our dairy industry. These organizations include the Sierra Club, the Conservation Law Foundation and the National Trust for Historic Preservation. These groups, as well as numerous other environmentally conscious organizations, recognize farmers as guardians of the land and value the ability of farms to sustain productive use of the land, while preserving open space.

Even though compacts enjoy widespread support across much of our country, opponents have worked tirelessly to discredit the merits of dairy compacts. These critics, however, must contend with the strong record of success that the Northeast Dairy Compact has put forth.

During its first four years, the Northeast Compact has stood up to numerous legal challenges. Courts have ruled in favor of the Compact on every level, including the U.S. Supreme Court. The courts have recognized the Compact as a proper and constitutional grant of congressional authority, permitted under the Commerce and Compact clauses of the U.S. Constitution. These decisions have upheld the Commission’s authority to regulate milk within the region, as well as milk produced outside of the region.

Concerns have also been raised about the Compact’s effect on interstate trade. Opponents of the Northeast Compact argue that compacts restrict the movement of milk between States that are in the Compact, and States that lie outside the Compact. Compacts, however, do not restrict the movement of milk into the region. For example, producers in eastern New York State benefit from the Northeast Compact. By shipping their milk into the region, farmers are eligible to receive the Compact price for their products.

Another common misconception is that the Compact leads to overproduction. The Northeast Dairy Compact, however, has not led to overproduction during its first four years. In fact, during 2000, the Northeast Dairy Compact states produced 4.7 billion pounds of milk, a 0.6 percent reduction from 1999. Since the Northeast Dairy Compact began, milk production in the region has risen by just 2.2 percent. Nationally, milk production rose 7.4 percent from 1997 to 2000. Over this same period, California, the largest
milk producing State in the country, increased its milk production by 16.9 percent.

To protect against overproduction, the Compact Commission has developed a supply management program that rewards farmers who do not increase production. Under the program, 7.5 cents per hundred-weight is withheld by the Commission. This money is refunded to producers that have not increased their production by more than 1 percent during the given year. While this program has only been in place since 2000, we believe that it will be a useful tool in preventing overproduction.

Finally, opponents argue that compacts are harmful to consumers, especially low-income consumers. The facts show that this is not the case. On May 2, 2001, an independent study out of the University of Connecticut’s Food Marketing Policy Center offers new evidence regarding the impact of the Northeast Dairy Compact on consumer prices. The Food Marketing Policy Center performed a four-year analysis of retail milk prices using supermarket scanner data from 18 months prior to Compact implementation, up through July of 2000. This period of time captured the volatile prices preceding Compact implementation, as well as the pricing behavior that followed. The study found that the Northeast Dairy Compact was responsible for only 4.5 cents of the 29-cent increase in retail prices following Compact implementation. The study concludes that wider profit margins by processors and retailers account for 11 cents of the 29-cent increase. Since the Compact went into effect, these wider profit margins have drawn nearly $50 million out of the pockets of New England consumers.

The study suggests that retail stores and price setting by the region’s leading retailers are the primary forces driving food prices. While the study points to some evidence of “tacitly collusive price conduct” to lock in wider profit margins, the study states, “Leading firms in the supermarket-marketing channel have used their dominant market positions to elevate retail prices in the Northeast Compact Region.” In conclusion, the study contends: “The major policy now facing New England consumers of fluid milk is not the Northeast Dairy Compact. It is the exercise of market power by the region’s leading retailers and milk processor.” While this study raises some serious concerns regarding the New England dairy industry, it illustrates that the effects of the Compact on consumers have been benign.

A May 11, 2001 article in Cheese Market News, by Jim Tillison, Chairman of the Alliance of Western Producers, further addresses the consumer issue. Mr. Tillison writes: “Now, unless I am wrong, in every dairy state there are many times more consumers than dairy farmers. It would be very difficult to get compact legislation passed if consumers were strongly opposed to it. That’s why it is all the more important to focus on the benefits for consumers.”

The study continues, “Consumers like the idea of milk for their kids being produced ‘locally.’ Milk isn’t orange juice. It has a different flavor. Even though the milkman delivering ‘fresh’ milk to the consumer’s doorstep is a thing of the past, that doesn’t mean that consumers don’t want fresh milk.” At this time, I would ask unanimous consent that Jim Tillison’s article, “Let’s Talk About Compacts” be submitted for the Record.

Under our legal system, individual states have the authority to establish their own dairy pricing mechanism. Because of the nature and size of the dairy industries in the Northeast and South, states in these regions are better served by coming together to form a unified pricing mechanism. By supporting the rights of states to form dairy compacts, we maintain the safety and continuity of our milk supply, protect consumers from volatile milk prices, and conserve open land.

Original created as a three-year pilot program by the Northeast Dairy Compact, and ratifying a Southern Compact.

In closing, I urge the Senate to support this important legislation. Our States have come to us, and asked us to grant them the right to regulate the minimum farm price of milk, the right to save their family farms. We must grant them that right.

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

([From the Cheese Market News, May 11, 2001]

**LET’S TALK ABOUT COMPACTS**

*By Jim Tillison*

Here we go again. The issue of dairy compacts is “heating up” once again. Studies have been done and to now one’s surprise there have been a number of states to regulate the milk paid by fluid processors in those states. Any milk brought into the state for fluid purposes has to be regulated.

The process starts with the state legislature in each state in which interested producers reside passing legislation supporting the compact. This legislation is then submitted to the Compact Commission and the compact was created. The Commission then orders a feasibility study and the compact is implemented. If the compact was implemented, there are many time more consumers than dairy farmers. It would seem that it would be very difficult to get compact legislation passed if consumers were strongly opposed to it. That’s why it is all the more important to focus on the benefits for consumers.

Arguably, this is proof that consumers are not opposed to dairy compacts even though they are good for farmers, good for consumers, and good for the environment. I ask that the Senate recognize this by supporting dairy compacts. We now have the hard evidence, and we don’t need to speculate about the potential effects of compacts. We no longer need to speculate about the potential effects of compacts. We no longer need to speculate about the potential effects of compacts. We no longer need to speculate about the potential effects of compacts. We no longer need to speculate about the potential effects of compacts.

What is difficult to understand is the opposition to compacts by some producers. This opposition seems to be generated more by economic theory than fact. The theory was based on a single premise—money makes milk, more money makes more milk. A dairy compact will give producers in compact states more money. This will result in them producing more milk. This additional milk will go into manufactured products which will hurt producers in other areas of the country? The answer is no. Will a Southeast Compact bring on a surge of milk production? Again, the answer is no. Just take a look at the population after Class I differentials were raised $1.00 per hundred weight in the Southeast in 1986. Did milk production boom? Did it outstrip demand? Did cheese become cheaper? Did milk production from Arkansas to Florida? No, no, no.

Finally, the argument that really makes me knockle is that the Northeast Compact hurt producers in other areas of the country? The answer is no. Would a Southeast Compact bring on a surge of milk production? Again, the answer is no. Just take a look at the population after Class I differentials were raised $1.00 per hundred weight in the Southeast in 1986. Did milk production boom? Did it outstrip demand? Did cheese become cheaper? Did milk production from Arkansas to Florida? No, no, no.
It is a fact that on a per capita basis, Native participation rate in the Armed Forces was much higher than that of other groups in this Nation. Many American Indian men made the ultimate sacrifice in the defense of this Nation, some even before they were granted citizenship in 1924.

Many of the words in our language have been borrowed from Native languages, including many of the names of the rivers, cities, and States across our Nation. Indian arts and crafts have also made a distinct impression on our heritage.

It is my hope that by designating the month of November 2001, as “National American Indian Heritage Month,” we will continue to encourage self-esteem, pride, and self-awareness amongst American Indians and Alaska Natives of all ages.

November is a special time in the history of the United States: we celebrate the Thanksgiving holiday by remembering the Indians and English settlers as they enjoyed the bounty of their harvest and the promise of new kinships. Now, therefore, be it

Resolved. That the Senate designates November 2001 as “National American Indian Heritage Month” and requests that the President issue a proclamation calling on the Federal Government and State and local governments, interested groups and organizations, and the people of the United States, to observe the month with appropriate programs, ceremonies, and activities.

Mr. CAMPBELL. Mr. President, along with thirty of my colleagues today I am pleased to introduce a resolution to recognize the many contributions American Indians and Alaska Natives have made to this great Nation and to designate November, 2001, as “National American Indian Heritage Month” as Congress has done for nearly a decade.

American Indians and Alaska Natives have left an indelible imprint on many aspects of our everyday life that most Americans often take for granted. The arts, education, science, the armed forces, medicine, industry, and government are a few of the areas that have been influenced by American Indian and Alaska Native people over the last 500 years. In the medical field, many of the healing remedies that we use today were once used by our predecessors already in use by Indian people and are still utilized today in conjunction with western medicine.

Many of the basic principles of democracy in our Constitution can be traced to practices and customs already in use by American Indian tribal governments including the doctrines of freedom of speech and separation of powers.

The respect of Native people for the preservation of natural resources, reverence for elders, and adherence to tradition, mirrors our own values which we developed in part, through the contact with American Indians and Alaska Natives. These values and customs are deeply instilled in Indian people and thrive with generation after generation of Native people.

From the difficult days of Valley Forge through our peace keeping efforts around the world today, American Indian people have proudly served and dedicated their lives in the military readiness and defense of our country in wartime and in peace.

 It is a fact that on a per capita basis, Native participation rate in the Armed Forces was much higher than that of other groups in this Nation. Many American Indian men made the ultimate sacrifice in the defense of this Nation, some even before they were granted citizenship in 1924.

Many of the words in our language have been borrowed from Native languages, including many of the names of the rivers, cities, and States across our Nation. Indian arts and crafts have also made a distinct impression on our heritage.

It is my hope that by designating the month of November 2001, as “National American Indian Heritage Month,” we will continue to encourage self-esteem, pride, and self-awareness amongst American Indians and Alaska Natives of all ages.

November is a special time in the history of the United States: we celebrate the Thanksgiving holiday by remembering the Indians and English settlers as they enjoyed the bounty of their harvest and the promise of new kinships.

By recognizing the many Native contributions to the arts, governance, and culture of our Nation, we will honor their past and ensure a place in America for Native people for generations to come. I ask for the support of my colleagues on both sides of the aisle for this resolution, and urge the Senate to pass this important matter.

SENATE RESOLUTION 119—COMMITTEE ON FOREIGN RELATIONS

Whereas the international AIDS pandemic is of grave proportions and is growing;

Whereas the epicenter of the AIDS pandemic is sub-Saharan Africa, and incidences of contraction of HIV, AIDS, and related diseases are growing in the Caribbean basin, Russia, China, Southeast Asia, and India at alarming rates;

Whereas AIDS pandemic-related statistics are especially staggering in sub-Saharan Afрика;

(1) the infection rate is 8 times higher than the rest of the world;

(2) in the region, over 17,000,000 people have already lost their lives to AIDS or AIDS-related illnesses; with another 24,000,000 living with AIDS, according to the World Health Organization and Joint United Nations Program on HIV/AIDS;

(3) in many countries in the region, life expectancy will drop by 50 percent over the next decade;
(4) more than 12,000,000 African children have lost 1 or both parents to AIDS or AIDS-related illnesses, and that number will grow to more than 35,000,000 by 2010; 
(5) if current trends continue, 50 percent or more of all 15-year olds in the worst affected countries, such as South Africa, Botswana, and Swaziland, will die of AIDS or AIDS-related illnesses; and 
(6) one-quarter of the sub-Saharan African population could die of AIDS or AIDS-related illnesses by 2020, according to the Central Intelligence Agency; 

Whereas confronting the AIDS pandemic is a moral imperative; 
(7) urges international assistance programs to continue to emphasize science-based best practices and prevention in the context of a comprehensive program of care and treatment; 
(8) encourages international health care infrastructures to better prepare themselves for the successful provision of AIDS care and treatment, including the administration of AIDS drugs; 
(9) urges the Administration of President George W. Bush to encourage participants at the United Nations General Assembly Special Session on AIDS in June, and the Group of Eight Industrialized Nations meeting in July, to contribute to the global fund; and 
(10) calls for United States representatives at the United Nations General Assembly Eighty-First Session on AIDS, taking place in June 2001, and the Group of Eight Industrialized Nations meeting to emphasize the need to maintain focus on science-based best practices and prevention in the context of a comprehensive program of care and treatment, combating mother-to-child transmission of the HIV virus, defeating opportunistic disease, and we must provide leadership if we are to reverse global infection rates; 

Whereas the AIDS pandemic is perhaps the most serious and challenging transnational issue facing the world in the post-Cold War era; 

Whereas the AIDS pandemic is decimating local skilled workforces, straining fragile governments, diverting national resources, and undermining states’ ability to provide for their national defense or international peacekeeping forces; 

Whereas United Nations Secretary General, Kofi Annan, asserts that between $7,000,000,000 and $13,000,000,000 is needed annually to address the AIDS pandemic, yet current international assistance efforts total roughly a little more than $1,000,000,000 per annum; 

Whereas the United States has joined the call from the United Nations Secretary General, Kofi Annan, and others in support of a global fund to assist national governments, international organizations, and nongovernmental organizations in the prevention, care, and treatment of AIDS and AIDS-related illnesses; and 

Whereas the United Nations Special Session on AIDS, taking place in June 2001, and the Group of Eight Industrialized Nations meeting in July 2001, are key opportunities for more states, governments, international organizations, the private sector, and civil society to donate assistance to the global fund: Now, therefore, be it 

Resolved, That the Senate—
(1) recognizes the tragedy of the AIDS pandemic in human terms, as well as its devastating impact on national economies, infrastructures, political systems, and all sectors of society; 
(2) strongly supports the formation of a Global AIDS and Health Fund; 
(3) calls for the United States to remain open and providing greater sums of money to the global fund as other donors join in supporting this endeavor; 
(4) calls on other nations, international organizations, foundations, the private sector, and civil society to join in providing assistance to the global fund; 
(5) urges all national leaders in every part of the world’s states to candidly to their people about how to avoid contracting or transmitting the HIV virus; 
(6) calls for the United States to continue to invest heavily in AIDS treatment, prevention, and research; 

SENIATE RESOLUTION 120—ORGANIZATION OF THE SENATE 

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

S. Res. 120 Resolved, That the Majority Party of the Senate shall have a one seat majority on every committee of the Senate, except that the Select Committee on Ethics shall continue to be composed equally of members from both parties. No Senator shall lose his or her current committee assignments by reason of this resolution.

Sec. 2. Notwithstanding the provisions of Rule XXV the Majority and Minority Leaders of the Senate are hereby authorized to appoint their respective committees consistent with this resolution.

Sec. 3. Subject to the authority of the Standing Rules of the Senate, any agreements entered into regarding committee funding and space prior to June 5, 2001, between the Chairman and Ranking member of each committee shall remain in effect, unless modified by subsequent agreement between the Chairman and Ranking member.

Sec. 4. The provisions of this resolution shall cease to be effective, except for Sec. 3, if the ratio in the full Senate on the date of adoption of this resolution changes.

SENIATE RESOLUTION 121—EX-PRESSING THE SENSE OF THE SENATE REGARDING THE POLICY OF THE UNITED STATES AT THE 53RD ANNUAL MEETING OF THE INTERNATIONAL WHALING COMMISSION 

Mr. KERRY (for himself, Ms. Snowe, Mr. Hollings, Mr. McCain, Mr. Biden, Mr. Sarbanes, Mrs. Boxer, Mr. Kennedy, and Mr. Feingold) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 121 Whereas whales have very low reproductive rates, making whale populations extremely vulnerable to pressure from commercial whaling; 
Whereas whales migrate throughout the world’s oceans and international cooperation is required to successfully conserve and protect whale stocks; 
Whereas in 1946 the nations of the world adopted the International Convention for the Regulation of Whaling, which established the International Whaling Commission to provide for the proper conservation of the whale stocks; 
Whereas the Commission adopted a moratorium on commercial whaling in 1982 in order to conserve and promote the recovery of the whale stocks; 
Whereas the Commission has designated the Southern Ocean and the ocean waters around Antarctica as whale sanctuaries to further enhance the recovery of whale stocks; 
Whereas many nations of the world have designated whales under their jurisdiction as whale sanctuaries where commercial whaling is prohibited, and additional regional whale sanctuaries have been established by nations that are members of the Commission; 
Whereas several member nations of the Commission have taken reservations to the Commission’s moratorium on commercial whaling and 1 member nation is currently conducting commercial whaling operations in spite of the moratorium and the protests of other nations; 
Whereas the Commission has adopted several resolutions at recent meetings seeking multinational nations to abandon plans to initiate or continue commercial whaling activities conducted under reservation to the moratorium; 
Whereas another member nation of the Commission has taken a reservation to the Commission’s Southern Ocean Sanctuary and continues to conduct unnecessary lethal scientific whaling in the waters of that sanctuary; 
Whereas the Commission’s Scientific Committee has repeatedly expressed serious concerns about the scientific need for such lethal whaling; 
Whereas scientific information on whales can readily be obtained through non-lethal means; 
Whereas the lethal take of whales under reservations to the Commission’s policies have been increasing annually; 
Whereas there continue to be indications that whale meat is being traded on the international market despite a ban on such trade under the Convention on International Trade in Endangered Species (CITES), and that meat may be originating in one of the member nations of the Commission; 
Whereas engaging in unauthorized commercial whaling and lethal scientific whaling undermines the conservation program of the Commission; Now, therefore, be it, 

Resolved, That it is the sense of the Senate that—
(1) at the 53rd Annual Meeting the International Whaling Commission the United States should—
(A) remain firmly opposed to commercial whaling; 
(B) initiate and support efforts to ensure that all activities conducted under reservations to the Commission’s moratorium or sanctuaries are ceased; 
(C) oppose the lethal taking of whales for scientific purposes unless such lethal taking
CONGRESSIONAL RECORD—SENATE

June 29, 2001

Mr. KERRY. Mr. President, as Chairman of the Oceans and Fisheries Subcommittee, I rise today to submit a resolution regarding the policy of the United States at the upcoming 53rd Annual Meeting of the International Whaling Commission, IWC. I wish to thank the Ranking Member of the committee, Ms. SNOWE, for co-sponsoring this resolution. I wish to also thank my colleagues Mr. HOLLINGS, Mr. MCCAIN, Mr. BIDEN, Mrs. BOXER, Mr. SARBANES, Mr. KENNEDY and Mr. FEINGOLD for co-sponsoring as well.

The IWC will meet in London from July 23-27th. Despite an IWC moratorium on commercial whaling since 1985, Japan and Norway have harvested over 1000 minke whales since the moratorium was put in place. Whales are already under enormous pressure worldwide from collisions with ships, entanglement in fishing gear, coastal pollution, noise emanating from surface vessels and other sources. The need to conserve and protect these magnificent mammals is clear.

The IWC was formed in 1946 in recognition of the fact that whales are highly migratory and that they do not belong to any one Nation. In 1982, the IWC agreed on an indefinite moratorium on all commercial whaling beginning in 1985. Unfortunately, Japan has been using a loophole that allows countries to issue themselves special permits for whaling under scientific purposes. The IWC Scientific Committee has not requested any of the information obtained by killing these whales and has stated that Japan’s scientific whaling data is not required for management.

Norway, on the other hand, objects to the moratorium on whaling and openly pursues a commercial fishery for whales.

This resolution calls for the U.S. delegation to the IWC to remain firmly opposed to commercial whaling. In addition, this resolution calls for the U.S. to oppose the lethal taking of whales for scientific purposes unless such lethal taking is specifically authorized by the Scientific Committee of the Commission. The resolution calls for the U.S. delegation to support an end to the illegal trade of whale meat and to support the permanent protection of whale populations through the establishment of whale sanctuaries in which commercial whaling is prohibited.

I ask unanimous consent to insert into the RECORD a statement from the World Wildlife Fund, WWF, concerning the upcoming meeting of the IWC and the protection of whales in which commercial whaling is prohibited.

The warping being no objection, the matter was ordered to be printed in the RECORD, as follows:

STATEMENT OF WORLD WILDLIFE FUND

Today, populations of nearly all the great whales are at depressed levels, a legacy of unsustainable whaling during the last two centuries. Some, such as the North Atlantic right and Antarctic blue whales, survive as a few hundred individuals at the brink of extinction, having failed to rebound from past exploitation. Others are believed to be returning to healthy levels. While direct human impacts continue, other more diffuse threats may ultimately exact a greater toll. Rapid climate warming in the next few decades is expected to disrupt the marine environment on which whales depend. And accumulation of DDT, PCBs, and other toxic contaminants in the marine food chain is already affecting some whales and may endanger some marine species and their ability to reproduce. Such broad-based threats to the marine environment are difficult to address in ways that will alleviate harm to whales specifically, and make it all the more important that whales are not also threatened by uncontrolled commercial whaling.

The International Whaling Commission, IWC, was established under the 1946 International Convention for the Regulation of Whaling, and is the sole international regulatory body charged with the management of cetaceans. International regulation of whaling was recognized by the UN Convention on the Law of the Sea, and reaffirmed by Agen- da 21 as essential for these highly migratory species.

Despite the global moratorium on commercial whaling put in place by the IWC in 1986, over 1000 Northern and Southern minke whales are caught each year. Within the IWC, Japan continues to catch hundreds of whales (many in the Southern Ocean which is designated as an IWC whale sanctuary) using a loophole for scientific research, while Norway pursues an openly commercial hunt under a legal “objection” to the moratorium. For over a decade, both countries have proceeded without IWC approval and indeed in the face of repeated censure by the Commission. Norway is currently moving to re-open international trade in whale products despite a ban under CITES, and Japan has just extended its scientific whaling to include sperm and Bryde’s whales as well as the two species of minke.

Japan and Norway’s insistence on hunting whales despite the moratorium has brought IWC to a dangerous impasse. No sound management scheme currently exists to ensure the sustainability of whale populations, although a Re-vised Management Scheme, RMS, that could help to do so has been under discussion in the IWC for several years.

Japan and Norway have long said they viewed completion of the RMS as a turning point in their efforts to lift the whaling moratorium, and both countries have harshly criticized the IWC’s approach to the RMS. In recent IWC talks, however, the great majority of countries present sought to include crucial safeguards on the quality and content of proposals on the RMS. They did so over the strengths and repeated objections of Japan and Norway, who seemed unwilling to agree to safeguards that would ensure that commercial whaling does not threaten whale populations.

In addition, Japan and Norway are supported in the IWC by the votes of a loyal group of countries, mostly small island states that receive significant assistance from Japan. This gives the whalers a blocking minority of votes and has exacerbated the IWC’s deadlock.

Because a tiny minority of countries in the IWC refuses to cease commercial whaling, it is imperative that new safeguards (including highly precautionary catch limits and provisions on monitoring, surveillance, and control such as DNA sampling of all whales caught, a diagnostic DNA register, and sanctions for non-compliance) be agreed that will contain their activities and bring them back under full IWC control at the earliest possible date. An RMS could advance this goal providing it contains safeguards, including a Re-vised Management Scheme that sets all catch limits at zero unless otherwise calculated and approved. Such an RMS would replace the now obsolete 1974 management scheme.

The IWC 53rd Conference of Parties meets at Hammersmith, London, in late July of this year. The Hammersmith meeting must make progress in resolving the impasse within the IWC, bringing whaling by Norway and Japan under international control as a matter of urgency, and ensuring that any discussion on the RMS incorporate rigorous safeguards to rein in current and potential whaling abuses.

The IWC’s mandate requires first and foremost that it prevent the return of uncontrolled large-scale commercial whaling. This is the near-term agenda by which it will be judged and is currently the main contribution it has to offer conservation of cetaceans more broadly. For the IWC to remain relevant over the long term, however, it must expand its scope of engagement to address the other human activities which threaten whales and focus action on ensuring the survival of the most endangered species.

Ms. SNOWE, Mr. President, the resolution that Senator KERRY and I are submitting is very timely and important. As we work here in the Senate today, representatives of nations from around the globe are preparing for the 53rd Annual Meeting of the International Whaling Commission to be held in London July 23–27, 2001. At this meeting, the IWC will determine the fate of the world’s whales through consideration of proposals to end the current global moratorium on commercial whaling. The adoption of any such proposals by the IWC would mark a major setback in whale conservation. It is imperative that the United States remain to stand against the proposals to resume commercial whaling and that we, as a nation, continue to speak out passionately against this practice.

It is also time to close one of the loopholes used by nations to continue to vote without regard to the moratorium or established whale sanctuaries. The practice of unnecessary lethal scientific whaling is outdated and the value of the data of such research has
been called into question by an international array of scientists who study the same population dynamics questions. Whaling a whale is not, in the name of science. This same whale meat is then processed and sold in the marketplace. These sentiments have been echoed by the Scientific Committee of the IWC which has repeatedly passed resolutions calling for the cessation of lethal scientific whaling, particularly that occurring in designated whale sanctuaries. They have offered to work with all interested parties to design research protocols that will not require scientists to harm or kill whales.

Last year, Japan expanded their scientific whaling program over the IWC’s objections. The resolution that we are offering expresses the Sense of the Senate to the IWC, as well as individual nations, that support. Norway, Japan, and other countries have made it clear that they oppose, at the upcoming IWC meeting, the non-necessary lethal taking of whales for scientific purposes.

Commercial whaling has been prohibited for many species for more than sixty years. In 1982, the continued decline of commercially targeted stocks led the IWC to declare a global moratorium on all commercial whaling which went into effect in 1986. The United States was a leader in the effort to establish the moratorium, and since then we have consistently provided a strong voice against commercial whaling and have worked to uphold the moratorium. This resolution reaffirms the United States’ strong support for a ban on commercial whaling at a time when our negotiations at the IWC most need that support. Norway, Japan, and other countries have made it clear that they intend to push for the elimination of the moratorium, and for a return to the days when whales were treated as commodities.

The resolution would reiterate the U.S. objection to activities being conducted under reservations to the IWC’s moratorium. The resolution would also oppose all efforts made at the Convention on International Trade in Endangered Species, CITES, to reopen international trade in whale meat or to downlist any whale population. In addition, the resolution would express opposition to any nations including the United States, that has established whale sanctuaries that would prevent whaling in specified areas even if the moratorium were to be lifted. Despite these efforts to give whales a chance to rebuild, the number of whales harvested has increased in recent years, tripling since the implementation of the global moratorium in 1986. This is a dangerous trend that does not show signs of stopping.

Domestically, we work very hard to protect whales in U.S. waters, particularly those considered threatened or endangered. Our own laws and regulations are designed to give whales one of the highest standards of protection in the world, and as a result, our own citizens are subject to rules designed to protect against even the accidental taking of whales. Commercial whaling is, of course, strictly prohibited. Given what is asked of our citizens to protect against even accidental injury to whales here in the United States it would be grossly unfair if we retreated in any way from our position opposing commercial, intentional whaling by other countries. Whales migrate throughout the world’s oceans, and as we protect whales in our own waters, so should we act to protect them internationally.

Whales are among the most intelligent animals on Earth, and they play an important role in the marine ecosystem. Yet, there is still much about them that we do not know. Resuming the intentional harvest of whales is irresponsible, and it could have ecological consequences that we cannot predict. Therefore, to even consider easing conservation measures.

The right policy is to protect whales across the globe, and to oppose the resumption of commercial whaling. I urge my colleagues to support swift passage of this resolution.

SENEATE RESOLUTION 122—RELATING TO THE TRANSFER OF SLOBODAN MILOSEVIC TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR YUGOSLAVIA, AND FOR OTHER PURPOSES

Mr. McCONNELL, (for himself and Mr. LEAHY) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 122

Whereas Slobodan Milosevic has been transferred to the International Criminal Tribunal for Yugoslavia to face charges of crimes against humanity; and

Whereas the transfer of Slobodan Milosevic and other indicted war criminals is a triumph of international justice and the rule of law in Serbia; and

Whereas corruption and warfare under the Milosevic regime caused Yugoslavia extensive economic damage, including an estimated $29,400,000,000 in lost output and a foreign debt that exceeds $12,200,000,000; and

Whereas democrats and reformers in the Federal Republic of Yugoslavia deserve the support and encouragement of the United States; Now, therefore, be it

Resolved, That (a) the Senate hereby—

(1) recognizes the courage of Serbian democrats, in particular, Serbian Prime Minister Zoran Djindjic, in facilitating the transfer of Slobodan Milosevic to the International Criminal Tribunal; and

(2) calls for the continued transfer of indicted war criminals to the International Criminal Tribunal for Yugoslavia and the release of all political prisoners held in Serbian prisons.

(b) It is the sense of the Senate that the United States should remain committed to supporting foreign policy to support the success of economic, political, and legal reforms in the Federal Republic of Yugoslavia.

Mr. McCONNELL, Mr. President, Senator LEAHY and I welcome the news that Slobodan Milosevic and other indicted war criminals transferred to The Hague, and I think it bodes well for the country’s overall prospects for successful economic, political, and legal reforms.

The resolution we submit today recognizes the courage of Serbian democrats and reaffirms our commitment to providing U.S. foreign assistance to support much needed reforms in the Federal Republic of Yugoslavia (FRY). We hope that Prime Minister Djindjic, and other reformers, continue to demonstrate courageous leadership, such as they did yesterday. Other indicated war criminals should be transferred to The Hague and all political prisoners in Serbian jails should be immediately released.

There is no victory sweeter than justice. It is now up to the ICTY to deliver justice to the victims and the survivors of Milosevic’s atrocities through Section 594 of P.L. 106–429 contributed to dramatic events in early April, when Milosevic was first arrested, and again yesterday, the real credit is due for facilitating the transfer becoming more involved in economic reconstruction in Serbia, Bosnia, and Croatia.

Mr. LEAHY, Mr. President, last year, when Senator McCONNELL and I included language in the fiscal year 2001 Foreign Operations bill to condition United States assistance in Serbia on the Federal Republic of Yugoslavia’s cooperation with the War Crimes Tribune, we could not predict what the effect of our provision would be. While we both wanted to support democracy and economic reconstruction in Serbia, we also felt strongly that if Serbia’s leaders wanted our assistance they should fulfill their international responsibility to apprehend and surrender indicted war criminals to The Hague.

I am very grateful for the way Senator McCONNELL, and his staff have worked closely with me and my staff on this. It has been a classic case of how conditioning our assistance and our together, successfully administration, can achieve a result that significantly advances the cause of international justice. Milosevic’s transfer to the War Crimes Tribunal should bring
hope to millions of people throughout the former Yugoslavia.

Above all, as Senator MCCONNELL has already noted, we should congratulate Prime Minister Djindjic for surrendering Milosevic should be aware that for the United States there is no alternative. We will not support a Serb Government that does not cooperate with the War Crimes Tribunal. We expect the apprehension and transfer to The Hague of the other publicly indicted war criminals who remain at large in Serb territory, and the release of the remaining political prisoners in Serbia’s jails.

I also want to recognize the Serb people who suffered terribly under Milosevic’s disastrous policies, and who increasingly saw that in order to rebuild their country and establish democracy and the rule of law on a solid footing, it was necessary to bring to justice the people who devastated the former Yugoslavia in their names. We submit this resolution on their behalf, and on behalf of Milosevic’s other victims, dead and alive, in Kosovo, Bosnia and Herzegovina, and Croatia.

It is a legacy that few people in history have already noted, we should congratulate the United States on the 120th anniversary of the founding of the Hebrew Immigrant Aid Society. Since 1970, the Society has assisted more than 4.5 million refugees from more than 50 countries and has helped bring to the United States such outstanding individuals as former Secretary of State Henry Kissinger, artist Marc Chagall, Olympic gold medalist Lenny Kravitz, poet and Nobel Laureate Joseph Brodsky, and author and restaurateur George Lang.

Whereas HIAS has assisted with United States resettlement overseas, often through joint voluntary agency, providing refugee processing, cultural orientation, and other services in Moscow, Vienna, Kiev, Tel Aviv, Rome, and Guam;

Whereas through publications, public meetings, and radio and television broadcasts, HIAS is a crucial provider of information, counseling, legal assistance, and other services, including outreach programs for the Russian-speaking immigrant community, to immigrants and asylum seekers in the United States;

Whereas HIAS plays a vital role in serving the needs of refugees, immigrants, and asylum seekers, and continues to work in areas of conflict and instability, seeking to rescue those who are fleeing from danger and persecution;

And whereas on September 9, 2001, HIAS will celebrate the 120th anniversary of its founding: Now, therefore, be it

Resolved, That the Congress—

(1) recognizes the Hebrew Immigrant Aid Society (HIAS), and the immigrants and refugees that HIAS has served, for the contributions they have made to the United States; and

(2) congratulates HIAS on the 120th anniversary of its founding.

 SENATE RESOLUTION 123—AMENDING THE STANDING RULES OF THE SENATE TO CHANGE THE NAME OF THE COMMITTEE ON SMALL BUSINESS TO THE “COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP”

Mr. KERRY (for himself and Mr. BOND) submitted the following resolution; which was considered and agreed to:

S. RES. 123
Resolved, That the Standing Rules of the Senate are amended—

(a) by striking “Business” to “Business and Entrepreneurship”;

(b) by inserting “and Entrepreneurship” after “Committee on Small Business” each place that term appears;

And whereas HIAS has helped bring to the United States such outstanding individuals as former Secretary of State Henry Kissinger, artist Marc Chagall, Olympic gold medalist Lenny Kravitz, poet and Nobel Laureate Joseph Brodsky, and author and restaurateur George Lang;

Whereas HIAS has assisted with United States resettlement overseas, often through joint voluntary agency, providing refugee processing, cultural orientation, and other services in Moscow, Vienna, Kiev, Tel Aviv, Rome, and Guam;

Whereas through publications, public meetings, and radio and television broadcasts, HIAS is a crucial provider of information, counseling, legal assistance, and other services, including outreach programs for the Russian-speaking immigrant community, to immigrants and asylum seekers in the United States;

Whereas HIAS plays a vital role in serving the needs of refugees, immigrants, and asylum seekers, and continues to work in areas of conflict and instability, seeking to rescue those who are fleeing from danger and persecution;

And whereas on September 9, 2001, HIAS will celebrate the 120th anniversary of its founding: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That (a) Congress—

(1) recognizes the Hebrew Immigrant Aid Society (HIAS), and the immigrants and refugees that HIAS has served, for the contributions they have made to the United States; and

(2) congratulates HIAS on the 120th anniversary of its founding.

(b) It is the sense of Congress that the President should issue a proclamation recognizing September 9, 2001, as the 120th anniversary of the founding of the Hebrew Immigrant Aid Society, and calling on the people of the United States to conduct appropriate ceremonies, activities, and programs to demonstrate appreciation for the contributions made by HIAS and its members to our Nation.

Mr. KENNEDY. Mr. President, I am proud to submit a resolution honoring the 120th anniversary of the founding of the Hebrew Immigrant Aid Society. During its distinguished history, the Society has helped more than 5 million immigrants of all faiths who have come to the United States, Israel, and other safe havens around the world. Since 1970, the Society has assisted more than 400,000 refugees from more than 50 countries in resettling in the United States, and these individuals have provided indispensable contributions to this country.

I also commend the Hebrew Immigrant Aid Society for its continuing efforts to remind this country of the importance of a wise policy on refugees. As events occur throughout the world, the Society has helped ensure that the United States has an effective and humane response to each human tragedy. By maintaining a vigorous refugee resettlement program, we set an example for other nations to follow.

The Hebrew Immigrant Aid Society continues to have a vital role in serving the needs of refugees, immigrants, and asylum seekers. Our country owes it an enormous debt of gratitude, and I urge the Senate to agree to this well-deserved tribute.

S. CON. RES. 58
Whereas the Asia Pacific Parliamentary Forum was founded by former Japanese Prime Minister Yasuhiro Nakasone in 1993, whereas the Tokyo Declaration, signed by 59 parliamentarians from 15 countries, entered into force as the founding charter of the forum on January 14 and 15, 1993, establishing the basic structure of the forum as an inter-parliamentary organization; whereas the original 15 members, one of which was the United States, have increased to 27 member countries; whereas the forum serves to promote regional identification and cooperation through discussion of matters of common concern to all member states and serves, to a great extent, as the legislative arm of the Asia-Pacific Economic Cooperation; whereas the focus of the forum lies in resolving political, economic, environmental security, law and order, human rights, education, and cultural issues; whereas the forum will hold its tenth annual meeting on January 6 through 9, 2002, which will be the first meeting of the forum hosted by the United States; whereas approximately 270 parliamentarians from 27 countries in the Asia Pacific region will attend this meeting; whereas the Secretariat of the meeting will be the Center for Cultural and Technical Exchange Between East and West in Honolulu, Hawaii; whereas the East-West Center is an internationally recognized education and research organization established by the United States Congress in 1960 largely through the efforts of the Eisenhower administration and the Congress; whereas it is the mission of the East-West Center to strengthen understanding and relations between the United States and the nations of the Asia Pacific region and to help promote the establishment of a stable, peaceful and prosperous Asia Pacific community in which the United States is a natural, valued and leading partner;

Whereas it is the agenda of this meeting to advance democracy, peace, and prosperity in the Asia Pacific region.

Now, therefore, be it Resolved by the Senate (the House of Representatives concurring), That the Congress—
leaders on both sides of the Pacific for
the economy, and the environment.
including human rights, security, law,
in these countries to hear and ex-
provide an opportunity for legislators
bates are frank and open. The meetings
Costa Rica, Mongolia, the Philippines,
Mexico, South Korea, Peru, Ecuador,
tralia, Canada, Chile, China, Russia,
the Asia-Pacific region.
the Secretariat for the meeting which
as the East West Center, will provide
for Cultural and Technical Exchange
organization.
heads of state meeting of the Asia Pa-
as a parliamentary counterpart to the
of this organization which was created
founders. Our former colleague, Sen-
the United States is one of the original
Forum consists of 27 countries of which
itself and Mr. GREGG)) proposed an amend-
the Treasury Department, one-third of MSA pur-
ners previously had no health care cov-
(3) The medical savings account demon-
program has been hampered with restrictions that put medical savings ac-
ents out of reach for millions of Amer-
(b) SENSE OF THE SENATE.—It is the sense of the Senate that a patients’ bill of rights shall remove the restrictions on the pri-
sector medical savings account demon-
program to make medical savings accounts available to more Americans.

(TEXT OF AMENDMENTS

SA 850. Mr. NICKLES proposed an amend-
to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 131, after line 20, insert the follow-

TITLE III—APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS.

(a) APPLICATION OF STANDARDS.—

(1) IN GENERAL.—Subject to subparagraph (B), a Federal health care program shall comply with the patient protection requirements under title I, and such requirements shall be deemed to be incor-

(2) CAUSE OF ACTION RELATING TO PROVISION OF HEALTH BENEFITS.—Any individual who re-

receives a health care item or service under a Federal health care program shall have a cause of action against the Federal Govern-

ment under sections 502(n) and 514(d) of the Employee Retirement Income Security Act of 1974, and the provisions of such sections shall be deemed to be incorporated into this section.

(3) RULES OF CONSTRUCTION.—For purposes of this subsection—

(A) each Federal health care program shall be deemed to be a group health plan;

(B) the Federal Government shall be deemed to be the plan sponsor of each Federal health care program; and

(C) each individual eligible for benefits under a Federal health care program shall have a cause of action against the Federal Govern-

ment under sections 502(n) and 514(d) of the Employee Retirement Income Security Act of 1974, and the provisions of such sections shall be deemed to be incorporated into this section.

(4) LIMITATION ON AWARD OF ATTORNEYS’ FEES.—

(A) IN GENERAL.—Subject to paragraph (1), a court in its discretion may adjust the amount of attorneys’ fees that may be awarded under section 502(n)(1).

(B) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of attorneys’ fees required under subparagraph (A) as equity and the interests of justice may require.

On page 170, between lines 21 and 22, insert the follow-

(5) LIMITATION ON AWARD OF ATTORNEYS’ FEES.—

(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys’ contingency fees, subject to subparagraph (B), a court shall limit the amount of attor-

ners’ fees that may be incurred for the rep-

sentation of a participant or beneficiary (or the estate of such participant or bene-

ficiary) who brings a cause of action under section 502(n) and 514(d) (not including the reimbursement of actual out-of-pocket expenses of an attorney as approved by the court in such action) may not exceed an amount equal to 1/3 of the amount of the recovery.

SA 851. Mr. CRAIG proposed an amend-
to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage, as follows:

At the appropriate place insert the fol-

SEC. 302. FUNDING FOR HIGH-QUALITY HEALTH CARE PROGRAMS.

(1) IN GENERAL.—Notwithstanding any other provision of law, a Federal health care program shall have a cause of action against the Federal Govern-

ment under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b) except that, for purposes of this section, such term in-

cludes the Federal Employee health benefits program established under chapter 96 of title 5, United States Code.
IN GENERAL.—In the case of medically necessary and appropriate items or services related to the emergency medical condition that may be provided to a participant, beneficiary, or enrollee by a nonparticipating provider after the participant, beneficiary, or enrollee is stabilized, the nonparticipating provider shall contact the plan or issuer as soon as practicable, but not later than 1 hour after stabilization occurs, with respect to whether—

(A) the provision of items or services is approved;

(B) the participant, beneficiary, or enrollee will be transferred; or

(C) other arrangements will be made concerning the care and treatment of the participant, beneficiary, or enrollee.

(2) FAILURE TO RESPOND AND MAKE ARRANGEMENTS.—If a group health plan, and a health insurance issuer that offers health insurance coverage, fails to respond and make arrangements within 1 hour of being contacted in accordance with paragraph (1), then the plan or issuer shall be responsible for the cost of all additional items or services provided by the nonparticipating provider if—

(A) coverage for items or services of the type provided by the nonparticipating provider is available under the plan or coverage;

(B) the items or services are medically necessary and appropriate and related to the emergency medical condition involved; and

(C) the timely provision of the items or services is medically necessary and appropriate.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit a participating provider.

(b) A PPLICATION OF SECTION.—A group health plan, and a health insurance issuer that offers health insurance coverage, may not require authorization or prepayment of benefits for items or services provided in accordance with this section, if—

(A) the items or services are furnished by any provider, including a nonparticipating provider, that is qualified to furnish such items or services; and

(B) such items or services are needed to evaluate or stabilize (as such term is defined in section 1396d(e)(3) of the Social Security Act) an emergency medical condition.

(1) DIRECT ACCESS.—A group health plan, and a health insurance issuer that offers health insurance coverage, may not require that a group health plan or a health insurance issuer that offers health insurance coverage, covered inpatient and outpatient health services, or any other similar reasons with respect to such professionals.

(2) SPECIAL POINT OF SERVICE PROTECTION FOR INDIVIDUALS IN DENTAL PLANS.—For purposes of applying the requirements of this section under sections 2707 and 2733 of the Public Health Service Act and section 714 of the Employee Retirement Income Security Act of 1974, section 2711(c)(2)(A) of the Public Health Service Act and section 733(c)(2)(A) of the Employee Retirement Income Security Act of 1974, only relating to limited scope benefits, shall not apply to a small employer.

SEC. 102. OTHER OPTIONS OF CHOICE COVERAGE OPTIONS.

(a) REQUIREMENT.—If a group health plan provides coverage for benefits only through a point-of-service coverage option, and a health insurance coverage, described in subsection (b) may not require authorization or prepayment of benefits for items or services provided by a nonparticipating provider other than a physician who specializes in obstetrics or gynecology.

(b) APPLICATION OF SECTION.—A group health plan, and a health insurance issuer that offers health insurance coverage, described in this subsection is a plan or issuer that—

(1) provides coverage for obstetric or gynecologic care; and

(2) requires the designation by a participating provider of a participating obstetric and gynecological care, and the ordering of related obstetrical and gynecological items and services, pursuant to the direct access described in paragraph (1), by a participating obstetric and gynecological care provider, who specializes in obstetrics or gynecology as the authority of the primary care provider.

(c) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

(1) require that a group health plan or a health insurance issuer approve or provide coverage for—

(A) any items or services that are not covered under the terms and conditions of the plan or coverage;

(B) any items or services that are not medically necessary, or

(C) any items or services that are provided, ordered, or otherwise authorized under subsection (a)(2) by a physician unless such items or services are related to obstetric or gynecologic care;

(2) to preclude a group health plan or health insurance issuer from requiring that the physician described in subsection (a)(2) by a physician certified as a participating obstetric and gynecological care provider,

(3) to require that a group health plan include coverage of health care professionals that the plan excludes because of fraud, quality of care, or other similar reasons with respect to such professionals.

(4) To require that a group health plan include coverage of health care professionals that the plan excludes because of fraud, quality of care, or other similar reasons with respect to such professionals.

(5) To require that a group health plan include coverage of health care professionals that the plan excludes because of fraud, quality of care, or other similar reasons with respect to such professionals.

(6) To require that a group health plan include coverage of health care professionals that the plan excludes because of fraud, quality of care, or other similar reasons with respect to such professionals.
according to a process implemented by the issuer, and the participant, beneficiary, or enrollee would otherwise be required to obtain authorization for such items or services;

(4) to require that the participant, beneficiary, or enrollee described in subsection (a)(1) obtain authorization or a referral from a primary care provider in order to obtain obstetrical or gynecological care from a health care professional other than a physician if the provision of obstetrical or gynecological care by such professional is permitted by the group health plan or health insurance issuer if such designation is permitted by the group health plan or health insurance issuer and the treatment by such professional is consistent with State licensure, credentialing, and scope of practice laws and regulations; or

(5) to preclude the participant, beneficiary, or enrollee described in subsection (a)(1) from designating a health care professional other than a physician as a primary care provider if such designation is permitted by the group health plan or health insurance issuer and the treatment by such professional is consistent with State licensure, credentialing, and scope of practice laws and regulations; or

(6) to impose such a notification requirement, including prior authorization, for certain items and services from the physician described in subsection (a)(1) who specializes in obstetrics and gynecology if the designated primary care provider of the participant, beneficiary, or enrollee would otherwise be required to obtain authorization for such items or services; or

(7) otherwise be required to obtain authorization for such items or services.

SEC. 104. ACCESS TO CERTAIN PROVIDERS.
(a) PEDIATRIC CARE.—If a group health plan, and a health insurance issuer that offers health insurance coverage, determines that a child of a participant, beneficiary, or enrollee has an on-going special condition (as defined in paragraph (e)(4)), or benefits or coverage provided by a health care provider are terminated because of a change in the terms of provider participation in such plan or coverage, and an individual who is a participant, beneficiary, or enrollee under such plan or coverage is undergoing an active course of treatment for a serious and complex condition, in accordance with a process implemented by the issuer, and the participant, beneficiary, or enrollee would otherwise pay for such specialty care if provided by a participating specialist.

(b) RULES OF CONSTRUCTION.—With respect to the child of a participant, beneficiary, or enrollee, nothing in subsection (a) shall be construed to—

(1) require that the participant, beneficiary, or enrollee obtain prior authorization or a referral from a primary care provider in order to obtain pediatric care from a health care professional other than a physician if the provision of pediatric care by such professional is permitted by the plan or issuer and consistent with State licensure, credentialing, and scope of practice laws and regulations; or

(2) preclude the participant, beneficiary, or enrollee from designating a health care professional other than a physician as a primary care provider for the child if such designation is permitted by the plan or issuer and the treatment by such professional is consistent with State licensure, credentialing, and scope of practice laws and regulations.

SEC. 105. TIMELY ACCESS TO SPECIALISTS.
(a) APPROPRIATE MEDICAL SPECIALIST DEFINED.—For purposes of this section, the term "appropriate medical specialist" means a physician (including an allopathic or osteopathic physician) or health care professional who is appropriately credentialed or licensed in 1 or more States and who typically treats the diagnosis or condition of the participant, beneficiary, or enrollee.

(b) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed—

(A) to require the coverage under a group health plan, or health insurance coverage, of benefits or services that the issuer or a participating specialist is not available to provide to the participant, beneficiary, or enrollee; or

(B) to require a group health plan, or a health insurance issuer that offers health insurance coverage, to require that a participating specialist be provided for coverage of such care by a nonparticipating specialist.

(c) TREATMENT PLANS.—

(1) IN GENERAL.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from requiring that specialty care be provided pursuant to a treatment plan so long as the treatment plan is—

(A) developed by the specialist, in consultation with the case manager or primary care provider, and the participant, beneficiary, or enrollee; and

(B) if the plan or issuer receives or provides notice of such termination, on a timely basis of such termination;

(2) NOTIFICATION.—Nothing in paragraph (1) shall be construed as preventing a group health plan, or a health insurance issuer that offers health insurance coverage, from providing the plan or issuer with regular updates on the specialty care provided, as well as all other relevant information.

(d) SPECIALIST DEFINED.—For purposes of this section, the term "specialist" means, with respect to the medical condition of the participant, beneficiary, or enrollee, a health care professional, facility, or center (such as a center of excellence) that has adequate expertise (including age-appropriate expertise) through appropriate training and experience.

SEC. 106. CONTINUITY OF CARE.
(a) TERMINATION OF PROVIDER.—If a contract between a group health plan, and a health insurance issuer that offers health insurance coverage, and a treating health care provider is terminated (as defined in paragraph (e)(4)), or benefits or coverage provided by a health care provider are terminated because of a change in the terms of provider participation in such plan or coverage, and an individual who is a participant, beneficiary, or enrollee under such plan or coverage is undergoing an active course of treatment for a serious and complex condition, the issuer shall—

(1) notify the individual, or arrange to have the individual notified pursuant to subsection (d)(2), on a timely basis of such termination;

(2) provide the individual with an opportunity to notify the provider or the individual’s need for transitional care; and

(3) subject to subsection (c), permit the individual to elect to continue to be covered with respect to the active course of treatment with the provider’s consent during a transitional period (as provided for under subsection (b)).

(b) TRANSITIONAL PERIOD.—

(1) SERIOUS AND COMPLEX CONDITIONS.—The transitional period under this section with respect to a serious and complex condition shall extend for up to 90 days from the date of the notice described in subsection (a)(1) of the provider’s termination.

(2) INSTITUTIONAL OR INPATIENT CARE.—

(A) IN GENERAL.—The transitional period under this section for institutional or inpatient care for a provider shall extend until the earlier of—

(i) the expiration of the 90-day period beginning on the date on which the notice described in subsection (a)(1) of the provider’s termination is provided; or

(ii) the date of discharge of the individual from such care or the termination of the period of institutional care for the participant, beneficiary, or enrollee; and

(B) SCHEDULED CARE.—The 90 day limitation described in subparagraph (A)(i) shall
section 106 of the Patient Protection and Affordable Care Act, the terms ‘serious and complex condition’ means—

(A) the condition is one that (I) is disabling or life-threatening; and

(ii) requires—

(1) frequent ongoing specialized medical care across a variety of domains of care.

(3) TERMINATED.—The term ‘terminated’ includes that the individual’s participation in the trial; (B) subject to subsections (b), (c), and (d) may not deny (or limit or impose additional conditions on) the coverage of routine patient care costs for items and services furnished in connection with participation in the trial; and

(C) may not discriminate against the individual on the basis of the participant’s, beneficiaries, or enrollee’s participation in such trial.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a qualified individual participate in the trial through such a participating provider if the provider will accept the individual as a participant in the trial.

(b) QUALIFIED INDIVIDUAL DEFINED.—For purposes of subsection (a), the term ‘qualified individual’ means an individual who is a qualified patient, a beneficiary, or enrollee and who meets the following conditions:

(1) The individual has a life-threatening or serious illness for which no standard treatment is effective.

(2) The individual is eligible to participate in the trial protocol with respect to treatment of such illness.

(a) IN GENERAL.—Subject to subsection (b), a group health plan, and a health insurance issuer that offers health insurance coverage, may not deny (or limit or impose additional conditions on) the coverage of routine patient care costs for items and services furnished in connection with participation in the trial.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a qualified individual participate in the trial through such a participating provider if the provider will accept the individual as a participant in the trial.

SEC. 108. PATIENT’S RIGHT TO PRESCRIPTION DRUG COVERAGE

(a) IN GENERAL.—To the extent that a group health plan, and a health insurance issuer that offers health insurance coverage, provides coverage for medically necessary drugs, provides coverage for prescription drugs, and limits such coverage to drugs included in a formulary, the plan or issuer shall—

(1) ensure the participation of physicians and pharmacists in developing and reviewing such formulary; and

(2) in accordance with the applicable quality assurance and utilization review standards of the plan or issuer, provide for exceptions from the formulary limitation when a non-formulary alternative is medically necessary and appropriate.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from excluding coverage for a specific drug or class of drugs if such drugs or class of drugs is expressly excluded under the terms and conditions of the plan or issuer.

SEC. 109. COVERAGE FOR INDIVIDUALS PARTICIPATING IN APPROVED CLINICAL TRIALS.

(a) COVERAGE.—

(1) IN GENERAL.—If a group health plan, and a health insurance issuer that offers health insurance coverage, provides coverage to a qualified individual (as defined in subsection (b)), the plan or issuer—

(A) may not deny the individual participation in the clinical trial referred to in subsection (b); and

(b) subject to subsections (b), (c), and (d) may not deny (or limit or impose additional conditions on) the coverage of routine patient care costs for items and services furnished in connection with participation in the trial; and

(C) may not discriminate against the individual on the basis of the participant’s, beneficiaries, or enrollee’s participation in such trial.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit

(a) the coverage of benefits under the terms of the plan or coverage.

(b) EXCLUSION OF CERTAIN COSTS.—For purposes of paragraph (1), routine patient care costs do not include the cost of the tests or measurements conducted primarily for the purpose of the clinical trial involved.

(c) USE OF NETWORK PROVIDERS.—If one or more participating providers is participating in a clinical trial, nothing in paragraph (1) shall be construed as preventing a plan or issuer from requiring that a qualified individual participate in the trial through such a participating provider if the provider will accept the individual as a participant in the trial.

(1) IN GENERAL.—The plan or issuer—

(2) in accordance with the applicable quality assurance and utilization review standards of the plan or issuer, provide for exceptions from the formulary limitation when a non-formulary alternative is medically necessary and appropriate.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from excluding coverage for a specific drug or class of drugs if such drugs or class of drugs is expressly excluded under the terms and conditions of the plan or issuer.
provide for payment for routine patient costs described in paragraph (f) but is not required to pay for costs of items and services that are reasonably expected to be paid for by the sponsors of an approved clinical trial.

(2) Determining Routinely Accrued Patient Costs Associated with Clinical Trial Participation.—;

(A) In General.—The Secretary shall, in accordance with this paragraph, establish standards relating to the coverage of routine patient costs for individuals participating in clinical trials that group health plans and health insurance issuers must meet under this section.

(B) Factors.—In establishing routine patient cost standards under subparagraph (A), the Secretary shall consult with interested parties and take into account—

(i) quality of patient care;

(ii) routine patient cost versus costs associated with the conduct of clinical trials, including uncompensated patient care costs as a result of participation in clinical trials;

(iii) previous and on-going studies relating to patient care costs associated with participation in clinical trials.

(C) Appointment of Meetings of Negotiated Rulemaking Committee.—

(i) Publication of Notice.—Not later than November 15, 2002, the Secretary shall publish notice of the establishment of a negotiated rulemaking committee, as provided for under section 566(a) of title 5, United States Code, to develop the standards described in subparagraph (A), which shall include—

(I) the proposed scope of the committee;

(II) the interests that may be impacted by the standards;

(III) a list of the proposed membership of the committee;

(IV) the proposed meeting schedule of the committee;

(V) a solicitation for public comment on the committee; and

(VI) the procedures under which an individual may apply for membership on the committee.

(ii) Comment Period.—Notwithstanding section 553(c) of title 5, United States Code, the Secretary shall provide for a period, beginning on the date on which the notice is published under clause (i) and ending on November 15, 2003, for the submission of written comments on the committee under this subparagraph.

(iii) Appointments of Committee.—Not later than December 30, 2003, the Secretary shall appoint the members of the negotiated rulemaking committee under this subparagraph.

(iv) Facilitator.—Not later than January 10, 2004, the Secretary shall provide for the publication in the Federal Register, by not later than June 30, 2003, of a rule making committee's progress on achieving a consensus with regard to the rulemaking process. The Secretary shall terminate such process and provide for the publication in the Federal Register, by not later than June 30, 2003, of a rule under this paragraph through such other methods as the Secretary may provide.

(E) Final Committee Report and Publication of Rule.—

(i) In General.—If the rulemaking committee is not nominated under subparagraph (D)(i), the committee shall submit to the Secretary, by not later than May 30, 2003, a report containing a proposed rule.

(ii) Public Notice.—If the Secretary receives a report under clause (i), the Secretary shall provide for the publication in the Federal Register, by not later than June 30, 2003, of the proposed rule.

(F) Target Date for Rule of Publication.—

(i) In General.—If the Secretary receives a report under clause (i), the Secretary shall provide for the publication in the Federal Register, by not later than June 30, 2003, of the proposed rule.

(ii) Scheduling of Final Rule.—In establishing the report of the rulemaking committee, the “target date for publication” (referred to in section 566(a)(5) of title 5, United States Code) shall be June 30, 2003.

(G) Effective Date.—The provisions of this paragraph shall apply to group health plans and health insurance issuers that offer health insurance coverage, that plan or coverage years beginning on or after January 1, 2004.

(3) Payment Rate.—In the case of covered items and services provided by—

(A) a participating provider, the payment rate shall be at the agreed upon rate, or

(B) a nonparticipating provider, the payment rate shall be 120 percent of the rate the plan or issuer would normally pay for comparable services under subparagraph (A).

(d) Approved Clinical Trial Defined.—

(i) In General.—In this section, the term "approved clinical trial" means a clinical research study or clinical investigation approved or funded (which may include funding through in-kind contributions) by one or more of the following:

(A) The National Institutes of Health;

(B) a cooperative group or center of the National Institutes of Health; or

(C) Either of the following if the conditions described in paragraph (2) are met;

(i) The Department of Veterans Affairs;

(ii) The Department of Defense.

(ii) Conditions for Departments.—

A condition described in paragraph (2) shall be comparable to the system of peer review of studies and investigations used by the National Institutes of Health, and ensures unbiased review of the highest scientific standards by qualified individuals who have no interest in the outcome of the review.

(e) Construction.—Nothing in this section shall be construed to require a plan or issuer from offering coverage that is broader than the coverage required under this section with respect to clinical trials.

(f) Plan Satisfaction of Certain Requirements; Responsibilities of Fiduciaries.—

(i) In General.—For purposes of this section, as fares as a group health plan provides benefits in the form of health insurance coverage through a health insurance issuer, the plan shall be treated as meeting the requirements of this section with respect to such benefits and not be considered as failing to meet such requirements because of a failure of the issuer to meet such requirements so long as the plan sponsor or its representatives did not influence such issuer.

(ii) Study and Report.—

(1) Study.—The Secretary shall study the impact on group health plans and health insurance issuers for coverage of patient care costs for individuals who are entitled to benefits under this section and who are enrolled in an approved clinical trial program.

(2) Report to Congress.—Not later than January 1, 2006, the Secretary shall submit a report to Congress that contains an assessment of—

(A) any incremental cost to group health plans and health insurance issuers resulting from the provisions of this section;

(B) a projection of expenditures to such plans and issuers resulting from this section; and

(C) any impact on premiums resulting from this section.

SEC. 110. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR SECONDARY CONSULTATIONS.

(a) In General.—

(i) Patient Care.—A group health plan, and a health insurance issuer that offers health insurance coverage, that provides medical and surgical benefits shall ensure that inpatient care with respect to the treatment of breast cancer is provided for a period of time as is determined by the attending physician, in consultation with the patient, to be medically necessary and appropriate following—

(A) a mastectomy;

(B) a lumpectomy; or

(C) a lymph node dissection for the treatment of breast cancer.

(ii) Exception.—Nothing in this section shall be construed as requiring the provision of coverage by the plan or issuer to an individual who is determined to have a shorter period of hospital stay is medically appropriate.

(iii) Prohibition on Certain Modifications.—In implementing the requirements of this section, a group health plan, and a health insurance issuer that offers health insurance coverage, may not modify the terms and conditions of coverage based on the determination by a participant, beneficiary, or enrollee to request less than the minimum coverage required under subsection (a).

(iv) Secondary Consultations.—

(1) In General.—A group health plan, and a health insurance issuer that offers health insurance coverage, that provides coverage with respect to medical and surgical services provided in relation to the diagnosis and treatment of cancer shall ensure that full coverage is provided for secondary consultations by specialists in the appropriate medical fields (including pathology, radiology, and oncology) to confirm or refute such diagnoses, and that such plan or issuer shall ensure that full coverage is provided for such secondary consultation whether such consultation is based on a positive or negative initial diagnosis. In any case in which an attending physician certifies in writing that services necessary for such a secondary consultation
are not sufficiently available from specialists or the plan or issuer with respect to whose services coverage is otherwise provided under such plan or by such issuer, such plan or issuer shall ensure that such care is provided with respect to the services necessary for the secondary consultation with any other specialist selected by the attending physician for such purpose at no cost to the individual beyond that which the individual would have paid if the specialist was participating in the network of the plan or issuer:

(a) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage under which either the plan sponsor or the issuer agrees to assume responsibility for health services, if such preauthorization is required.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a group health plan sponsor and health insurance issuer from entering into an agreement under which either the plan sponsor or the issuer agrees to assume responsibility for compliance with the requirements of this section, in whole or in part, and the party delegating such responsibility is released from liability for compliance with the requirements that are assumed by the other party, to the extent the party delegating such responsibility did not cause such non-compliance.

(c) INFORMATION.—Information shall be provided to participants, beneficiaries, and enrollees under this section that such information is provided to participants, beneficiaries, or enrollees via the United States Postal Service or other private delivery service.

(d) REQUIRED INFORMATION.—The informational materials to be distributed under this section shall include for each option available under the group health plan or health insurance coverage the following:

(A) BENEFITS.—A description of the covered benefits, including—

(A) any in- and out-of-network benefits;

(B) specific preventative services covered under the plan or coverage if such services are covered;

(B) a written statement including, providers only to the extent necessary to meet the needs of the plan’s or issuer’s participants, beneficiaries, or enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan or issuer;

(2) to override any State licensure or scope-of-practice law; or

(3) as requiring a plan or issuer that offers network coverage to include for participation every willning provider who meets the terms and conditions of the plan or coverage.

Notwithstanding section 102, in the case of a group health plan, and a health insurance issuer that offers health insurance coverage, that provides benefits under 2 or more coverage options, the requirements of this subpart shall apply separately with respect to each coverage option.

Subtitle B—Right to Information About Plans and Providers

SEC. 121. HEALTH PLAN INFORMATION.

(a) REQUIREMENT.—

(1) In general.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall provide for the disclosure of the information described in subsection (b) to participants, beneficiaries, and enrollees—

(A) at the time of the initial enrollment of the participant, beneficiary, or enrollee under the plan or coverage;

(B) if any maximum out-of-pocket expense limitation for the participant, beneficiary, or enrollee may be liable;

(C) any profit-sharing requirements for out-of-network benefits or services received from nonparticipating providers; and

(d)iposition on Penalties or Incen-

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a group health plan sponsor and health insurance issuer from entering into an agreement under which either the plan sponsor or the issuer agrees to assume responsibility for compliance with the requirements of this section, in whole or in part, and the party delegating such responsibility is released from liability for compliance with the requirements that are assumed by the other party, to the extent the party delegating such responsibility did not cause such non-compliance.

(3) INFORMATION.—Information shall be provided to participants, beneficiaries, and enrollees under this section that such information is provided to participants, beneficiaries, or enrollees via the United States Postal Service or other private delivery service.

(b) REQUIRED INFORMATION.—The informational materials to be distributed under this section shall include for each option available under the group health plan or health insurance coverage the following:

(A) BENEFITS.—A description of the covered benefits, including—

(A) any in- and out-of-network benefits;

(B) specific preventative services covered under the plan or coverage if such services are covered;

(B) a written statement including, providers only to the extent necessary to meet the needs of the plan’s or issuer’s participants, beneficiaries, or enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan or issuer;

(2) to override any State licensure or scope-of-practice law; or

(3) as requiring a plan or issuer that offers network coverage to include for participation every willning provider who meets the terms and conditions of the plan or coverage.

Notwithstanding section 102, in the case of a group health plan, and a health insurance issuer that offers health insurance coverage, that provides benefits under 2 or more coverage options, the requirements of this subpart shall apply separately with respect to each coverage option.

Subtitle B—Right to Information About Plans and Providers

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(a) REQUIREMENT.—

(1) In general.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall provide for the disclosure of the information described in subsection (b) to participants, beneficiaries, and enrollees—

(A) at the time of the initial enrollment of the participant, beneficiary, or enrollee under the plan or coverage;

(B) if any maximum out-of-pocket expense limitation for the participant, beneficiary, or enrollee may be liable;

(C) any profit-sharing requirements for out-of-network benefits or services received from nonparticipating providers; and

(d)iposition on Penalties or Incen-

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a group health plan sponsor and health insurance issuer from entering into an agreement under which either the plan sponsor or the issuer agrees to assume responsibility for compliance with the requirements of this section, in whole or in part, and the party delegating such responsibility is released from liability for compliance with the requirements that are assumed by the other party, to the extent the party delegating such responsibility did not cause such non-compliance.

(3) INFORMATION.—Information shall be provided to participants, beneficiaries, and enrollees under this section that such information is provided to participants, beneficiaries, or enrollees via the United States Postal Service or other private delivery service.

(b) REQUIRED INFORMATION.—The informational materials to be distributed under this section shall include for each option available under the group health plan or health insurance coverage the following:

(A) BENEFITS.—A description of the covered benefits, including—

(A) any in- and out-of-network benefits;

(B) specific preventative services covered under the plan or coverage if such services are covered;

(B) a written statement including, providers only to the extent necessary to meet the needs of the plan’s or issuer’s participants, beneficiaries, or enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan or issuer;

(2) to override any State licensure or scope-of-practice law; or

(3) as requiring a plan or issuer that offers network coverage to include for participation every willning provider who meets the terms and conditions of the plan or coverage.

Notwithstanding section 102, in the case of a group health plan, and a health insurance issuer that offers health insurance coverage, that provides benefits under 2 or more coverage options, the requirements of this subpart shall apply separately with respect to each coverage option.
CONGRESSIONAL RECORD—SENATE

June 29, 2001

(12) CLAIMS AND APPEALS.—A description of the process of filing and procedures pertaining to claims and appeals, a description of the rights of participants, beneficiaries, or enrollees under sections 563, 563A and 563B of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001, 1056, and 1066), and any other provisions of this Act that are utilized in employer-sponsored health plans or insurance contracts. The requirements of this section shall be construed to prohibit a failure of the plan or issuer to comply with this section, to be submitted to the Secretary for the conduct of a study in accordance with the requirements of this Act. The amount of the penalty that is calculated to be understood by the average participant.

(b) INCREASE IN AMOUNT.—The amount referred to in subparagraph (a) shall be increased or decreased, for each calendar year that ends after December 31, 2001, by the same percentage as the percentage by which the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, for September of the preceding calendar year has increased or decreased from the such Index for September of 2001.

(3) FAILURE DEFINED.—For purposes of this section, a plan or issuer shall be deemed to have failed to comply with the requirements of this section with respect to a participant, beneficiary, or enrollee if the plan or issuer failed to provide the required notices and the requirements of this section within 30 days—

(A) of the date described in subsection (a)(1); or

(B) of the date described in subsection (a)(1)(I); or

(C) of the date on which additional information was required under subsection (c).

(h) CONFORMING AMENDMENTS.—


SEC. 123. INFORMATION ABOUT PROVIDERS.

(a) STUDY.—(1) The Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine for the conduct of a study, and the submission to the Secretary of a report, that includes—

(1) an analysis of information concerning health care professionals that is currently available to patients, consumers, States, and professional societies, nationally and on a State-by-State basis, including patient preferences with respect to information about health care providers and practices;

(2) an evaluation of the legal and other barriers to the sharing of information concerning health care professionals; and

(3) recommendations for the improvement of information on health care professionals, including the competencies and professional qualifications of such practitioners, to better facilitate patient choice, the quality improvement, and market competition.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall forward to the appropriate committees of Congress a copy of the report and study conducted under this section.

SEC. 123. EFFECT ON THE PHYSICIAN COMPENSATION METHODS.

(a) STUDY AND REPORT.—(1) In general.—The Secretary shall enter into a contract with the Institute of Medicine for the conduct of a study in accordance with this section, to be submitted to the Secretary of Labor as provided for in paragraph (4).

(2) MATTERS TO BE STUDIED.—The study under paragraph (1) shall include—

(A) an examination of a survey if necessary, of physician compensation arrangements that are utilized in employer-sponsored group health plans (including group health plans sponsored by government and non-government employers) and commercial health insurance products, including—

(1) writing, telephone numbers and, if available, Internet websites, shall be made available upon request.

(c) ADDITIONAL INFORMATION.—The information determined by the plan or issuer to be made public or made available as required under sections 711(d), 713(b), or 715 of the Employee Retirement Income Security Act of 1974, and with any other provisions of this Act that are utilized in employer-sponsored health plans or insurance contracts. The requirements of this section shall be construed to prohibit a failure of the plan or issuer to comply with this section, to be submitted to the Secretary for the conduct of a study in accordance with the requirements of this Act.

(d) MANNER OF DISCLOSURE.—The information described in this section shall be disclosed in an appropriate format that is calculated to be understood by the average participant.

(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from—

(1) distributing any other additional information determined by the plan or issuer to be important or necessary in assisting participants, beneficiaries, or enrollees in the selection of a health plan; and

(2) complying with the provisions of this section by providing information in brochures, on the Internet or other electronic media, or through other similar means, so long as participants, beneficiaries, and enrollees are provided with an opportunity to request that informational materials be provided in printed form.

(f) CONFORMING REGULATIONS.—The Secretary shall issue regulations to coordinate the requirements of group health plans and health insurance issuers under this section with the requirements imposed under part 1, to reduce duplication with respect to any information that is required to be provided under any such requirements.

(g) SECRETARIAL ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The Secretary shall issue regulations to coordinate the requirements of group health plans and health insurance issuers under this section with the requirements imposed under part 1, to reduce duplication with respect to any information that is required to be provided under any such requirements.

(2) AMOUNT OF PENALTY.—

(A) IN GENERAL.—The amount of the penalty to be imposed under paragraph (1) shall not exceed $100 for each day for each participant, beneficiary, or enrollee with respect to which the failure to comply with the requirements of this section occurs.

(3) CLAIMS AND APPEALS.—A description of the process of filing and procedures pertaining to claims and appeals, a description of the rights of participants, beneficiaries, or enrollees under sections 563, 563A and 563B of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001, 1056, and 1066), and any other provisions of this Act that are utilized in employer-sponsored health plans or insurance contracts. The requirements of this section shall be construed to prohibit a failure of the plan or issuer to comply with this section, to be submitted to the Secretary for the conduct of a study in accordance with the requirements of this Act.

(b) INCREASE IN AMOUNT.—The amount referred to in subparagraph (a) shall be increased or decreased, for each calendar year that ends after December 31, 2001, by the same percentage as the percentage by which the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, for September of the preceding calendar year has increased or decreased from the such Index for September of 2001.

(3) FAILURE DEFINED.—For purposes of this section, a plan or issuer shall be deemed to have failed to comply with the requirements of this section with respect to a participant, beneficiary, or enrollee if the plan or issuer failed to provide the required notices and the requirements of this section within 30 days—

(A) of the date described in subsection (a)(1); or

(B) of the date described in subsection (a)(1)(I); or

(C) of the date on which additional information was required under subsection (c).

(h) CONFORMING AMENDMENTS.—


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(1) an analysis of information concerning health care professionals that is currently available to patients, consumers, States, and professional societies, nationally and on a State-by-State basis, including patient preferences with respect to information about health care providers and practices;

(2) an evaluation of the legal and other barriers to the sharing of information concerning health care professionals; and

(3) recommendations for the improvement of information on health care professionals, including the competencies and professional qualifications of such practitioners, to better facilitate patient choice, the quality improvement, and market competition.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall forward to the appropriate committees of Congress a copy of the report and study conducted under this section.

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(2) MATTERS TO BE STUDIED.—The study under paragraph (1) shall include—

(A) an examination of a survey if necessary, of physician compensation arrangements that are utilized in employer-sponsored group health plans (including group health plans sponsored by government and non-government employers) and commercial health insurance products, including—

(1) writing, telephone numbers and, if available, Internet websites, shall be made available upon request.

(c) ADDITIONAL INFORMATION.—The information determined by the plan or issuer to be made public or made available as required under sections 711(d), 713(b), or 715 of the Employee Retirement Income Security Act of 1974, and with any other provisions of this Act that are utilized in employer-sponsored health plans or insurance contracts. The requirements of this section shall be construed to prohibit a failure of the plan or issuer to comply with this section, to be submitted to the Secretary for the conduct of a study in accordance with the requirements of this Act.

(d) MANNER OF DISCLOSURE.—The information described in this section shall be disclosed in an appropriate format that is calculated to be understood by the average participant.

(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from—

(1) distributing any other additional information determined by the plan or issuer to be important or necessary in assisting participants, beneficiaries, or enrollees in the selection of a health plan; and

(2) complying with the provisions of this section by providing information in brochures, on the Internet or other electronic media, or through other similar means, so long as participants, beneficiaries, and enrollees are provided with an oppor-
(i) all types of compensation arrangements, including financial incentives for risk-sharing arrangements and arrangements that do not contain such incentives and risk sharing, that reflect the complexity of organizational relationships between health plans and enrollees; and

(ii) arrangements that are based on factors such as utilization management, cost control, quality improvement, and patient or enrollee satisfaction; and

(iii) arrangements between the plan or issuer and provider, as well as down-stream arrangements among providers and subcontracted providers;

(B) an analysis of the effect of such differing arrangements on physician behavior with respect to the provision of medical care to patients, including whether and how such arrangements affect the quality of patient care and the ability of physicians to provide care that is medically necessary and appropriate.

(3) STUDY DESIGN.—The Secretary shall consult with the Director of the Agency for Healthcare Research and Quality in preparing the scope of work and study design with respect to the contract under paragraph (1).

(A) REPORT.—Not later than 24 months after the date of enactment of this Act, the Secretary shall forward to the appropriate committees of Congress a copy of the report and study conducted under subsection (a).

(B) RESEARCH.—

(i) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall conduct and support research to develop scientific evidence regarding the effects of differing physician compensation methods on physician behavior with respect to the provision of medical care to patients, particularly issues relating to the quality of patient care and whether patients receive medically necessary and appropriate care.

(ii) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

Subtitle C—Right to Hold Health Plans Accountable

SEC. 131. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by inserting after section 501 (29 U.S.C. 1133) the following:

"SEC. 503A. CLAIMS AND INTERNAL APPEALS PROCEDURES FOR GROUP HEALTH PLANS.

"(a) INITIAL CLAIM FOR BENEFITS UNDER GROUP HEALTH PLANS.—

"(1) PROCEDURES.—

"(A) IN GENERAL.—A group health plan, or health insurance insurer that offers health insurance coverage in connection with a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures for resolving a claim for benefits for which the insurance coverage is applicable under any plan or issuer to make a determination of the claim, in no case shall such determination be made later than 30 business days after the receipt of the claim for benefits.

"(ii) EXPEDITED DETERMINATION.—Notwithstanding clause (i), a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures for expediting a prior authorization determination on a claim for benefits described in such clause when a request for such an expedited determination is made by a participant or beneficiary (or authorized representative) at any time during the process for making a determination and the treating health care professional substantiates, with the request, that a determination under the procedures described in clause (i) would seriously jeopardize the life or health of the participant or beneficiary. Such determination shall be made within 72 hours after a request is received by the plan or issuer under this clause.

"(iii) CONCURRENT DETERMINATIONS.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures for expediting a concurrent determination on a claim for benefits that results in a discontinuation of inpatient care is made within 24 hours after the receipt of the claim for benefits.

"(B) RETROSPECTIVE DETERMINATION.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a retrospective determination on a claim for benefits is made within 30 business days of the date on which the determination under such subsection was made, that is reasonably necessary to enable the plan or issuer to make a determination on the claim, in no case shall such determination be made later than 30 business days after the receipt of the claim for benefits.

"(C) NOTICE OF A DENIAL OF A CLAIM FOR BENEFITS.—Written notice of a denial of a claim for benefits described in clause (i) shall include—

(i) the reasons for the determination (including a summary of the clinical or scientific-evidence based rationale used in making the determination and a description of the information obtained in a more complete description written in a manner calculated to be understood by the average participant);

(ii) the procedures for obtaining additional information concerning the determination; and

(iii) notification of the right to appeal the determination and instructions on how to initiate an appeal in accordance with sub-paragraph (b).

"(D) INTERNAL APPEAL OF A DENIAL OF A CLAIM FOR BENEFITS.—

(i) RIGHT TO INTERNAL APPEAL.—

(A) IN GENERAL.—A participant or beneficiary (or authorized representative) may appeal any denial of a claim for benefits as under subsection (a) under the procedures described in this subsection.

(B) TIME FOR APPEAL.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall ensure that a participant or beneficiary (or authorized representative) has a period of not less than 60 days beginning on the date of a denial of a claim for benefits under subsection (a) in which to appeal such denial under this subsection.

(C) FAILURE TO ACT.—The failure of a plan or issuer to issue a determination on a claim for benefits under subsection (a) within the applicable timeline established for such a determination under such subsection shall be treated as a denial of a claim for benefits for purposes of proceeding to external review under this subsection.

(D) PLAN WAIVER OF INTERNAL REVIEW.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, may waive the internal review process under this subsection and permit a participant or beneficiary (or authorized representative) to proceed directly to external review under section 503B.

"(1) TIMELINES FOR MAKING DETERMINATIONS.—

(A) ORAL REQUESTS.—In the case of a claim for benefits involving an expedited or concurrent determination, a participant or beneficiary (or authorized representative) may require that the participant or beneficiary (or authorized representative) provide written confirmation of such request in a timely manner.

(B) APPEAL OF A DENIAL OF A CLAIM FOR BENEFITS.—Written notice of a denial of a claim for benefits described in clause (i) shall include—

(i) the reasons for the determination (including a summary of the clinical or scientific-evidence based rationale used in making the determination and a description of the information obtained in a more complete description written in a manner calculated to be understood by the average participant);

(ii) the procedures for obtaining additional information concerning the determination; and

(iii) notification of the right to appeal the determination and instructions on how to initiate an appeal in accordance with sub-paragraph (b).
(B) Access to Information.—With respect to an appeal of a denial of a claim for benefits under a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a determination on an appeal of a denial of a claim for benefits under this subsection is made within 14 business days after the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination on the appeal, but in no case shall such determination be made later than 28 business days after the receipt of the request for the appeal.

(3) Conduct of Review.—

(A) In General.—A review of a denial of a claim for benefits under this subsection shall be conducted by an individual with appropriate expertise who was not directly involved in the initial determination.

(B) Review of Medical Decisions by Physician.—If a request for an appeal of a denial of a claim for benefits that is based on a lack of medical necessity and appropriateness, or based on an experimental or investigational treatment, or requires an evaluation of medical facts, shall be made by a physician with appropriate expertise, including age-appropriate expertise, who was not involved in the initial determination.

(4) Notice of Determination.—

(A) In General.—Written notice of a determination made under an internal appeal of a denial of a claim for benefits shall be issued to the participant or beneficiary (or authorized representative) by the group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, within 60 business days after the receipt of the request for the appeal.

(B) Final Determination.—The decision by a plan or issuer under this subsection shall be treated as the final determination of the appeal on an appeal of a denial of a claim for benefits under this subsection within the applicable timeline established for such a determination.

(C) Requirements of Notice.—With respect to a determination made under this section within the applicable timeline established for such a determination, written notice of a denial of a claim for benefits for purposes of proceeding to external review under section 503B shall include—

(i) the reasons for the determination (including a summary of the clinical or scientific-evidence based rationale used in making the determination and instruction on obtaining a more complete description written in a manner calculated to be understood by the average participant);

(ii) the procedures for obtaining additional information concerning the determination; and

(iii) notification of the right to an independent external review under section 503B and instructions on how to initiate such a review.

(D) Definitions.—The definitions contained in section 503B shall apply for purposes of this section.

SEC. 503B. INDEPENDENT EXTERNAL APPEALS PROCEDURES FOR GROUP HEALTH PLANS.

(A) Right to External Appeal.—A group health plan, and a health insurance issuer that offers health insurance coverage in connection with a group health plan, shall provide in accordance with this section participants and beneficiaries (or authorized representatives) with access to an independent external review for any denial of a claim for benefits.

(B) Initiation of the Independent External Review Process.—

(1) Time to File.—A request for an independent external review under this section shall be filed with the plan or issuer no later than 60 business days after the date on which the participant or beneficiary receives notice of the denial of a claim for benefits under section 503A(b)(4) or the determination that is the subject of the request for an external review under section 503A(b)(1)(D).

(2) Filing of Request.—

(A) In General.—Subject to the succeeding provisions of this subsection, a group health plan, and a health insurance issuer that offers health insurance coverage in connection with a group health plan, shall refer such request to a qualified external review entity selected in accordance with this subsection if the request is for an independent external review conducted by an independent external review entity under section 503A(b)(4).

(B) Limitation on Filing.—Except as provided in subparagraph (B)(i), require that a request for review be in writing.

(C) Referral to Qualified External Review Entity Upon Request.—

(1) In General.—Upon the filing of a request for independent external review conducted by a qualified external review entity, the group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall refer such request to a qualified external review entity selected in accordance with this subsection if the request is for an independent external review conducted by a qualified external review entity under section 503A(b)(4).

(2) Access to Plan or Issuer and Health Professional Information.—With respect to an independent external review conducted by a qualified external review entity, the plan or issuer, and the treating health care professional (or any) shall provide the external review entity with information requested by the external review entity that is necessary to conduct a review under this section.

(III) except if waived by the plan or issuer under section 503A(b)(1)(D).

(D) Indigency.—Payment of a filing fee shall not be required under subparagraph (A)(iv) where there is a certification (in a health plan, or plan or issuer that is specified in guidelines established by the Secretary) that the participant or beneficiary is indigent (as defined in such guidelines). In establishing guidelines under this subclause, the Secretary shall ensure that the guidelines relating to indigency are consistent with the poverty guidelines used by the Secretary of Health and Human Services under title XIX of the Social Security Act.

(II) Filing Fee Not Required.—Payment of a filing fee shall not be required under subparagraph (A)(iv) where the request for review is on behalf of an individual who is eligible for the services of a legal services corporation

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section, as determined by the entity, not later than the 45th day after the date on which a request is referred to the qualified external review entity under paragraph (1), or earlier as determined appropriate by the entity to meet the applicable timelines under clauses (ii) and (iii) of subsection (e)(1)(A).

(3) SCREENING OF REQUESTS BY QUALIFIED EXTERNAL REVIEW ENTITIES.—

(A) IN GENERAL.—With respect to a request referred to a qualified external review entity under paragraph (1) relating to a denial of a claim for benefits, the entity shall refer such request for the conduct of an independent medical review unless the entity determines that—

(i) any of the conditions described in subsection (b)(2)(A) have not been met;

(ii) the thresholds described in subparagraph (B) have not been met;

(iii) the denial of the claim for benefits does not involve a medically reviewable decision under subsection (d)(2);

(iv) the denial of the claim for benefits relates to a determination that an individual is a participant or beneficiary who is enrolled under the terms of the plan or coverage (including the applicability of any waiting period under the plan or coverage); or

(v) the denial of the claim for benefits is a decision as to the application of a specification or exclusion limit on the amount, duration, or scope of coverage for items or services under the terms and conditions of the plan or coverage unless the decision is a denial described in subsection (d)(2).

Upon making a determination that any of clauses (i) through (v) applies with respect to the request for review, the entity shall determine that the denial of a claim for benefits involved is not eligible for independent medical review under subsection (d), and shall provide notice in accordance with subparagraph (D).

(B) THRESHOLDS.—

(i) IN GENERAL.—The thresholds described in this subparagraph are that—

(I) the total amount payable under the plan or coverage for the item or service that was the subject of such denial exceeds $100;

(ii) the entity has not provided prior authorization for the item or service or condition for which the denial was made; or

(iii) a physician has asserted in writing that there is a significant risk of placing the life, health, or development of the participant or beneficiary in jeopardy if the denial of the claim for benefits is sustained.

(ii) THRESHOLDS NOT APPLIED.—The thresholds described in this subparagraph shall not apply if the plan or issuer involved waives the internal appeals process with respect to the denial of a claim for benefits involved under section 503A(b)(1)(D).

(C) PROCESS FOR MAKING DETERMINATIONS.—

(i) NO DEFERENCE TO PRIOR DETERMINATIONS.—In making determinations under subparagraph (A), there shall be no deference given to determinations made by the plan or issuer under section 503A or the recommendation of a treating health care professional (if any).

(ii) USE OF APPROPRIATE PERSONNEL.—A qualified external review entity shall use appropriately qualified personnel to make determinations under this section.

(D) INDEPENDENT MEDICAL REVIEWS.—

(i) NOTICE IN CASE OF DENIAL OF REFERRAL.—If the entity under this paragraph does not make a determination that an independent medical review is required or that the request for such a review is not eligible for such a review, the entity shall provide notice to the plan or issuer, the participant or beneficiary (or authorized representative), or treating health care professional (if any) that the denial is not subject to independent medical review. Such notice—

(I) shall be written (and, in addition, may be provided orally) in a manner calculated to be understood by an average participant;

(II) shall include the reasons for the determination; and

(III) include any relevant terms and conditions of the plan or coverage.

(ii) TREATMENT OF CLINICAL OR MEDICAL NATURE.—If the entity determines that the denial is based on a denial of a claim for benefits under section 503A or the recommendation of a treating health care professional that is not subject to independent medical review, the entity shall provide a written determination to uphold or reverse the denial under review and, in the case of a reversal, the timeframe within which the plan or issuer shall authorize coverage to comply with the determination. Written determination shall include the specific reasons of the reviewer for such determination, including a clear and scientific-evidence based rationale used in making the determination. The reviewer shall provide the plan or issuer and the treating health care professional with additional recommendations in connection with such a determination, but any such recommendations shall not be treated as part of the decision.

(iii) TREATMENT OF DETERMINATION.—In making a determination, the independent medical reviewer shall—

(I) consider the claim under review with or without reference to the determinations made by the plan or issuer under section 503A or the recommendation of the treating health care professional (if any); and

(II) consider, but not be bound by the definition used by the plan or issuer of ‘medically necessary and appropriate’, or ‘experimental or investigational’, or other equivalently-based terms that are used by the issuer to describe medical necessity and appropriateness, experimental or investigational nature, or the evaluation of the medical facts of the item, service, or condition shall be based on the medical condition of the participant or beneficiary (including the diagnosis of the participant or beneficiary) and the valid, relevant scientific evidence and clinical evidence, including peer-reviewed medical literature or findings and the opinion of an expert in the appropriate field.

(iv) NO COVERAGE FOR EXCLUDED BENEFITS.—Nothing in this subsection shall be construed to permit an independent medical reviewer to require the plan, issuer, or health insurance issuer that offers health insurance coverage in connection with a group health plan, provide coverage for items or services that are specifically excluded or expressly limited under the plan or coverage that are not covered regardless of any determination relating to medical necessity and appropriateness, experimental or investigational nature of the treatment, or an evaluation of the medical facts in the case involved.

(v) NOTICE OF DETERMINATION AND INFORMATION TO BE USED IN MEDICAL REVIEWS.—In making a determination under this subsection, the independent medical reviewer shall also consider appropriate and available evidence and information, including the following:

(I) The determination made by the plan or issuer, which is subject to external review and the evidence and guidelines used by the plan or issuer in reaching such determination.

(II) The recommendation of the treating health care professional and the evidence, guidelines, and rationale used by the treating health care professional in reaching such recommendation.

(III) Additional evidence or information obtained by the reviewer or submitted by the plan, issuer, participant or beneficiary (or an authorized representative), or treating health care professional.

(vi) THE PLAN OR COVERAGE DOCUMENT.

(2) INDEPENDENT DETERMINATION.—In making the determination, the independent medical reviewer shall—

(I) consider the claim under review with or without reference to the determinations made by the plan or issuer under section 503A or the recommendation of the treating health care professional (if any); and

(II) consider, but not be bound by the definition used by the plan or issuer of ‘medically necessary and appropriate’, or ‘experimental or investigational’, or other equivalently-based terms that are used by the issuer to describe medical necessity and appropriateness, experimental or investigational nature of the treatment.

(C) DETERMINATION.—(1) IN GENERAL.—An independent medical reviewer shall—

(A) IN GENERAL.—An independent medical reviewer under this section shall make a new independent determination with respect to—

(i) whether the item or service or condition involved is a covered benefit under the terms and conditions of the plan or coverage; and

(ii) based upon an affirmative determination under clause (i), whether or not the denial of a claim for a benefit that is the subject of the review should be upheld or reversed.

(B) STANDARD FOR DETERMINATION.—The independent medical reviewer’s determination relating to the medical necessity and appropriateness, or the experimental or investigational nature, or the evaluation of the medical facts of the item, service, or condition shall be based on the medical condition of the participant or beneficiary (including the diagnosis of the participant or beneficiary) and the valid, relevant scientific evidence and clinical evidence, including
(ii) **Expedited Determination.**—Notwithstanding clause (i), the independent medical reviewer (or reviewers) shall make an expedited determination on a denial of a claim for benefits described in clause (i), when a request for such an expedited determination is made by a participant or beneficiary (or authorized representative) at any time during the process for making a determination, and the treating health care professional substantive, or professional, participant or beneficiary. Such determination shall be made not later than 72 hours after the receipt of information under subsection (c)(2).

(iii) **Concurrent Determination.**—Notwithstanding clause (i), a review described in such subclause shall be completed not later than 24 hours after the receipt of information under subsection (c)(2) if the review involves the qualified external review entity.

(B) *Retrospective Determination.*—The independent medical reviewer (or reviewers) shall complete a review in the case of a retrospective determination on an appeal of a denial of a claim for benefits that is referred to the reviewer under subsection (c)(3) not later than 30 business days after the receipt of information under subsection (c)(2).

(2) **Notification of Determination.**—The external review entity shall ensure that the plan or issuer, the participant or beneficiary (or authorized representative) and the treating health care professional (if any) receives a copy of the written determination of the independent medical reviewer prepared under paragraph (1) in a manner consistent with the timeline described in paragraph (A) (or the independent medical reviewer if the affiliation is disclosed to the plan or issuer and neither party objects; and

(iv) **Failure to Reimburse.**—Where a plan or issuer fails to provide reimbursement to a professional, participant or beneficiary in accordance with this subsection, the professional, participant or beneficiary may commence a civil action (or utilize other remedies available under law) to recover only the amount of reimbursement that is unpaid and any necessary legal costs or expenses (including attorneys' fees) incurred in recovering such reimbursement.

(3) **Form of Notices.**—Determinations and notices under this subsection shall be written in a manner calculated to be understood by a reasonable person.

(4) **Termination of External Review Process if Approval of a Claim for Benefits during Process.**—(A) *In General.*—If a plan or issuer—

(i) reverses a determination on a denial of a claim for benefits that is the subject of an external review under this section and authorizes coverage for the claim or provides payment of the claim; and

(ii) provides notice of such reversal to the participant or beneficiary (or authorized representative) and the treating health care professional (if any), and the external review entity responsible for such review, the external review process shall be terminated with respect to such denial and any filing fee paid under subsection (b)(2)(A)(iv) shall be refunded.

(B) *Treatment of Termination.*—An authorization of coverage under subsection (A) by the plan or issuer shall be treated as a written determination to reverse a denial under section (d)(3)(F) for purposes of liability under section 5507(f)(4).

(f) **Compliance.**—

(1) **Application of Determinations.**—(A) *External Review Determinations Binding on Plan.*—The determinations of an external review entity and an independent medical reviewer under this section shall be binding upon the plan or issuer involved.

(B) *Expedited Determination.*—If the determination of an independent medical reviewer is to reverse the denial, the plan or issuer, upon the receipt of such determination, shall authorize coverage to commence with the medical reviewer's determination in accordance with the timeframe established by the medical reviewer under subsection (d)(3)(F).

(2) **Failure to Comply.**—If a plan or issuer fails to comply with the timeframe established under paragraph (1)(B) with respect to a participant or beneficiary, where such failure to comply is caused by the plan or issuer, the participant or beneficiary may obtain the items or services involved (in a manner consistent with the determination of the independent medical reviewer from any provider regardless of whether such provider is a participating provider under the plan or coverage.

(3) **Reimbursement.**—

(A) *In General.*—Where a participant or beneficiary obtains items or services in accordance with paragraph (2), the plan or issuer involved shall provide for reimbursement of the costs of such items or services. Such reimbursement shall be made by a participating provider to the participant or beneficiary (in the case of a participant or beneficiary who pays for the costs of such items or services).

(B) *Exception.*—Nothing in this subparagraph (A) shall be construed to—

(i) prohibit an individual, solely on the basis of affiliation with the plan or issuer, from serving as an independent medical reviewer if—

(1) a non-affiliated individual is not reasonably available;

(2) the affiliated individual is not involved in the provision of items or services in the case under review;

(3) the fact of such an affiliation is disclosed to the plan or issuer and the participant or beneficiary (or authorized representative) and neither party objects; and

(4) the affiliated individual is not an employee of the plan or issuer and does not provide services exclusively or primarily to or on behalf of the plan or issuer;

(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as an independent medical reviewer if the affiliation is disclosed to the plan or issuer and the participant or beneficiary (or authorized representative) and neither party objects; or

(iii) prohibit receipt of compensation by an independent medical reviewer from an entity if the compensation is provided consistent with paragraph (6).

(4) **Practicing Health Care Professional in Same Field.**—(A) *In General.*—The requirement of this paragraph with respect to a reviewer in a case involving treatment, or the provision of items or services, by—

(i) a physician, is that the reviewer be a practicing physician of the same or similar specialty as a physician who typically treats the diagnosis or condition or provides such treatment in the case under review; or

(ii) a health care professional (other than a physician), is that the reviewer be a practicing professional who—

(1) qualifies external review entity shall ensure that—

(A) each independent medical reviewer meets the qualifications described in paragraphs (4) and (5); and

(B) with respect to each review at least 1 such reviewer meets the requirements described in paragraphs (4) and (5); and

(C) compensation provided by the entity to the reviewer is consistent with paragraph (6).

(2) **Licensure and Expertise.**—(A) *In General.*—Subject to subparagraph (B), each independent medical reviewer shall be a physician (who may be an allopathic or osteopathic physician) or health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review.

(B) *Physician Review.*—In referring a denial for independent medical review under subsection (c), the qualified external review entity shall ensure that, in the case of the referral, the treatment recommended or provided by a physician, such referral may be made only to a physician for such independent medical review.

(5) **Independence.**—(A) *In General.*—Subject to subparagraph (B), each independent medical reviewer in a case shall—

(i) not be a related party (as defined in paragraph (7));

(ii) not have a material familial, financial, or professional relationship with such a party;

(iii) not otherwise have a conflict of interest with such a party (as determined under regulations).

(B) *Exception.*—Nothing in this subparagraph (A) shall be construed to—

(i) prohibit an individual, solely on the basis of affiliation with the plan or issuer, from serving as an independent medical reviewer if—

(1) a non-affiliated individual is not reasonably available;

(2) the affiliated individual is not involved in the provision of items or services in the case under review;

(3) the fact of such an affiliation is disclosed to the plan or issuer and the participant or beneficiary (or authorized representative) and neither party objects; and

(4) the affiliated individual is not an employee of the plan or issuer and does not provide services exclusively or primarily to or on behalf of the plan or issuer;

(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as an independent medical reviewer if the affiliation is disclosed to the plan or issuer and the participant or beneficiary (or authorized representative) and neither party objects; or

(iii) prohibit receipt of compensation by an independent medical reviewer from an entity if the compensation is provided consistent with paragraph (6).

(6) **Age-Appropriate Expertise.**—The independent medical reviewer shall have expertise under paragraph (2) that is age-appropriate to the participant or beneficiary involved.

(7) **Limitations on Reviewer Compensation.**—Compensation provided by a qualified external review entity for an independent medical reviewer in connection with a review under this section shall—
(A) not exceed a reasonable level; and
(B) be consistent with the standards the Secretary shall establish to assure there is no real or apparent conflict of interest in the conduct of external review activities; and

(2) Contract with qualified external review entity. The plan or issuer shall provide for the designation or selection of qualified external review entities in a manner determined by the Secretary to assure an unbiased determination in conducting external review activities. In conducting reviews under this section, the Secretary or the organization providing such certification shall review the contract with a qualified external review entity to assure that the terms and conditions of the contract are consistent with the standards required for such contracts, including the following:

(i) The entity has (directly or through consultants) sufficient medical, legal, and other expertise and sufficient staffing to carry out the duties of a qualified external review entity under this section on a timely basis, including meeting applicable deadlines specified in subparagraph (B) and providing for independent medical reviews under subsection (d).

(ii) The entity is not a plan or issuer or an affiliate or a subsidiary of a plan or issuer, and is not an affiliate or subsidiary of a professional or trade association of plans or issuers involved, or any fiduciary, officer, director, or employee of such plan, plan sponsor, or issuer.

(B) The participant or beneficiary (or authorized representative) and the organization shall provide for the designation or selection of qualified external review entities to make a decision in a timely manner under this section.

(C) The participant or beneficiary (or authorized representative) and the plan or issuer shall provide for the designation or selection of qualified external review entities to make a decision in a timely manner under this section.

(D) The length of time in making determinations.

(E) Adherence to applicable deadlines.

(F) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

(G) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

(H) The entity meets such other requirements as the Secretary provides by regulation.

(III) Adherence to applicable deadlines.

(I) The entity has provided assurances that it will provide information in a timely manner under this section.

(J) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

(K) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

(L) The entity meets such other requirements as the Secretary provides by regulation.

(M) The entity has provided assurances that it will provide information in a timely manner under this section.

(N) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

(O) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

(P) The entity meets such other requirements as the Secretary provides by regulation.

(Q) The entity has provided assurances that it will provide information in a timely manner under this section.

(R) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

(S) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

(T) The entity meets such other requirements as the Secretary provides by regulation.

(U) The entity has provided assurances that it will provide information in a timely manner under this section.

(V) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

(W) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

(X) The entity meets such other requirements as the Secretary provides by regulation.

(Y) The entity has provided assurances that it will provide information in a timely manner under this section.

(Z) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

AA) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

BB) The entity meets such other requirements as the Secretary provides by regulation.

CC) The entity has provided assurances that it will provide information in a timely manner under this section.

DD) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

EE) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

FF) The entity meets such other requirements as the Secretary provides by regulation.

GG) The entity has provided assurances that it will provide information in a timely manner under this section.

HH) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

II) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

JJ) The entity meets such other requirements as the Secretary provides by regulation.

KK) The entity has provided assurances that it will provide information in a timely manner under this section.

LL) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

MM) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

NN) The entity meets such other requirements as the Secretary provides by regulation.

OO) The entity has provided assurances that it will provide information in a timely manner under this section.

PP) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

QQ) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

RR) The entity meets such other requirements as the Secretary provides by regulation.

SS) The entity has provided assurances that it will provide information in a timely manner under this section.

TT) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

UU) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

VV) The entity meets such other requirements as the Secretary provides by regulation.

WW) The entity has provided assurances that it will provide information in a timely manner under this section.

XX) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

YY) The entity has provided assurances that it will provide information in a timely fashion consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not provide any information that is not provided in a timely manner under this section.

ZZ) The entity meets such other requirements as the Secretary provides by regulation.
recertified) under this subsection by a qualified private external review organization that the request of the organization, the entity shall provide the organization with the information provided to the Secretary under clause (i).

“(II) ADDITIONAL INFORMATION.—Nothing in this subparagraph shall be construed as preventing such an organization from requiring additional information as a condition of certification or recertification of an entity.

“(IV) USE OF INFORMATION.—

“(I) IN GENERAL.—Information provided under a subparagraph may be used by the Secretary and qualified private standard-setting organizations to conduct oversight of qualified external review entities, including recertification of such entities, and shall be made available to the public in an appropriate manner.

“(II) REPORT TO CONGRESS.—Not later than 2 years after the date on which the Bipartisan Patients’ Bill of Rights Act of 2001 takes effect under section 501 of such Act, and every 2 years thereafter, the Secretary, in consultation with the Secretary of Health and Human Services, shall prepare and submit to the appropriate committees of Congress, a report that contains—

“(I) a description of the information provided to the Secretary under clause (ii);

“(II) a description of the effect that the appeals process established under this section and section 340A had on the access of individuals to health insurance and health care;

“(III) a description of the effect on health care costs associated with the implementation of the appeals process described in item (bb); and

“(IV) a description of the quality and consistency of determinations by qualified external review entities.

“(III) RECOMMENDATIONS.—The Secretary may from time to time submit recommendations to Congress with respect to proposed modifications to the appeals process based on the reports submitted under subclause (II).

“(E) LIMITATION ON LIABILITY.—No qualified external review entity having a contract with a plan or issuer, and no person who is employed by any such entity or who furnishes services to such entity, including as an independent medical reviewer, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this section, to be civilly liable under any law of the United States or of any State (or political subdivision thereof) if there was no actual malice or gross misconduct in the performance of such duty, function, or activity.

“(i) Definitions.—In this section:

“(1) AUTHORIZED REPRESENTATIVE.—The term ‘authorized representative’ means, with respect to a participant or beneficiary——

“(A) a person to whom a participant or beneficiary has given express written consent to represent the participant or beneficiary in any proceeding under this section;

“(B) a person authorized by law to provide substituted consent for the participant or beneficiary;

“(C) a family member of the participant or beneficiary (or the estate of the participant or beneficiary) or the participant’s or beneficiary’s other health care practitioner who is acting within the scope of employment or within the scope of the participant’s or beneficiary’s employment (including as an independent medical reviewer), shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this section, to be civilly liable under any law of the United States or of any State (or political subdivision thereof) if there was no actual malice or gross misconduct in the performance of such duty, function, or activity.

“(2) CLAIM FOR BENEFITS.—The term ‘claim for benefits’ means any request by a participant or beneficiary (or authorized representative) for benefits (including requests that are subject to authorization of coverage or utilization review, for eligibility, or for payment in whole or in part, of a claim for services under a group health plan or health insurance coverage offered by a health insurance issuer in connection with a group health plan.

“(3) GROUP HEALTH PLAN.—The term ‘group health plan’ shall have the meaning given such term in section 733(a). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

“(4) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ has the meaning given such term in section 733(b)(1). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

“(5) HEALTH INSURANCE ISSUER.—The term ‘health insurance issuer’ has the meaning given such term in section 733(b)(2).

“(6) PRIOR AUTHORIZATION DETERMINATION.—The term ‘prior authorization determination’ means a determination by the plan sponsor with respect to the group health plan or health insurance issuer in connection with a group health plan offering health insurance coverage or in connection with an exception from the requirement under section 501B of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) of the denial of a claim for health benefits under a group health plan.

“(7) TREATING HEALTH CARE PROFESSIONAL.—The term ‘treating health care professional’ with respect to a group health plan, health insurance issuer or provider sponsored organization means a physician (medical director of orthopedapy) or other health care practitioner who is acting within the scope of his or her State licensure or certification for the delivery of health care services, or an independent medical reviewer, and no person who is employed by any such entity or who furnishes services to such entity, including as an independent medical reviewer, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this section, to be civilly liable under any law of the United States or of any State (or political subdivision thereof) if there was no actual malice or gross misconduct in the performance of such duty, function, or activity.

“(8) UTILIZATION REVIEW.—The term ‘utilization review’ with respect to a group health plan or health insurance coverage means procedures used in the determination of coverage for a participant or beneficiary, such as procedures to evaluate the medical necessity, appropriateness, efficacy, quality, or efficiency of health care services, procedures or settings, and includes prospective review, concurrent review, retrospective review, and post-hoc reviews.

“(b) CONFORMING AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 503 the following:

“Sec. 503A. Claims and internal appeals procedures for group health plans.

“Sec. 503B. Independent external appeals procedures for group health plans.”

SEC. 132. ENFORCEMENT.

Section 503(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended by adding at the end the following:

“(8) The Secretary shall make a civil penalty assessment against the plan and the plan shall pay such penalty to the participant or beneficiary involved.”

Subtitle D—Remedies

SEC. 141. AVAILABILITY OF COURT REMEDIES.

“(1) IN GENERAL.—

“(A) JURISDICTION TO COMPLY WITH EXTERNAL MEDICAL REVIEW.—With respect to an action commenced by a participant or beneficiary (or the estate of the participant or beneficiary) in connection with a claim for benefits under a group health plan, if——

“(1) a designated decision-maker described in paragraph (2) fails to exercise ordinary care in approving coverage pursuant to the written determination of an independent medical reviewer under section 503(b) that reverses a denial of the claim for benefits; and

“(2) the denial described in clause (1) is the proximate cause of substantial harm (as defined in paragraph (3)(G)) to the participant or beneficiary;

“such designated decision-maker shall be liable to the participant or beneficiary (or the estate of the participant or beneficiary) in connection with a claim for benefits under a group health plan, if——

“(1) a designated decision-maker described in paragraph (2) fails to exercise ordinary care in making a determination denying the claim for benefits under section 503(a) (relating to an initial claim for benefits); or

“(2) a designated decision-maker described in paragraph (2) fails to exercise ordinary care in making a determination denying the claim for benefits under section 503(a) (relating to an initial appeal);

“(3) the delay attributable to the failure described in clause (1) is the proximate cause of substantial harm to, or the wrongful death of, the participant or beneficiary;

“such designated decision-maker shall be liable to the participant or beneficiary (or the estate of the participant or beneficiary) for economic and noneconomic damages in connection with such failure and such injury or death (subject to paragraph (5)).

“(C) RELIEF FROM LIABILITY FOR EMPLOYER OR OTHER PLAN SPONSOR BY MEANS OF DESIGNATED DECISIONMAKER.—In general.—Notwithstanding the direct participation (as defined in paragraph (3)(C)(i)) of an employer or plan sponsor, in any case in which there is deemed to be a designated decision-maker under clause (ii) that meets the requirements of paragraph (2)(A) for an employer or other plan sponsor,

“(1) all liability of such employer or plan sponsor (and any other entity thereof acting within the scope of employment) under this subsection in connection with any participant or beneficiary shall be transferred to, and assumed by, the designated decision-maker, and

“Sec. 141. Availability of Court Remedies.
the same facts and circumstances.

(ii) AUTOMATIC DESIGNATION.—A health insurance issuer shall be deemed to be a designated decisionmaker for purposes of clause (i) with respect to the participants and beneficiaries of an employer or plan sponsor, whether or not the employer or plan sponsor makes such a designation, if it is deemed to have assumed unconditionally all liability of the employer or plan sponsor under such designation in accordance with paragraph (2), unless the employer or plan sponsor affirmatively enters into a contract to prevent the service of the designated decisionmaker.

The deeming of a designated decisionmaker under this clause shall not affect the liability of the appointing employer or plan sponsor for the failure of the employer or plan sponsor to comply with any other provisions of this section or section 514(c).

(D) PREVENTION OF DUPLICATION OF ACTION WITH ACTION UNDER STATE LAW.—No action may be brought under this subsection based upon facts and circumstances if a cause of action may be brought under this subsection based upon facts and circumstances if a cause of action under State law is brought based upon the same facts and circumstances.

(E) APPLICATION TO CERTAIN PLANS.—

(i) In general. Notwithstanding any other provision of this subsection, no group health plan described in clause (ii) shall be liable under this paragraph for the performance of any non-medically reviewable duty under the plan.

(ii) DEFINITION.—A group health plan described in this clause is—

(II) a multiemployer plan as defined in section 402(a) and as required under section 4041 of the Employee Retirement Income Security Act of 2001.

(F) QUALIFICATIONS FOR DESIGNATED DECISIONMAKERS.—

(I) IN GENERAL.—Subject to clause (ii), an entity is qualified under this subparagraph to serve as a designated decisionmaker with respect to a group health plan if the entity has the ability to assume the liability described in subparagraph (A) with respect to participants and beneficiaries under such plan, including requirements relating to the ability to satisfy any financial obligation of an entity for liability arising from its service as a designated decisionmaker under this paragraph; or

(ii) AUTOMATIC DESIGNATION.—A health insurance issuer and that is regulated under the Health Insurance Portability and Accountability Act of 1996 shall be deemed to be a designated decisionmaker under this paragraph for purposes of clause (i) and clause (ii).

(G) CERTAIN REVIEWABLE DECISIONS.—In the case of a group health plan that provides benefits consisting of medical care to a participant or beneficiary only through health insurance coverage offered by a single health insurance issuer, such issuer is the only entity that may be qualified under this subparagraph to serve as a designated decisionmaker with respect to such participant or beneficiary, and shall serve as the designated decisionmaker unless the employer or other plan sponsor plans, acts affirmatively to prevent such service.

(H) REQUIREMENTS RELATING TO FINANCIAL OBLIGATIONS.—For purposes of subparagraph (B)(ii), the requirements relating to the financial obligation of an entity for liability shall include—

(i) coverage of such entity under an insurance policy or other arrangement, secured and maintained by such entity, to effectively assure such entity against losses arising from professional liability claims, including those arising from its service as a designated decisionmaker under this paragraph;

(ii) evidence of minimum capital and surplus levels that are maintained by such entity to cover any losses as a result of liability arising from its service as a designated decisionmaker under this paragraph;

(iii) any participation by the employer or other plan sponsor (or employee) in the process of creating, continuing, modifying, or terminating the plan or any benefit under the plan, if such process was not substantially focused solely on the particular situation of the participant or beneficiary referred to in paragraph (1); and

(iv) any action taken by the employer or other plan sponsor (or employee) in the design of any benefit under the plan, including the amount of copayment and limits connected with such benefit.

(I) IRRELEVANCE OF CERTAIN COLLATERAL EFFORTS MADE BY EMPLOYER OR PLAN SPONSOR.—For purposes of this subparagraph, an employer or other plan sponsor (whether or not treated as engaged in direct participation in a decision with respect to any claim for benefits or denial thereof in the case of any particular participant or beneficiary solely by reason of—

(i) any efforts that may have been made by the employer or plan sponsor to advocate for, or the organization of, any action by any other participant or beneficiary (or any group of participants or beneficiaries), or
(II) any provision that may have been made by or for a beneficiary or plan participant that is not made under this subsection.

(5) AFFIRMATIVE DEFENSES.—In the case of any action under paragraph (1), it shall be an affirmative defense that—

(A) the designated decision-maker of a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, involved did not receive from the participant or beneficiary (or authorized representative) the information requested by the plan or issuer regarding the medical condition of the participant or beneficiary that was necessary to make a determination of the participant or beneficiary's share of fault or responsibility for the injury suffered by the participant or beneficiary. In all such cases, the liability of a designated decision-maker for noneconomic damages shall be several and not joint.

(6) LIMITATIONS ON ACTIONS.—Nothing in this paragraph shall be construed to preclude any action under State law against a defendant.

(7) WAIVER OF INTERNAL REVIEW.—In the case of any cause of action under paragraph (1), the waiver or nonwaiver of internal review under section 503A; or a final determination on a claim for benefits under section 503A or a final determination pursuant to section 503B.

(8) LIMITATIONS ON ACTIONS.—Nothing in this subsection shall be construed to preclude any action under State law against a defendant.

(9) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this subsection shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's administration or determination of a claim for benefits (as such term is defined in section 503A and notwithstanding the definition contained in paragraph (13)(B)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Nothing in this subsection shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's administration or determination of a claim for benefits (as such term is defined in section 503A and notwithstanding the definition contained in paragraph (13)(B)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Nothing in this subsection shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's administration or determination of a claim for benefits (as such term is defined in section 503A and notwithstanding the definition contained in paragraph (13)(B)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section.

(10) CONSTRUCTION.—Nothing in this subsection shall be construed as authorizing a "Failure to appeal for the failure of a group health plan or health insurance issuer to provide an item or service to which the participant or beneficiary was entitled."
that is specifically excluded under the plan or covered by a group health plan.

(11) PREVIOUSLY PROVIDED SERVICES.—

(A) IN GENERAL.—Except as provided in this paragraph, a cause of action shall not arise under subsection (1) where the denial involved relates to an item or service that has already been fully provided to the participant or beneficiary under the plan or coverage and the claim relates solely to the subsequent denial of payment for the provision of such item or service.

(B) EXCEPTION.—Nothing in subparagraph (A) shall be construed to—

(i) prohibit a cause of action under paragraph (1) where the nonpayment involved results in the participant or beneficiary being unable to receive further items or services that are directly related to the item or service involved in the denial referred to in subparagraph (A) or that are part of a continuing treatment or series of procedures;

(ii) prohibit a cause of action under paragraph (1) relating to quality of care; or

(iii) limit liability that otherwise would arise under this section for the performance of the item or service or the performance of a medical procedure.

(12) EXEMPTION FROM PERSONAL LIABILITY FOR INDIVIDUAL MEMBERS OF BOARDS OF DIRECTORS, JOINT BOARDS OF TRUSTEES, ETC.—Any individual who is

(A) a member of a board of directors of an employer or plan sponsor; or

(B) a member of an association, committee, employee organization, joint board of trustees or other similar group of representatives of the entities that are the plan sponsor of plan maintained by two or more employers and one or more employee organizations,

shall not be personally liable under this subsection for conduct that is within the scope of employment of the individuals unless the individual acts in a fraudulent manner for personal enrichment.

(13) DEFINITIONS.—In this subsection:

(A) AUTHORIZED REPRESENTATIVE.—The term ‘authorized representative’ has the meaning given such term in section 733(b)(1).

(B) CLAIM FOR BENEFITS.—Except as provided for in paragraph (9), the term ‘claim for benefits’ shall have the meaning given such term in section 733(b)(2), except that such term shall only include claims for which prior authorization is required.

(C) GROUP HEALTH PLAN.—The term ‘group health plan’ shall have the meaning given such term in section 733(a). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

(D) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ has the meaning given such term in section 733(b)(1). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

(E) HEALTH INSURANCE ISSUER.—The term ‘health insurance issuer’ has the meaning given such term in section 733(b)(2).

(F) ORDINARY CARE.—The term ‘ordinary care’ means the care, skill, prudence, and diligence that an ordinarily prudent health care practitioner acting in the same general community would use in making a determination on a claim for a similar category of care.

(G) SUBSTANTIAL HARM.—The term ‘substantial harm’ means the loss of life, loss or significant impairment of limb or bodily function, mental illness or dis ease, significant disfigurement, or severe and chronic physical pain.

(b) AUTHORITY TO IMPOSE CIVIL PENALTIES FOR SURVIVING A GROUP HEALTH PLAN OR NOT ELIGIBLE FOR MEDICAL REVIEW.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by subsection (a), is further amended by adding at the end the following:

(0) AUTHORITY TO IMPOSE CIVIL PENALTIES FOR FAILURE TO PROVIDE A PLAN BENEFIT NOT ELIGIBLE FOR MEDICAL REVIEW.—In connection with any action maintained under section 502(d)(2) of a group health plan or a health insurance issuer (that offers health insurance coverage in connection with a group health plan) of not to exceed $100,000 where

(1) in its final determination under section 503A, the designated decision-maker fails to provide, or authorize coverage of, a benefit to which a participant or beneficiary is entitled under the terms and conditions of the plan;

(2) the participant or beneficiary has appealed such determination under section 503B and such determination is not subject to independent medical review as determined by a qualified external review entity under section 503B;

(3) the plan has failed to exercise ordinary care in making a final determination under section 503A denying a claim for benefits under the plan;

(4) that denial is the proximate cause of substantial harm (as defined in subsection (b)(2)); or

(c) LIMITATION ON CERTAIN CLASS ACTION LITIGATION.—

(1) ERISA.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by subsections (a) and (c), is further amended by adding at the end the following:

(2) LIMITATION ON CLASS ACTION LITIGATION.—

(1) CLAIMS UNDER THIS SECTION.—

(A) IN GENERAL.—Any claim or cause of action arising under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, may be maintained on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative claimant, or the group of claimants is limited to the participants or beneficiaries of a group health plan established by only 1 plan sponsor. No action maintained by such class, such derivative claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative claimant, or group of claimants or consolidated for any purposes with any other proceeding. In this paragraph, the terms ‘group health plan’ and ‘health insurance coverage’ have the meanings given such terms in section 733.

(B) EFFECTIVE DATE.—This paragraph shall apply to all civil actions that are filed on or after the date of enactment of the Bi partisan Patient Protection Act. This paragraph applies to all civil actions that are pending on or after such date and have not been finally determined by judgment or settlement prior to such date of enactment.

SEC. 151. PREEMPTION; STATE FLEXIBILITY; CONSTRUCTION.

(a) LIMITATION ON PREEMPTION OF STATE LAW WITH RESPECT TO HEALTH INSURANCE ISSUERS.—

(1) IN GENERAL.—Subject to paragraph (1)—

(A) subsections A and B of section 502(a)(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)(1)(A)) is amended by inserting ‘or’ after ‘(a)’ and ‘(2)’ after subsection (c); and

(B) the amendments made by this section shall apply to acts and omissions (from which a cause of action arises) on or after October 1, 2002.

Subtitle E—State Flexibility
CONGRESSIONAL RECORD—SENATE

CONGRESSIONAL RECORD—SENATE

(B) STATE LAW DESCRIBED.—A State law described in this subparagraph is a State law that imposes, with respect to health insurance issuers (in connection with group health plans or individual health insurance coverage) and to non-Federal governmental plans, any requirement that is approved by the Secretary (through a certification under subsection (c)(4)) as being consistent with a patient protection requirement (as defined in paragraph (3)).

(2) LIMITATION.—In the case of a group health plan covered under title I of the Employed Retirement Income Security Act of 1974, paragraph (1) shall be construed to apply only with respect to the health insurance coverage (if any) offered in connection with the plan.

(3) PATIENT PROTECTION REQUIREMENT DEFINED.—For purposes of this section, the term ‘patient protection requirement’ means any one or more requirements under the following:

(A) Section 101 (relating to access to emergency care).

(B) Section 102 (relating to consumer choice option) with respect to non-Federal governmental plans only.

(C) Section 103 (relating to patient access to obstetrical and gynecological care).

(D) Section 104 (relating to access to psychiatric care).

(E) Section 105 (relating to timely access to specialists).

(F) Section 106 (relating to continuity of care), but only insofar as a replacement issuer assumes the obligation for continuity of care.

(G) Section 108 (relating to needed prescription drugs).

(H) Section 109 (relating to coverage for minimum hospital stay for inpatient care).

(I) Section 110 (relating to required coverage for maternity and newborn care).

(J) A prohibition under—

(i) subsection (b)(1) (relating to prohibition of interference with certain medical communications); and

(ii) subsection (e)(1) (relating to prohibition of discrimination against providers based on licensure).

(K) An informational requirement under section 121.

(c) DETERMINATIONS WITH RESPECT TO CERTIFICATIONS.—

(1) IN GENERAL.—For purposes of the continued application of certain State laws under subsection (b)(1), a State may, on or after May 1, 2002, submit to the Board established under subsection (d) a certification that the State law involved is consistent with the patient protection requirements (as defined in subsection (b)(3)) that are covered under the law for which the State is seeking a certification. Such certification shall be accompanied by such information as may be required to permit the Board to make the determination described in paragraph (3), as applicable.

(2) APPROVAL DEADLINES.—

(A) IN GENERAL.—The Board shall promptly review a certification submitted under paragraph (1) with respect to a State law to make the determination described in paragraph (3) with respect to the certification.

(B) APPROVAL DEADLINES.—

(i) INITIAL REVIEW.—Not later than 60 days after the date on which the Board receives a certification under paragraph (1), the Board shall—

(I) notify the State involved that specified additional information is needed to make the determination described in paragraph (3), or

(II) submit a recommendation to the Secretary under subsection (c) for disapproval (and the reasons therefore) of the certification.

(ii) ADDITIONAL INFORMATION.—With respect to a State that has been notified by the Board under clause (I) that specified additional information is needed to make the determination described in paragraph (3), the Board shall make the submission required under clause (I) within 60 days after the date on which such specified additional information is requested by the Board.

(iii) BOARD DETERMINATION.—The Board shall recommend that the Secretary approve or disapprove a certification submitted under paragraph (1)(A). The Board shall recommend the approval of a certification under this subparagraph unless the Board finds that there is no reasonable basis or evidence for such an approval.

(iv) REVIEW BY SECRETARY.—

(A) IN GENERAL.—The recommendation by the Board to approve or disapprove a certification submitted under paragraph (1) is considered to be approved by the Secretary unless the Secretary notifies the State in writing, within 30 days after the date on which the Board submits its recommendation, that such certification is not a standard or requirement under a State law applicable to the plan or issuer, that is not the subject of a certification under subsection (c), is superseded under subsection (a)(1) because such standard or requirement prevents the application of a requirement of this Act.

(B) APPROVAL.—The Secretary shall issue a determination with respect to a petition submitted under subparagraph (A) within the 60-day period beginning on the date on which such petition is submitted.

(d) PATIENTS’ PROTECTION BOARD.—

(1) ESTABLISHMENT OF BOARD.—

(A) IN GENERAL.—There is hereby established in the Department of Health and Human Services a Patients’ Protection Board. Consistent with the requirements of sections 3 and 10 of the Federal Advisory Committee Act, the Board shall carry out the duties described in paragraph (2).

(B) COMPOSITION.—The Board shall be composed of 13 members appointed by the Secretary. One member of the Board shall be a representative of the Department of Health and Human Services. Members shall serve on the Board not later than May 1, 2002.

(C) TERMS.—The terms of the members of the Board shall be for 3 years except that for the first term appointed the Secretary shall designate staggered terms of 3 years for 2 members, 2 years for 2 members, and 1 year for 1 member. After the first terms are filled, terms shall be filled in the same manner in which the original appointment was made and a member appointed to fill a vacancy occurring before the expiration of the term for which the member was appointed shall be appointed only for the remainder of that term.

(d) PATIENTS’ PROTECTION BOARD.—

(1) IN GENERAL.—The Board shall submit to Congress an annual report on its activities. Each such report shall include the findings of the Board as to—

(i) the States that have failed to obtain a certification under subsection (c); and

(ii) whether the enforcement role of the Federal Government with respect to health insurance has substantially expanded.

(2) INITIAL REPORT.—The first annual report under clause (i) shall focus specifically on the development by the Board of criteria for certification, evaluation, and any other activities of the Board during its first year of operation.

(e) DEFINITIONS.—For purposes of this section:
(1) BOARD.—The term “Board” means the Patient Protection and Affordable Care Act established under subsection (d).  
(2) STATE, STATE LAW.—The terms “State” and “State law” shall have the meanings given such terms in section 2722(d) of the Public Health Service Act (42 U.S.C. 300gg-2(1)).  

Subtitle F—Miscellaneous Provisions  
SEC. 161. DEFINITIONS.  
(a) INCORPORATION OF GENERAL DEFINITIONS.—Except as otherwise provided, the provisions of section 2791 of the Public Health Service Act shall apply for purposes of this title in the same manner as they apply for purposes of title XXVII of such Act.  
(b) SECRETARY.—Except as otherwise provided, the term “Secretary” means the Secretary of Health and Human Services, in consultation with the Secretary of Labor.  
(c) ADDITIONAL DEFINITIONS.—For purposes of this title:  
(1) ENROLLEE.—The term “enrollee” means, with respect to health insurance coverage offered by a health insurance issuer, an individual enrolled with the issuer to receive such coverage.  
(2) HEALTH CARE PROFESSIONAL.—The term “health care professional” means an individual who is licensed, accredited, or certified under State law to provide specified health care services and who is operating within the scope of such license, accreditation, or certification.  
(3) HEALTH CARE PROVIDER.—The term “health care provider” includes a physician or other health care professional, as well as an institutional or other facility or agency that provides health care services and that is licensed, accredited, or certified to provide health care items and services under applicable State law.  
(4) NETWORK.—The term “network” means, with respect to a group health plan or health insurance issuer offering health insurance coverage, the network of health care professionals and providers through whom the plan or issuer provides health care items and services to a participant, beneficiary, or enrollee.  
(5) NONPARTICIPATING.—The term “nonparticipating” means, with respect to a health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage, a health care provider that is not a participating health care provider with respect to such items and services.  
(6) PARTICIPATING.—The term “participating” means, with respect to a health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage offered by a health insurance issuer, a health care provider that furnishes such items and services under a contract or other arrangement with the plan or issuer.  
(7) PRIOR AUTHORIZATION.—The term “prior authorization” means the process of obtaining prior approval from a health insurance issuer or group health plan for the provision or coverage of medical services.  
(8) TERMS AND CONDITIONS.—The term “terms and conditions” includes, with respect to a group health plan or health insurance coverage, any terms or conditions imposed under this title with respect to the plan or coverage.
SEC. 9813. STANDARD RELATING TO PATIENTS’ BILL OF RIGHTS.

A group health plan shall comply with the requirements of title I of the Bipartisan Patients’ Bill of Rights Act of 2001 (as in effect as of the date of the enactment of such Act), and such requirements shall be deemed to be incorporated into this section.”.

SEC. 402. CONFORMING ENFORCEMENT FOR WOMEN’S HEALTH AND CANCER RIGHTS.

Subchapter B of chapter 100 of the Internal Revenue Code of 1986, as amended by section 401, is further amended by inserting after the item relating to section 9813 the following new item:

“Sec. 9814. Standard relating to women’s health and cancer rights.”;

and by inserting after section 9813 the following:

“SEC. 9814. STANDARD RELATING TO WOMEN’S HEALTH AND CANCER RIGHTS.

“Title I of the Bipartisan Patients’ Bill of Rights Act of 2001 (as in effect as of the date of the enactment of this section) shall apply to group health plans as if included in this subchapter.”.

TITLe V—EFFECTIVE DATE; SEVERABILITY

SEC. 501. EFFECTIVE DATE AND RELATED RULES.

Except as otherwise provided in this Act, the provisions of this Act, including the amendments made by title I, shall apply on the later of—

(1) plan years beginning on or after January 1, 2003; or

(2) plan years beginning on or after 18 months after the date on which the Secretary of Health and Human Services and the Secretary of Labor issue final regulations, subject to the notice and comment period required under subchapter 2 of chapter 5 of title 5, United States Code, necessary to carry out the amendments made by this Act.

SEC. 502. SEVERABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), if any provision of this Act, or any amendment made by such section, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by such sections, and the amendments made by such sections, shall be deemed to be null and void and shall be given no force or effect.

(b) DEPENDENCE OF REMEDIES ON APPEALS.—If any provision of section 131, or the amendments made by such section, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, sections 141 and 143, and the amendments made by such sections, shall be deemed to be null and void and shall be given no force or effect.

(c) REMEDIES.—If any provision of section 141, or the amendments made by such section, or the application of such section or amendments to any person or circumstance is held to be unconstitutional, sections 141 and 143, and the amendments made by such sections, shall be deemed to be null and void and shall be given no force or effect.
request that the Institute of Medicine of the National Academy of Sciences prepare and submit to the appropriate committees of Congress a report concerning the impact of this Act, and the amendments made by this Act, on the number of individuals in the United States with health insurance coverage.

(b) LIMITATION WITH RESPECT TO CERTAIN PLANS.—If the Secretary, in any report submitted under subsection (a), determines that more than 1,000,000 individuals in the United States have lost their health insurance coverage as a result of the enactment of this Act, as compared to the number of individuals with health insurance coverage in the 12-month period preceding the date of enactment of this Act, section 141 and the amendments made by such section shall be repealed effective on the date that is 12 month after the date on which the report is submitted, and the submission of any further reports under subsection (a) shall not be required.

(c) FUNDING.—From funds appropriated to the Department of Health and Human Services for the years 2003 and 2004, the Secretary of Health and Human Services shall provide for such funding as the Secretary determines necessary for the conduct of the study by the National Academy of Sciences under this section.

SA 857. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 179, after line 14, add the following:

SEC. 4. IMMUNITY FOR HEALTH CARE PROFESSIONALS.

Section 6(e) of the Volunteer Protection Act of 1997 (42 U.S.C. 14506(e)) is amended by adding at the end the following flush sentence:

"Such term includes a health care professional (as defined in section 151 of the Bipartisan Patient Protection Act) who is providing public health services and who meets the requirements of subparagraphs (A) and (B) with respect to the provision of such services including compensation from any source."

SA 858. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 976, to provide authorization and funding for the enhancement of ecosystems, water supply, and water quality of the State of California; which was referred to the Committee on Energy and Natural Resources; as follows:

On page 174, line 9, strike "For" and insert the following:

(a) a partial interim report; or (b) a determination by the Secretary that the project appears to be infeasible, based on preliminary findings and information contained in the report.

Beginning on page 30, strike line 9 and all that follows through page 32, line 18, and insert the following:

(b) ACQUISITION OF WATER AND LAND.—There are authorized to be appropriated such sums as are necessary to pay the Federal share of the cost of carrying out 1 or more projects or non-physician health professional who, acting within the appropriate scope of practice within the State in which the service is provided or rendered, for the ecosystem restoration program and the environmental water account, as provided in the record of decision.

On page 32, line 19, strike "(5)" and insert "(4)".

SA 860. Mr. REID (for Mr. KENNEDY (for himself and Mr. GREGG)) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to need the health care professionals in managed care plans and other health coverage; as follows:

On page 22, lines 13 and 14, strike "REVIEW OF MEDICAL DECISIONS BY PHYSICIANS" and in section 12584 insert the following:

"(a) shall be made by a physician (allopathic or osteopathic); or "(b) in a claim for benefits provided by a non-physician health professional, shall be made by reviewer (or reviewers) acting within the appropriate scope of practice within the State in which the service is provided or rendered, for the diagnosis or provides the type of treatment under review."

On page 32, strike lines 7 through 17, and insert the following:

"(ii) a non-physician health care professional, a reviewer (or reviewers) shall include at least one practicing non-physician health professional of the same or similar specialty as the non-physician health care professional who, acting within the appropriate scope of practice within the State in which the service is provided or rendered, typically treats the condition, makes the diagnosis, or provides the type of treatment under review."

On page 94, line 13, strike "scientific" and insert "ethical".

On page 100, line 13, strike "104(b)(3)(C)" and insert "104(d)(3)(C)".

On page 122, line 1, strike "person" and insert "plan, plan sponsor or issuer".

On page 154, line 11, strike "(5)" and insert "(9)".

On page 174, line 5, strike "determined without regard to" and insert "excluding".

On page 174, line 8, strike the period and insert a semicolon.

On page 174, line 9, strike "For" and insert "but shall apply not later than 1 year after the general effective date for".
SEC. 304. SENSE OF THE SENATE CONCERNING THE IMPORTANCE OF CERTAIN UNPAID SERVICES.

(a) Sense of the Senate.—It is the sense of the Senate that the court should consider the loss of a non-wage earning spouse or parent as an economic loss for the purposes of this section. Furthermore, the court should define the compensation for the loss not as minimum services, but, rather, in terms that fully compensate for the true and whole replacement value.

At the end of subtitle A of title I, insert the following:

SEC. __. HEALTH CARE CONSUMER ASSISTANCE GRANTS

(a) Grants.—
(1) In general.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall establish a fund, to be known as the “Health Care Consumer Assistance Fund”, to be used to award grants to eligible States to carry out consumer assistance activities described in subparagraphs (C) and (D); and
(2) Contract entity.—In the case of a grant awarded under this subsection that are not used by the State shall be remitted to the Secretary and reallocated in accordance with this subparagraph.

(b) Minimum amount.—In no case shall the amount provided to a State under a grant under this subsection for a fiscal year be less than an amount equal to 0.5 percent of the amount appropriated for such fiscal year to carry out this section.

(C) Non-federal contributions.—A State shall give preference to Federal and State health care insurers with the office and to ensure that no such information is used by the office, or released or disclosed to State agencies or outside persons or entities without the prior written authorization (in accordance with section 164.508 of title 45, Code of Federal Regulations) of the individual or personal representative. The office may, consistent with applicable Federal and State confidentiality laws, collect, use or disclose aggregate information that is not individually identifiable (as defined in section 164.501 of title 45, Code of Federal Regulations).

The office shall provide a written description of the policies and procedures of the office with respect to which health information may be used or disclosed to carry out consumer assistance activities.

The office shall provide health care providers, group health plans, or health insurance issuers with a written authorization (in accordance with section 164.508 of title 45, Code of Federal Regulations) to allow the office to obtain such information relevant to the matter before the office.

(3) Availability of services.—The health care consumer assistance office of a State shall not discriminate in the provision of information, referrals, and services regardless of the source of the individual’s health insurance coverage or prospective coverage, including individuals covered under a group health plan or health insurance coverage offered by a health insurance issuer, the medicare or medicaid programs under title XVIII and title XIX of the Social Security Act (42 U.S.C. 1395 and 1396 et seq.), or under any other Federal or State health care program.

(4) Designation of responsibilities.—(A) Within existing office.—If the health care consumer assistance office of a State is located within an existing State regulatory agency or office of an elected State official, the State shall ensure that—

(i) there is a separate delineation of the funding, activities, and responsibilities of the office as compared to the other funding, activities, and responsibilities of the agency; and

(ii) the office establishes and implements procedures and protocols to ensure the confidentiality of all information shared by a participant, beneficiary, or enrollee or their personal representative and their health care providers, group health plans, or health insurance issuers with the office and to ensure that no information is disclosed to the State agency or office without the written authorization of the individual or their personal representative in accordance with paragraph (2).

(b) Contract entity.—In the case of an entity that enters into a contract with a State described in subsection (a), the contract entity shall provide assurances that the entity has no conflict of interest in carrying out the activities of the office and that the entity is independent from the health care providers, group health plans, health insurance issuers, providers, and regulators of health care.
Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on legislative proposals related to energy efficiency, including S. 352, the Energy Emergency Response Act of 2001; title XIII of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; sections 602–606 of S. 388, the National Energy Security Act of 2001; S. 95, the Federal Energy Bank Act; S.J. Res. 15, providing for congressional disapproval of the rule submitted by the Department of Energy relating to the post-ponement of the effective date of energy conservation standards for central air conditioners.

The hearing will take place on Friday, July 13, at 9:30 a.m. in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Deborah Estes, U.S. Senate, Washington, DC 20510.

For further information, please call Deborah Estes at 202/224–5360.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

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COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a legislative hearing on provisions to protect energy supply and security (title I of S. 388, the National Energy Security Act of 2001; oil and gas production (title III and title V of S. 388; and title X of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001); drilling moratoriums on the Outer Continental Shelf (S. 901, the Coastal States Protection Act; S. 1089, the COAST Anti-Drilling Act; and S. 771, a bill to permanently prohibit the conduct of offshore drilling on the Outer Continental Shelf of the State of Florida, and for other purposes); energy regulatory reviews and studies (S. 900, the Consumer Energy Commission Act of 2001).

The hearing will take place on Thursday, July 12, 2001, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Mary Katherine Ishee, U.S. Senate, Washington, DC 20510–6150.

For further information, please contact Mary Katherine Ishee at (202) 224–7865.

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The hearing will take place on Friday, July 13, at 9:30 a.m. in room 366 of the Dirksen Senate Office Building.

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The hearing will take place on Friday, July 13, at 9:30 a.m. in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Deborah Estes, U.S. Senate, Washington, DC 20510.

For further information, please call Deborah Estes at 202/224–5360.
The hearing will take place on Thursday, July 19, 2001, at 9:30 a.m., in room SD-366, of the Dirksen Senate Office Building in Washington, DC.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Deborah Estes, U.S. Senate, Washington, DC 20510.

For further information, please contact Deborah Estes at (202) 224–5360 or Mary Katherine Ishee at (202) 224–7865.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on proposals related to global climate change and measures to mitigate greenhouse gas emissions, including S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; S. 388, the National Energy Security Act of 2001; and S. 820, the Forest Resources for the Environment and the Economy Act.

The hearing will take place on Tuesday, July 24, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Shirley Neff, U.S. Senate, Washington, DC 20510.

For further information, please call Shirley Neff at 202/224-6689.

SUBCOMMITTEE ON WATER AND POWER

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on S. 976, the California Ecosystem, Water Supply, and Water Quality Enhancement Act of 2001.

The hearing will take place on July 19 at 2:30 p.m., in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Patty Beneke, U.S. Senate, Washington, DC 20510.

For further information, please call Patty Beneke at 202/224-5451.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DASCHLE. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: No. 166, Nos. 169 through 181, including the nominations on the Secretary’s desk; that the nominations be confirmed en bloc, the motions to consider be laid on the table en bloc, the President be immediately notified of the Senate’s action, and the Senate then return to legislative session.

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

The nominations were considered and confirmed as follows:

AIR FORCE

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general
Brig. Gen. Neal A. McCaleb, of Oklahoma, to be an Assistant Secretary of the Interior.

To be brigadier general
Col. Tex W. Tanberg, Jr., 0000.

NAVY

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general

The following Air National Guard of the United States officers for appointment in the Reserve of the Air Force to the grades indicated under title 10, U.S.C., section 12203:

To be brigadier general
Col. John A. Van Alstyne, 0000.

The following named officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

To be major general

The following Army National Guard of the United States officers for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that Krisann Kleibacker, a fellow in Senator Daschle’s office, be granted the privilege of the floor during debate on S. 1052.

The PRESIDING OFFICER. Without objection, it is so ordered.
Mr. DASCHLE. Madam President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

Mr. DASCHLE. Madam President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

Mr. DASCHLE. Madam President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.
which is consistent with Senate precedent.

It clarifies that—subject to the standing rules of the Senate—the agreements on funding and space that were made between chairman and ranking members early in this Congress will remain in effect for the duration of this Congress.

This resolution also makes it clear that all of these provisions will sunset if the ratio in the Senate changes during this Congress.

I especially commend Senator Leahy. Senator Leahy, in his typically fair and wise way, played a critical role in solving the most difficult questions we faced in these negotiations: those involving Supreme Court and other Presidential nominees.

Together, he and Senator Hatch were able to find a constructive solution to the way in which we handle “blue slips,” and the way in which we consider nominees to the Supreme Court.

On the subject of blue slips, Senators Leahy and Hatch agreed that these forms—traditionally sent to home-state Senators to ask their views on nominees to be U.S. Attorneys, U.S. Marshals, and federal judges—will now be treated as public information.

I share their belief that this new policy of openness will benefit not only the Judiciary Committee, but the Senate as a whole. I also share their hope that this policy will continue in the future, regardless of which party is in the majority.

In the course of our negotiations, a number of our Republican colleagues also raised concerns about how Democrats would deal with potential Supreme Court nominations, should that need arise. So I wrote a second letter to which Senators Leahy and Hatch agreed says clearly that all nominees to the Supreme Court will receive full and fair consideration.

This is the same position I stated publicly many times during our negotiations, and I intend to see that the Senate lives up to this commitment.

It has been the traditional practice of the Judiciary Committee to report Supreme Court nominees to the Senate floor only after the committee has completed its consideration. This has been true even for a number of nominees that were defeated in the Judiciary Committee.

Now, Senators Leahy and Hatch have put in writing their intention that consideration of Supreme Court nominees will follow the practices and precedents of the Judiciary Committee and the Senate.

In reaching this agreement, we have avoided an unwarranted and unwarranted change to the Standing Rules of the Senate and a sweeping revision to the Senate’s constitutional responsibility to review Supreme Court nominees.

In sum, this is a good, balanced, resolution—one that will enable us to run this Senate in a spirit of fairness and pragmatism.

In a letter to Thomas Jefferson, James Madison explained that the Constitution’s Framers considered the Senate to be the great “anchor” of the Government.

For 212 years, an anchor has held steady. The Senate has withstood Civil War and constitutional crises. In each generation, it has been buffeted by the winds and tides of political and social change.

Today I believe we are proving that this great anchor of democracy can withstand the forces of unprecedented internal changes as well.

I am confident that this resolution is the right way to keep the Senate working. I am appreciative of the support given by my colleagues today as we now adopt it.

If I may, I will say one other thing about this particular resolution. There is a member of my staff whose name is Mark Childress; our colleagues know him for many good reasons, as I am to all of my staff. But no one deserves more credit and more praise for the job done in reaching this successful conclusion than Mark Childress. Publicly, I acknowledge his contribution, his incredible work and effort. I thank him from the bottom of my heart for what he has done to make this possible.

Mr. LOTT. Madam President, I ask unanimous consent to insert in the Record a memo from the Congressional Reference Service. As this memo makes clear, the Senate has a long record of allowing the Supreme Court nominees of the President to be given a vote on the floor of the Senate. No matter what the vote in committee on a Supreme Court nominee, it is the precedent of the Senate that the individual nominated is given a vote by the whole Senate.

The letter inserted in the Record as a part of the agreement accompanying the organization resolution refers to the “traditional” practice of reporting Supreme Court nominees for a vote on the floor. This memo from CRS shows that since 1881, there is only one case where the nominee was not given a floor vote. In that case, there was no opening on the Court for the nominee to fill and thus the nominee was withdrawn. So this precedent is even purer than the “99 and 4/100ths” soap test.

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

CONGRESSIONAL RECORD—SENATE 12589


Senate Consideration of Supreme Court Nominations before 1880

Hon. Trent LOTT, Senator Republican Leader.

This memorandum is in response to your request made during our telephonic conversation earlier today, for a short written answer to the specific question, “Is it the case that since 1880 all Supreme Court nominations, irrespective of Senate Committee recommendation, have received Senate consideration by, and a vote of, the full Senate?”

Research by CRS has found that from President James A. Garfield’s nomination of Stephen Dole on March 14, 1881, to the present, every person nominated to the Supreme Court has been considered by the Senate. Senate consideration and a vote on his or her nomination have been given, even if the Senate rejected the nomination.

Nonetheless, it should be noted, during the time frame of 1880 to the present, there have also been two other instances, besides the already mentioned exception, in which Supreme Court nominations failed to receive consideration: in both cases, however, the individuals in question were re-nominated shortly thereafter, with one receiving Senate confirmation and the other Senate rejection.

The one instance when the Senate did not consider and vote on an individual nomination was the one of President Lyndon B. Johnson’s nomination of Henry Nelson Gjeebeam of federal appellate judge Homer Thornberry in 1968. Judge Thornberry was originally nominated to be an associate justice of the Supreme Court on June 26, 1968, the same day on which President Johnson nominated then-Associate Justice Abe Fortas to be Chief Justice. Judge Thornberry’s nomination was voted down by the Judiciary Committee, the Fortas nomination failed to gain Senate confirmation on October 1, 1968, the fourth day of Senate consideration of the Fortas nomination, and thus the Fortas nomination failed by a 43-43 vote. Three days later, on October 4, 1968, President Johnson withdrew both the Fortas and Thornberry nominations.

Prior to Senate action on the Fortas nomination, the Judiciary Committee held hearings simultaneously on Fortas and Thornberry, but upon conclusion of the hearings revealed only one thing—indeed, one detailed history of the Fortas nomination reported that it was apparent “that the committee would take no action on Thornberry until the Fortas nomination was settled.”

As noted in the second paragraph of this memorandum, there also have been two instances in which Supreme Court nominations failed to receive Senate consideration, only to be followed by the individuals in question being re-nominated shortly thereafter and then receiving Senate consideration. The earlier of these instances involved President Rutherford B. Hayes’s nomination of Shorty Matthews on January 26, 1881 in the final days of the 46th Congress. Accord-
of any Judiciary Committee action or Senate consideration of the nomination indicated in Journal of the Executive Proceedings of the Senate volume for that (the 53rd) Congress. Hornblower was re-nominated by President Cleveland on December 6, 1893. After this second nomination was reported adversely by the Judiciary Committee on January 8, 1894, Hornblower was rejected by the Senate on January 15, 1894 by a 24–30 vote.

I trust the above information is responsive to your request. If I may be of further assistance please contact me at 7–7162.

DENIS STEVEN RUTKUS
Specialist in American National Government

CHANGING THE NAME OF THE COMMITTEE ON SMALL BUSINESS TO "COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP"

Mr. DASCHLE. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 123, submitted earlier today by Senators KERRY and BOND.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 123) amending the Standing Rules of the Senate to change the name of the Committee on Small Business to the "Committee on Small Business and Entrepreneurship."

There being no objection, the Senate proceeded to consider the resolution.

Mr. KERRY. Madam President, I would like to take a few minutes to explain the historic importance of the Resolution I am putting forward with Senator BOND to change the name of the Senate Committee on Small Business to the "Committee on Small Business and Entrepreneurship."

As many of my colleagues may know, the needs and circumstances of today's entrepreneurial companies differ from those of traditional small businesses. For instance, entrepreneurial companies are much more likely to depend on investment capital rather than loan capital. Additionally, although they represent less than five percent of all businesses, entrepreneurial companies create a substantial number of all new jobs and are responsible for developing a significant portion of technological innovations, both of which have substantial benefits for our economy.

Taken together, an unshakable determination to grow and improved productivity lie at the heart of what distinguishes fast growth or entrepreneurial companies from more traditional, albeit successful, small businesses. Early on, it is important to be able to distinguish a small business from an entrepreneurial company. Only when a company starts to grow fast and make fundamental changes in a market do the differences come into play. Policies that support entrepreneurship become critical during this phase of the business cycle. Our public policies can only play a significant role during this critical phase if we understand the needs of entrepreneurial companies and are prepared to respond appropriately.

I believe that adding "Entrepreneurship" to the Committee on Small Business's name will more accurately reflect the Committee's valuable role in helping to foster and promote economic development and the entrepreneurial companies and the spirit of entrepreneurship in the United States. I urge my colleagues to support this Resolution. Thank you.

Mr. DASCHLE. Madam President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, that any statements relating thereto be printed in the Record.

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

(The resolution (S. Res. 123) was agreed to.)

COMPLIMENTING SENATORS

Mr. DASCHLE. Madam President, let me just say this before I make my final comments. Senator KENNEDY is on the floor and I know that he did just now upstairs and as I did a couple of weeks ago as we completed our work on the education bill, a historic and landmark piece of legislation, how grateful I am, once again, to the senior Senator from Massachusetts, the chairman of the Health, Education, and Labor Committee.

I have said privately and publicly that I believe he is one of the most historic figures our Chamber has ever had the pleasure of witnessing. We saw, again, the leadership and the remarkable ability that he has to legislate over the course of the last couple of weeks. I didn't think that what he had to endure in the education bill could have been any harder. In many respects, I think the last 2 weeks were harder. It was harder reaching a consensus. We had very difficult and contentious issues to confront, amendments to consider. In all of it, he, once again, took his responsibilities as we would expect of him—with fairness, with courtesy, and with a display of empathy for all Members, the likes of which you just do not see on the Senate floor.

So on behalf of all of our caucus, I daresay on behalf of the Senate, I thank Senator KENNEDY, our chairman, for a job he has done.

I also acknowledge and thank our colleague from North Carolina, Senator JOHN EDWARDS. Senator EDWARDS has done a remarkable job. In a very short period of time, he has demonstrated his capabilities for senatorial leadership. He came to the Senate without the experience of public service, but in a very brief period of time he has demonstrated his enormous ability to adapt. He has become a true leader. I am grateful to him for his extraordinary contribution to this bill.

Let me also thank Senator JOHN MCCAIN. This bill is truly bipartisan in many ways, but it is personified in that bipartisanship with the role played by Senator MCCAIN, not unlike other bills in which he has participated. I will mention especially the campaign finance reform bill.

Senator MCCAIN has been the key in bringing about the bipartisan consensus that we reached again today. On a vote of 59–36, we showed the bipartisanship that can be displayed even as we take on these contentious and difficult issues. That would not have been possible were it not for his effort.

Let me thank, as well, Senator JUDD GREGG and many of our colleagues on the Republican side for their participation. They fought a hard fight; they made a good case; they argued their amendments extremely well; and they were prepared to bring this debate to closure tonight. I am grateful to them for their willingness to do so.

Finally, I thank Senator HARRY REID. He wasn't officially a part of the committee, but Senator REID has made a contribution once again to this bill, as he has on so many other bills, that cannot be replicated. The success of this legislation, if we have done it right on the Senate floor each and every day. He is a dear friend. He is someone unlike anyone I think we have seen in recent times. He cares deeply for this body and has worked diligently to bring about a successful conclusion to this bill. We thank him.

Having thanked our colleagues, let me also thank our staff—our floor staff, my personal staff, the leadership staff, the staff of the committee. Were it not for them, we simply could not have done our work. I am extraordinarily grateful to them as well.

ORDERS FOR MONDAY, JULY 9, 2001

Mr. DASCHLE. Madam President, I ask unanimous consent that when the Senate adjourns today, it stand adjourned until the hour of 12 noon, Monday, July 9. I further ask consent that on Monday, July 9, immediately following the prayer and the pledge, the
June 29, 2001

Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period for morning business until 1 p.m., with Senators permitted to speak for up to 10 minutes each, with the following exceptions: Senator DURBIN, or his designee, from 12 to 12:30 p.m.; Senator THOMAS, or his designee, 12:30 p.m. to 1 p.m.

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

ORDER FOR PRINTING OF S. 1052
Mr. DASCHLE. Madam President, I ask unanimous consent that S. 1052, as passed by the Senate, be printed.

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

ORDER FOR ADJOURNMENT
Mr. DASCHLE. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of H. Con. Res. 176, following the conclusion of the remarks of Senator Kennedy.

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

The distinguished senior Senator from Massachusetts.

PASSAGE OF THE BIPARTISAN PATIENT PROTECTION ACT
Mr. KENNEDY. Madam President, I want to take a brief moment to thank some very special people who were absolutely instrumental in bringing us to the point of the passage of the legislation which gives so much hope—and should give so much hope—to millions of American families who now are going to be treated by the doctors in whom they have confidence, by the health care staff from whom they are going to get true recommendations, and not have judgments and decisions overridden by their HMOs. We have not finished the job, but this is a giant step forward.

I want to, as others have done—I feel strongly about it —first thank some special Members of this body. We just heard our leader, Senator DASCHLE. I can remember when Senator DASCHLE was asked after he assumed the leadership role as the majority leader in the Senate, what was going to be his first priority, and he mentioned the Patients’ Bill of Rights. For 5 years—for 5 years—we have waited for this moment this evening. For 5 years we have waited. In the short time he has assumed the leadership of the Senate, in a closely divided Senate, he has been able to develop the broad support evidenced in vote after vote, bipartisan in such important public policy areas.

I thank my good friend, JOHN EDWARDS, whose leadership at critical times during this debate and during very important moments was absolutely indispensable and essential. He was extremely effective in his quiet way of persuasion, with a steely strength that is reflected in his great passion on so many of the issues which are in his soul. He has made an enormous difference in making sure we reached this point tonight.

I thank Senator McCAIN, as he has said many times, traveled this country as a Presidential candidate and saw the importance of this legislation. He came back and wanted to know how he could play a role in making sure it came to fruition. He was willing, as he has on so many issues, to take on tough challenges and stay the course, but he has been an absolutely extraordinary leader on this issue, as on many others. It has been a great pleasure to work with him closely on this matter.

He has been mentioned, JOHN EDWARDS has provided extraordinary leadership on this issue. He was indispensable in so many different aspects of the development of the legislation, likely all of them dealing with accountability. We know the importance of the relationship between accountability and patient protections in this bill. He was always a steady force, a strong force, a tireless voice for patients and has made an extraordinary mark on this legislation for which we are grateful. This has been a historic team, and I am grateful for them.

I have great appreciation for HARRY REID. I listened the other evening when my good friend Senator BYRD, mentioned that he had been a deputy leader. He said Senator REID was really one of the best. Having been a deputy leader myself many years ago, it truly can be said he is the best I have seen in all the time I have been in the Senate. He is a tireless worker and always there to find common ground.

He has this incredible ability to say no and make you feel good, which is very difficult but challenging at best for any Senator, and he does it on a regular basis, repeatedly, and still Members of this body know he is a selfless devotee to this institution and to the issues in which he is involved. He has made such an extraordinary difference in this legislation as well.

I thank Dr. FRIST, who has been the chairman of our Public Health Subcommittee and with whom I have worked on many different issues. We differed on this issue, but we worked closely on many other issues. I have great respect for him.

I thank JUDD GREGG who has been a worthy adversary as well as an ally on different public policy issues this year. I enjoy working with him.

Some Senators I had not expected to be as involved as they have been and yet were enormously helpful are Senator NELSON, Senator LANDRIEU, Senator LINCOLN, and Senator BAYH. Senator JEFFORDS spent a lot of time on this issue previously and worked with us and knows the issue carefully.

I have listened to him in small meetings including at the White House with the President, explaining the importance of this legislation enormously effectively as he does. He has been a wonderful help generally. We didn’t always agree on some of these issues, but nonetheless I value both his friendship and his views.

Senator BREAUX has been very much involved with health policy issues and was very involved in this. TOM HARKIN has been a champion on the Patients’ Bill of Rights from the beginning. He has been there every time we needed a strong voice. He knows this issue. He speaks passionately about it. He understands the significance and the importance not only in the areas of disability protections and health standards and medical necessity, but he also understands the nuances and the standards which were used and how that impacts broad numbers of our populations. He was absolutely invaluable throughout this process.

I thank particularly the staff members. These issues are complex. It is
difficult to always be able to anticipate the interrelationship between these issues, the importance of what we are doing and how it affects other legislation we have passed, what the impact will be with States and local communities, the impact with the business community, consumers, and others. We have been very successful in serving across the board by the staff who have worked tirelessly on this issue just as they did on the education issue. There are an incredible number of very capable men and women who have devoted an extraordinary amount of time and effort and who have made an extraordinary mark on this legislation.

I thank all of them: For Senator McCain, Sonya Sotak, Jean Bumpus, Cassandra Wood and Mark Busee; for Senator Edwards, Jeff Lane, Miles Lackey, Kyle Kinner, Hunter Pruett, and Lisa Zeldner. I want to thank the staff of Senator Daschle and Senator Reid, all of the floor staff and the clerks, including Marty Paone, Lula Davis, Gary Myrick, and also in particular Elizabeth Hargrave and Deborah Adler. I thank them very much. Senator Daschle has mentioned Mark Childress and Mark Patterson. They are leaders of a very capable and able team that works very closely with Senator Daschle. They are not only fiercely loyal and committed to him but they are enormous sources of help and assistance to all Members in our caucus. We are all very grateful to all of them. For Senator Gregg, Stephanie Monroe, and Steve Irrigarry, and Kim Monk.

Now to my own staff, to whom I am incredibly grateful. No one has worked longer and harder, has been more committed or with greater success in terms of legislative achievement than David Naxon, the head of my health care team. Dave has been an invaluable resource, a valued member of my team from when I interviewed him for the job and asked him to write an essay about health care. I still remember his strong commitment in that essay to universal coverage, comprehensive coverage, quality at a price people can afford. He has never let up on that ideal. It is one of the reasons I admire him so much. I am incredibly grateful to him.

I will mention others in no particular order. I thank Michael Myers who is our chief of staff for our whole committee and takes on the broad responsibilities in health, education, and all the matters of that committee. Michael and I go back a long time, initially working together on refugee issues. He is a forceful and effective and helpful in our efforts in that cause. And now, he has been good enough to stay the course with me and has just been an extraordinary leader for our committee. I am grateful to him for his friendship and leadership on the committee.

I thank Jeff Teitz who is a master of many complicated aspects of the bill. If you have a complex issue that needs to be mastered, call Jeff Teitz. Sarah Bianco is full of energy and intelligence and has had a distinguished career in working with former Vice President Gore. She has been a great addition to our team.

Jerry Wesevich, I thank him so much for being present. I mentioned a little while ago that this is Jerry’s last day working in the Senate. He will be working for the legal service programs down in Texas and New Mexico. This is a person, like so many others on the Hill, strongly committed to improving our society, and I regret losing him. I know though that he will be involved in making a better community.

Janie Oates is the master of all trades and knows every TRIO program, every program that reaches out to the most needy of our country and society, and has been enormously helpful to me in this endeavor as well.

I also thank Stacey Sachs who was here day in and day out and always seemed to have the answer. I remember the debate over the questions on the standard of medical necessity and the points being made about the standard we used in the Federal employers health plan. Stacey knew, yes, that was true but in the appeal provision a different standard was used. She knew the details of it, which was a key point. She is an extraordinary reservoir of good common sense and knowledge.

Jim Manley has been a great help and a good friend and has helped so much in terms of being able to communicate these issues and this whole policy area effectively. Jim has been tireless. Elizabeth Field, Marty Walsh, so many others worked not just here on the floor but outside, as well, in terms of working with various groups and helping to bring what is happening at the grass roots here to the Senate floor. Amelia Dungan and Jackie Gran, I thank David Bowen very much. He is a great master in understanding so much of the new research and what is happening in the outer edges of biomedical research. We had debate on some of those issues, and we will have more later. These are complex ethical issues and questions. Dave is a master of all of them. Beth Cameron and Paul Kim also deserve thanks. Paul joined our staff and has been enormously valuable and helpful, as he was in the House of Representatives.

Thanks also goes out to our many dedicated interns, Dan Muñoz, Madhu Church, Tarak Shah, Nina Dutta, Nicole Salazar-Austin, Abby Moncrieff, Eddie Santos, Kent Mitchell, Haris Hardaway, Nirav Shah, Charita Sinha, Les Chun and Wylie Proctor. Their energy and dedication certainly helped us along the way.

I appreciate our Presiding Officer and our Senate staff for their patience this evening while we make sure that the history of tonight will include so many who did so much to make tonight a very important step toward helping our fellow American citizens get better quality health care.
The following named officers for regular appointment to the grades indicated in the United States Navy under Title 10, U. S. C., Sections 531 and 532 are hereby appointed:

To be Captain

John R. C. Arlotta, 0000
Michael J. Barsoum, 0000
CHRISTOPHER A. PROCTOR, 0000

To be lieutenant commander

Shirley E. Backstrom, 0000
Donald W. Edgerly, 0000

To be commander

To be lieutenant (junior grade)
June 29, 2001

CONGRESSIONAL RECORD—SENATE

DEPARTMENT OF THE INTERIOR

NEAL A. McCALER, OF OKLAHOMA, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR.

The above nomination was approved subject to the nomination’s commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

In the Air Force

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under Title 10, U.S.C., Section 601:

To be major general

BRIG. GEN. MICHAEL A. HAMIL, 0000

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under Title 10, U.S.C., Section 601:

To be major general

BRIG. GEN. DAVE W. MYERS, 0000

BRIG. GEN. WILBERT D. PEARSON JR., 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be admiral

VICE ADM. MICHAEL L. COVAN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS CHIEF OF THE BUREAU OF MEDICINE AND SURGERY AND SURGEON GENERAL AND FOR APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5137:

To be vice admiral

VICE ADM. PATRICIA A. TRACEY, 0000

IN THE AIR FORCE


IN THE ARMY


IN THE MARINE CORPS


NAVY


CONFIRMATION

Executive Nominations Confirmed by the Senate June 29, 2001:

CONFIRMATION

EXECUTIVE NOMINATIONS CONFIRMED BY THE SENATE JUNE 29, 2001:

DEPARTMENT OF THE INTERIOR

NEAL A. McCALER, OF OKLAHOMA, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR.

The above nomination was approved subject to the nomination’s commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under Title 10, U.S.C., Section 601:

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To be major general

BRIG. GEN. DAVE W. MYERS, 0000

BRIG. GEN. WILBERT D. PEARSON JR., 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be admiral

VICE ADM. MICHAEL L. COVAN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS CHIEF OF THE BUREAU OF MEDICINE AND SURGERY AND SURGEON GENERAL AND FOR APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5137:

To be vice admiral

VICE ADM. PATRICIA A. TRACEY, 0000

IN THE AIR FORCE


IN THE ARMY


IN THE MARINE CORPS


NAVY


CONFIRMATION

EXECUTIVE NOMINATIONS CONFIRMED BY THE SENATE JUNE 29, 2001:
HONORING THE LATE JIMMIE ICARDO

HON. WILLIAM M. THOMAS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. THOMAS. Mr. Speaker, I am sad to report that Kern County, California lost one of its most prominent and successful friends when Jimmie Icardo passed away. Few can or will match commitment to his family, his church and to Kern County.

The businesses Jimmie developed are going to be models for young Californians for years to come. He built strong family farm operations that produced quality melons, tomatoes, peppers and other crops. He was active in the oil and gas, banking and real estate industries. Jimmie made his own successes through honest dealings with his neighbors and a tremendous amount of hard work. He was equally committed to his community.

Jimmie Icardo will also be remembered for the tremendous support he has given the California State University at Bakersfield over the years, in particular the University’s athletic programs. Jimmie ran barbecues to raise money for athletic scholarships, established a trust to benefit the program and supported the school in other ways. His strong support over several decades helped build CSU Bakersfield into the school it is today. The school’s decision to re dedicate its athletic center as the Jimmie and Marjorie Icardo Activities Center is only a start toward acknowledging how hard Jimmie worked over the years to support an important educational resource for Kern County.

Jimmie Icardo was a person you asked for help to get things done. His strengths and sense of commitment to our community are going to be missed by those who now have to measure up to his example.

REMOTE SENSING APPLICATION ACT OF 2001

HON. MARK UDALL
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. UDALL of Colorado. Mr. Speaker, today I am introducing the Remote Sensing Applications Act of 2001. This bill would help communities grow more smartly by giving them greater access to geospatial data — information from analysis of data from orbiting satellites and airborne platforms — from federal agencies such as NASA and commercial sources.

I am pleased that my colleague Representative Jim GREENWOOD is joining me as an original cosponsor of this bill.

Many of our cities, in Colorado and across the country, are experiencing problems with unchecked and unplanned growth — otherwise known as sprawl. Planning for growth is primarily the job of state and local government. But the federal government also has an important role to play — whether through funding transportation, infrastructure, schools, and the like; establishing federal tax incentives and disincentives for private development; or puffing in place federal permits and licenses that may contribute to or restrain sprawl.

The federal government can also help to provide information to help towns and cities grow in a smarter and more sustainable way. Wise community planning and management cannot happen if communities do not have information to make sound decisions. The federal government can bring valuable — and powerful — informational planning resources to the table.

One new space-age tool is the use of satellites to provide images of the Earth’s surface. We now have technology using geospatial data from satellites — that can produce very accurate maps that show information about vegetation, wildlife habitat, flood plains, transportation corridors, soil types, and many other things. Satellite imagery and remote sensing, when combined with Geographic Information System (GIS) and Global Positioning Satellite (GPS) system information, can be invaluable tools for use in such areas as land-use planning, transportation, emergency response planning, and environmental planning. Getting this integrated geospatial data to local communities would give planners important information they could use to avoid problems and help communities grow more smartly.

As a member of the House Science Committee and the Space and Aeronautics Subcommittee, I have learned about the technological opportunities available from federal agency activities and capabilities. The bill I am introducing would establish a program that will demonstrate the effectiveness of the use of integrated geospatial data to other governmental sectors.

The bill would establish in NASA a program of grants for competitively awarded pilot projects to explore the integrated use of sources of remote sensing and other geospatial information to address state, local, regional, and tribal agency needs. This proposed legislation would build on and complement an applications program that NASA’s Office of Earth Science announced earlier this year. Like NASA’s program, the Remote Sensing Applications Act would seek to translate scientific and technical capabilities in Earth science into practical tools to help public and private sector decisionmakers solve practical problems at the state and local levels.

The Remote Sensing Applications Act has the potential to begin to bridge the gap between established and emerging technology solutions and the problems and challenges that state and local communities face regarding growth management and other issues. I look forward to working with Rep. GREENWOOD and other Members of the House to move forward with this important initiative.

IN HONOR OF DOCTOR OFEM AJAH

HON. EDOLPHUS E. TOWNS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. TOWNS. Mr. Speaker, I rise in honor of Doctor Ofem Ajah for his dedication to the field of medicine and health education.

Doctor Ajah, born in Nigeria, was faced with many obstacles throughout his education. Born to peasant farmers, Ofem was required to help on the farm while he attended school. His family was further impoverished and his education interrupted when war broke out in Nigeria. He continued with his secondary education on an academic scholarship. His academic excellence propelled him to the University of Ilorin in Nigeria for both his undergraduate and medical degrees.

Ofem is and always has been involved in community affairs. In high school, he was editor-in-chief of the school magazine. His involvement continued into medical school where he served as Secretary of the Medical Students Union as well as Chief Organizer of the Nigerian Medical Students’ Games. After completing his medical degree, Ofem taught mathematics in a high school in Nigeria.

It was only after Ofem finished his medical internship that Ofem immigrated to the United States. As a distinguished physician, Ofem continued his medical training at the Interfaith Medical Center in Brooklyn where he became Chief Resident. Pursuing his inner quest for knowledge, Ofem obtained a specialty in gastroenterology.

For Ofem Ajah, being an accomplished doctor has enabled him to give of his free time. Dr. Ajah regularly donates his time and energy to educating everyone about colon cancer. He is also currently working on his second novel.

Ofem devotes himself to the love of his life, Francine Smalls-Ajah. Together, they have one daughter, Achayen, and two sons, Anijah and Tuniche.

Mr. Speaker, Doctor Ofem Ajah has devoted his life to serving his community through his excellent knowledge of medicine. As such, he is more than worthy of receiving our recognition today. I hope that all of my colleagues will join me in honoring this truly remarkable man.
Mr. BARR of Georgia. Mr. Speaker, this summer, the City of Emerson will move into a new City Hall facility. In honor of this occasion, I would like to recognize some of the unique historical facts underlying the development of this small and growing town in Bartow County, Georgia.

The history of Emerson, at least for human purposes, begins with its settlement by native Americans. At the time the first European settlers arrived, it was inhabited primarily by Cherokee Indian tribes, whose artifacts still line the shores of the Etowah River.

Following its settlement, Emerson began to grow into a community built on nearby railroad lines; rich agricultural lands; and near iron, graphite, and gold deposits. During the Civil War, the area in and around Emerson was crossed by numerous military forces as Sherman began his infamous drive toward the sea.

Returning war veterans found their homes near Emerson in desolation. Fortunately, the people had a spirit that could not be conquered. They began work rebuilding their town, and succeeded in having it incorporated in 1889.

That spirit of community and growth continues in Emerson today, as the town continues to expand to accommodate growth near metro Atlanta, while retaining its picturesque small town character. I join the citizens of Emerson in saluting their city as it passes an important milestone and moves into a new City Hall.

CONGRATULATIONS TO SUSAN CHASSON

HON. CHRIS CANNON
OF UTAH
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. CANNON. Mr. Speaker, I would like to congratulate Susan Chasson, a woman of great compassion. This afternoon Ms. Chasson will be awarded the Robert Wood Johnson Foundation Community Leadership Program Award. As a nurse and a victim’s advocate, Ms. Chasson was able to see that the system for assisting children who are victims of abuse was not working, and that the system itself often caused more trauma to the child than it helped. Susan acted on this and continued to school to obtain a law degree so that the very real possibility exists that you are not interested in doing whatever it takes to provide adequate patient care. Nurses generally don’t make a big fuss over working conditions. The fact that they are being asked to do procedures that they are not trained to perform is an important fact to remember.

How bad is the crisis? In the mid-90’s, short-sighted budget cuts, both by the government and by managed care companies, forced many hospitals that were staffed entirely by registered nurses to rely on lesser-trained practical nurses and nurse aides instead. Nurse aides, many of whom are not required to have high school diplomas, now constitute over one-third of nursing staffs in many hospitals. In my hometown of Chicago, the situation is so dire that housekeeping staff hired to clean rooms have been pressed into duty as aides to dispense medicine. Hospitals now routinely order nurses to care for 15 patients or more at a time, almost double the recommended patient load. Overworked nurses are being forced to juggle more tasks than any single person can be expected to handle, and are being asked to do procedures that they haven’t been adequately trained for.

Our nurses have reached the end of their rope. To quote Kim Cloninger, a registered nurse from Illinois: “I wake up every day and hope I don’t kill someone today. Every day I pray: God protect me. Let me make it out of there with my patients alive.” Or perhaps more tellingly, Tricia Hunter, executive director of the California branch of the American Nurses Association states: “I don’t know a nurse who would leave anyone they love in a hospital alone.”

Mr. Speaker, this is the face of nursing today. The nursing profession needs our help. As a profession, nurses have a rich history of doing whatever it takes to provide adequate patient care. Nurses generally don’t make a big fuss over working conditions. The fact that they are being asked to do procedures that they are not trained to perform is an important fact to remember.

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as president of the almost half million member Korean American Association of Greater New York and the obstacles that he had to overcome to attain such a prestigious position. Mr. Kim has overcome many personal obstacles that others might have stumbled upon. Contracting Polio in his native Republic of South Korea, Mr. Kim was stigmatized and labeled as "unlucky." In fact, Mr. Kim is self-educated because he chose to cut short his formal education as he saw it as a burden to his parents. Mr. Kim was also denied employment because of his disability and therefore found himself with a unique opportunity to found his own electronic repair shop. Mr. Kim, fascinated with America, studied for a test that would allow him to immigrate and have a job.

Mr. Kim is a firm believer in the American dream. America offered Andrew Kim a fresh start away from the cultural attitudes of South Korea. Mr. Kim embarked his way up in New York going from job to job.

Mr. Kim is also a devoted husband and father. He married his wife Theresa two years after coming to America. Together they have three children.

Mr. Kim’s biggest business success has come in the form of his Lisa Page store, a leading cell phone and pager retailer. Working in a diverse neighborhood has encouraged Mr. Kim to learn the numerous languages of his customers, which has led to him being a major community resource. Mr. Kim has donated uniforms for a softball team in his neighborhood and all the kids on the team respect Mr. Kim for his involvement and mentoring. In fact, after they won a trophy, the presented it to Mr. Kim as a token of their appreciation for all that he does in the community.

Mr. Kim has enjoyed growing recognition throughout the community, which has led him to become more involved in the community. He served as president of the Korean American Association of Mid-Queens. He recently found himself in a tough election campaign for president of the Korean American Association of Greater New York, where he was once again faced with many of the stigmas that he had left South Korea to escape. Nonetheless, Mr. Kim was able to overcome and win the prestigious post.

Mr. Speaker, Andrew Kim has overcome many obstacles in his life to become the president of a half million-member organization. For these achievements, he is more than worthy of receiving our recognition today as he is awarded a truly hard-earned honor. I hope that all of my colleagues will join me in honoring this truly remarkable man.

**RECOGNIZING THE CHIEFTAIN’S MUSEUM, ROME, GEORGIA**

**HON. BOB BARR**

**OF GEORGIA**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. BARR of Georgia. Mr. Speaker, it has been written that “Cherokee tradition held that anywhere three rivers met was holy, and Head of Coosa is just that.” The Oostanaula, Etowah and Coosa Rivers meet in the center of Rome, Georgia, which is noted as one of the top small cities in the country.

A leader in the Cherokee Nation, Chief Ridge chose to settle in the 1800’s with his wife, Sarah, on the banks of the Oostanaula near the point where the three rivers meet. The home was called “the Chief-tain.” Chief Ridge, who had been given the title “Major” by Andrew Jackson, agreed to sign the Treaty of New Echota in 1835 and left his home in Rome a year before “The Trail of Tears.” The Treaty of New Echota forced the Oostanaula to leave Georgia. Chief Ridge was left behind with his wife Sarah and son Andrew, as the federal government took the Cherokee Nation’s lands and forced them to move to Oklahoma.

The museum, built by Monrovian and Cherokee craftsmen, is an ornate collection of books on Major Ridge and the Cherokee Nation in Georgia are available at the museum. The period furniture and many artifacts, some found on the site as a result of archeological digs, and some donated by the public, make the museum a favorite place for school groups and those interested in the history of the Cherokee Nation.

The Cherokee called their home in North Georgia “the Enchanted Land.” More than twenty distinct groups of Cherokee Indians headed west along three separate routes. Today the general term “The Trail of Tears” is applied to all three routes; however, to the Cherokee, only the northern land route was called “The Trail Where They Cried.” The Cherokees of North Georgia are working diligently to make certain that we not forget the true “Native Americans,” and ensuring our children are aware of the culture of the people who were forced to sacrifice their “Enchanted Land.”

**IN MEMORY OF MR. ROBERT L. DILLARD, JR.**

**HON. RALPH M. HALL**

**OF TEXAS**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. HALL of Texas. Mr. Speaker, I rise to pay tribute to an outstanding citizen of the State of Texas, the late Robert L. Dillard, Jr. of Dallas, who died at the end of November, 2000. Mr. Dillard was an active and beloved member of his community—and he will be dearly missed.

Robert was born on September 30, 1913, the son of an independent olim. He followed in his father’s footsteps as a young man working in the oil fields of Texas to finance his education. His hard work paid off when he received his law degree from Southern Methodist University in 1935 and an LLM from Harvard in 1936. After receiving his degrees, Robert served as Assistant City Attorney for the City of Dallas from 1941-1945. From 1945 until his retirement in 1978, he worked in an executive capacity for Southland Life Insurance Company of Dallas, retiring as Executive Vice President.

Robert volunteered much of his time and talents to many civic endeavors. He served as president of the Board of Education of the Dallas Independent School District from 1961-1962, chairman of the Board of Trustees of Methodist Medical Center, chairman of the National Board of Directors of Camp Fire Girls, chairman of Region 10 Education Service Center, and a member of the Board of Directors of C.C. Young Retirement Home. He was also active in local and state government and in Highland Park United Methodist Church, where he served as a lay leader and a long-time Sunday School teacher.

A special part of Robert’s life, fifty-six years total, was devoted to membership in the Dallas Scottish Rite of Freemasonry. He was initiated in 1938 into Dallas Lodge No. 760 and held numerous leadership positions within the organization, including being a co-founder of a new Lodge in Dallas, serving as president of the Board of Directors of the Masonic Home and School of Texas and vice-chairman of the Board of Trustees of Texas Scottish Rite Hospital for Children. In 1953 he became a Thirty-Third Degree Inspectors General Honorary, in 1961 was a Grand Master of Masons in Texas, and in 1977 served as the Venerable Master of the Dallas Lodge of Perfection. As the culmination of his lifetime of dedication to the Freemasons, in 1995 Robert became one of only eight men in Texas in the past one-hundred years to receive the highest honor the Supreme Council of the Scottish Rite can bestow, the Grand Cross of Honor.

Robert left behind a loving family, including his wonderful wife of 63 years, Dunde, a son, two daughters, 13 grandchildren, and three great grandchildren. He was devoted to his family, his community and his Fraternity of Freemasons—and he leaves behind a legacy of dedication and service that will be remembered by many.

Mr. Speaker, Robert was one of a kind—and we will miss him. As we adjourn today, let us do so in memory of a great American and friend, Mr. Robert L. Dillard, Jr.

**IN RECOGNITION OF DANIEL LEVIN**

**HON. DANNY K. DAVIS**

**OF ILLINOIS**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to recognize one of Chicago’s finest citizens, Mr. Daniel Levin, who last week was named the American Jewish Committee’s 2001 Human Rights Medallion Award recipient.

Since 1963, the Human Rights Medallion has been awarded annually to leading Chicago citizens who have stood for the goals that have shaped the American Jewish Committee since it was established in 1906: human rights and equal opportunity for all, and constructive relations between America’s many religious, ethnic and racial communities.

Chairman of The Habitat Company, Dan Levin has been a real estate developer since 1957. He has been active in development and management activities involving in excess of
20,000 residential units, and has been principially responsible for the financing, structuring and equity syndication of the developments. In 1987, Dan Levin, with The Habitat Company, was appointed Receiver of The Chicago Housing Authority family housing development program by the U.S. District Court in Chicago. He is also the managing general partner of the East Bank Club, was South Commons, a 30-acre urban renewal site between 26th and 31st Street on the south side of the City. During his career, he has also developed a wide variety of subsidized and non-subsidized housing including, on the South Side, Quadrangle House and Long Grove House. Dan Levin also developed Wheaton Center, a 28-acre urban renewal development in downtown Wheaton. On Chicago's Gold Coast, he has developed, among other properties, Newberry Plaza, Huron Plaza, Asbury Plaza, Columbus Plaza and the Residences of Cityfront Center.

The largest urban redevelopment in which Dan Levin has been involved is the Presidential Towers complex located on a two square block area in the near west loop constructed in 1983. The land on which Presidential Towers was developed had become a skid row district of deteriorating residential hotels and industrial properties. Presidential Towers is considered to be a major factor in the revitalization of the area. Dan Levin graduated from the University of Chicago with a B.A. and J.D. degree. He is a member of the Visiting Committee of the University of Chicago School of Public Policy, a Trustee of WTTW, a member of the IIT College of Architecture Board of Overseers, a member of the Board of Trustees for the Jewish Reconstructive Rabbinical College, a Director of the American Jewish Committee, a Director of the Environmental Law and Policy Energy Center, a Director of the Multi-Family Housing Council, and is active in other community and professional organizations.

Dan Levin has proven that he is a man to emulate in both business and in public service. He has helped to create homes, jobs and other opportunities for people in need of a helping hand, and has played a major role in the economic growth and development of Chicago. It is with great pleasure that I commend Dan Levin for his years of service and congratulate him on being named this year's Human Rights Medallion awardee. Mr. Speaker, I ask that you join our colleagues, Dan's friends, his wife Fay and the rest of his family, the American Jewish Committee, and me in recognizing Dan Levin's outstanding and invaluable service to the Chicago community.

IN HONOR OF THE REVREND DOCTOR GLYSER G. BEACH
HON. BOB BARR
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. BARR of Georgia. Mr. Speaker, it is in doing what is right that a man encounters the essential challenges of life. Oftentimes the most difficult part of this challenge is the perception of what precisely is the “right” thing to do. The Honorable Dr. Tom Price is being honored for having done the right thing respecting the health of others. His service to others has been immeasurable and his people. As such, he is more than worthy of receiving our recognition today. I hope that all of my colleagues will join me in honoring this truly remarkable man.

RECOGNIZING THE HONORABLE
TOM PRICE, M.D.—STATE SENATE, GEORGIA

HON. BOB BARR
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. BARR of Georgia. Mr. Speaker, in recognition of his service to his community.

Mr. TOWNS. Mr. Speaker, I rise in honor of Reverend Doctor Glyser G. Beach, Senior Pastor of Vanderveer Park United Methodist Church, in recognition of his service to his community.
June 29, 2001

local users and workers with federal and state agencies to develop a public lands strategy. They contribute to land use planning to guarantee cooperation among these eclectic bodies and Emery County interests.

In our quest for a united effort to safeguard and protect our land for thoughtful use and community stability, I recognize the need for a joint endeavor to accomplish our objectives. I commend the Emery County Public Lands Council for acting as a model for all counties, states, and individuals who desire to preserve our nation’s beautiful natural resources.

IN MEMORY OF HENRY WADE

HON. RALPH M. HALL
OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. HALL of Texas. Mr. Speaker, I rise today to pay tribute to a great and legendary District Attorney, the late Henry Wade of Dallas, whose 35-year career brought him national attention for his handling of the murder trial of Jack Ruby and the landmark abortion case Roe v. Wade. Henry passed away on March 1 at the age of 86, leaving a powerful legacy that will be reviewed and remembered as part of our Nation’s history.

It is said “He never lost a case he personally prosecuted.” He took office in 1951 and compiled one of the Nation’s lowest rates of acquittal. In 1964, Henry led the prosecution of Jack Ruby, who shot to death Lee Harvey Oswald, the man charged with assassinating President Kennedy. Ruby died in prison while awaiting a death sentence. The 1973 Roe v. Wade decision establishing the right to an abortion began in Texas when a pregnant woman, identified in court documents as “Jane Roe,” sued Henry for enforcing a state law prohibiting abortion except when necessary to save a woman’s life.

These famous cases will be reviewed by attorneys, the courts, and students of history for years to come. The name, “Henry Wade,” evokes an image of a quintessential Texas prosecuting attorney—a formidable and compelling advocate in the courtroom—whoes folksy, country-boy demeanor disguised his keen intellect. Henry was a 1938 graduate of the University of Texas law school with highest honors, an editor of the law review, and a member of the Order of the Coif and Phi Beta Kappa. Throughout his illustrious career, Henry was a role model for countless young prosecuting attorneys—as well as a nemesis for defense lawyers.

Following law school, Henry practiced law, was an FBI special agent in the United States and abroad, and served in the Navy during World War II. After the war, he joined the district attorney’s office in Dallas, becoming chief felony prosecutor before winning election as district attorney. And the rest is history.

During World War II Henry served as a Fighter Director for Navy pilots. At one time he was at the top of the list in “splashes”—the term used for destroyed Japanese planes. Henry and his lifelong friend and fellow Navy officer, Thomas Unis, were inseparable during the War, and they both made a great and successful transition into public civilian life. The late Tom Unis prosecuted with Henry and later was a leading and highly regarded attorney and partner in the Dallas firm, Strasburger, Price, Kelton, Martin and Unis. I was privileged to litigate with both Henry and Tom and served with them at a couple of bases in the Pacific toward the end of World War II. I dearly respected and loved these two guys—two of all who knew them.

Mr. Speaker, Henry was a great and legendary District Attorney, a super American, and a good friend of mine. He will be missed by his children and their families, Michele Brandenberger and husband, Mike; William Kim Wade and wife, Suzanne; Henry Wade, Jr., and wife, Kristin; Wendy Ballew and husband, David; Bari Henson and husband, Dave; and 15 grandchildren. And he will be remembered. As we adjourn today, let us do so by paying our last respects to “The Chief,” as he was known around the Dallas courthouse—Henry Wade.

HONORING UNITED STATES NAVAL RESERVE CAPTAIN JAMES W. KELLEY, JR. UPON HIS RETIREMENT

HON. GARY G. MILLER
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. GARY G. MILLER of California. Mr. Speaker, I rise today to commend the achievements of United States Naval Reserve Captain James W. Kelley, Jr. and wish him well upon his retirement.

In August of 1970, a time in which military service was socially unfavorable, Captain Kelley enlisted in the United States Marine Corps. He served with the Sixth Marines in Camp LeJune, North Carolina and the Fourth Marines in the Republic of South Viet Nam.

He graduated from Villanova University with a Bachelor of Arts Degree in Political Science in 1975. He also holds a Master of Arts Degree in Criminal Justice from New York University and a Juris Doctorate Degree from Seton Hall School of Law.

In September of 1978, Captain Kelley received his commission as an Ensign in the Judge Advocate Corps. During his active duty military career, Captain Kelley served as a Navy Trial Counsel and a Staff Judge Advocate.

Captain Kelley was released from active duty in January of 1985, and he affiliated with Naval Reserve Intelligence Unit NISRO 2310. As an intelligence officer, he served with VP94, USS America, US CINCLANT, and Commander Naval Reserve Intelligence Command.

In August of 1987, Captain Kelley was selected as a Canvasser Recruiter Officer, and he reported to Naval Reserve Readiness Center in Houston, Texas. He was later reassigned to the Naval Reserve Recruiting Command Detachment THREE, Dallas, where he served as the Department Head for Enlisted Programs. In September of 1994, he reported to the Bureau of Naval Personnel, as the Branch Head for Total Force Recruiting Policy.

He was then transferred to the Chief of Naval Operations as an Assistant for Manpower Policy. In May of 1997, Captain Kelley was assigned as the Officer in Charge, Naval Reserve Recruiting Command Detachment FIVE, Washington, DC. Last November, he became the Commanding Officer of Naval Reserve Recruiting Command Area FIVE upon the redesignation of Detachment FIVE to area status.

This distinguished career has been celebrated with numerous awards, including, but not limited to, the Meritorious Service Medal (three awards), Navy Commendation Medal (two awards), Navy Achievement Medal (two awards), Meritorious Unit Commendation Ribbon (two awards), and the National Defense Service Medal (two awards). Additionally, he is considered to be a Navy Expert Rifleman and Navy Expert Pistol Shot.

Mr. Speaker, I ask that this 107th Congress join Captain Kelley’s wife Judy, and his children, Ryan, John, Kevin, and Megan, as he retires from the United States Naval Reserve.

CONGRATULATIONS, ALEXANDER CHRISTOFIDES

HON. DONALD M. PAYNE
OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. PAYNE. Mr. Speaker, I would like to ask my colleagues here in the U.S. House of Representatives to join me in honoring an outstanding public servant, Mr. Alexander Christofides, who was chosen to receive the Commissioner’s Citation, the Social Security Administration’s highest honor award.

This prestigious award is presented to those select employees who have made exceptional contributions meriting agency-wide recognition. Based on Mr. Christofides’ superior accomplishments and exemplary performance, he was chosen for this high honor. Mr. Christofides was selected based on his outstanding performance as an Operations Supervisor in the Clinton Hill District Office. He won praise for his innovative efforts in regard to service delivery to the customers of his District Office, which resulted in reduced waiting times and speedier claims processing. Furthermore, it was Mr. Christofides’ extraordinary leadership and motivational skills which enabled his entire staff to work together for the public good, in a true spirit of teamwork, towards a shared goal.

Mr. Speaker, Alexander Christofides embodies the finest tradition of government service. We are proud of his dedication to his work, his problem-solving ability and the high standards of excellence he has set in the workplace. Let us take this opportunity to extend our appreciation and congratulations to Mr. Christofides and to wish him continued success. We are indeed fortunate to have a man of his caliber serving in the Social Security Administration.
By Dita Smith, Washington Post Staff Writer

WHITWELL, Tenn.—It is a most unlikely place to build a Holocaust memorial, much less one that would get the attention of the president, let alone the subject of a book, that would become an international cause. Yet it is here that a group of eighth-graders and their teachers decided to honor each of the 6 million Jews killed in the Holocaust by collecting paper clips, turning them into a sculpture.

This is remarkable because, for one thing, Whitwell, a town of 1,600 tucked away in a Tennessee Valley just west of the Smokies, has no Jews. In fact, Whitwell does not offer much opportunity to practice racial or religious tolerance. The community is white, Christian and very fundamentalist,” says Linda Hooper, principal of the middle school, which has 225 students, including six blacks, one Hispanic, zero Asians, zero Catholics, zero Jews.

“During coal-mining days, we were a mixed community,” explains the town’s unofficial historian, Eulene Hewett Harris. “Now there are only a handful of black families left.” Whitwell is a town of two traffic lights, 10 churches and a collection of fast-food joints joined in a coal-mining drag. It was a thriving coal town until 1962, when the last mine closed. Some of the cottages built by the mining companies still stand, their paint now peeling and porches saggings. Trailers have replaced the houses that collapsed from age and neglect during lean economic times. Only 40 miles up the road is Dayton, where the red-brick Rhea County Courthouse made history during the 1925 Scopes trial, the “monkey trial,” in which teacher John T. Scopes was convicted of violating a Tennessee law that made it unlawful “to teach any theory that denies the Divine Creation” and to teach Darwinian evolutionary theory instead.

Almost everyone in this Sequatchie River Valley holds firmly to those beliefs under the watchful eyes of their church leaders. “Look, we’re not that far away from the Ku Klux Klan,” founded only 100 miles west, in Pulaski, Tenn., says Hewett Harris. “I mean, in the 1950s they were still active here.” Such is the setting for a Southern town collecting paper clips and turning them into a sculpture to remember the victims. The idea caught on, and the students began bringing in paper clips, from home, from aunts and uncles and friends, as the school’s computer expert, set up a Web page asking for donations of clips, one or two, or however many people wanted to send.

Two weeks later, the first letter arrived. One Lisa Sparks from Tyler, Tex., sent a handful. Then a letter landed from Colorado. By the end of the school year, the group had assembled 100,000 clips. It occurred to the teachers that collecting 6 million paper clips at that rate would take a lifetime.

HELP FROM AFAR

Unexpected help came in late 1999 when two German journalists living in Washington, D.C., stumbled across the Whitwell Web site. Peter Schroeder, 59, and Dagmar Schroeder-Hildebrandt, 58, had been doing research for an article about the U.S. Holocaust Museum, tracing concentration camp survivors to interview. Schroeder-Hildebrandt was author of “I’m Dying of Hunger,” a book about a camp survivor who died as the Nazis turned them into a sculpture.

The Holocaust project had its genesis in the summer of 1998 when Whitwell Middle’s 31-year-old deputy principal and football coach, David Smith, attended a teacher training course in nearby Chattanooga. A seminar on the Holocaust as a teaching tool for tolerance intrigued him because the Holocaust had never been part of the middle school’s curriculum and was mentioned only tangentially in the local high school. He came back and proposed an after-school course that would be voluntary. Principal Hooper, 59, loved the idea. “We just have to give our children a broader view of the world,” she says. “We have to crack the shell of their white cocoon, to enable them to survive in the world out there.” She was nervous about how parents would react, and held a parent-teacher meeting. But when she asked the assembled audience if they knew anything about the Holocaust, only a few hands went up, hesitatingly. Hooper, who has lived in Whitwell most of her life and had taught in the school for 35 years, had made 26 trips to the U.S. Holocaust Memorial Museum, tracing concentration camp survivors to interview. Schroeder-Hildebrandt was author of “I’m Dying of Hunger,” a book about a camp survivor who died as the Nazis turned them into a sculpture.

The entire school showed up. None of the eighth-graders had ever met anyone from outside the United States, let alone anyone from Germany. The couple soon had 46,000, filling several large plastic containers. The thing to do, they decided, was to drive them to Whitwell, 12 hours away. They received a hero’s welcome.

The Holocaust Web site came up during a routine search under “Holocaust.” The idea of American children in a conservative Southern town collecting paper clips intrigued the couple. They called the school, interviewed teachers and students by telephone, and wrote several articles for the nine newspapers they work for in Germany and Austria. Whitwell and the Schroeders were hit with a blizzard of paper clips from the two countries. The couple soon had 46,000, filling several large plastic containers. The thing to do, they decided, was to drive them to Whitwell, 12 hours away. They received a hero’s welcome.

The Schroeders were pleased they wrote a paperback about Whitwell. “The Paper Clip Project,” which has not been translated into
There are days when I wished we could just school, contains about 40 letters, with paper pose. The large package, from a German even if we did, we would go on. We cannot deniers, but we have never received a of students responds to the e-mails sent via phone number and e-mail address. One group Laura Jefferies is in charge of the ledger and has arrived from Germany, two smaller ones Yet, there is an obvious and warm bond be- ma'am'' and ''yes, sir.'' Even lunch in the knee-length shorts or skirts, worn with a dévore of large logos, solid-colored pants, at a Time.'' The neat white shirts conform to day meeting. All wear the group's polo shirt, green, 22 students gather for their Wednes- On a late—winter day, as the picturesque while, the counting goes on. It is daunting. myself into other people's shoes.'' Mean- scared,'' recalls Monica Hammers, a partici- camps. The students are blindfolded, tied to- jackbooted Nazi guards marched them off to kling of what people must have felt when the ''walk'' to give students at least an in- resent the millions of shoes the victims left in the shape of paper clips. There are poems, and 45 states, and include dozens of paper, even the stamps, in large white ring rels, which once contained Coca-Cola syrup, and were donated by the corporation, are kept track on a legal pad. Two other bar- counts each clip, drops it into the barrel, stands over a three-foot-high white plastic barrel, about the size of an oil drum. He accounts each clip, drops into the barrel, keeping track on a legal pad. Two other bar- rels, which once contained Coca-Cola syrup and were donated by the corporation, are filled to the rim and scaled with transparent plastic. ``It takes five strong guys to move one of those barrels,'' says Roberts. Against the wall this day are stacks and stacks of boxes. In early February, an Atlanta syna- gogue had promised 1 million paper clips, and sure enough, a week later a pickup truck delivered 84 boxes bought from an office sup- ply store. Half are still unopened.

All sorts of clips arrive—silver-tone, bronze-tone, plastic-coated in all colors, small ones, larger ones, triangular clips and artistic ones fashioned from wood. Then there are the designs made of paper clips, neatly pasted onto letter paper. If someone could not de- stroy the design, the students count the clips, then replace them in the barrel with an equal number purchased by the group. The art work is often so beautiful, and is bought for dollars arrives. The money goes to- ward buying supplies. Both Roberts and Smith won teacher awards last year, and they put their $3,000 in prize money also went toward supplies, and helping students pay for what has become an annual trip to Washington and the Holocaust Museum.

The students still file all letters, all scraps of paper, even the stamps, in large white ring binders. By now, 5,000 to 8,000 letters fill 14 neat binders. The letters are from 19 coun- tries and 45 states, and include dozens of rainbow pictures, and flowers, peace doves and swastikas crossed out with big red bars— in the shape of paper clips. There are poems, personal stories. Today,” one letter reads, “I am sending 71 paper clips to commemorate the 71 Jews who were deported from Buccegburg.” One group of students, a byproduct of a five-year-remember his mother and four siblings murdered by the Nazis in Lithuania in November 1941. “For my handicapped brother,” says another let- ter. “I’m so glad he didn’t live then, the Nazis would have killed him.” For my grand- mother,” says another, “I’m so grateful she survived the camp.” “For my son, that he may live in peace,” wrote a woman from Germany.

Last year, a letter containing eight paper clips came from President Clin- ton. Another arrived from Vice President Gore, a native of Tennessee, thanking the students for their "tireless efforts to pre- serve and promote human rights," but in- cluding no clips. Every month, Smith writes dozens of celebrities, politicians and sports teams, requesting paper clips. He gets many refusal, form letters indicating that the ad- dressee never saw the request. But clips do come: from Jimmy Carter (the "Happy Days" fame), Henry Winkler (the Fonz), Tom Hanks, Elle Wiesel, Madeleine Albright. Among the football teams that contributed are the New England Patriots ("The Happy Days" fame), Tampa Bay Buccaneers, the Indianapolis Colts and the Dallas Cowboys.

So many clips in memory of specific Holo- caust victims have come in that one thing has become clear: Melting them into a statue would be inconceivable. Each paper clip should represent one victim, the students be- lieve, and so a new idea has been hatched. They want to get an authentic German rail- road car from the 1940s, one that may have actually transported victims to camps. The car would be turned into a museum that would house all the paper clips, as well as display all the letters.

Dagmar and Peter Schroeder plan to travel to Germany next week to find a suitable rail- road car and have it transported to Whitwell. They are determined to find such a car and the necessary funding. Like counting the clips, the task is daunting.

WHITWELL’S LEGACY

Whatever happens, for generations of Whitwell eighth-graders, a paper clip will never again be just a paper clip, but instead carry a message of patience, perseverance, empathy and tolerance. Roberts, asked what she thought she had accomplished with the project so far, said: “Nobody put it better than Laurie Lynn [a student in last year’s class]. She said, ‘Now, when I see someone, I think before I speak, I think before I act, and I think before I judge.’” And Roberts adds: "It may not have been the best assignment, but it may have been the best assignment. That was enough." Drew pipes up: "Well, I’ve already tried that, but that kid—that, you know, he just sits there and stares. Do you know, can I do?" "Keep it at—it don’t give up," says Roberts.

EXTENSIONS OF ECONOMIC DEVELOPMENT INITIATIVES FOR RURAL AMERICA

HON. JOHN M. MCHUGH
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. MCHUGH. Mr. Speaker, as a life-long resident of Northern New York, I have watched the 24th Congressional District thrive as a bustling arena of agricultural production, aluminum processing, automobile parts fabrica- tion, paper-making, tourism and textile manufacturing.

Regrettably, in the last decade or so, the trends have been altered dramatically and the manufacturing sector—particularly in the Northeast—has diminished considerably. Fur- thermore, our small family farmers have seen a dramatic decline in the price they receive for their hard-earned production, forcing many of them to abandon their beloved way of life. The statistics, unfortunately, bear this out; earlier this month it was reported that Northern New York continues to have the State’s highest un- employment rate. While the unadjusted state- wide unemployment rate was 4 percent and the national rate was 4.1 percent, the rate in the ten counties in my rural Northern and Cen- tral New York District ranged as high as 9.1 percent.

Mr. Speaker, we are a proud and inde- pendent people who have long relied on our ingenuity and integrity to make our way through life. While we have accomplished
much through our resourcefulness, there is more that can, and must, be achieved to re-
turn growth. And that’s what we think ‘God’s country.’ That is why I rise today to introduce
a legislative package of rural economic develop-
ment initiatives that I believe will create at
least the initial incentives to bring new busi-
ness and industry opportunities—and the at-
tendent job creation—to our rural commu-
nities.

First, the use of high-speed Internet access
is no longer limited to the wealthy or so-called
computer techies. It has fast become a main-
stay of everyday life, particularly in the busi-
ness world. Accordingly, the first initiative I
am introducing, the Rural America Digital Ac-
cessibility Act, contains four incentives to help
bridge the digital divide in rural America.
The technology bond initiative would provide
a new type of tax incentive to help state and
local governments invest in a telecommuni-
cation structure and partner with the private
sector to expand broadband deployment in
their communities, especially underserved
rural areas. The broadband expansion grant
initiative, based on these bonds by utilizing
grant and loan guarantees in underserved
rural communities to accelerate private-sector
deployment of high-speed connections so that
our residents can access the Internet with a
local, rather than a long-distance, phone call.
The third initiative targets funding for research
and development of new technologies designed to address a host of issues that
affect the agricultural marketing chain to capture
the skilled labor needed by American
farmers and ranchers to the United States and preclude what
we believe may be the only solution to this problem: the so-called ‘travel
merel’ to cross the border to pro-
vide the skilled labor needed by American
companies. In these instances, there appears
to be no justification for the onerous delays they face in gaining timely entry into the
United States to perform their duties. To
streamline this process, the GAO recommends
elimination of the separate requirement that
employers first submit a Labor Condition Ap-
plication (LCA) to the U.S. Department of
Labor for certification and then to the INS
along with their petition for H–1 B workers. My
legislation corrects this situation. In addition to
submitting the LCA to Labor, employers would be
required to submit the immigration petition
and the LCA simultaneously to INS, which will
continue to review and evaluate the informa-
tion contained on both the LCA and the peti-
tion.

Another component of the package I am in-
troducing will give statutory authority to the al-
ready-existing National Rural Development
Partnership and State Rural Development
Councils. The NRDP and its principal organi-
cations have nurtured in the area of economic
development efforts with the tourism potential
to market and promote the abundance of
the region’s visibility, economic development,
and overall quality of life. But the full potential
of the industry remains untapped. Some of the
factors that have limited the benefits to be re-
alized from the tourism industry include the
vastness of the region, the lack of reliable infor-
mation about the region’s assets and resources and, per-
haps most importantly, the lack of regular data
upon which to base policy or marketing deci-
sions.

While considerable effort has been under-
taken at the State and local levels to promote
development and jobs for the region, as well as
to market and promote the abundance of
tourist related attractions and events, we con-
tinue to lag integration of current economic
development efforts with the tourism potential
of the region.

It is for these reasons that I am proposing
establishment of the Northern New York Trav-
el and Tourism Research Center at the Wil-
liam C. Merwin Rural Services Institute at the

EXTENSIONS OF REMARKS

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Another incentive involves an expansion of the work opportunity tax credit to include small businesses located in, and individuals living in,
communities experiencing population loss and low job growth rates such as those found in rural Northern and Central New York. Approxi-
mately 100 such communities would be des-
signed, subsidizing some 8,000 jobs in each area.

Mr. Speaker, when employees face layoffs
or the shutdown of their place of employment,
thereby losing some or all of their family in-
come, the one thing that provides them some
small sense of security is severance pay. While
this is without a doubt a welcome help-
hand in a time of need, unfortunately, the
recipients often lose a third of their severance
pay to taxes because they are pushed into a
higher tax bracket. My legislation excludes
from gross income up to $25,000 of any quali-
""
State University of New York at Potsdam, New York. The Center would fill the critical deficiency we continue to place a crucial role in the economic revitalization of Northern New York. The final element of my job creation and assistance legislation mandates the General Accounting Office to examine and report to Congress on how best to address the long-term problems resulting from a lack of infrastructure and a lack of venture capital in rural areas. The study will focus on the need for expanding existing economic development and small business loan/grant programs and will include tourism and agriculture-related projects. The study will help us better identify the problems that presently exist and evaluate how infrastructure, venture capital and federal programs can be better utilized to enhance rural areas.

Mr. Speaker, during the nearly nine years I have been honored and privileged to represent the residents of Northern and Central New York, in the U.S. House of Representatives, I have joined in a wide variety of efforts to help revitalize rural America—from tax relief for individuals and the business community, protection and enhancement of the environment and addressing our energy problems to preserving our health care system, promoting fair international trade and enhancing transportation opportunities.

Most recently, since the start of the 107th Congress in January, I have spearheaded several efforts to help rural America and its citizens. I am involved in legislative initiatives that would assist our communities recover and develop property known as brownfields, and are designed to complement broader, more comprehensive brownfields legislation moving through Congress. The Brownfields Redevelopment Incentives Act provides direct federal funding, loans and loan guarantees, and tax incentives to increase the amount of support available to assess and clean pieces of abandoned, idled, or underused property where expansion, redevelopment, or reuse is complicated by environmental contamination or perceived contamination.

I have also joined with several of my House colleagues from New York in introducing the Acid Rain Control Act. By reducing sulfur and nitrogen emissions, the measure would result in more than $60 billion in annual benefits by providing improvements to human health, visibility, aquatic and forest ecosystems, and buildings and cultural structures. At the same time, the EPA estimates costs associated with implementation of the Act to be about $5 billion. I think it is safe to say that this is the kind of cost-effective legislation we strive to achieve, with 12 times the benefits for the costs involved.

A third initiative I introduced earlier this year, the Self-Employed Health Affordability Act, provides for the full deductibility of health insurance costs for the self-employed. Current law provides for 100 percent deductibility in 2003, but we need to make the change immediately in order to bring relief to the many hard-working small business and farm families who must pay their own health insurance premiums. Coup with the estate tax reform, rate reductions and pension improvements, among other tax code changes recently enacted into law, this is another step toward helping our taxpayers keep more of their hard-earned money and decide for themselves how it should be spent.

Mr. Speaker, as I stated earlier, my constituents are proud and resourceful. They, too, have continued to take the initiative to help themselves and their communities develop the tools necessary to fulfill our mutual goals.

The economic development package I am introducing today is simply one more step, albeit of a more comprehensive nature, that I am taking in a long line of legislative initiatives designed to assist our communities manage the wide-ranging challenges faced by rural America in the 21st century.

REMEMBERING WAYNE CONNALLY

HON. RALPH M. HALL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. HALL of Texas. Mr. Speaker, I rise today to recognize the late Texas Senator Wayne Connally, my friend and colleague with whom I served in the Texas State Senate, who died on December 20. Wayne was a member of the famous Connally political family and the brother of the late Governor John Connally and Judge Merrill Connally—and was an esteemed public servant in his own right.

Wayne was born and raised in Floresville, Texas, and educated in public schools in Floresville and San Antonio. He attended the University of Texas at Austin before enlisting in the U.S. Army Air Corps during World War II, after which he ranched in his native region. He viewed public service as a tenet of good citizenship and was elected to the Texas House of Representatives in 1964 and elected to the Texas Senate two years later. He represented Senate District 21 from the 59th through the 62nd Texas Legislatures and was honored by his peers as “Governor for a Day” on October 7, 1971. I served with Wayne in the Texas Senate. He was a temic Senator—true to state values and true to state law. He was also so very capable of friendship, and he was always responsive to anyone in need.

Wayne’s over-riding goal was to uphold integrity and responsibility in government. He worked with his brother, Governor Connally, to create the first upper-level higher education institution in Laredo in 1970, the first step toward establishing Texas A&M International University in 1993.

A tall, imposing figure who spent his life working as a rancher and a public leader, Wayne embodied the Texas persona—and he leaves behind a legacy of faithful service to the people of his native state that he so loved. He will be missed by his many friends and family, including his children, Wyatt, Pamela and Wesley; four grandchildren; his brother, Merrill Connally; and sister, Blanche Kline.

The Texas State Senate introduced a resolution on March 19, Wayne’s birthday, recognizing his many contributions during his years of public service and his devotion to the State of Texas. Mr. Speaker, when the House adjourns today, I ask that my colleagues from Texas and in the Congress join me in also paying tribute to this outstanding American, the late Wayne Connally.

CONGRATULATIONS TO MRS. AUDREY WEST

HON. DONALD M. PAYNE
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. PAYNE. Mr. Speaker, I would like my colleagues here in the U.S. House of Representatives to join me in paying tribute a very special person, Mrs. Audrey West, who will be honored at a Gala Retirement Celebration on Friday, June 29, 2001 by the Newark Pre-

school Council, Inc. Board of Directors and Head Start Policy Council for her eleven years of dedicated service.

Audrey West began her Head Start career in September 1990. She has brought a wealth of administrative experience in providing social services and human development strategies to the operational goals of the Newark Preschool Council. Mrs. West’s leadership encompasses a broad vision and wide range of knowledge, expertise, mobilization skills and community strengthening approaches, which were vital to the successful implementation of new programs demonstrating the mission of the New-

ark Preschool—to prepare our children to enter kindergarten LEARN READY TO READ. As the Executive Director of the Newark Preschool Council, Mrs. West has led an agency that is on the cutting edge of the national movement to develop family advocacy and sound educational beginnings for our children as they begin their successful journeys toward good citizenship. Mrs. West’s accomplishments, role modeling and mentorship certainly serve as an outstanding example of generosity and community involve-

ment.

A native of Trenton, New Jersey, Audrey West received her Bachelor of Arts Degree from Howard University, Washington, D.C. Ms. West holds a Master’s Degree in Public Ad-

ministration from Rutgers University. She served ten years as the Director of the New-

ark Division of Public Welfare (1968–1978) and ten years as the Deputy Director and Di-

rector of the New Jersey Division of Public Welfare in the Department of Health and Human Services (1978–1988). A true pioneer, she was the first African American to serve in these positions. Audrey West was also Special Assistant to the Commissioner in the New Jer-

sey State Department of Personnel (1988–

1990).

Mr. Speaker, we in New Jersey are so proud of Mrs. West and it is a pleasure to share her achievements with my colleagues here in the U.S. House of Representatives. Please join me in expressing our congratula-

tions to her for a job well done and our best wishes for continued health and happiness as she begins a new phase of her life.

TRIBUTE TO ROSANNE BADER OF POMONA, CALIFORNIA

HON. GARY G. MILLER
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. GARY G. MILLER of California. Mr. Speaker, I rise to pay tribute and honor the
accomplishments of Rosanne Bader, of Pomona, California. Mrs. Bader is retiring after thirty-two years of dedicated service to the Pomona Unified School District. From her first assignment in 1969, as a teacher at Diamond Bar Elementary School, to her current position as Principal of Diamond Point Elementary School, Mrs. Bader has demonstrated outstanding teaching skills, supervisory expertise, and leadership in the development of innovative educational programs. She was the Teacher of the Year nominee in 1979 and 1980. Numerous, well deserved honors, have been awarded to Mrs. Bader for her involvement in professional, civic and youth organizations. Mrs. Bader was recently appointed to Mount San Antonio Community College’s Board of Directors.

Mrs. Bader’s impressive record of academic, career and community service has earned the admiration and respect of those who have had the privilege of working with her. I ask that this 107th Congress join me to congratulate her on these accomplishments and thank her for her service to our community.

REVEREND VIRGINIA C. HOCH’S MEMORIAL DAY TRIBUTE

HON. BENJAMIN A. GILMAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. GILMAN. Mr. Speaker, I rise today to share the insights of a post-modern preacher and a veteran, Reverend Virginia C. Hoch, concerning Memorial Day patriotism. In order to share Rev. Hoch’s thoughts with my colleagues, I request that her remarks be inserted and printed in the RECORD at the end of my statement.

Reverend Hoch delivered this moving tribute for the Memorial Day Observance in the Goschen, NY, United Methodist Church on June 28, 2001. Her eloquent thoughts of the proper way to commemorate Memorial Day. Rev. Hoch contrasted, what she termed, “Pathetic Patriotism” with “Prophetic Patriotism.” The former, she described as exhibiting only the pathos of war and elevating the gore of the battlefield to idolatrous levels. The latter, she explained as working for a vision of the nation which embraces the achievements, the potentials, and diversities of our inhabitants, and in which the fortunate share their blessings with those whose lives seem unblessed.

Reverend Hoch, in her sermon, discussed her own personal, familial anecdotes. She spoke of her father’s experiences as a B–17 pilot in the then U.S. Army Air Corps, and his disobedience cost him his rank, his timely discharge from the service to his family. He was not working in the belly of the airship, and thus half of his crew would not survive the mission. Dad broke formation, returned to base, and saved the lives of his crew. That disobedience cost him his rank, his timely return to the states, and his career in the Air Corps. But it saved the American military men.

One of those men, the only one besides my father who still survives, is Father Ken Ross, a former POW, who is now a Catholic priest in East Chester, NY. My Dad lived to save lives, not to destroy them. That is a brand of patriotic patriotism that I commend, not because he disobeyed an order, but because he used his integrity to weigh the costs, and found that he could only choose life for his crew over his own ease and good fortune.

If you may not know that I am also a veteran. Prior to entering the ministry, I served as a flight Nurse in the US Air Force during the so-called Vietnam Conflict. And it is from this perspective of the era that I speak. For Memorial Day is about the sacrifices of men and women of all our nation’s wars, starting with the Revolution. But we often forget or ignore these men and women who fought in wars that were popular with our country.

Despite the fact that it took Congress over fifty years to establish a WW II monument, the two World Wars were quite uncontested in America, as people felt the need to protect our growing democracy. As the better parts of the newly-released film “Pearl Harbor” call to remind us, the path of government was under attack, and there was a sense of urgency among all people to protect and defend our land. But then the picture got fuzzy. With Korea, we were moving to a new concept: the defense of other lands against a growing ideology with which we did not agree—a frightening entity to our national self-image and its ideology. The pathos of patriotism had faded, and the prophetic national pride was still embryonic. We portrayed ourselves as a people of all called Kurdistan. By the end of Vietnam, our country was divided in its self-image and its ideology. The pathos of patriotism had faded, and the prophetic national pride was still embryonic. Our women and men went to fight an undeclared war for an undefined purpose. And they returned, not to the hero’s welcome which could have helped to put our gory memories into some sort of higher perspective, but to shame and hiding more met as renegade felons than as revered fellows. And thousands of our brothers, sisters, fathers, mothers, sons, daughters, and friends remained as dead fodder for distant turf—so many undisclosed that MIA became a cause and a banner for decades to come. Countless thousands of our Vietnam vets, death upon a foreign shore would have been preferable to the reality of life in a hovel of memory and torment. The pathos of patriotism had shown us its worst side, and we were not enthused.

Since Nam we have seen the ‘sterile’ wars in Grenada, the Persian Gulf, and Bosnia. We have watched on TV as missiles travelled as if they were blips on a video-game screen, and we have not understood in our souls that the war was complete, as our minds and bodies were. We still harbor a patriotism of pathos—that pathetic allegiance which believes that if we are there, then we belong, and all losses are okay because the war is ‘holy’ to us; but to many, war still has all the allure of a video arcade to young boys on holiday.

EXTENSIONS OF REMARKS

June 29, 2001

We portray is pathetic patriotism. We only exhibit only the pathos of war: those sentiments which long for the comradery of wars, which have watched on TV as missiles travelled as if they were blips on a video-game screen, and we have not understood in our souls that the war was complete, as our minds and bodies were. We still harbor a patriotism of pathos—that pathetic allegiance which believes that if we are there, then we belong, and all losses are okay because the war is ‘holy’ to us; but to many, war still has all the allure of a video arcade to young boys on holiday.

Today, we gather amid the pageantry, parades, and pennant to recognize and remember those persons who have given their measures of devotion to protecting our national interests, the greater part of which is the task of military service, as a people called American. Yet we do not honor them nor commend ourselves if the sole patriotism we portray is pathetic patriotism. We only bring their and our sacrifices into full bloom when the proper patriotism we put forth is prophetic patriotism.

To be patriotic in our patriotism is to exhibit only the pathos of war: those sentiments which long for the comradery of wars of yesteryear, and which elevate the gore of the battlefield to idolatrous idolatry. While it may be understandable that some may seek the regular companionship and commemoration of only those of like mind and experience, the pathos of living only in past glories is to deny the truth of that for which even they once fought: for the people of our country, and indeed for the people of all called Kurdistan. By the end of Vietnam, our country was divided in its self-image and its ideology. The pathos of patriotism had faded, and the prophetic nationalism was still embryonic.

Rather, we are to work, pray, and long for a prophetic patriotism: a vision of our nation which weaves our accomplishments, our potentials, and diversities of the peoples of America as a foundation for sharing our blessings with those whose lives seem unblessed by any Divine Being, and sharing our strengths with those whose weaknesses are evident that they live on the margins of existence. It is this kind of patriotic patriotism to which all of our celebrations ought to point.

Two years ago, Mayor Mathews told of her uncle’s struggles and triumphs in a war once fought. Today, I’d like to tell you about my first hero—my Dad.

My father was a decorated B–17 pilot in the then US Army Air Corps, receiving the Air Medal, the Theatre Medal, and the Distinguished Flying Cross. He was a lieutenant, stationed with the 306th Bombardier Group of the 8th Air Force in Thurleigh, England. He flew 35 missions, returning one time with 60 shrapnel holes in his craft. His flight log is replete with the stuff that makes the hair stand on end and the heart feel a rush of humor. On one occasion, they dropped unused payloads into the English Channel, straddling the bomb bay and throwing bombs on the deck of the passenger ship. On another, Dad missed a mission due to a bad sinus infection, and that day his crew was shot down, and the person in his seat was killed. But one story stands out in my mind as the man who my father is, and it is a prime example of prophetic patriotism. On one of the missions, which averaged eight hours in length, when his ‘Flying Fortress’ reached its altitude, he realized that his crew was not working in the belly of the airship, and thus half of his crew would not survive the mission. Dad broke formation, returned to base, and saved the lives of his crew. That disobedience cost him his rank, his timely return to the states, and his career in the Air Corps. But it saved the American military men.

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In the House of Representatives. Thursday, June 28, 2001.
EXTENSIONS OF REMARKS

Mr. WAXMAN. Mr. Speaker, today the Los Angeles City Council Chamber will be dedicated in the name of John Ferraro, a highly respected and beloved City Council member who died on April 17, 2001.

John made a name for himself long before he joined the City Council in 1966. The young-est of eight children, he won an athletic scholar- ship to the University of Southern California where he played football for the USC Trojans. He was an all-American tackle and played in Rose Bowl games in 1944, 1945, and 1947.

He was named to the National Football Foun-dation Hall of Fame in 1995, and the Rose Bowl Hall of Fame in 1996. More recently, he was named to the Best College Football Team of the Cen-tury by the Los Angeles Times.

After earning a Bachelor of Science Degree in Business Administration, John established a successful insurance brokerage firm in Los Angeles and became active in Democratic politics. In 1966 he was appointed to serve on the Los Angeles City Council after Council member Harold Henry died. He subsequently won nine elections and was serving his thirty-fifth year when he passed away. He served as City Council President longer than anyone in Los Angeles history.

John’s political skills were sharply honed and he made important contributions to the City of Los Angeles, including his crucial role in bringing improvements of the Los Angeles Zoo and drawing the 1984 Olympics and the Democratic National Convention 2000 to Los Angeles.

In addition to serving on the City Council, John served as President of the League of California Cities and Independent Cities Asso-ciation, and he served on the boards of the National League of Cities, the Museum of Contemporary Art, the Autry Museum of Western Heritage and the Hollywood-Wilshire YMCA.

John’s dedication to public service brought him numerous awards, including the Central City Association’s 2000 Heart of the City Award, the L.A. Headquarters Association 2000 Enduring Spirit of Los Angeles Award, the USC General Alumni Association’s Asa V. Galen’s Hall of Fame Award, the Los Angeles Marathon’s 1996 Citizen of the Year Award, the All City Employees Benefits Service Asso-ciation 1995 Employee of the Year, and the GTE State Forum Award for Community Serv-ice.

John’s loss has been felt deeply by the resi-dents of Los Angeles and the Council members who were fortunate to serve with him. He never grandstanded. He didn’t expect credit for his accomplishments. He worked quietly and effectively to achieve his goals. He was very simply a decent man and skilled advo-cate for the people of Los Angeles. The Dedica-tion of the Council Chamber will help keep his memory and the generous contributions he made alive as a model for the future.

TRIBUTE TO THE LATE JOHN FERRARO

HON. HENRY A. WAXMAN
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001
ON THE DEATH OF PATRICK B. HARRIS, FORMER STATE LEGISLATOR AND CIVIC LEADER OF ANDERSON, SOUTH CAROLINA

HON. LINDSEY O. GRAHAM
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. GRAHAM. Mr. Speaker, I am saddened to report to the House of Representatives the death of Patrick B. Harris of Anderson, South Carolina. He is survived by his wife of more than 60 years, Elizabeth.

I had the distinct honor of serving with Mr. Pat' in the South Carolina House of Representatives where he served for more than twenty years. It truly was an honor to serve with him as he was a tireless advocate on behalf of senior citizens and people with mental illness.

Among his numerous accomplishments in public office were the creation of a property-tax homestead exemption for people older than 65, creating a sales tax exemption on prescription drugs for those age 50 and older, making elder abuse a crime, and allowing people age 65 and older to attend state colleges and universities tuition-free.

Born in Mount Carmel in 1911, Mr. Pat attended Anderson Boys High School where he played both football and baseball.

He began work when he left Presbyterian College in Clinton, South Carolina to work in a textile mill during the Great Depression. He also owned and operated a local gas company and for many years was involved in real estate.

Mr. Pat was awarded numerous honors and awards during his life including an honorary Doctor of Laws degree from Erskine College and the Order of the Palmetto from former Governor Carroll Campbell.

With the passing of Pat Harris South Carolina has lost an extraordinary statesman and gentleman. I’m sure other Members of the House join me in sending our condolences to his family and loved ones.

EXTENSIONS OF REMARKS
ON THE PEOPLE’S REPUBLIC OF CHINA’S ROLE IN THE EXECUTION OF PRISONERS AND TRAFFICKING OF THEIR ORGANS

HON. FRANK R. WOLF
OF VIRGINIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. WOLF. Mr. Speaker, I want to share with you this statement presented before a hearing at the House International Relations Subcommittee for Human Rights and International Operations on June 27, by Wang Guoqi, a physician from the People’s Republic of China. Mr. Wang was a skin and burn specialist at the Paramilitary Police Tianjin General Brigade Hospital. Mr. Wang writes that his work “required me to remove skin and corneas from the corpses of over one hundred executed prisoners, and, on a couple of occasions, victims of intentionally botched executions.”

In a very graphic example, Mr. Wang describes how he harvested the skin off of a man who was still living and breathing.

What kind of government skins alive its own citizens?

I urge our colleagues to read this statement and to keep this egregious abuse of human rights in mind when voting on China’s trade status this year.

TESTIMONY OF WANG GUOQI, FORMER DOCTOR AT A CHINESE PEOPLE’S LIBERATION ARMY HOSPITAL

My name is Wang Guoqi and I am a 38-year-old physician from the People’s Republic of China. In 1981, after standard childhood schooling and graduation, I joined the People’s Liberation Army. By 1984, I was studying medicine at the Paramilitary Police Paramedical School. I received advanced degrees in Surgery and Human Tissue Studies, and consequently became a specialist in the burn victims unit at the Paramilitary Police Tianjin General Brigade Hospital in Tianjin. My work required me to remove skin and corneas from the corpses of over one hundred executed prisoners, and, on a couple of occasions, victims of intentionally botched executions. It is with deep regret and remorse for my actions that I stand here today testifying against the practices of organ and tissue sales from death row prisoners.

My involvement in harvesting the skin from prisoners began while performing research on cadavers at the Beijing People’s Liberation Army Surgeons Advanced Studies School, in Beijing’s 304th Hospital. This hospital is directly subordinate to the PLA, and so connections between doctors and officers were very close. In order to secure a corpse from the execution grounds, security officers and court units were given “red envelopes” with cash amounting to anywhere between 200–500 RMB per corpse. Then, after execution, the body would be rushed to the autopsies room rather than the crematorium, and we would extract skin, kidneys, livers, bones, and corneas for research and experimental purposes. I learned the process of preserving skin, livers, and corneas from the higher court personnel. We scheduled ten to fifteen operations a day, and after the operation we would process the organs for sale. Out of the four samples, one basic and sub-group blood match was found for the recipient, and the prisoner’s kidneys were deemed fit for transplantation.

One, age, profession, a renal problem, our hospital held a joint meeting with the urology department, burn surgery department, and operating room personnel. We scheduled tentative plans to prepare the recipient for the coming kidney and discussed concrete issues of transportation and personnel. Two days before execution, we received final confirmation from the higher court. On the day of the execution we arrived at the execution site in plain clothes. In the morning, the donating prisoner had received a heparin shot to prevent blood clotting, and so the organs were then cut open. We obtained the organs and extracted the kidneys. When all military personnel and condemned prisoners would arrive at the site, the organ donating prisoners would walk forth for the first time. At the execution site, a colleague, Xing Tongyi, and I were responsible for carrying...
June 29, 2001

the stretcher. Once the hand-cuffed and leg-cuffed prisoner shot, a bailiff removed the leg irons. Xiong Tongyi and I had 15 seconds to bring the executee to the waiting ambulance. Inside the ambulance, the best ultrasound was removed, both kidneys, and rushed back to the waiting recipient at the hospital. Meanwhile, our burn surgery department waited for the execution of the following three prisoners, and tried to preserve their corneas to the crematorium where we removed skin in a small room next.

Although I performed this procedure nearly a hundred times in the following years, it was an incident in October 1995 that tormented my conscience to no end. We were sent to Hebei, a province more than one hundred miles away from the capital. We arrived one day before the execution of a man sentenced to death for robbery and the murder of a would-be witness. Before execution, I administered a shot of heparin in the vein to prevent blood cloting to the prisoner. A nearby policeman told him it was a tranquilizer to prevent unnecessary suffering. But at the execution, I administered a shot of heparin in the skin. We arrived one day before the execution. The man sentenced to death for robbery and the murder of a would-be witness was still breathing and his heart continued to beat. The prisoner was nervous, poorly trained, or intentionally misfired to keep the organs intact. The prisoner had not yet died, but instead lay convulsing on the ground. The doctor ordered us to take him to the ambulance anyway. We were ordered to take him to the ambulance anywhere. When the doctors Wang Zhifu, Zhao Qingfeng and Liu Qingyao extracted his kidneys quickly and precisely. When they finished, the prisoner was still breathing and his heart continued to beat. The execution commander asked if they might fire the second shot to finish him off, to which the county court staff replied, “Save that shot. With both kidneys out, there is no way he can survive.” The urologists rushed back to the hospital with the kidneys, the county staff and executioner left the scene, and eventually the paramilitary policemen disappeared. We burned the organs and skins over one hundred prisoners in a place prepared in a small room next to the crematoriums. Whatever impact I have made in the lives of burn victims and transplant patients does not excuse the unethical and immoral manner of extracting organs.

To no longer participate in the organ business, and my wife supported my decision. I submitted a written report requesting reassignment to another job. This request was flatly denied on the grounds that no other job matched my skills. I began to refuse to take part in outings to execution sites and crematoriums, to which the hospital responded by blaming and criticizing me for my refusals. I was forced to submit a pledge that I would never expose their practices to the public. I have always cared about the process by which the organs and skin were preserved and sold for huge profits. They threatened me with severe consequences, and added to train me to become a medical technician. Until the day I left China in the spring of 2000, they were still harvesting organs from execution sites.

I hereby expose all these terrible things to the light in the hope that this will help to put an end to this evil practice.

EXTENSIONS OF REMARKS

TRIBUTE TO THE MOUNT HOPE HOUSING COMPANY, INC.

HON. JOSE E. SERRANO

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. SERRANO. Mr. Speaker, I rise today to pay tribute to the Mount Hope Housing Company, Inc. (MHHC) as they celebrate their 15th anniversary today.

The Mount Hope Housing Company, Inc. was formed in 1986 as a part of intense organizing efforts of residents and community groups in the Mount Hope neighborhood in the South Bronx. Focusing first on the pressing need for the availability of affordable housing, Mount Hope completed one of the first housing tax credit projects in the United States in 1986 and to date has rehabilitated over 1,400 housing units. As a result of this intense and comprehensive effort, one in six residents of the Mount Hope neighborhood lives in a building operated by the MHHC.

Since its founding, the MHHC has continued to enhance its abilities and expand its services to the community. In 1994, the MHHC opened a thrift shop. One year later, the Mount Hope Primary Care Center opened. And in 1996, the New Bronx Employment Service was inaugurated, followed by the Neighborhood Housing Service/MHHC Home Maintenance Training Center in 1998. And now MHHC is planning to develop a community center that will house programs for area youth like a Boys and Girls Club, affordable child care and a state of the art center for computer training.

Mr. Speaker, the Mount Hope Housing Company, Inc. is another fine example of a community organization dedicated to empowering Bronx residents and revitalizing the community, using a comprehensive, self-sustaining and long-term approach. Its success reminds us all of the contributions local organizations have made to improving the lives of citizens in their respective communities.

Mr. Speaker, I ask my colleagues to join me in paying tribute to the Mount Hope Housing Company, Inc. and in wishing them continued success.

HON. MIKE THOMPSON

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. THOMPSON of California. Mr. Speaker, I rise today to request that the testimony given by David Hoffman, President of Internews in Arcata, CA, be submitted into the CONGRESSIONAL RECORD. Mr. Hoffman’s valuable testimony before the House Appropriations Subcommittee on Foreign Operations is as follows:

CONGRESSIONAL TESTIMONY OF DAVID HOFFMAN

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. THOMPSON of California. Mr. Speaker, I rise today to request that the testimony given by David Hoffman, President of Internews in Arcata, CA, be submitted into the CONGRESSIONAL RECORD. Mr. Hoffman’s valuable testimony before the House Appropriations Subcommittee on Foreign Operations is as follows:

Electronic media are the most powerful force for social change in the world today. As Americans, we live in a time of free information. Media are central to our economy, our culture, our political system and our everyday lives. But in many countries around the world, free media can by no means be taken for granted. In Russia, President Putin has prosecuted Victor Guzinsky, whose influential television network had been critical of the government. In Ukraine, Prime Minister Kuchma has been accused of ordering the murder of a dissident journalist. In China, the government selectively censors Internet web sites that challenge the official version of events. In Iran, dozens of newspapers have been banned and their editors thrown in jail. In Zimbabwe, journalists have been detained and jailed. In Kazakhstan and Azerbaijan, independent television stations have been suppressed.

And of course, former President Milosevic used state media as a propaganda weapon to foment hatred and violence in the Balkans. But with US government funds, Internews and other NGOs were able to provide critical support to independent broadcasters in Serbia that formed the nucleus of opposition to the Milosevic regime. In Serbia and many countries around the world, open media have been on the front lines in the fight for freedom and democracy.

With significant funding from USAID, Internews helped develop and support independent, non-governmental broadcasters in 23 countries. During the past ten years, we have also trained 16,000 media professionals.

IMPORTANCE OF OPEN MEDIA

In all these countries we have learned that open media are essential for holding free and fair elections, for exposing corruption and human rights abuses, for allowing the free exchange of ideas, for keeping government accountable to its people, for exposing corruption and human rights abuses, for allowing the free exchange of ideas, for keeping government accountable to its people, for promoting democracy, and for promoting social development. Open media are essential for holding free and fair elections, for exposing corruption and human rights abuses, for allowing the free exchange of ideas, for keeping government accountable to its people, for promoting democracy, and for promoting social development. Open media are essential for holding free and fair elections, for exposing corruption and human rights abuses, for allowing the free exchange of ideas, for keeping government accountable to its people, for promoting democracy, and for promoting social development.

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open, civil societies and healthy market economies in place, with democratic ideals. This support needs to be sustained for the long run until stable economies and civil societies are in place.

And third, in the developing world, locally-produced radio programs and other media coverage are unparalleled in their potential to effectively educate mass populations about urgent social problems such as HIV/AIDS.

We would urge the committee to give special attention to this last point.

ROLE OF MEDIA IN COMBATTING HIV/AIDS IN AFRICA

At a time when the incidence of HIV/AIDS has reached catastrophic proportions in Africa, there is an important opportunity to harness the power of local media to reduce the spread of this disease. Over 17 million Africans have died of AIDS since the epidemic began in the late 1970s. In at least eight sub-Saharan African nations, infection levels in the general population are 15% or higher.

Yet local news coverage of this epidemic is often seriously flawed. African journalists do not usually specialize in one particular area, so their coverage of the issue may be superficial and the language they use may inadvertently further stigmatize victims of HIV/AIDS. As a recent Time magazine cover story concluded, “ignorance is the crucial reason the epidemic has run out of control.”

By training local African journalists in how to cover this issue effectively and responsibly, as Internews has done in Russia and Ukraine, we can reduce the ignorance and fear that exacerbate the suffering. One of the biggest challenges of the AIDS pandemic is in reaching young audiences with needed information before they become sexually active. By focusing a media campaign on pre-pubescent African children, we can begin to get ahead of the spread of this deadly virus.

Internews therefore requests that this Committee recommend funding in the amount of $2 million for Internews to implement a media training program to combat the spread of HIV/AIDS in Africa.

As eloquently written by Nobel Prize winner Amartya Sen in In Defence of Democracy, the John D. and Catherine T. MacArthur Foundation, the Ford Foundation, Rockefeller Financial Services, the W. Alton Jones Foundation, the Joyce Mertz-Gilmore Foundation, the Carnegie Corporation of New York, the Corporation for Public Broadcasting, the Miriam and Ira D. Wallach Foundation, the W.K. Kellogg Foundation, and many others. The organization had a budget of $15 million in 2000.

INTRODUCTION OF TRIBAL ENERGY SELF-SUFFICIENCY ACT

HON. NICK J. RAHALL II
OF WEST VIRGINIA

INTRODUCTION OF TRIBAL ENERGY SELF-SUFFICIENCY ACT

HON. NICK J. RAHALL II
OF WEST VIRGINIA

This bill would ensure that Indian tribes have access to energy resources on Indian lands.

As the House of Representatives prepares to consider legislation to further advance a national energy policy, we must not forsake the sovereign tribes to which the United States has a trust responsibility. In this regard, the fundamental purpose of this legislation is to provide Indian Country with the tools it needs to achieve energy self-sufficiency.

When enacted, this legislation will go a long way to promote energy development of Indian lands where it is wanted and badly needed. The “Tribal Energy Self-Sufficiency Act” contains a multitude of provisions relating to the production of energy resources on Indian lands, the development of renewable sources of energy, and access by tribes to transmission facilities largely by building upon programs that are already in place.
While this legislation was developed with a great deal of input from Indian Country, it does not purport to include every single proposal that was advanced. Rather, this measure is intended to reflect those areas where intersecting tribes are largely in agreement with refinements made as it is considered by the committees of jurisdiction during the legislative process.

MOTION PICTURE PRODUCTION: TO RUN OR STAY MADE IN THE USA

HON. JOHN CONYERS, JR.
OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. CONYERS. Mr. Speaker, I submit that the following article from the Entertainment Law Review, by Pamela Conley Ulrich and Lance Simmons, be placed in the CONGRESSIONAL RECORD.

MOTION PICTURE PRODUCTION: TO RUN OR STAY MADE IN THE U.S.A.
(Pamela Conley Ulrich and Lance Simmons)

1. INTRODUCTION

Globalization profoundly impacts traditional ways of conducting business, and the entertainment industry is no immune from the new economics drastically changing the world. Could Hollywood become "Hollyhasbeen"? Will television and theatrical motion pictures shot in the United States go the way of the American car and American-made clothing?

Runaway production has caused serious labor issues, including the displacement of thousands of workers and jobs. In 1998, twenty-seven percent of films released in the United States were produced abroad, and an estimated one million U.S. jobs were lost to foreign countries. Lower exchange rates, direct government subsidies and lower labor wages enticed American production companies to film in foreign locales. In 1998, the direct economic loss of runaway production was $2.8 billion. When coupled with the loss of ancillary business, the losses likely totaled $10.3 billion for 1998 alone. These losses juxtapose with the issues of free trade versus fair trade in an uneasy balance.

This Article considers why many television and theatrical motion pictures targeted primarily at U.S. audiences are not made in America. It also examines the economic impact resulting from the flight of such productions. Finally, it considers possible solutions in an effort to reverse the trend.

II. THE HISTORY OF "RUNAWAY PRODUCTION"


"Apart from the fact that thousands of job opportunities, including those for technicians, musicians, and players are being 'exported' to other countries at the expense of American citizens residing in the State of California, the fact that runaway production causes economic loss of runaway production was an unfortunate trend . . . threatens to destroy a valuable national asset in the field of world-wide mass communications—all complex reasons. We urged Congressional action in two primary areas: (1) flight subsidy with subsidy. Use the present 10 percent admission tax to create a domestic subsidy; (2) tax . . . [WE] proposed consideration of a spread of five or seven years over which tax would be paid on the average, not on the highest, income for those years."

Despite these impassioned pleas, runaway production has continued to grow in importance, scope and visibility. Today it ranks among the most critical issues confronting the entertainment industry. This issue received increased attention in June 1999, when the "SAG" and the Directors Guild of America ("DGA") commissioned a Monitor Company report, "The Economic Impact of U.S. Film and Television Runaway Production" ("Monitor Report")., that analyzed the quality of motion picture pictures shot abroad and resulting losses. In the United States Department of Commerce. The Communications Act of 1934 prohibited foreign ownership of more than one-fifth of an American company with broadcast holdings. The Communications Act of 1934 prohibited foreign ownership of more than one-fifth of an American company with broadcast holdings. The Communications Act of 1934 prohibited foreign ownership of more than one-fifth of an American company with broadcast holdings. The Communications Act of 1934 prohibited foreign ownership of more than one-fifth of an American company with broadcast holdings. The Communications Act of 1934 prohibited foreign ownership of more than one-fifth of an American company with broadcast holdings.

III. CAUSES OF RUNAWAY PRODUCTION

In the Department of Commerce Report, the government delineated factors leading to runaway film and television production. These factors contributed to the "substantial transformation of what used to be a traditional and quintessentially American industry into an increasingly dispersed global industry."

IV. VERTICAL INTEGRATION: Globalization

Vertical integration is defined by the International Monetary Fund as "the increasing integration of economies around the world, particularly through trade and financial flows." The term refers to the movement of people (labor) and knowledge (technology) across international borders.

Consequently, companies are now both productive and international in order to profit. Because companies are generally more interested in profits than in people, companies are often not loyal to communities in which they have flourished. Instead, they solely consider the bottom line in the process of making business decisions.

Columbia is an excellent example of the conversion from a traditional U.S.-based company to a global enterprise. Following in Columbia's footsteps, other studios have globalized through foreign ownership, Universal Studios, Inc. ("Universal"), previously the Music Corporation of America, was acquired by the additional Japanese electronics company Matsushita in 1991, and four years later was purchased by Seagram, a Canadian company headquartered in Montreal. In 1985, Australian media mogul Rupert Murdoch acquired a controlling interest in Fox, and Time, Inc., a publishing and cable television giant, acquired Warner Bros. in 1989. As studios become multinational, their loyalty to the community or country in which they were born is now a thing of the past. Multinational corporations are no longer concerned with the ramifications of moving film production overseas for the potential savings. These companies are generally more interested in profits than in people, they are often not loyal to communities in which they have flourished. Instead, they solely consider the bottom line in the process of making business decisions.
By the end of the 1990s, studio executives began to alter their business methods. Despite aggressive cost-cutting, layoffs, strategic joint ventures and movement of production to foreign shores, rising production and distribution costs have consumed profits over the last decade. Production costs rose from an average of $25.8 million to $51.5 million. Distribution costs for new feature films more than doubled. In 1990, the average motion picture cost $11.97 million to distribute, and by 1999, the cost rose to $24.53 million. At the time, profit margins were falling. For example, Disney Studio’s profits decreased from 25 percent in 1987 to 19 percent in 1997, and Viacom’s profits dropped from 13 percent in 1997 to less than 6 percent in 1997. Additionally, both Time Warner and News Corporation, parent of Fox, showed declines in 1998.

IV. THE IMPACT OF RUNAWAY PRODUCTION

A. The Impact

In total, U.S. workers and the government lost $10.3 billion to economic runaways in 1998. According to the Monitor Report, $3.9 billion had been lost to the United States in 1998 from both theatrical films and television Economic runaways. For example, if a theatrical picture is shot in New York, then carpenters are employed to make the set, caterers are employed to prepare and serve food, and costume designers are hired to provide wardrobe. As the Commerce Department Report explains, “[B]ehind the polished, finished film product there are tens of thousands of technicians, less well-known actors, assistant directors, catering managers, artists, specialists, post-production workers, set movers, extras, construction workers, and other workers in fields too numerous to mention.” This fiscal loss ripples through the economy affecting peripheral industries. In addition to the direct economic loss discussed above, the Monitor Report calculated an additional $5.6 billion lost in indirect expenditures. Indirect expenditures include real estate, restaurants, clothing and hotel revenues, which are not realized. In addition to these private industry losses, the government lost $1.9 billion in taxes to runaway production. As opposed to the $10.3 billion lost from the fiscal picture cost, the government’s losses will be between $13 and $15 billion in 2001.

B. Cultural Identity

In 1961, Congress was warned that the trend of runaway production threatened to destroy a valuable "national asset" in the field of worldwide mass communications. As H. O’Neill Shankis, John Lehners and Robert L. Colf, the Hollywood APL Film Council testified in 1961, if Hollywood became "obsolete as a production center" and the United States voluntarily surrendered its position in the world market in the motion picture business, the chance to present a more favorable American image on the movie screen would be forever lost. Although the decline in leadership in the field of cultural identity, today U.S.-produced pictures are still a conduit through which our values, such as democracy and freedom, are promoted.

V. Solutions

A. The Film California First Program

California remains a leading force in the industry, and last year took a legislative step to remedy the problem of runaway production by passing a three-year, $45 million program aimed at reimbursing film costs incurred on public property. The Film California First (“FCF”) program is specifically targeted toward industry's competitive edge in attracting and retaining film projects. To accomplish this goal, the legislation provides various subsidies to production companies for filming in California, including offering property leases at below-market rates. This legislation should serve as a model for other states, as they too struggle with an issue of increasing economic importance.

B. Wage-Based Tax Credit

A possible solution could be patterned after a legislative proposal offered, but never advanced, in the 106th Congress. Specifically, this proposal called for a wage-based tax credit for targeted productions and provided: (1) a general business tax credit that would be a dollar-for-dollar offset against any federal income tax liability; and (2) a credit cap at twenty-five of the first $25,000 in wages and salaries paid to any employee whose work is in connection with a film or television program substantially produced in the United States and (3) availability of credit only to targeted film and television productions with costs of more than $500,000 and less than $10 million.

C. Future Solutions

To rectify the problems of runaway productions, legislation at the local, state and federal levels is paramount. Over the past thirty years, the film industry has expanded beyond California to become a major engine of economic growth in states such as New York, Texas, Florida, Illinois and North Carolina. To achieve effective legislative remedies, it is critical to examine the successful programs implemented by other nations. Perhaps it is the inexorable result of a changing world. Regardless, the proliferation of foreign subsidies for U.S. film production, which is occurring at an increasing rate throughout the world, raises troubling questions of fairness and equity. From a competitive standpoint, it appears as though the deck is stacked against a class of workers who seek to defend their livelihoods and their industry but find their jobs have moved overseas. It is understandable that producers will take the opportunity to film abroad when the reduction in production costs is as high as 25 percent. Consequently, the only remedy for America’s workforce is to pass legislation.
that provides commensurate benefits in the United States.

It is apparent that a laissez-faire, market-oriented approach to the American worker. Unemployment is extraordinarily high within the creative community, leading to seventy percent of SAG’s 100,000 plus members earning less than $7,500 annually. This economic hardship is exacerbated by runaways abroad. Thus, it is abundantly clear that legislative remedies attempting to more adequately level the playing field must be pursued. Amid encouraging signs that a tax bill of significant consequence is likely to pass Congress in the coming months, it is imperative that the creative community take a proactive position to ensure that the tax bill provides incentives for domestic film production. It must use all resources to cure the concerns presented in the two reports outlined in this Article. Organizations, such as SAG, must work with Congress to develop a proposal that is acceptable in terms of cost and other political considerations.

While it seems unlikely that there is the political will or desire to match the incentives offered by our competitors it is conceivable to the authors that an effective approach can be designed to substantially close the gap on cost savings without eliminating them. Thus, the approach advocated involves identifying the level where cost savings of filming abroad are minimized as not to be the determinative location factor. An appropriate level may be in the range of ten percent cost savings versus the twenty-six percent cost savings now common in some Canadian locations.

It is important to note the strategy used to fashion a remedy is just as important as the relief sought. The industry should be willing to approach the tax-writing committee staff with the afore-mentioned concept and work closely with them in designing a legislative remedy. This strategy represents a holistic approach to a global problem. It is important to remember the United States risks losing its economic advantage in a vital industry which carries with it enormous economic consequences. As noted in the Department of Commerce Report:

“If the most rapid growth in the most dynamic area of film production is occurring outside the United States, then employment, infrastructure, and technical skills will also grow more rapidly outside the United States, and the country could lose its competitive edge in important segments of the film industry.”

VI. CONCLUSION

Politics represents the art of the possible. The approach advocated in this Article should find a receptive ear in the halls of Congress if for nothing else than its simplicity. Timing is crucial. Left unchecked, the only continuing runaway production with the attendant of economic costs, lost jobs, and diminished tax revenues at all levels of government. In a time of waning economic growth and warning signs of dwindling surpluses and future economic weaknesses, including production incentives into any upcoming tax relief is essential to preserving the U.S. workforce in the American entertainment industry.

EXTENSIONS OF REMARKS

PERSONAL EXPLANATION

HON. JAMES H. MALONEY
OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. MALONEY of Connecticut. Mr. Speaker, on Tuesday, June 26, 2001, I was unavoidably detained and missed roll call No. 190. Had I been present, I would have voted No on roll call vote No. 190.

TRIBUTE TO THE CITY OF MURRIETA, 10TH ANNIVERSARY

HON. KEN CALVERT
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. CALVERT. Mr. Speaker, it is with great pleasure today to pay tribute to a wonderful, young city in my district as they prepare to celebrate their 10th Anniversary—Murrieta, California, a “Gem of the Valley.” Murrieta is an expansive valley covered with grasses and dotted with oak trees.

Incorporated as a city in July of 1991 after an overwhelming supportive vote, Murrieta has seen tremendous growth since its small beginnings as a sheep ranch. It was a young Don Juan Munrieta who first recognized the natural beauty and vitality of this California valley and bought 52,000 acres in 1873. As the years passed, the city saw slow growth and finally a boom when the railroad came through. By 1890, almost 800 people lived in the valley. Unfortunately, by 1935 the city had gone bust like so many western towns whose livelihood depended upon the railroad.

It would not be until 1987, more than fifty years later, that Murrieta Valley would once again come into its own. That year saw explosive growth for this sleepy little town. Totaling over 542 residents in 1970 and little more than 2,250 a decade later it found its population increase by a multiple of eight by 1991, to 20,000 residents, when Murrieta became an incorporated city. This year, as they celebrate their 10th Anniversary it finds itself the home of some 50,000 residents.

As a city and community, Murrieta has thrived with the greater control of its destiny over the last 10 years. That includes providing services from within the community instead of outside, such as police, fire and library systems of its own rather than contracting for these services.

In 10 short years, the City of Murrieta has seen its population and communities grow because of dedication to affordable housing, protecting the natural beauty of the valley, good schools, low crime and clean air. The city adopted its first General Plan after more than 50 public meetings to draft a vision of what the new city would become over the next several decades. The police department was created in 1992, the fire department in 1993 and the library system in 1998. Public services like these are what bound a city together along with the building of parks and recreational facilities and more. In fact, for their incredible progress as a city Murrieta has won numerous awards for innovation and performance.

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Mr. Speaker, looking back, the city of Murrieta and its residents can hold their heads high with pride at what their once small town has become in only 10 short years. I wish to extend to them my congratulations as families, community leaders and business leaders gather on this Saturday, June 30th, to celebrate their 10th Anniversary. Congratulations to the “Gem of the Valley!”

PERSECUTION OF THE MONTAGNARD PEOPLES IN VIETNAM

HON. CASS BALLANGER
OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. BALLANGER. Mr. Speaker, today I am introducing a resolution concerning the persecution of the Montagnard peoples in Vietnam. The Montagnards are indigenous peoples of the Central Highlands of Vietnam who have long suffered discrimination and mistreatment at the hands of Vietnamese governments. In the 1960’s and 1970’s the Montagnard freedom fighters were the first line in the defense of South Vietnam against invasion from the North, fighting courageously beside members of the Special Forces of the United States Army, suffering disproportionately heavy casualties, and saving the lives of many of their American and Vietnamese comrades in arms. Today the Montagnards are singled out by the Vietnamese government due to their past association with the United States, their strong commitment to their traditional way of life and to their Christian religion.

Due to this persecution, many Montagnards have attempted to flee Vietnam to other countries, including Cambodia. The Royal Government of Cambodia has announced that Montagnards found in Cambodia who express a fear of return to Vietnam will be placed under the protection of the United Nations High Commissioner for Refugees rather than forcibly repatriated to Vietnam. Unfortunately, it appears there is a policy of systematic repatriation of Montagnard asylum seekers to Vietnam by some officials of the central government. There also are credible reports that Vietnamese security forces are operating openly in the Mondulkiri and Ratanakiri provinces of Cambodia to repatriate Montagnards.

My resolution urges the government of Vietnam to allow freedom of religious belief and practice to all Montagnards, return all traditional Montagnard lands that have been confiscated, allow international humanitarian organizations to deliver humanitarian assistance directly to Montagnards in their villages, and to withdraw its security forces from Cambodia and stop hunting down refugees. It also commends the Royal Government of Cambodia for its official policy of guaranteeing temporary asylum for Montagnards fleeing Vietnam and urges the Cambodian government to take all necessary measures to ensure that all officials and representatives of the local provincial and central governments fully obey the policy of providing temporary asylum. Finally, this resolution has the Department of State make clear to the Government of Vietnam that continued
INTRODUCTION OF THE SMALL BUSINESS WELFARE BENEFITS PROTECTION ACT

HON. JERRY WELLER OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. WELLER. Mr. Speaker, today, Representative NEAL (D-MA) and I introduced the Small Business Welfare Benefits Protection Act which deals with Welfare Benefit Plans governed by Section 419A of the Tax Code. The Code currently allows a deduction for contributions to multiple employer welfare benefit plans.

The purpose of this legislation is to provide some clarity to this section of the code in a fashion that protects pension tax law while allowing small businesses to provide important benefits, such as life and health insurance, long term care insurance and severance benefits to their employees. While any employer can utilize Section 419A plans, they allow small businesses to compete with large employers in attracting and retaining talented staff by enabling them to offer meaningful benefits like the ones I just mentioned.

Section 419A plans are independently trusted administered ensuring employees that the funds set aside for their benefit are there when they need them most, when a company is facing economic difficulties. This is the right policy and we should do everything in our power to encourage small businesses to protect their employees against the proverbial rainy day.

In terms of clarifying the Code, my legislation would ensure that all full time employees benefit. The allowable deduction would be limited to the cost of the benefit for the year in which the deduction is taken. Finally, the bill would prevent an employer who terminates participation in plan from pilfering the assets of the plan at the expense of the rank and file participation in plan from pilfering the assets of the plan at the expense of the rank and file.

This legislation will ensure that 419A plans work the way they were intended to by Congress, namely to protect employees, especially small business employees.

ACKNOWLEDGING ALL THOSE SUFFERING WITH THE DEADLY DISEASE OF HIV/AIDS IN THE CARIBBEAN

HON. CHARLES B. RANGEL OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. RANGEL. Mr. Speaker, while we take into account the millions who die each year in Africa from this deadly disease we know as HIV/AIDS, we must also focus our attention on the Caribbean, as the second largest population to become infected with this devastating disease. According to the front page of the Washington Post on June 19, 2001, for those who may have missed it, I submit it for the record.

Two-thirds of all those diagnosed with the AIDS virus in the Caribbean are dead within two years. This is even more outrageous is that AIDS is the leading cause of death in the Caribbean for those aged 15 to 45 and the numbers are growing.

About one in every 50 people in the Caribbean, or 2% of the population has AIDS or is infected with HIV, the virus which causes AIDS; more than 4% in the Bahamas, and 13% among urban adults in Haiti.

The UN estimates that there were 9,600 children infected in the Caribbean. Further, the Caribbean Epidemiology Centre (CAREC) as well estimates that the overall child mortality rate will increase 60% by 2010 if treatment is not improved.

Clearly, there is a need not only for the United States government's assistance but also for those major private foundations that provide AIDS money for Africa to also develop programs that will come to the aid of those in the Caribbean.

I proudly commend Congresswoman DONNA CHRISTENSEN and her efforts to raise awareness in the community, as this disease is kept silent. I also commend the government of the Bahamas as being the only country in the region that has offered universal antiretroviral treatment over the last several years.

While we simply take medical services and treatment for granted in this country, as the number of AIDS cases decreases per year in North America and increases in the Caribbean; it is our obligation to help provide assistance to these governments in order for them to provide a simple service to their people, enabling them to live prosperous and healthy lives.

A TRIBUTE TO LT. AUGUSTUS HAMILTON, JR. AND THE MEMBERS OF THE FORCED LANDING ASSOCIATION

HON. JANICE D. SCHAKOWSKY OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Ms. SCHAKOWSKY. Mr. Speaker, today is June 28th. We are only a few days away from the July 4th Independence Day celebrations. As fireworks light up the sky, houses are adorned with crisp flags, and children gaze in wonder at the passing parades, we must not forget the many brave men and women who courageously sacrificed their lives to preserve the freedoms and ideals we all enjoy as Americans.

Throughout our short history, America's security as a nation has been tested and tried. It is truly wonderful that four years have since passed the horrors of war. However, for all those who have known war and have died for the sake of this great country, let it be said that they did not die in vain. The gratitude felt by all Americans and our many allies throughout the world is immeasurable.

Let us extend particular thanks to the veterans of World War II. During World War II, Adolf Hitler and his Nazi regime came alarmingly close to achieving world domination. It is difficult to envision what our world might have looked like had Hitler succeeded but, thanks to the heroism of World War II veterans, we will never have to find out.

I'd now like to share a story about one very special World War II veteran, a man by the name of Augustus Hamilton, Jr., and a remarkable group of people in France who have dedicated themselves to ensuring that the memories of World War II veterans endure. This story was told to me by Mr. Hamilton's niece, Beth White from Chicago, Illinois, and I want to thank Ms. White for taking the time to contact me.

Augustus Hamilton was born on January 4, 1922. At the age of twenty, he enlisted in the U.S. Army Air Corps the day after Pearl Harbor and quickly advanced to First Lieutenant of the 358th Fighter Group, 365th Squadron. By all accounts, he had always been a family hero—an athlete (amateur golf champ for the state of North Carolina); a football star (who attended the University of North Carolina on a football scholarship); good student, caring brother, and loving son. He was also a new husband and when he went overseas, his wife was pregnant with their child.

Lt. Hamilton served as a fighter pilot in World War II and was awarded an air medal with two oak leaf clusters. According to an excerpt from Thunderbolts over High Halden by Graham J. Hukins, "Lt. Hamilton was last seen diving on a flight of four enemy planes with another four on.

At the time of his death, Lt. Hamilton had never met or seen a photo of his only son, for the baby was born when he was overseas. He had named his fighter plane after his wife and son, "Mrs. Ham/Lil Ham 3rd." Following the crash, several of his family members persisted in denying his death. He had told his family that if he were ever seriously injured in combat, he would not come home due to his injuries; or perhaps had developed amnesia and could not contact them.

In 1993, almost half a century later, the gift of emotional closure was finally given to Lt. Hamilton's surviving family members by a French team named Jean Luc Grusson and his volunteer organization, Forced Landing Association. In an amazing demonstration of appreciation for the U.S. soldiers who fought in World War II, the members of Forced Landing Association devote themselves to finding each of the more than 150 crash sites reported within a 30 kilometer radius of Tillieres sur Avre, an area of intense air battles because of the close proximity of three German airfields. The Association was established in 1986 and has 11 members who live in France. To date, its members have discovered 30 crash sites, including that of Lt. Hamilton.

M. Grusson uncovered Lt. Hamilton's plane in 1993. He then spent a full year tracking down Lt. Hamilton's surviving family members

EXTENSIONS OF REMARKS

June 29, 2001
to return Lt. Hamilton’s dog tags, “wings” (a lapel pin), a belt buckle, and other items. When the Hamilton family asked M. Grusson why he and his associates devote so much time, energy, and personal expense unearthing these crash sites, he replied, “The pilots who gave their lives need to be honored. We owe these men our freedom. They gave us our country. We must honor them.” M. Grusson’s associate, Jacques Larousse, also shared a personal account of the profound impact American soldiers had on him as a young child. He explained that his mother washed the uniforms of American soldiers during the war to make money. When the Americans would come to their home to retrieve their uniforms, they always brought food and chocolate bars to M. Larousse and his mother. Given the scarcity of the time, the kindness of the Americans, and their generous gifts made a lasting impression on M. Larousse.

M. Grusson and Jacques Larousse continue to revere these American soldiers as heroes to this very day. In fact, the members of Forced Landing Association are completing individual memorials at the crash sites of both Lt. Hamilton and Edward Blevins, Hamilton’s squadron member. These sites will contain photographs and descriptive items of these men to commemorate their tremendous service. There will also be a ceremony on July 8th in remembrance of these fallen soldiers.

I applaud the tireless work of M. Grusson and the Forced Landing Association to keep the memory of our veterans illuminated. I hope that on this July 4th holiday, we will not take for granted the countless freedoms we enjoy. Rather, I hope we always remember that such freedoms have been kept alive through the sacrifices of others.

INTRODUCTION OF EDUCATION BILLS

HON. RON PAUL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. PAUL. Mr. Speaker, I rise to introduce two bills designed to help improve education by reducing taxes on parents, teachers, and all Americans who wish to help improve education. The first bill, the Hope Plus Scholarship Act, extends the HOPE Scholarship tax credit to K–12 education expenses. Under this bill, parents could use the HOPE Scholarship to pay for K–12 private or religious school tuition or to offset the cost of home schooling. In addition, under the bill, all Americans could use the Hope Scholarship to make cash or in-kind donations to public schools. Thus, the Hope Scholarship could help working parents finally afford to send their child to a private school, while other parents could take advantage of the Hope credit to help purchase new computers for their children’s school.

Mr. Speaker, reducing taxes so that Americans can devote more of their own resources to education is the best way to improve America’s schools. This is not just because expanding the HOPE Scholarship bill will increase the funds devoted to education but because, to use a popular buzz word, individuals are more likely than federal bureaucrats to insist that schools be accountable for student performance. When the federal government controls the education dollar, schools will be held accountable for their compliance with bureaucratic paperwork requirements and mandates that have little to do with actual education, or for students performance on a test that may measure little more than test-taking skills or the ability of education bureaucrats to design or score the test so that “no child is left behind,” regardless of the child’s actual knowledge.

Federal rules and regulations also divert valuable resources away from classroom instruction into fulfilling bureaucratic paperwork requirements. The only way to change this system is to restore control of the education dollar to the American people so they can ensure schools meet their demands that children be provided a quality education.

My other bill, the “Professional Educators Tax Relief Act” modifies the current year tax credit to all professional educators, including librarians, counselors, and others involved in implementing or formulating the curriculum. This bill helps equalize the pay gap between educators and other professionals, thus ensuring that quality people will continue to seek out careers in education. Good teaching is the key to a good education, so it is important that Congress raise the salaries of educators by cutting their taxes.

Mr. Speaker, I urge my colleagues to join with me in returning education resources to the American people by cosponsoring my Hope Plus Scholarship Act and my Professional Educators Tax Cut Act.

VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVATION ACT

HON. JAMES V. HANSEN
OF UTAH
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. HANSEN. Mr. Speaker, it is with pleasure that I rise today to introduce the Virgin River Dinosaur Footprint Preserve Act. This legislation is vital if we hope to preserve some of our nation’s most intact and rare pre-Jurassic paleontological discoveries.

In February of 2000, Dr. Sheldon Johnson began development preparations on land adjacent to the Virgin River in southern Utah. After dropping the backhoe and noticing a square footprint in the Navajo sandstone, Mr. Johnson turned the Act over to his other amazing talent, there in the stone were dinosaur tracks, taildraggings, and skin imprints of unparalleled quality. These paleontological discoveries are tamed by scientists in the field as some of the most amazing ever discovered. The clarity and completeness of the imprints are unparalleled.

Since that time over 140,000 people from all 50 states and at least 54 foreign countries have visited the site. This attention is welcomed by the present owners, but overwhelming at the same time. Over 5,000 people came to visit on Easter weekend alone when only two volunteers were available to help! With current facilities meager at most, this is beginning to cause traffic and congestion problems for the owners and neighbors of the sight, as well as for the city of St. George, Utah.

In addition to the logistical nightmare caused by this discovery, the preservation of these valuable resources is now in jeopardy. The fragile sandstone in which the impressions have been made is susceptible to the heat and wind typical of the southern Utah climate. Rain is nearly catastrophic for these unearthed impressions.

The community and the land owners have come together and have done what they can do to help. They have constructed makeshift shelters for the exposed impressions and volunteers have stepped up to help with tours. Even after all of these efforts, they still need help. The community has asked if there is anything Congress can do to help. Since these resources are of value to the entire world, there is a legitimate role for Congress and the Administration. We have discussed the possibility that the area might be worthy of National Monument designation. It is my hope that by introducing this legislation, we can attract the attention of the Administration and protect these irreplaceable resources at the same time.

We must act quickly if these national treasures are to be saved. This bill would authorize the Secretary of the Interior to purchase the land where the footprints and taildraggings are found, then authorize the conveyance of the property to the city of St. George, Utah, which will then work with the property owners and the county to preserve and protect the area and resources in question. The Secretary of the Interior would then enter into a cooperative agreement with the city and provide assistance to help further the protection of the resources.

The American people deserve the chance to see these treasures and the scientific community deserves to be able to study and learn from them as well. Without this legislation, this opportunity might not be possible. Who knows what the cost of inaction might be. I hope my colleagues will support this bill.

CHILD PASSENGER PROTECTION EDUCATION GRANTS EXTENSION

SPEECH OF
HON. CONSTANCE A. MORELLA
OF MARYLAND
IN THE HOUSE OF REPRESENTATIVES
Wednesday, June 27, 2001

Mrs. MORELLA. Mr. Speaker, I rise in support of H.R. 691 which will extend the Child Passenger Protection Grant Program for an additional two years—making the program consistent with the TEA 21 reauthorization cycle.

Currently, the Child Passenger Protection Grant program authorizes $7.5 million each year for the Secretary of Transportation to make incentive grants to states to encourage the implementation of child passenger protection programs in those states. This program is critical to ensuring that child passenger safety is on the minds of citizens nationwide.

Motor vehicle crashes are the single largest cause of child fatalities in the United States.
Each year more than 1,400 children die as motor vehicle passengers, and an additional 280,000 are injured. Despite these horrifying figures, parents are still allowing their children to ride unrestrained.

More disturbing is the fact that of children who are buckled up, roughly half are restrained incorrectly—increasing the risk of serious or fatal injuries. Tragically, most of these injuries could have been prevented. Car seats are proven life savers, reducing the risk of death by 69 percent for infants and 47 percent for toddlers.

With programs like the Child Passenger Protection Grants, we can prevent these senseless deaths and injuries by increasing awareness in our communities.

In my district, the Drivers’ Appeal for National Awareness (DANA) Foundation has worked tirelessly to increase public awareness for child passenger safety. Joe Colella, from Montgomery County, founded the DANA Foundation in memory of his niece, Dana, who died because of injuries sustained in a crash while riding in a child restraint that was installed with an incompatible system. Joe deserves great credit for bringing the incompatibility problem to the attention of the National Highway Transportation Safety Administration (NHTSA) and to Congress. Because of the DANA Foundation’s efforts, the nation is now better educated and aware about the proper installation of children’s safety seats in motor vehicles.

Protecting our children is a national issue that deserves national attention. I urge my colleagues; to support H.R. 691, as well as other noble efforts to increase child passenger safety.

WHO WAS THAT MASKED MAN?

JOHN HART

HON. JAMES A. BARCIA
OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. BARCIA. Mr. Speaker, I rise today to pay tribute to the substantial and laudable Hollywood career of John Hart, a true cowboy hero. His work has spanned every aspect of the silver screen, from writing to acting, from directing to stunt work. But for thousands of fans, his name will forever be synonymous with the signature black mask of the Lone Ranger, the stirring strains of the "William Tell Overture," and a hearty "Hi-yo Silver, away!"

Growing up in the Los Angeles area with a drama critic for a mother, acting was introduced to John early in his life. After studying drama at Pasadena City College, John landed his first motion picture job working for Cecil B. DeMille in "The Buccaneer." After appearing in many gangster pictures, John was drafted into the Army, where he spent the next five years writing, producing, and directing touring shows for the Fifth Air Force.

Upon his return to Hollywood, John was destined to trade in his gangster’s fedora for the good guy’s white hat. He quickly discovered Westerns, playing the Lone Ranger in the television series for two seasons beginning in 1952. With his trusty sidekick, Tonto, played by Jay Silverheels, the Lone Ranger was heroic inspiration for children all across America as the pair vanquished bad guys in the fight for the U.S. Frontier. John went on to play title roles in "Jack Armstrong, The All-American Boy," "Captain Africa," and with Lon Chaney, Jr., "Hawkeye and the Last of the Mohicans." He has appeared in more than 300 television shows and movies and has a lengthy resume of behind-the-camera work.

In today’s world, it is easy to forget the thrilling days of yesteryear when heroes wore white, villains were always brought to justice and the Lone Ranger rode again. How refreshing it is to recall that his silver bullets never killed anyone and that he never sought compensation or credit for his good deeds. In testament to his hero status, children everywhere brought Lone Ranger lunch boxes to school and wore his trademark black mask during imaginary Old West games.

Finally, Mr. Speaker, I want to commend John Hart for his role as an early pioneer in the film industry. Hollywood has changed greatly since the first motion pictures, but our expectations have not: We still look for the hero to ride off into the sunset after giving the villain his due. I urge my colleagues to join me in praising John Hart for a lifetime of honoring the Lone Ranger creed of justice.

BROWN v. BOARD OF EDUCATION

50TH ANNIVERSARY COMMISSION

SPEECH OF

HON. CHARLES B. RANGEL
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 27, 2001

Mr. RANGEL. Mr. Speaker, I rise to raise my colleagues on both sides of the aisle for yesterday’s overwhelming passage of H.R. 2133. This legislation would establish a commission to encourage and provide for commemorating the 50th anniversary in the year 2004 of the Supreme Court’s unanimous and landmark 1954 decision in Brown v. Board of Education of Topeka Kansas—the most momentous in the 20th Century.

While the 13th, 14th, and 15th Amendments to the Constitution outlawed slavery, guaranteed rights of citizenship to naturalized citizens and due process, equal protection and voting rights, nearly a century would pass before the last vestiges of "legalized" discrimination and inequality would be effectively revoked. The right of equal protection under the law for African-Americans was dealt a heavy blow with the Supreme Court’s 1875 decision to uphold a lower court in Plessy v. Ferguson. The Plessy decision created the infamous "separate but equal" doctrine that made segregation "constitutional" for almost 80 years.

It was not until the 1950’s, when the NAACP defense team led by the Honorable Thurgood Marshall as general counsel, launched a national campaign to challenge segregation at the elementary school level that effective and lasting change was achieved. In five individually unique cases filed in four states and the District of Columbia, the NAACP defense team not only claimed that segregated schools told Black children they were inferior to White children, but that the "separate but equal" ruling in Plessy violated equal protection. Although all five lost in the lower courts, the U.S. Supreme Court accepted each case in turn, hearing them collectively in what became Brown v. Board of Education. The Brown decision brought a decisive end to segregation and discrimination in our public school systems, and gradually our national, cultural and social consciousness as well.

The fight, however, did not end there. We may have overcome segregation and racism, but now the fight is economic, one in which some of our schools are inferior to others because of inadequate funding, overcrowded classrooms, dilapidated school buildings and a nationwide lack of teachers. We only have to look at the high levels of crime, drug use, juvenile delinquency, teen pregnancy and unemployment to know the value of a good education. If Brown taught us anything, it is that through the tools of a quality education, young people lose hope for the future.

No one challenges the concept of investing in human capital, but it is a well-known fact that we spend ten times as much to incarcerate than we do to educate. If we can find the resources to fund a tax cut and for a U.S. prison system with nearly 2 million inmates, we can give our public schools the repairs and facilities they desperately need, we can reduce class sizes and provide adequate pay to attract the best and brightest into the teaching profession.

Again, while I applaud yesterday’s passage of H.R. 2133, I urge my colleagues to remember the lessons of Brown v. Board of Education when we consider our national priorities by committing ourselves to addressing the unfulfilled promises of equality and opportunity contained in the Brown decision.

TEAM PROBLEM SOLVERS

HON. JANICE D. SCHAKOWSKY
OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Ms. SCHAKOWSKY. Mr. Speaker, recently, we debated ways to improve educational opportunities. I would like to draw my colleagues’ attention to a program that is doing just that.

The Future Problem Solving Program has a significant and positive impact on the education of students in grades 4 through 12. It is part of a nationwide and international effort to teach children and teens creative thinking and problem-solving skills. Problem-solving skills have been proven to be essential characteristics for young people entering the increasingly competitive job market. This non-profit program, which operates in 44 states as well as Australia, New Zealand, Malaysia, Chile, and Canada, teaches young people these important skills.

Students have the opportunity to apply their critical thinking skills to real-world problems such as restoration of imperiled natural habitats and genetic engineering. The program is structured around a six-step model for solving complex problems. The steps include recognizing potential challenges, generating and evaluating solutions and developing a plan for
action. Learning to apply these steps every day increases the ability of students to think critically and work efficiently.

Small teams of young people brainstorm solutions and implementation strategies for issues as varied as tourism, global interdependence, and water use. Students are taught to think not only critically but also creatively. Team Problem Solving, Action-Based Problem Solving, Individual Problem Solving, and Scenario Writing are all components of the program that foster dynamic thinkers. Students who work in small teams also learn the value of cooperation and teamwork. Young people in each of the three age divisions compete on the regional, state, and international levels. The Future Problems Solving Program is preparing the youth of today to face the demands of tomorrow.

I would like to officially recognize the contributions this program has made and will continue to make to society at large. I want to thank the adults who are enhancing the education of today’s young people and the student participants who are taking the initiative to learn about and help solve today’s difficult issues. These students are taking their futures into their own hands. Keep up the good work!

BROWN v. BOARD OF EDUCATION 50TH ANNIVERSARY COMMISSION

SPEECH OF
HON. RON PAUL
OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 27, 2001

Mr. PAUL. Mr. Speaker, I am pleased to join my colleagues in encouraging Americans to commemorate the 50th anniversary of Brown v. Board of Education and the end of legal segregation in America. However, I cannot support the legislation before us because it attempts to authorize an unconstitutional expenditure of federal funds for the purpose of establishing a commission to provide federal guidance of celebrations of the anniversary of the Brown decision. This expenditure is neither constitutional nor in the spirit of the brave men and women of the civil rights moment who are deservedly celebrated for standing up to an overbearing government infringing on individual rights.

Mr. Speaker, any authorization of an unconstitutional expenditure of taxpayer funds is an abuse of our authority and undermines the principles of a limited government which respects individual rights. Because I must oppose appropriations not authorized by the enumerated powers of the Constitution, I therefore reject this bill. I continue to believe that the best way to honor the legacy of those who fought to ensure that all Americans can enjoy the blessings of liberty and a government that treats citizens of all races equally is by consistently defending the idea of a limited government whose powers do not exceed those explicitly granted it by the Constitution.

EXTENSIONS OF REMARKS
THE OUTFITTER POLICY ACT

HON. JAMES V. HANSEN
OF UTAH

IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. HANSEN. Mr. Speaker, I am pleased to introduce, today, the Outfitter Policy Act, which will create a statutory authority for permit terms and conditions across America's public lands.

Millions of Americans recreate on America's public lands every year, and the services Outfitters and guides allow our constituents to access many areas of our public lands that would otherwise be inaccessible. These are families and civic groups learning to enjoy and respect nature, including horse pack trips and float trips, which many of us have enjoyed.

Unfortunately, many of our federal agencies lack legislative guidance on permit administration. Without guidelines, the system is highly discretionary, and often inconsistent, creating confusion for Outfitters and guides, and ultimately reducing opportunities for our constituents to enjoy our public lands. The system established under this bill would eliminate inconsistencies, and would provide incentives for Outfitters to offer consistently high-quality services to all our constituents.

I would like to thank the original co-sponsors of this legislation for their willingness to join me in this effort to assure public lands access for all Americans, especially my good friend from Idaho, Mr. Otter. Without his hard work and dedication, this bill would never have been ready with such speed. This is a bill which appropriately balances public needs with conservation efforts, due in large measure because of his efforts. I thank him, as I thank all the co-sponsors of this bill, and hope that all my colleagues will support us in this effort.

JOHN KOHR: ALWAYS A “CO-OPERATIVE” MAN

HON. JAMES A. BARCIA
OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. BARCIA. Mr. Speaker, I rise today to pay tribute to my good friend, John Kohr, upon the occasion of his retirement as Chief Executive Officer of Co-Operative Elevator Company in Pigeon, Michigan. I have worked closely with John for the past 20 years and have always held him in the highest esteem. He is the kind of individual who others seek out for guidance because he strives for excellence in all that he does and he never hesitates to take on more than his share in any circumstance.

During my 1 years and a half with John, he demonstrated leadership, strong work ethic and decentralized management style that have helped to mold the company and individuals within it into shining examples for others in the industry to look up to as models for growth and development. He has been the driving force in establishing a record of profitability that is unmatched in the industry statewide.

Just as importantly, John worked to create an environment that trained others so that they could move up in the organization. One has to look no farther than his replacement, Burt Keefer, to see how John’s style allowed others to succeed. John has a well-deserved reputation as someone who gives unselfishly and extensively to the industry in which he has made a living for his family. In fact, John earlier this year was honored with the Agri-Business Award for Outstanding Member for his many contributions and dedication to the Agri-Business Association. John’s drive for excellence has also extended beyond his profession. He has been very active in many community organizations, volunteering his time and talents for the betterment of his fellow citizens.

Behind every successful businessman, there is always the love and warm support of family. John’s wife, Dianne, and their four children, Kathryn, Susan, John, and Scott, have been ready with such speed. This is a bill which appropriately balances public needs with conservation efforts, due in large measure because of his efforts. I thank him, as I thank all the co-sponsors of this bill, and hope that all my colleagues will support us in this effort.

MICROBICIDES DEVELOPMENT ACT OF 2001

HON. CONSTANCE A. MORELLA
OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mrs. MORELLA. Mr. Speaker, I rise today to introduce the “Microbicides Development Act of 2001”. I am pleased to be joined by many of my good friends and colleagues who have signed on as original cosponsors to this legislation. My thanks go to them.

Mr. Speaker, this week the United Nations convened a special session of the U.N. General Assembly to address how to combat the spreading HIV/AIDS epidemic.

We have entered the third decade in the battle against HIV/AIDS. June 5, 1981 marked the first reported case of AIDS by the Centers for Disease Control. Since that time, over 400,000 people have died in the United States. Globally 21.8 million people have died of AIDS.

Tragically, women now represent the fastest growing group of new HIV infections in the United States and women of color are disproportionately at risk. In the developing world, women now account for more than half of HIV infections and there is growing evidence that the position of women in developing societies will be a critical factor in shaping the course of the AIDS pandemic.

So what can women do? Women need and deserve access to a prevention method that is within their personal control. Women are the only group of people at risk who are expected to protect themselves without any tools to do
so. We must strengthen women’s immediate ability to protect themselves—including providing new woman-controlled technologies. One such technology does exist called microbicides.

The Microbicides Development Act of 2001 which I am introducing, will encourage federal investment for this critical research, with the establishment of programs at the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention. Through the work of the NIH, non-profit research institutions, and the private sector, a number of microbicide products are poised for successful development. But this support is no longer enough for actually getting microbicides through the development “pipeline” and into the hands of the millions who could benefit from them. Microbicides can only be brought to market if the federal government helps support critical safety and efficacy testing.

Health advocates around the world are convinced that microbicides could have a significant impact on HIV/AIDS and sexually transmitted diseases (STDs).

Researchers have identified almost 60 microbicides, topical creams and gels that could be used to prevent the spread of HIV and other STDs such as chlamydia and herpes, but interest in the private sector in microbicides research has been lacking.

According to the Alliance for Microbicide Development, 38 biotech companies, 28 not-for-profit groups and seven public agencies are investigating microbicides, and Phase III clinical trials have begun on four of the most promising compounds. The studies will evaluate the compounds’ efficacy and acceptability and will include consumer education as part of the compounds’ development. However, it will be at least two years before any compound trials are completed.

Currently, the bulk of funds for microbicide research comes from NIH—nearly $25 million per year—and the Global Microbicide Project, which was established with a $35 million grant from the Bill and Melinda Gates Foundation. However, more money is needed to bring the microbicides to market. Health advocates have asked NIH to increase the current budget for research to $75 million per year.

Mr. Speaker, today, the United States has the highest incidence of STDs in the industrialized world—annually it is estimated that 15.4 million Americans acquired a new STD. STDs cause serious, costly, even deadly conditions for women and their children, including infertility, pregnancy complications, cervical cancer, infant mortality, and higher risk of contracting HIV.

This legislation has the potential to save billions in health care costs. Direct cost to the U.S. economy of STDs and HIV infection, is approximately $8.4 billion. When the indirect costs, such as lost productivity, are included that figure rises to an estimated $20 billion.

With sufficient investment, a microbicide could be available around the world within five years.

I urge my colleagues to lend their support to this vital legislation.

### EXTENSIONS OF REMARKS

#### CELEBRATING THE OPENING OF THE SMITHSONIAN FOLK LIFE FESTIVAL

**HON. CHARLES B. RANGEL**

**OF NEW YORK**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. RANGEL. Mr. Speaker, I rise before you today to celebrate the opening of the Smithsonian Folk Life Festival. I commend the Smithsonian Institution for its decision to feature New York City and its rich heritage and diversity. I am delighted that Harlem’s own legendary Apollo Theatre, will be showcased by hosting its famous “Amateur Night at the Apollo” on the Mall Saturday, July 7. For the very first time Americans outside of New York will be allowed to be a part of Amateur Night at the Apollo. They will be able to experience the thrill of watching American Dream come true at the Apollo in the same way that past winners, such as, Billie Holiday, Ella Fitzgerald, Sarah Vaughan, James Brown, and Stevie Wonder did many years ago.

When New Yorkers took the A-train uptown, the first stop was the Apollo. When the downtown musicians wanted to learn how to play jazz they went to the Apollo. When the kids from Brooklyn wanted to learn how to bebob and “limpy hop” they went to the Apollo.

The Apollo stage is where the Godfather of Soul—James Brown, got his soul, when—Michael Jackson showed off the moonwalk; and today it provides a showcase for leading hip-hop artists.

The Apollo Theatre was built in 1913, however it was not until 1932 when Sydney Cohen purchased it that it became known as a Black Vaudeville house. This change was reflective of the influx of African-Americans into the area between 135th and 145th streets and the changes in Harlem entertainment. Over the next few decades the Apollo became the place to perform if you were a rising Black musician. You were not accepted as a serious musician in Harlem until you performed and excelled at the Apollo.

For more than eighty years the Apollo Theatre has been the first home of African-American music, the cultural mecca of Harlem, and the vanguard to the contributions of Black Americans in the entertainment industry. The Theatre achieved the high point of its popularity in the 1950’s when the growing number of popular Black entertainers were still restricted to performing at Black venues. Acts that have graced the stage include: Bessie Smith in 1935, Count Basie and Billie Holiday in 1937, Sammy Davis, Jr., as a dancer in the Will Mastin Trio in 1947, Bill Cosby in 1968, Prince in 1993, and Tony Bennett in 1997.

The Apollo, located on 125th Street, is the centerpiece of Harlem and one of the main attractions for Harlem visitors. It has become the number one tourist attraction in New York. I am proud to announce that a major $6.5 million revitalization and expansion of the Apollo Theatre is being undertaken, which will make a major contribution to the Harlem community through the transformation of this venue into a major performing arts center.

The renowned Apollo Theatre is a national treasure that has made major contributions to the entertainment industry of this nation. The Theatre was designated a New York City landmark and listed on the National Register of Historic Places in 1983.

Some might say the Apollo is the home of Black music, but I would say the Apollo is the home of American music.

I invite everyone to join with me in celebrating The Smithsonian 2001 Folk Life Festival, New York City, and the legendary Apollo Theatre.

### INTRODUCTION OF THE “COMMERCIAL FISHERMEN SAFETY ACT OF 2001”

**HON. ROB SIMMONS**

**OF CONNECTICUT**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. SIMMONS. Mr. Speaker, since colonial days my home town of Stonington has been tied to fishing. Today it is the home to Connecticut’s only commercial fishing fleet, and I am proud to be its congressional representative.

Commercial fishing continues to rank as one of the most hazardous occupations in America. According to the United States Coast Guard and the Bureau of Labor Statistics, the annual fatality rate for commercial fishermen is about 150 deaths per 100,000 workers.

In order to increase the level of safety in the fishing industry, the U.S. Coast Guard requires all fishing vessels to carry safety equipment. Required equipment can include a life raft that automatically inflates and floats free should the vessel sink; personal flotation devices or immersion suits; Emergency Position Indicating Radio Beacons (EPIRB); visual distress signals; and fire extinguishers.

When an emergency arises, safety equipment is priceless. At all other times, the cost of purchasing or maintaining life rafts, immersion suits, and EPIRBs must compete with other expenses such as loan payments, fuel, wages, maintenance, and insurance. Meeting all of these obligations is made more difficult by a regulatory framework that uses measures such as trip limits, days at sea, and gear alterations to manage our marine resources.

Commercial fishermen should not have to choose between safety equipment and other expenses. That’s why I am introducing the “Commercial Fishermen Safety Act of 2001,” which would provide for a tax credit equal to 75 percent of the amount paid by fishermen to purchase or maintain required safety equipment. The tax credit is capped at $1,500 and 75 percent of the amount paid by fishermen to purchase safety equipment is priceless. At all other times, the cost of purchasing or maintaining life rafts, immersion suits, and EPIRBs must compete with other expenses such as loan payments, fuel, wages, maintenance, and insurance. Meeting all of these obligations is made more difficult by a regulatory framework that uses measures such as trip limits, days at sea, and gear alterations to manage our marine resources.

Commercial fishermen should not have to choose between safety equipment and other expenses. That’s why I am introducing the “Commercial Fishermen Safety Act of 2001,” which would provide for a tax credit equal to 75 percent of the amount paid by fishermen to purchase or maintain required safety equipment. The tax credit is capped at $1,500 and includes expenses paid or incurred for maintenance of safety equipment required by federal regulation. Sens. Susan Collins (R–ME) and John Kerry (D–MA) have introduced identical legislation in the Senate.

The Commercial Fishermen Safety Act of 2001 could improve safety by giving commercial fishermen more of an incentive to purchase and care for safety equipment. I ask my colleagues to join me in helping commercial fishermen protect themselves while doing their jobs.
In the 1940s, leading executives of the day such as S. Bayard Colgate, James Cash Penney, Joseph Sprang of Gillette and others helped the organization grow rapidly. Stories of Junior Achievement’s accomplishments and of its students soon appeared in national magazines of the day such as TIME, Young America, Colliers, LIFE, the Ladies Home Journal and Liberty.

In the 1950s, Junior Achievement began working more closely with schools and saw its growth increase five-fold. In 1955, President Eisenhower declared the week of January 30 to February 5 as “National Junior Achievement Week.” At this point, Junior Achievement was operating in 139 cities and in most of the 50 states. During its first 45 years of existence, Junior Achievement enjoyed an average annual growth rate of 45 percent.

To further connect students to influential figures in business, economics, and history, Junior Achievement started the Junior Achievement National Business Hall of Fame in 1975 to recognize outstanding leaders. Each year, a number of business leaders are recognized for their contribution to the business industry and for their dedication to the Junior Achievement experience. Today, there are 200 laureates from a variety of businesses and industries that grace the Hall of Fame.

By 1982, Junior Achievement’s formal curricula offering had expanded to Applied Economics (now called JA Economics), Project Business, and Business Basics. In 1988, more than one million students per year were estimated to take part in Junior Achievement programs. In the early 1990s, a sequential curriculum for grades K–6 was launched, catalyzing the organization into the classrooms of another one million elementary school students.

Today, through the efforts of more than 100,000 volunteers in the classrooms of America, Junior Achievement reaches more than four million students in grades K–12 per year. JA International takes the free enterprise message of hope and opportunity even further to more than 1.5 million students in 111 countries. Junior Achievement has been an influential part of many of today’s successful entrepreneurs and business leaders. Junior Achievement’s success is truly the story of America—the fact that one idea can influence and benefit many lives.

Mr. President, I wish to extend my heartfelt congratulations to Fred Hampton of Albuquerque, New Mexico for his outstanding service to Junior Achievement and the students of New Mexico. I am proud to have him as a member of my district and proud of his accomplishment.

SUPPORT OF NEW COLLEGE

HON. DAN MILLER
OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. MILLER of Florida. Mr. Speaker, I am here today to congratulate New College on being the newest accredited independent liberal arts college in the state university system of Florida.

New College was founded in 1960 as an independent college by Sarasota and Bradenton civic leaders. When the school opened in 1964, it accepted students on their academic talents, not on their race, creed or gender. In 1975, during a time of financial uncertainty, this 650-student college joined with the University of South Florida. Even with this merger, New College retained its faculty, academic programs and competitive admissions. New College is known as the Honors College of Florida, being the only public college or university in Florida designated as “Highly Competitive” by Barron’s Magazine. The graduates of New College are some of the brightest and most motivated of all college graduates in the country.

I wish the best of luck to New College and to all its students and faculty during its transition. They have met many challenges in the past and face more in the future, but New College will succeed and make Florida very proud. I am honored to represent this institution.

TRIBUTE TO W. GEORGE HAIRSTON III

HON. SPENCER BACHUS
OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. BACHUS. Mr. Speaker, I rise today to honor Mr. W. George Hairston III for his outstanding contributions to the U.S. commercial nuclear industry and, by extension, to the nation as a whole. Mr. Hairston currently serves as president and CEO of Southern Nuclear Operating Company, and was recently inducted into the State of Alabama Engineering Hall of Fame in recognition of his accomplishments.

Mr. Hairston’s resume is extensive and distinguished. He is a veteran of the United States Army Corps of Engineers and of the Vietnam War. His degrees were earned at some of the top engineering universities in the country; such as his undergraduate engineering degree from Auburn University and his Master’s in Nuclear Engineering from the Georgia Institute of Technology. Additionally, in 1991, he successfully completed the Massachusetts Institute of Technology’s Program for Senior Executives.

Mr. Hairston is also active in his community, holding positions on the Board of Directors for the Institute of Nuclear Power Operations (INPO), where he also served as chairman of the INPO National Nuclear Accrediting Board, and the WANO-Atlanta Center Governing Board. Mr. Hairston is currently a member of the Nuclear Energy Institute (NEI) Board of Directors, Executive Committee, and the Nuclear Strategic Issues Advisory Committee (NSIAC). He also serves as Chairman of the NEI Government Relations Advisory Committee.

It is clear that such honors and qualifications are more than most individuals could obtain in a lifetime. However, Mr. Hairston continues to strive for excellence not only in his work but also in his community. He stresses the importance of equality in the workplace and focuses on minority recruiting. Additionally, he understands the importance of cultivating in the nation’s youth an understanding
of and an interest in the field of engineering. By serving on the Board of Directors for Junior Achievement in Birmingham and the Auburn Alabama Engineering Council, and by chairing the INROADS/Birmingham Advisory Board, Mr. Hairston positions himself as a mentor for bright, young engineers. His refusal to remain content with serving and influencing any one area or group is both admirable and challenging. His accomplishments are many, it is his concern for his fellow citizens and his country that truly set him apart.

Mr. Speaker, please join me in honoring Mr. W. George Hairston III, an outstanding businessman, leader, and servant to the community.

CALL FOR HUMANITARIAN ASSISTANCE TO THE PEOPLE OF THE NUBA REGION IN SUDAN

HON. CHARLES B. RANGEL
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. RANGEL. Mr. Speaker, I rise before you today to bring your attention to the grave situation in Sudan and specifically to the people of the Nuba region. I urgently call on President Bush and Secretary of State Colin Powell to work for an immediate lifting of the cruel siege of the Nuba region of Sudan.

For over ten years, the Government of Sudan has denied all humanitarian relief aid to the people of the Nuba, despite the terrible plight of tens of thousands of innocent civilians. Very recent reports indicate that the cumulative effect of this brutal siege has been to push 85,000 human beings to the very brink of starvation. Without immediate humanitarian intervention, thousands of people will begin to die—and they will continue to die until humanitarian aid is permitted into the region. Countless mothers will suffer the agonizing fate of watching helplessly as their children die for lack of food, and then succumbing themselves.

This is intolerable and utterly indefensible. Nowhere in the world is the denial of food aid used as a more vicious weapon of war than in the Nuba region of Sudan. Further, Government of Sudan offensives have recently burned thousands and thousands of people out of their homes, making them even more vulnerable in these precarious circumstances.

There is in Lokichokio in northern Kenya, the center of relief operations for southern Sudan, humanitarian aid ready and able to assist the people of the Nuba tomorrow. What is required is access. It is imperative that the United States take the international lead in demanding, in the strongest possible terms, that the Government of Sudan lift this brutal siege immediately.

We must continue to work together as a nation to stop slavery, aerial bombardments of innocent civilians, religious persecution and induced famine in the Sudan. The recent passage of the Sudan Peace Act of 2001 with an overwhelming vote of 422 to 2 shows the tremendous support of the U.S. House of Representatives in applying all necessary means to bring an end to the 18-year civil war and its related atrocities. We must continue this momentum in the Senate, and show unified U.S. support with unanimous passage of the Sudan Peace Act when it comes to the Senate floor.

INTRODUCTION OF THE “ENDANGERED SPECIES CONSOLIDATION ACT”

HON. C.L. “BUTCH” OTTER
OF IDAHO
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. OTTER. Mr. Speaker, since 1970, two federal agencies have had jurisdiction over implementation and enforcement of the Endangered Species nationwide—the U.S. Fish and Wildlife Service (USFWS) under the U.S. Department of the Interior, and the National Marine Fisheries Service (NMFS), which is part of the National Oceanic and Atmospheric Administration under the U.S. Department of Commerce. Before 1970, NMFS’ programs were implemented by USFWS. This changed when President Nixon signed into law on December 26, 1970, the Endangered Species Act. If President Nixon knew how ESA and NMFS would look today—30 years later—he probably would have second thoughts.

The U.S. Fish and Wildlife Service has jurisdiction of over 1,800 species of plants, mammals, birds, and fish, and an annual ESA budget of $112 million. NMFS— with responsibility for just 42 listed species of marine mammals and fish—has an annual ESA budget nearly as high as USFWS—$105 million. Many of NMFS’ “species” include “evolutionary significant unit” designations that NMFS created without Congressional authorization—an issue that is now pending in federal district court.

Mr. Speaker, the goals and activities of these two agencies have become blurred. For example, both NMFS and USFWS have undertaken the listing and recovery of Atlantic salmon, the Gulf sturgeon, and four species of sea turtles.

In the Pacific Northwest, the USFWS manages freshwater bull trout and hatchery salmon, while NMFS has devoted billions of dollars to regulate and enforce the recovery of “wild” salmon and steelhead in the same water-sheds. NMFS allows the commercial and tribal harvest of thousands of salmon that it acknowledges are endangered. NMFS’ interpretation of ESA has caused hundreds of activities—including those having minimal impact—or those that actually aid—the recovery of species to be held up for months or years.

Instead of becoming more efficient, NMFS’ response is to request more federal money and expand their regulatory activities while failing to identify goals of how many species of fish it needs to recover.

All species—fish and humans—deserve better from the federal government. That is why today I and my friend and colleague from Idaho, Congressman Mike Simpson, together will introduce the “Endangered Species Consolidation Act.” This measure will ensure that ESA activities regarding fish that spawn in fresh or estuarine waters and migrate to ocean waters—and vice versa—are managed and coordinated through one agency—the U.S. Fish and Wildlife Service.

The bill will eliminate duplication and allow scarce resources to be focused on achieving the true objective of the Endangered Species Act—recovery of species through science-based management.

WRIGHT TOWNSHIP CELEBRATES 150TH ANNIVERSARY

HON. PAUL E. KANJORSKI
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. KANJORSKI. Mr. Speaker, I rise today to call the attention of the House of Representatives to the 150th anniversary of the founding of Wright Township in Luzerne County, Pennsylvania. I am honored to have been asked to participate in the township’s Independence Day parade, which will double as a celebration of the sesquicentennial.

Wright Township was established by the Court of Quarter General Sessions on April 12, 1851. It is named for Hendrick Bradley Wright, a resident of Luzerne County who served four terms in this House between 1853 and 1881 and also served as speaker of the Pennsylvania House of Representatives and Luzerne County district attorney. In commemoration of the 150th anniversary, the National Archives and Records Administration recently donated to the township a framed photograph of Hendrick Wright taken in the 1860s.

The community was carved from Hanover Township, and has seen its population grow despite seeing part of its territory become incorporated into the new communities of Fairview Township, Rice Township and Nuangola Borough over the years. The township encompasses 13.9 square miles of land.

At its founding, Wright Township had just 152 inhabitants, and its character remained primarily rural until the 1950s. In 1950, the population was 948, which has more than quintupled to 5,593 in 2000. A major reason for the increase in population was the opening of the Crestwood Industrial Park in 1952. This 1,050-acre facility is home to more than 20 businesses that employ more than 3,000 people. Wright Township continues to work with the Greater Wilkes-Barre Chamber of Business and Industry and businesses located or considering location in the industrial park.

To help preserve the quality of life, the residents enjoy and provide for orderly community and economic development, the township adopted a comprehensive plan and subdivision and land development and zoning ordinances in the late 1960s and early 1970s. As the township grew, it upgraded its public services to meet the citizens’ increasing needs. In 1972, the police, the public works department and the supervisors’ office moved into the newly constructed municipal building. Previously, the police operated out of the firehouse, the road department out of a developer’s garage and the supervisors’ office was in the home of the secretary.

In the 1970s, the Wright Township Recreation Park was completed, and the township is
currently in the process of a major expansion of the park to include a regulation soccer field, loop trail and a plaza with additional parking. Another service to residents is the drop-off recycling program that was begun in 1991 for the Mountain Top area.

The community has planned an extensive celebration of its 150th anniversary and America’s independence that includes a concert, fireworks and a festival with food, entertainment, games and crafts.

Mr. Speaker, I am proud to represent the people of Wright Township, and I am pleased to call their community and patriotic spirit to the attention of the House of Representatives on the occasion of the township’s 150th anniversary.

A TRIBUTE TO NORMA STEWART HAMILTON
OF NORTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. ETHERIDGE. Mr. Speaker, I rise today to pay tribute to one of America's great teachers, Mrs. Norma Stewart Hamilton of Dunn, North Carolina, in my congressional district, who is retiring from teaching on June 29th after 39 years of service to the children and communities of Harnett County. I want to take this opportunity to thank her for her hard work and service.

Norma Hamilton teaches home economics. She is known for her disciplined teaching style, but she possesses an ability to make her classroom an enjoyable place to learn. Recently, several of her former students joined together to celebrate her life's work at the 39th annual Western Harnett High School Mother-Daughter Banquet. They recalled her classes, the exams she gave, and most importantly, her willingness to listen and give sage advice. One of Mrs. Hamilton's former students, Mrs. Rebecca Collins Hunter, herself a home economics teacher, remembered that Mrs. Hamilton never allowed teaching subject matter to supersede her goal of teaching the individual.

It has been said that "The mediocre teacher tells. The good teacher explains. The superior teacher demonstrates. And the great teacher inspires." As the former Superintendent of my state's schools, I know the difference that an outstanding teacher can make in the lives of young people. Great teachers, like Norma Hamilton, not only teach academic lessons, they teach life lessons. They strengthen the moral fiber of their students and of the communities where they teach. They challenge their students to strive for excellence.

In almost four decades, she touched and shaped the lives of over 4,000 children. She inspired more than a generation of students to achieve their dreams and make their own unique impression upon the world.

Mr. Speaker, when Norma Hamilton retires at the end of this week, she will take on a new role in the Harnett County community. Although he will no longer teach in a classroom, I know she will continue to contribute to the lives of those around her because great teachers never stop teaching. Today, I honor her for her dutiful service, and on behalf of a grateful state, I thank her for inspiring us with her great teaching.

HONORING THE DISTINGUISHED PUBLIC SERVICE OF JOHN PITTARD
HON. BART GORDON
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. GORDON. Mr. Speaker, I rise today to recognize the long and distinguished career that my friend John Pittard has had in the public service arena. John has served on the City Council in my hometown of Murfreesboro, Tennessee, for 19 years, as well as other civic boards and organizations within the city.

John's pride for his community is obvious. He has helped guide the city through a period of tremendous growth, not only in population but also in quality of life. He is one of the most honorable public servants I know, and I've known him most of my life. In fact, we went to high school and college together. John's devotion to public service comes honestly. Both his mother, Mabel Pittard, and his father, the late Homer Pittard, were long-time educators and gave much of themselves to their community. A Murfreesboro school—the Homer Pittard Campus School—was even named after John's father.

Murfreesboro owes a huge debt of gratitude to John, who never became disillusioned or cynical during his two decades of public service. He served the city because of his love for the community, nothing else. John's wife, Janice, and his daughters, Emily, Mary and Sarah, are fortunate to have such a good man in their lives.

I have a deep admiration for John and congratulate him for his many accomplishments. His decency transcends both his public and private life. Thank you, John, for being such an unselfish and caring public servant.

HONORING SKIIHI ENTERPRISES, LTD.
HON. KAY GRANGER
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Ms. GRANGER. Mr. Speaker, today I want to recognize a great Texas company, SKIIHI Enterprises, Ltd., on its 20th anniversary. Over the past 20 years, SKIIHI has built a reputation for excellence. The company has been awarded for its work on the Dallas-Fort Worth International Airport Rental Car Facility. In recent years, the company has also completed many projects outside of the Fort Worth area. The most notable is the United Spirit Arena at Texas Tech University in Lubbock.

SKIIHI also gives back to the industry and community. In conjunction with the Construction Education Foundation, SKIIHI provides workforce training classes at North Lake College and Trintle Tech High School. The Construction Education Foundation is a coalition of North Texas contractors that trains approximately 600 apprentices each year. SKIIHI sends employees to high school career days and job fairs to promote the construction business. The company also provides on-the-job training for young men and women interested in a career in construction.

Additionally, SKIIHI is an active member of the Associated Builders and Contractors. The company has been awarded for its quality work by the Associated Builders and Contractors on numerous occasions. Most recently, SKIIHI was awarded First Place on the local level for the 2000 Associated Builders and Contractors Excellence in Construction Awards for its work on the Dallas-Fort Worth International Airport Rental Car Facility.

HONORING THE 20TH ANNIVERSARY OF THE NATIONAL FOUNDATION FOR ECTODERMAL DYSPLASIAS
HON. JERRY F. COSTELLO
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. COSTELLO. Mr. Speaker, I rise today to ask my colleagues to join me in recognizing the 20th anniversary of the National Foundation for Ectodermal Dysplasias (NFED) in Mascoutah, Illinois.

The NFED is the only organization in the United States providing comprehensive services to individuals affected by the ectodermal
dysplasia syndromes (EDS) and their families. EDS are a group of genetic disorders which are identified by the absence or deficient function of at least two derivatives of the ectoderm (teeth, hair, nails or glands). There are at least 150 forms of EDS that have been identified. EDS was first recognized by Charles Darwin in the late 1860's.

EDS affects many more people that had been originally thought by Darwin. Today, the number of those individuals affected by EDS has been estimated as high as 7 in 10,000 births. Individuals affected by EDS have abnormalities of the sweat glands, tooth buds, hair follicles and nail development. Some types of EDS are mild while others are more devastating. People with EDS have been identified has having frequent respiratory infections, hearing or vision defects, missing fingers or toes, problems with their immune system and a sensitivity to light. In rare cases, the lifespan of a person with EDS may be affected. Many individuals affected by EDS cannot perspire, requiring air conditioning in the home, at work or in school. Some individuals may have missing or malformed teeth or problems with their upper respiratory tract. EDS is caused during pregnancy, as the baby is developing. During the formation of skin tissues, defects in formation of the outer layers of the baby's skin may lead to ED.

At this time there is no cure for ED. The NFED, incorporated in 1981, is the sole organization in the world providing comprehensive services to families affected by EDS. The NFED is committed to improving lives by providing information on treatment and care and promoting research. There are more than 3000 individuals served by the NFED in 50 states and 53 countries. They have provided more than $115,000 in financial assistance to families for their dental care, medical care, air conditioners, wigs, cooling vests and other needs. The NFED has provided patient access and granted more than $237,000 to research needs. The NFED has provided patient access and granted more than $237,000 to research.

The Davidson County Sheriff's Department named Michael a 911 hero, and he was awarded a plaque at a special ceremony. This week, the National Emergency Number Association recognized Michael at its 20th annual conference, along with other National 911 heroes. I am very pleased to be able to recognize Michael as one of our North Carolina 911 heroes. On behalf of the citizens of the Sixth District of North Carolina, we offer our personal congratulations to Michael Mathis—a true hero.

TRIBUTE TO JAMES E. ZINI, D.O.
HON. MARION BERRY
OF ARKANSAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. BERRY. Mr. Speaker, I rise today to pay tribute to a great Arkansan and outstanding Osteopathic physician. I am proud to recognize James E. Zini, D.O., in the Congress for his invaluable contributions and service to his community, to our state, and to our nation.

Dr. Zini epitomizes the Osteopathic profession. With his application of Osteopathic practices and principals, he personifies the model D.O. physician—practicing in a small rural town taking care of people, not just treating symptoms. He started his family practice in rural Mountain View, Arkansas, in 1977. In his Mountain View and Marshall clinics, along with partner David Burnette, D.O., office manager Judy Zini, and the Zini Clinic staff, Jim makes sure that each patient visit—approximately 13,000 annually—is remembered as excellent, quality D.O. care.

Dr. Zini is Board Certified in Family Practice by the American College of Osteopathic Family Physicians and is a fellow of the college. Jim is also Board Certified by the American Board of Quality Assurance and Utilization Review Physicians.

As a founder and leader of the Arkansas Osteopathic Medical Association (AOMA), Dr. Zini tirelessly worked to advance the Arkansas Osteopathic profession: to promote the Osteopathic family in all areas affecting D.O.s; and to protect the licensure, practice and educational interests of all Arkansas D.O.s. Dr. Zini has served his state association with distinction: Founder, President, Vice President, Committee Chairperson, Member, and he received the first AOMA Physician of the Year Award in 1989. Jim is also the first D.O. to serve on the Arkansas State Medical Board—a position designated by law that he worked to enact.

Dr. Zini furthered his commitment to the Osteopathic profession at the national level; serving as Arkansas delegate to the American Osteopathic Association (AOA) House of Delegates; numerous House committees; AOA Board of Trustees; several key AOA committees and chairmanships; and 2001–2002 AOA...
President. As a community leader, Dr. Zini’s recognitions include: 1998 Flight Safety Award, Federation of Aviation Medicine; 1987 Distinguished Citizen Award, Mountain View Chamber of Commerce; 1996 Alumni of the Year Award, University of Health Sciences in Kansas City, Missouri; 1991 Federal Aviation Administration Certificate of Recognition; Sigma Sigma Phi Honorary Osteopathic Fraternity; and 1971 Ordained Minister, St. Paul’s United Church of Christ in Little Rock, Arkansas.

James E. Zini, D.O., is a physician, advisor and friend to many. He has dedicated his life to serving his fellow citizens as a leader in both his profession and his community, and he deserves our respect and gratitude for his priceless contributions. On behalf of the Congress, I extend congratulations and best wishes to my good friend James E. Zini, D.O., on his successes and achievements.

**Tribute to Chief Robert R. Greenlaw**

**Hon. Marge Roukema**

**of New Jersey**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mrs. Roukema. Mr. Speaker, I rise today to recognize and congratulate Chief Robert R. Greenlaw, C.E.M., for his outstanding achievements with the Ridgewood Emergency Services and his contributions to the protection of the Ridgewood community. Bob Greenlaw, who is now the Director of Ridgewood Emergency Services, has served the public in emergency situations for over forty years. On July 4, 2001, we will be honoring him in Ridgewood for his tremendous service. His leadership in the development of a trained volunteer fire and police department is only one of his remarkable achievements and I commend him for his efforts. The results of his dedicated service are felt throughout the Village of Ridgewood. As a leader of the men and women who protect our community, he is an inspiration for all those involved in public service.

Bob began his protection of the public in 1957 as a volunteer firefighter in Ridgewood, which is also my hometown. After a long and dedicated service in our community, Bob has assumed numerous leadership positions within the fire and police department. He was named Captain of the Ridgewood Auxiliary Police while also involving himself with emergency management. In 1980, Bob received the first two of many awards for his service, as he was given both the Emergency Medical Services Medal of Honor and the Village of Ridgewood Mayor’s Award of Excellence in the same year. Convinced that the fire and police departments could be structured differently in order to best serve the community, Bob asked the Village of Ridgewood to support a trained group of volunteers within the departments which would allow the fire and police professionals to focus on the most critical situations. Bob encouraged a handful of volunteers to join him in this program and today his inspiration has led to a department of 127 volunteers serving more than 500,000 hours each year.

This has been a tremendous resource for the Ridgewood community and would not have happened were it not for Bob’s vision and dedication.

As those who know Bob can tell you, he has continually placed the safety of his community at the top of his priorities. He demonstrates an outstanding commitment to the public and has worked selflessly in this role for over 40 years. I am honored to have the opportunity to recognize Chief Bob Greenlaw for his examples of service and leadership.

Mr. Speaker, I ask my colleagues in the House of Representatives to join me in congratulating Chief Robert R. Greenlaw for all he has done for his community and for the outstanding example he sets for all of us.

**The Low Income Gasoline Assistance Program Act of 2001**

**Hon. Tom Udall**

**of New Mexico**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. Udall. Of New Mexico. Mr. Speaker, I rise today to address a bill I have just introduced, the Low Income Gasoline Assistance Program Act of 2001.

Let me begin my remarks by thanking the original sponsor of this legislation, Senator John Rockefeller, who in introducing this bill is attempting to address a very serious problem throughout our country. I also want to thank the original House cosponsors who have joined in this effort.

We all know the problem: skyrocketing gasoline prices have taken their toll on pocketbooks in a severe way. Gas station managers around New Mexico—and other parts of the country—say drivers are filling up their tanks and driving off without paying. Some say they have never seen it so bad, and it has forced them to charge things are done at the pump. A number of stations are now requiring customers to pay first because of so much lost revenue.

A common recommendation that we often hear when gas prices go up is for people to drive less. Walk, bike, or take public transit when you can. While I agree with that, unfortunately, that only goes so far, especially if you have no choice but to commute to work, to the doctor, or to school because public transportation is not available in your area. This is especially true for those who live in rural areas. These citizens have no other choice but to pay these prices in order to live their lives. This legislation attempts to address the problems that underprivileged citizens face in rural America with regard to the high cost of gasoline.

Our proposal is relatively simple. The current high price of gasoline is hurting people throughout the country. And perhaps no group is being hit harder than seniors and the working poor, especially in rural areas and places with inadequate public transportation. With experts predicting regular unleaded gasoline prices in excess of $2.00 a gallon for much of the country this summer, I believe it is our responsibility to provide some immediate, short-term assistance for our most needy citizens.

The Low Income Gasoline Assistance Program Act of 2001 or LIGAP, is modeled on the successful LIHEAP program that helps senior citizens and those with disabilities with their utility bills in the winter and air conditioning in the summer. Under this program, recipients would receive $25 to $75 per month for three months, as long as gasoline prices stay high where they live. If the price of gasoline does not fall back below the price at which the program triggers off, recipients would be allowed to re-apply for three additional months’ benefit.

LIGAP will allow states to make grants to low- and fixed-income individuals and families to defray the cost of purchasing gasoline for travel to work, to school, or to regular healthcare appointments when the price of gasoline reaches or exceeds the unmanageable current levels. States will make LIGAP grants to income-eligible families who meet the distance requirements of driving at least 30 miles a day, or 150 miles per week for work, school, or medical care appointments.

States are also encouraged to use their welfare reform block grant to provide transportation stipends to parents who meet the same distance standards.

This measure will enable states to operate the program through their Community Action agencies or welfare departments. Thus, states will have the flexibility to set income-eligibility standards similar to the current eligibility for LIHEAP. The prices at which the program triggers on and subsequently releases will then be set for each jurisdiction through consultation between the Secretary of Health and Human Services and the Secretary of Energy.

LIGAP is not meant to be a substitute for the long-term energy solutions we all seek for our nation. Each of us understands the necessity of a comprehensive and balanced approach to energy development, but we must realize that in every state there are hard-working people and elderly individuals whose monthly budgets are being stretched to the breaking point by the cost of gasoline. While we must approach this country’s energy demand with the willingness to make the tough, long-range choices demanded of us, it is equally important that we heed the immediate damage being caused by the current high prices. We must show a willingness to provide some comfort for those Americans who are most at risk.

Mr. Speaker, we all recognize that people are suffering and that something must be done to help with the high cost of gasoline. I urge my colleagues to join us in this proposal that is both forward thinking and comprehensive.

**Hon. Scott McInnis**

**of Colorado**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. McInnis. Mr. Speaker I would like to take this opportunity to honor a life spent serving others, the life of Jack Fowler, Jr. Jack was a man that selflessly dedicated his life to protecting the lives of others. On Sunday,
EXTENSIONS OF REMARKS

June 29, 2001

Mr. LUCAS of Kentucky. Mr. Speaker, America's steel industry has been hit by an unprecedented flood of low-priced, imported steel. As a member of the bipartisan Congressional Steel Caucus, I have become increasingly frustrated as I have watched this flood of low-priced imports force our steel producers to either slow production or close up shop. That is why I was pleased by the Administration's recent decision to heed the advice of the Congressional Steel Caucus and the steel industry by initiating an investigation under Section 201 of the Fair Trade Act of 1974. On Friday, June 22, 2001, U.S. Trade Representative, Robert Zoellick requested the investigation to begin that investigation.

Pursuing a Section 201 means that we will now investigate the illegal dumping of foreign steel into our marketplace. If the investigation finds that unfair trade practices were used by foreign countries in the United States, we will be entitled to seek relief from imported steel—including imposing punitive tariffs and trade restrictions. This investigation is a step in the right direction. It puts foreign steel producers on notice that we will not simply stand by while unfairly subsidized steel imports leave our steel plants idle and our steelworkers without work, but we need to do more.

Over 15,000 steelworkers nationwide have lost their jobs due to the current industry crisis. Since 1997, at least 18 steel companies have filed for bankruptcy. The health insurance of 70,000 steel-company retirees is now in jeopardy—that's 70,000 Americans faced with losing health care coverage precisely at the time in their life when they can afford it the least. Although a Section 201 investigation must report its findings within 120 days, the
ITC can take up to a year to figure out how to respond to unfair trade practices. America’s steel industry needs relief now. Simply put, Congress needs to enact the Steel Revitalization Act of 200, H.R. 808. And the President needs to sign it.

This bill directs the President to impose quotas, tariff surcharges, or other measures on imports. Among other things, it requires the President to negotiate enforceable, voluntary export restraint agreements. And the Steel Revitalization Act takes care of those who have suffered most from the current situation—the steelworkers who have lost their jobs. The bill establishes programs, such as the Steelworker Retiree Health Care Fund, to help these workers take care of their families. This fund would be accessible by all steel companies to provide health insurance to qualified retirees. The measures included in the Steel Revitalization Act would help families throughout Kentucky’s Fourth Congressional District, from Shelby to Boyd Counties, who depend on our domestic steel industry for their livelihood.

Our steelworkers work hard to ensure that quality American steel girds our growing communities. That’s why I, along with 220 other members of Congress, have cosponsored the Steel Revitalization Act. I am determined to keep our domestic producers in this important industry from falling victim to unfair trade with foreign nations. Along with the Section 201 investigation, the Steel Revitalization Act would go a long way toward ensuring that steel remains a vital industry in Kentucky and the nation.

**PASSAGE OF ENERGY AND WATER DEVELOPMENT APPROPRIATIONS BILL**

**HON. TED STRICKLAND**

**OF OHIO**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. STRICKLAND. Mr. Chairman, I would like to thank our Subcommittee Chairman and Ranking Member for the hard work they put into this bill, which includes a number of programs that are very important to Southern Ohio. I would like to take this opportunity to comment on these Department of Energy programs that directly affect the workers and communities supporting the Portsmouth Gaseous Diffusion Plant located in Piketon, Ohio. I would like to express my support for the $110,784,000 included in the Fiscal Year 2002 Energy and Water Appropriations bill for costs associated with winterization of the Portsmouth, Ohio Gaseous Diffusion Plant and maintaining the plant on cold standby. It was just over a year ago today that the United States Enrichment Corporation, Inc. (USEC) announced that it would close the only U.S. uranium enrichment plant capable of meeting industry’s nuclear fuel specifications. While I cannot overstate my disappointment, disagreement, and disgust with that decision, I am pleased that funding will be available in Fiscal Year 2002 to ensure that the Portsmouth facility remains in a cold standby condition so that it could be restarted if needed in the future. I have been assured by the Department of Energy that the funding levels in this year’s appropriations bill will allow the Department to meet its goals and announce in Columbus, Ohio on March 1, 2001 and as stated by then Governor Bush last October.

I am aware of report language accompanying the bill which discusses the non-proliferation programs with Russia and, specifically, the Highly Enriched Uranium (HEU) Agreement. I support this incredibly important foreign policy initiative and I agree with the language calling for the Russian HEU to “be reduced as quickly as possible.” I am also aware that the purchase of the 500 metric tons of Russian HEU has not always stayed on schedule, and I support exploring ways to accelerate the purchase of the downblended weapons grade material from Russia. However, I would hope that we can accelerate this program without adversely affecting the domestic uranium enrichment industry. Today, we are dependent upon the downblended Russian HEU for approximately 50 percent of our domestic nuclear fuel supply. Increasing that dependence makes no sense to me, particularly at a time when we are debating a national energy strategy calling for greater energy independence and reduced volatility and supply uncertainty. We must act in a manner that strikes a reasonable balance between this significant foreign policy objective and the need to maintain a reliable and economic source of domestic nuclear fuel.

I am disappointed that the Department of Energy’s Worker and Community Transition Office funding falls short of the President’s request. I am deeply concerned that the allocated funding is inadequate to address the needs of the Department of Energy workers and communities across the DOE complex who depend on these funds to help minimize the social and economic impacts resulting from the changes in the Department of Energy’s mission.

Finally, but not least of all, I am concerned about the slight reduction in the funding for the Department of Energy’s Environment, Safety and Health Office. I am hopeful that this reduction will not impact the extremely important medical monitoring program at the Portsmouth plant, which also serves to screen past and present workers at other sites throughout the DOE complex. I am hopeful that these funds will be restored as the bill moves through the conference committee. We now know that many workers at DOE sites, including the one in Piketon, Ohio, handled hazardous and radioactive materials with little knowledge and, oftentimes, with inadequate safety practices. In fact, a May 2000 report issued by the Department’s Office of Oversight on the Piketon Gaseous Diffusion Plant states, “Due to weaknesses in monitoring programs, such as the lack of extremity monitoring, exposure limits may have unknowingly been exceeded. In addition, communication of hazards, the rationale for and use of protective measures, accurate information about radiation exposure, and the enforcement of protective equipment use were inadequate. Further, workers were exposed to various chemical hazards for which adverse health effects had not yet been identified.” Scaling back the medical monitoring program now would be unconscionable knowing what we know today. Furthermore, the compen-
Mr. BARR of Georgia. Mr. Speaker, few times each week, I open our newspapers and read about someone who is making important contributions in a particular field. It is these individuals who continue to make America a great place to live, and we should never fail to recognize their contributions. However, it is with much less frequency that we hear about people who have spent a lifetime contributing to our society in numerous different areas, always rising to the top level in each endeavor.

One such individual is Al Fowler, a native of Douglasville, Georgia. After graduating from Douglas Country High School and the University of Georgia, where he earned high honors and was active in Student Government and the Future Farmers of America, Al answered his country’s call and left to fight in World War II.

During the war, Al served in the 483rd Bomber Group in Italy, where his group of B-17s suffered a casualty rate of 107%, including replacements. Although he had the option to leave after surviving 30 missions, Al Fowler stayed on the front, and stopped flying only when the war ended on the morning before his 34th mission. During his tenure, he was promoted to Brigadier General and earned a Distinguished Flying Cross for bringing his crippled aircraft back to the ground after a particularly dangerous mission.

Fortunately, Al Fowler’s time in Italy was marked by more than just war and bloodshed. It was during this time that he met his wife, who was serving with the Red Cross in Italy. They went on to be married on the Isle of Capri. At that wedding, they exchanged rings made of gold that had been converted from dead German soldiers by a friendly Italian jeweler, the bride wore a dress sewn from German parachute silk, and the couple departed from their wedding in a B-17 Flying Fortress flown by the groom.

After returning to Douglasville, Al won election to the Georgia General Assembly, where he served with pride and distinction for 16 years. Next, he won election to the Georgia Public Service Commission. During his political years, he truly helped develop the state of Georgia, and was instrumental in building its communications and transportation infrastructure.

Later, Al went on to become Georgia’s Adjutant General, where he started the National Guard program we rely on today, and once again contributed immensely to our nation’s defense.

After leaving politics in the 1970s, Al must have felt he had not done enough to improve his community, because he took a job as President of Douglas Country Federal Savings and Loan. During his tenure of over 30 years in banking, Al helped countless families achieve their dream of owning a home or starting their own business. He also helped reform the savings and loan industry after many of his competitors overextended themselves. His work to reform these institutions has made many of them stronger today than they ever were before.

Al Fowler has already been honored by his community and the State of Georgia for his service. He was recently named the 2nd recipient ever of the Chairman’s Award at our Aviation Hall of Fame in Warner Robins, Georgia. An exhibit there will honor his contributions to freedom and prosperity in America.

As Al reaches his 81st birthday, and finally begins a well-deserved retirement, I hope that other members of this body will join me in thanking him for his service to our nation and our community in Georgia.

Mr. KUCINICH, Mr. Speaker, I rise today to honor the memory of a great man who has dedicated his entire life to spreading Christian values and beliefs, Brother Nivard, for his lifetime of dedicated service.

Born Joseph Martin Stanton in 1945, Brother Nivard has served his community in countless capacities from a very young age. At age 17 he boarded a train in the Old Union Terminal of Cleveland bound for Kentucky to commit his life to Christianity. His quest for true happiness eventually led him to the Abbey of Gethsemani in Trappist, Kentucky, where he became a monk.

His love and devotion to Christian values and beliefs earned him the respect and admiration of all his peers. His friends and family describe him as a man that has inspired many, Brother Nivard is truly a man that has given back to his community in numerous ways and that has touched an incredible number of people.

Mr. Speaker, please join me in honoring the memory of a man that has reached out into his community to improve mankind, Brother Nivard. His kind spirit, gentle demeanor, and warm smile will be greatly missed.

CONGRATULATIONS FOR PHILIP A. SHARP MIDDLE SCHOOL

Mr. LUCAS of Kentucky, Mr. Speaker, I rise today to pay tribute to Butler, Kentucky’s Philip A. Sharp Middle School. At a time when our nation is laced with a troubling energy crisis, the students of Philip A. Sharp Middle School serve as a fine example for our youth. Their school was recently selected as the Middle School of the Year by the National Energy Education Development (NEED) Project, and they will attend the National Youth Awards Program for Energy Achievement here in Washington, D.C.

I am pleased to see young people take an interest in energy issues. They are learning early in life the importance of energy produc-
SELF-DETERMINATION FOR SIKH HOMELAND DISCUSSED ON CAPITOL HILL

HON. CYNTHIA A. MCKINNEY
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Ms. MCKINNEY. Mr. Speaker, on Friday, June 15, the Think Tank for National Self-Determination held a very informative meeting here on Capitol Hill in the Rayburn House Office Building. The featured speaker was Dr. Gurmit Singh Aulakh, President of the Council of Khalistan. He laid out very well the strong case for self-determination for the Sikhs of Punjab, Pakistan, and for the other nations of South Asia, such as predominantly Christian Nagaland and predominantly Muslim Kashmir.

During his speech, Aulakh noted that "self-determination is the birthright of all peoples and nations." He quoted Thomas Jefferson, who wrote in our own Declaration of Independence that when a government tramples on the basic rights of the people, "it is the right of the people to alter or abolish it." Jefferson also wrote, "Resistance to tyranny is obedience to God."

India certainly is that kind of government. It has killed over 200,000 Christians in Nagaland since 1947, more than 250,000 Sikhs since 1984, over 75,000 Kashmir Muslims since 1988, and many thousands of other minorities, including people from Assam, Manipur, Tamil Nadu, and members of the Dalit caste, the dark-skinned "Untouchables," who are the aboriginal people of South Asia, among others. Currently, there are 17 freedom movements in India.

Just recently, a group of Indian soldiers was caught trying to set fire to a Gurdwara, a Sikh temple, in Kashmir, and some houses. Local townspeople, both Sikh and Muslim, overcame the soldiers and prevented them from committing this atrocity. Unfortunately, that is the reality of "the world's largest democracy."

Mr. Speaker, there are measures that America can take to prevent further atrocities and help the people of the subcontinent live in freedom. We should end our aid to the Indian government until it stops repressing the people and we should openly and publicly declare our support for self-determination for the people of Khalistan, Nagalim, Kashmir, and the other nations seeking their freedom in South Asia. This is the best way to help them. Unfortunately, that is the reality of "the world's largest democracy."

Mr. Speaker, I would like to insert Dr. Aulakh's speech into the Record for the information of my colleagues.

REMARKS OF DR. GURMIT SINGH AULAKH, PRESIDENT, COUNCIL OF KHALISTAN

It is a pleasure to be back here with my friends at the Think Tank for National Self Determination. This is a very important organization and I am proud to support its work.

Self-determination is the birthright of all peoples and nations. Next month America will celebrate its Independence. Thomas Jefferson, author of the American Declaration of Independence, wrote that when a government tramples on the people's rights, "it is the right of the people to alter or abolish it." He also wrote that "resistance to tyranny is obedience to God." Sikhs share that view. We are instructed by the Gurus to be vigilant against tyranny and to assert its ugly head. Guru Gobind Singh, the last of the Sikh Gurus, proclaimed the Sikh Nation sovereign. Every day we pray "Raj Kare Ga Khalsa," which means "the Khalsa shall rule."

Let me tell you a little about the history of Sikh national sovereignty. Sikhs established the Khalsa in 1699 until 1716.

In 1765, Sikh rule in Punjab was re-established, and it lasted until the British conquered the subcontinent in 1849. Under Maharaja Ranjit Singh, Hindus, Sikhs, and Muslims all served in the government. All people were treated equally and fairly. The Sikh state was extensive, at one point reaching all the way to Kabul.

At the time that the British quit India, three nations were supposed to get sovereignty. Jinnah got Pakistan for the Muslims on the basis of Muslim majority in the Punjab, while Nehru tricked the Sikh leadership of the time into taking their share with India on the promise that Sikhs would enjoy "the glow of freedom" in Punjab and no law affecting the rights of Sikhs would pass without Sikh consent. As soon as the ink dried, however, the Indian government broke these promises. They sent a memo to all officials declaring Sikhs "a criminal race" does not sound like a democracy or a totalitarian state in the Nazi/Communist mold—and the repression of Sikhs began. No Sikh representative has ever signed the Indian constitution to this day.

In June 1984 the Indian government attacked the holiest of Sikh shrines, the Golden Temple in Amritsar. Ask yourself, what is the right of the people to alter or abolish it. That is how Sikhs felt about the Golden Temple massacre and desecration. Seventeen years later, we have still not forgotten it, as the attack of the Indian government.

Since that attack, the Indian government has murdered more than 250,000 Sikhs, according to figures published in The Politics of Genocide by human-rights leader Inderjit Singh Jaimoo, convener of the Movement Against State Repression. A new report from Jaimoo's organization shows that India admitted that it held over 52,000 Sikhs as political prisoners without charge or trial under the expired "Terrorist and Disruptive Activities Act." Some of the political prisoners have been in illegal custody since 1984! In 1994, the U.S. State Department reported that the Indian government paid over 41,000 cash bounties to police officers for killing Sikhs. One such bonus was paid to a police officer who murdered a three-year-old Sikh boy. Other bonuses were paid to police killing Sikhs who later showed up alive, raising the question: Who did the police really murder? Unfortunately, there is often no way to answer. The Indian government has released one terrorist activist Jaswant Singh Khalra exposed the fact that the Indian government picked up over 50,000 Sikhs, tortured them, killed them, then declared their bodies "unidentified" and cremated them. Just recently, more bodies were found in a river bank. For this, Mr. Khaira was arrested and killed in police custody. The Indian government has also set their eyes on the small group of Khalistanis. Mr. Aulakh was arrested for trying to hand the British Home Secretary a petition asking Britain to get involved in helping to secure human rights for the Sikhs.

Two independent investigations showed that the Indian government killed 35 Sikhs last year in the village of Chithi Singhpora in Kashmir. Just last week, five Indian troops were overwhelmed by Sikh and Muslim residents of another village while they were trying to burn down the local Gurdwara and some Sikh homes. This is part of India's ongoing effort to set the minorities against each other. With 17 freedom movements within India's borders, the idea that the minorities might support each other scares the Indian government.

There is not just Sikhs who are being oppressed. While my main focus is on my own people, I am committed to freedom and human rights for all peoples and nations. There has been a wave of attacks on Christians since Christmas 1998. Members of the RSS, the pro-Fascist parent organization of the ruling BJP murdered missionary Graham Staines and his two sons in 1998 and later, with just 10, by burning them to death while they slept in their jeep. Nuns have been raped, priests have been killed, schools and prayer halls have been attacked. Last year, the RSS published a booklet on how to implicate Christians and other minorities in false criminal cases.

The BJP destroyed the Babri mosque in Ayodhya and still intends to build a Hindu temple on the site. Also, Mr. Aulakh has said that everyone who lives in India must be Hindu or must be subservient to Hinduism. They have called for the "Indianization" of non-Hindu religions. Is that a democratic country? U.S. Congressman Edolphus Towns pointed out that "the mere fact that [Sikhs] have the right to choose their oppressors does not mean they live in a democracy." Congressman Dana Rohrabacher said that for the minorities "India is not as right as America.

Sikh martyr Jarnail Singh Bhindranwale said that "if the Indian government attacks the Golden Temple, it will lay the foundation of Khalistan." He was right. On October 7, 1987, the Sikh Nation declared the independence of its homeland, Punjab, Khalistan. India claims that there is no support for Khalistan. It also claims to be democratic despite the atrocities. Then why not simply put the issue of independence to a vote, the democratic way? What are they afraid of?

Self-determination is the right of all people and nations. America should sanction India and stop its aid until all the people of South Asia are allowed to live in freedom.

Thank you for giving me this opportunity. I hope you will support freedom for Khalistan, Kashmir, Nagaland, and all the nations of South Asia.

TRADE RELATIONS REGARDING PRODUCTS OF KAZAKHSTAN

HON. ROBERT WEXLER
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. WEXLER. Mr. Speaker, I would like to place in the Congressional Record the following letter I received from A. Machkevitch.
DEAR CONGRESSMAN WEXLER: The Jewish Congress of Kazakhstan welcomes the decision of a number of US Congress members, in particular Senator S. Brownback and Congressmen J. Pitts on termination of Section IV of the Act of 1974 in relation to Kazakhstan and granting the country a permanent Regime of Normal Trade Relationship with the USA.

Undoubtedly, at the time of this Section adoption the decision of American legislators was timely and justified. One can not deny the fact that the communist regime tried all means and alleged strategies aimed at motivating the country's Jewry. Similar to the representatives of many other nationalities of the Soviet Union, neither we nor our forebears declare ourselves as ethnic group, nor visit our relatives abroad, as well as freely profess our religion. In this respect we are immensely grateful to the American people demonstrating concern and sympathy with our representatives of many other nationalities of the country's Jewry. Similar to the representatives of our consulates function in Kazakhstan. None of the countries in the Kazakhstan enjoy such achievements.

I have had the opportunity to observe Father O'Donovan at work because I was a tenured member of the faculty of the Law Center when he became president in 1989 and have continued as a faculty member, teaching a course every year. I watched first hand as Father O'Donovan strengthened a university that was already acknowledged to be one of the best in the country, and at the same time, deepened its strong commitment to its religious mission and to this city.

Father O'Donovan managed simultaneously to raise the university's academic standing and enrich the religious mission of one of the world's foremost Catholic universities. He leaves the University significantly expanded both academically and physically, with 37% more full time faculty, a 25% increase in library holdings, and a doubling of endowed chairs. Among the most significant capital improvements during Father O'Donovan's tenure are an $82 million renovation of all undergraduate housing and his initiation of a $169 million Southwest Quadrangle, which will contain new residences for undergraduates and for the Jesuit community. His signature especially is on the religious identity of the institution to which he has brought fresh and innovative emphasis.

I am particularly grateful to Father O’Donovan for his leadership in making Georgetown an especially good D.C. citizen. The achievements of the O’Donovan presidency will continue to roll out for years to come. Suffice it to say that in 1989, the challenge for a top university was to find its top president and that after a dozen years, no one can doubt that Georgetown was fortunate to meet that high standard in the man who became its 47th president. Father Leo J. O’Donovan will always be remembered at the university for this achievement, as well as for his gallant and loving spirit and for his unique contributions to education and to the District of Columbia, while reinforcing the values of his religious faith in the institution he has superbly lead into the 21st century.

HON. ELEANOR HOLMES NORTON

RETIREMENT OF REV. LEO J. O’DONOVAN, S.J. AS PRESIDENT OF GEORGETOWN UNIVERSITY

JOE O’DONOVAN, S.J.—LEADERSHIP FOR ACADEMIC EXCELLENCE

SUPPORT FOR FACULTY

Mr. Speaker, I cannot pretend to summarize Father O’Donovan’s magnificent accomplishments in a few words but let me mention some of the achievements. The achievements of the O’Donovan presidency will continue to roll out for years to come. Suffice it to say that in 1989, the challenge for a top university was to find its top president and that after a dozen years, no one can doubt that Georgetown was fortunate to meet that high standard in the man who became its 47th president. Father Leo J. O’Donovan will always be remembered at the university for this achievement, as well as for his gallant and loving spirit and for his unique contributions to education and to the District of Columbia, while reinforcing the values of his religious faith in the institution he has superbly lead into the 21st century.

HON. ELEANOR HOLMES NORTON

EXTENSIONS OF REMARKS

June 29, 2001

In this context the Jewish community of Kazakhstan calls upon you to exert your influence in freeing Kazakhstan from this rudiment of the past, which would undoubtedly strengthen relationship between our countries and testify that voices of tens of thousands of the Kazakhstan Jews have been once again heard by our American friends.

Yours Sincerely, A. MACKIKTYCH.

President.
and course development and made a priority the creation and funding of new graduate programs. The number of Georgetown’s endowed professorships and endowed chairs has doubled in the past twelve years. Among the new chairs at the University’s first in computer science, physique, and newly endowed endowed chairs in Medical History, Medicine, and Philanthropy, and a chair to support the scholarship and teaching of a visiting Jesuit scholar.

From Fall 1988 through Fall 2000 the number of Main Campus full-time faculty (both tenure track and non-tenure track) increased 37%. From Fall 1990 through Fall 2000, the number of full-time faculty at the Georgetown University Law Center increased 38%. Georgetown Law Center has the largest faculty in the United States.

RESEARCH AND SCHOLARSHIP

Georgetown’s faculty include some of the nation’s leading scholars in a wide array of fields—from linguistics to constitutional law to cancer research to health care policy. Georgetown is supported by the Heinz Endowments and the Heinz College, a center for research on Latin American law and policy issues, and the SUCCESS Medical Center; the Center for Australian and New Zealand Studies, the Center for Clinical Bioethics, and the Walsh School Studies, the Center for Australian and New Zealand Studies, the Center for Medical Ethics and Public Policy, and a chair to support the scholarship and teaching of a visiting Jesuit scholar.

The Center for Clinical Bioethics in the Law Center; the Center for Social Justice Research, Teaching and Service on the Main Campus. The Center for Social Justice Research, Teaching and Service on the Main Campus.

ACHIEVEMENTS IN ADMISSIONS & FINANCIAL AID

As Georgetown’s academic programs and faculty have advanced in stature, the admissions process has become increasingly competitive. Georgetown accepts between 20 and 25 percent of its approximately 15,000 undergraduate applicants each year and thus ranks among the nation’s most selective institutions.

At the same time, Fr. O’Donovan has worked to ensure the accessibility and affordability of a Jesuit education, sustain- ing its need-blind/full-need admissions policy and increasing significantly the amount of University funding appropriated annually for undergraduate aid. Institutional scholarship aid for undergraduates increased from $14.5 million in 1989 to more than $34.5 million in 2000–01. Each year more than 85% of the undergraduates at Georgetown receive some form of financial assistance. Including federal and private, grant, loan, and work-study programs, Georgetown awards a total of $67.5 million in undergraduate financial aid in 2000–01. Among the recent additions to financial aid resources are the Pedro Arrupe, S.J., Scholarship and the Pedro Arrupe, S.J., Scholarship.

Georgetown’s library holdings have increased by more than 25% in the past ten years.

ACADEMIC DEVELOPMENTS AND INNOVATIONS

In the past 12 years, Georgetown has steadily expanded its academic programs. Currently, there are more than 90 undergraduate and graduate degree programs, including 20 doctoral programs. In recent years, numerous new interdisciplinary graduate programs have been instituted, including programs in the neurosciences and molecular and cell biology. The undergraduate curriculum has been augmented by new minors in areas such as Catholic studies and environmental studies, a new major in political economy, and a joint program in Communication, Culture, and Technology. New graduate and professional initiatives include the Asian Law and Policy Studies Program at the Law Center, and an International Executive MBA Program at the McDonough School of Business. In 1995, the Main Campus also completed a major reorganization of academic programs, incorporating the Faculty of Languages and Linguistics into the Georgetown College.

Under Fr. O’Donovan’s leadership, innovative academic and philanthropic planning has allowed Georgetown to create a number of new teaching and research initiatives, including:

Law Casa, a center for research on Latin American law and policy issues, and the Supreme Court and the Law Center. The Center for Clinical Bioethics in the Medical Center.

The Center for German and European Studies, the Center for Australian and New Zealand Studies, and the Center for Muslim-Christian Understanding in the Walsh School of Foreign Service; and the Center for Social Justice Research, Teaching and Service on the Main Campus.

GEORGETOWN’S CATHOLIC AND JESUIT IDENTITY

To articulate the strong Catholic and Jesuit identity that Fr. O’Donovan has led Georgetown’s efforts to develop further the spiritual dimension of Georgetown’s campus and intellectual life. During the past 12 years, in addition to the new academic centers listed above, the University has launched innovative initiatives in Catholic Studies and Jewish Studies. Georgetown’s nationally recognized retreat programs have grown significantly, offering a broad range of retreat options to all members of the University community, with specific retreats for those of the Catholic, Protestant, Muslim, Orthodox Christian, and Jewish faiths. The University has hosted a wide range of conferences, symposia, and lectures devoted to religious issues and topics.

Georgetown’s Third Century Campaign has set a target of $45 million for initiatives related to Georgetown’s Catholic and Jesuit identity, including five endowed chairs in the Jesuit intellectual tradition.

In 1995, Fr. O’Donovan initiated a University-wide dialogue about ways in which the University might further deepen its Catholic and Jesuit identity. As a part of this process, in 1997, he charged a faculty-led task force to make specific recommendations about steps Georgetown could take to enhance its Catholic and Jesuit identity. The task force filed its report in 1998. Fr. O’Donovan then invited the entire University community to respond to this report and in May 1999 appointed four faculty committees to begin developing implementation strategies for some of the recommendations. Following the work of the faculty committees, in September 2000, Fr. O’Donovan launched a series of initiatives aimed at enhancing Georgetown’s Catholic and Jesuit identity. These included:

Inaugurating a second chair in Catholic Social Thought using a new endowment obtained by the University—the first chair, inaugurated last academic year, is currently held by the Rev. John P. Langan, S.J.;

Promoting dialogue among faculty about Jesuit pedagogy through the work of the Center for New Designs in Learning and Teaching, and the Center for Social Justice Research, Teaching and Service on the Main Campus.

Supporting Jesuit recruitment through the establishment of a standing committee of Jesuits and other faculty members;

Enhancing faculty diversity with increased funding for recruitment—Georgetown has already successfully recruited three new minority faculty members; and

Creating a special new Faculty Development and Scholarship (CNDLS), a new center that will make these discussions a part of its overall mission;

Supporting Jesuit recruitment through the establishment of a standing committee of Jesuits and other faculty members;

Enhancing faculty diversity with increased funding for recruitment—Georgetown has already successfully recruited three new minority faculty members; and

Creating a special new Faculty Development and Scholarship Center for Social Justice Research, Teaching and Service on the Main Campus.

NEW INVESTMENTS IN SPACE AND FACILITIES

Throughout his tenure, Fr. O’Donovan has been dedicated to developing strategies for effective long-term capital planning. More than $82 million dollars has been invested in the renovation of all undergraduate
student housing. In Fall 2000, the University broke ground on Southwest Quadrangle, which includes a 780-bed residence hall, a dining hall, an underground parking garage, and a new Jesuit community residence. The $168.5 million construction project received final approval from the Board of Zoning Adjustment (BZA) on November 8, 2000 and was scheduled for completion in the fall of 2003. The approval allows the University to proceed with construction and renovation plans for all buildings proposed in the plan, including-terms to hospital facilities proposed by MedStar Health. New facilities for the sciences, performing arts, and the McDonough School of Business are also part of the Master Plan, and major gifts for these have been raised through Georgetown's Third Century Campaign.

Recent campus development at the Law Center includes the completion of the Gewurz Student Center, which provides the campus' first on-site housing for law students, and the opening of a new wing of the campus' central building, which includes technologically advanced classrooms and seminar rooms and expanded student activity space. Current projects include construction of a new academic building that will house the Center for Urban Research and Teaching on the Main Campus; the new School building on Prospect Street and the National Academy of Sciences buildings on Wisconsin Avenue. At the Medical Center a new wing was completed at the Hospital in 1993, and a new research building was dedicated in 1995.

GROWTH AND ACHIEVEMENTS IN ATHLETICS

During Fr. O'Donovan's tenure as president, Georgetown's Athletic Program has regularly undergone reviews, has been found in compliance with Title IX, and has received NCAA certification. Georgetown instituted women's soccer as a varsity sport and elevated women's lacrosse to a national level sport. The University also expanded the number of scholarships for women athletes. Men's lacrosse, which has been a Final Four program, and, in 2001, the football team began competing in the Patriot League. In the 1990s, fourteen different teams ranked in the top ten in the nation, and graduate athletes continue to be outstanding. During the past 12 years, philanthropic support has increased significantly. Annual Fund contributions to the Athletic Program have more than doubled, and two endowed coaching positions and an endowed chair, the Francis X. Rienzo Athletic Director Chair, were established.

MAJOR ADMINISTRATIVE PROJECTS

With the rise of managed care, the decline of government funding for health care, and other factors, Georgetown faced serious financial challenges at the Medical Center throughout the 1990s. In 1995, Fr. O'Donovan established a series of grants to address the Medical Center's increasing budget deficits. Fr. O'Donovan established a strong focus on cost cutting, revenue enhancement, and other management strategies. In March 1999, he signed a letter of commitment to pursue exclusive negotiations to form a clinical partnership with MedStar Health, a non-profit regional health system. In June 2000, Georgetown instituted an historic partnership agreement with MedStar in which MedStar assumed all responsibility for the operation of the clinical enterprise, which includes a 535-bed hospital, a faculty practice group, and a network of community physician practices. Georgetown continues to have financial responsibility for the education and research enterprises, including the Medical School, the Nursing School, and the biomedical research enterprise.

The partnership allows Georgetown to realize major strategic goals:
- It preserves and supports the University's mission of first-class medical education and research, as well as the Hospital's Catholic identity.
- It transfers the clinical operations to MedStar, thereby protecting Georgetown from future clinically-related losses in an increasingly competitive health care economy while providing the opportunity for future earnings if MedStar's Washington, D.C., system meets certain financial targets.
- It saved 3,800 jobs in the clinical enterprise and financial aid resources and strengthens the relationship with the District of Columbia by continuing to provide opportunities for employment and medical care.

In the past 12 years, Georgetown has made major investments in improving the technological infrastructure of the University and expanding the ways in which technology can enhance teaching, research, and service. Georgetown ranks among the first universities in the nation to use the latest fiber optic technology in its residence halls, all of which are now wired for advanced computer and Internet use. In addition, 100% of Georgetown faculty have access to the world wide web. Library services include web-accessible catalogues and databases, as well as a broad array of research assistance online. While advancing its technological resources, Georgetown is also moving ahead as a higher education leader on such innovative projects as Internet research and information technology.
EXTENSIONS OF REMARKS

June 29, 2001

Stanton has made a huge impact in Colorado art, and has brought international attention to the glorious landscapes of Colorado. He worked with the art community to act as a model for the young and the old, for the artistic and the admirer. Mr. Speaker, I ask to thank Stanton Englehart on behalf of Congress for his ongoing contributions to this important creative aspect of Colorado. He deserves our congratulations.

TRIBUTE TO MELANIE STOKES

HON. BOBBY L. RUSH OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. RUSH. Mr. Speaker, I rose today to honor the memory of Melanie Stokes and all women who have suffered in silence from postpartum depression and psychosis with the introduction of the Melanie Stokes Postpartum Depression Research and Care Act.

Chicago native, Melanie Stokes was a successful pharmaceutical sales manager and loving wife of Dr. Sam Stokes. However, for Melanie, no title was more important than that of mother. Melanie believed motherhood was her life mission and fiercely wanted a daughter of her own. This dream came true on February 23, 2001 with the birth of her daughter, Sommer Skyy. Unfortunately, with the birth of her daughter, Melanie entered into a battle for her life with a devastating mood disorder known as postpartum psychosis. Despite a valiant fight against postpartum psychosis, which included being hospitalized a total of three times, Melanie jumped to her death from a 12-story window ledge on June 11, 2001.

Melanie was not alone in her pain and depression. Each year over 400,000 women suffer from postpartum mood changes. Nearly 80 percent of new mothers experience a common form of depression after delivery, known as “baby blues.” The temporary symptoms of “baby blues” include mood swings, feelings of being overwhelmed, tearfulness, and irritability, poor sleep and a sense of vulnerability. However, a more prolonged and pronounced mood disorder known as postpartum depression affects 10 to 20 percent of women during or after giving birth. Even more extreme and rare, postpartum psychosis, whose symptoms include hallucinations, hearing voices, paranoia, severe insomnia, extreme anxiety and depression, strikes in 1,000 new mothers.

Postpartum depression and psychosis affects new mothers indiscriminately. Many of its victims are unaware of their condition. This phenomena is due to the inability of many women to self-diagnose their condition and society’s general lack of knowledge about postpartum depression and psychosis and the stigma surrounding depression and mental illness. Untreated, postpartum depression can lead to self-destructive behavior and even suicide, as was the case with Melanie. As was seen recently in the case of Andrea Yates of Houston, Texas who drowned her five children, postpartum depression and psychosis can also have a dire impact on one’s family and society in general.

In remembrance of Melanie Stokes and all the women who have suffered from postpartum depression and psychosis, as well as their families and friend who have stood by their side, I am introducing the Melanie Stokes Postpartum Depression Research and Care Act which will:

Expand and intensify research at the National Institute of Health and National Institute of Mental Health with respect to postpartum depression and psychosis, including increased discovery of treatments, diagnostic tools and educational materials for providers;

Provide grants for the delivery of essential services to individuals with postpartum depression and psychosis and their families, including enhanced outpatient and home-based health care, inpatient care and support services.

It is my hope that through this legislation we can ensure that the birth of a child is a wonderful time for the new mother and family, and not a time of mourning over the loss of yet another mother or child.

INSULAR AREAS OVERSIGHT AVOIDANCE ACT

HON. ROBERT A. UNDERWOOD OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. UNDERWOOD. Mr. Speaker, today I would like to reintroduce the Insular Areas Oversight Avoidance Act, legislation I previously introduced during the 106th Congress.

This legislation, which is cosponsored by Congresswoman DONNA CHRISTIAN-CHRISTENSEN from the Virgin Islands and Resident Commissioner ANIBAL ACEVEDO-AVILA of Puerto Rico, seeks to hold the federal government more accountable in the manner that federal policy is developed towards the insular areas, which include Guam, the Virgin Islands, the Commonwealth of Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands. The bill would require that the Office of Management and Budget explain any omission of any insular area from any policy statement issued by the Office of Management and Budget on federal initiatives or legislation.

The impetus for the bill is to improve federal-territorial relations and to encourage greater use of government resources in a more cost-efficient manner. Given our geographical distance from Washington, D.C., and our political status as territories, it is very difficult for insular area officials to sometimes be heard at the federal level. We face repeated challenges in ensuring that the insular areas are not forgotten in federal initiatives and policies on a daily basis, whether it be international treaties, Presidential Executive Orders, proposals or a budget. I believe that such consideration would be a more effective way of ensuring that all Americans—in the fifty states, the District of Columbia, and the insular areas—are treated fairly.

The failure of the federal government to contemplate the impact of the insular areas in federal initiatives often results in the need for the Insular Areas governments to expend an exorbitant amount of resources and energy to either rectify the “oversight” through legislation or through executive and sometimes futile negotiations with federal agencies.

An example of such a situation is the way in which U.S. Treasury Department officials negotiate international tax treaties. There are around 75 international tax treaties that the U.S. has negotiated with other countries. The treaties govern the bi-lateral relationships the U.S. has with other countries on tax matters, including federal investment withholding rates.

In its definition of the term “United States,” there are several definitions used by U.S. negotiators. The most commonly employed definition explicitly excludes Guam and the other insular areas by name. Another definition explicitly includes the Insular Areas as comprising the “United States.”

Currently, the Congress is considering legislation I introduced, H.R. 309, the Guam Foreign Investment Equity Act, which is trying to rectify Guam’s exclusion in these international tax treaties. H.R. 309 provides the Government of Guam with the authority to tax foreign investors at the same rates as states under U.S. tax treaties. The bill passed the House on May 1, and is awaiting Senate consideration.

I would not have to be pushing for the Guam Foreign Investment Equity Act if the federal government had contemplated its impact on the insular areas, including Guam, when the current U.S. tax treaties with other countries were negotiated.

To understand why this “oversight” is detrimental to Guam and the federal government, let me give you an overview of how this action has stymied economic development on Guam. Currently, under the U.S. Internal Revenue Code, there is a 30% withholding rate for foreign investors in the United States. Since Guam’s tax law “mirrors” the rate established under the U.S. Code, the standard rate for foreign investors in Guam is 30% since Guam is not included in the definition of “United States” for international tax treaties. As an example, the 30% withholding rate for foreign investors is 10%. That means while Japanese investors are taxed at a 10% withholding rate on their investments in the fifty states, those same investors are taxed at a 30% withholding rate on Guam. As 75% of Guam’s commerce is funded by foreign investors, such an omission has deprived Guam of attracting foreign investment opportunities.

Other territories under U.S. jurisdiction have already remedied this problem or are able to offer alternative tax benefits for foreign investors through delinking or by means of federal agency actions. As the only state or territory in the United States which is unable to provide this tax benefit or to offer alternative tax benefits for foreign investors, the Insular Areas Oversight Avoidance Act would be helpful to insular area governments and the federal government by requiring that
situations like the U.S. negotiations on international tax treaties are for the good of all U.S. jurisdictions in the country, not just the fifty states. I understand that the U.S. government is currently renegotiating with Japan on the tax treaty between our two countries. While I hope that Guam is not excluded from being part of this treaty, the record of U.S. negotiators on previous tax treaties does not provide me with any level of comfort. This is a perfect example of why the bill I have introduced today is needed.

Klamath Basin Government-Caused Disaster Compensation Act

Hon. Wally Herger
Of California
In the House of Representatives
Thursday, June 28, 2001

Mr. HERGER. Mr. Speaker, principles of fairness and justice demand that the Government not force some people to bear burdens, which should rightfully be borne by the public as a whole. However, that is precisely what is happening in the Klamath Basin in northern California and southern Oregon because of the Endangered Species Act (ESA), and today I rise, joined by my Oregon colleague, Congressman Greg Walden, to introduce legislation to address that.

The ESA has strayed far from its original mission. It was never intended to sacrifice human health and safety and economic well-being. Yet, the fact remains that under the guise of species protection, constitutionally-protected property rights are being trampled, local economies are being destroyed, families are being forced into bankruptcy and, in many cases, human health and safety are being jeopardized. There is little consideration given to the human species under the ESA. Once a species is “listed,” its needs must come first—before the rights and livelihoods of American people. As it is currently being implemented, the ESA requires species protections at any and all costs.

Regrettably, rural Western communities are disproportionately bearing the burdens and costs associated with species protection, burdens which should rightfully be borne by the public as a whole. The zero-water decision that was recently handed down in the Klamath Basin is the “poster child” for precisely these kinds of injustices. Farmers in this rural area were told on April 6, 2001 that there would be no Klamath Project water for agriculture this year, because, in the opinion of a few Government biologists, it was needed to protect two species of fish that may or may not be endangered.

The decision does not come without significant social and economic impacts. The Klamath Project supports approximately 1,500 small family farmers and ranching operations and scores of related businesses. This agricultural area generates in excess of $250 million in economic activity annually. The annual value of crops produced is estimated at more than $110 million. All of this human activity has come to a grinding halt because of an ESA mandated decision that is based only on speculation and guesswork. Preliminary estimates place total economic damage in the neighborhood of $220 million. Regrettably, all of the estimated economic losses associated with this decision will be borne solely by the people who live and work in the Klamath Basin, many of them veterans of World War II who were promised a permanent supply of water and land, and their sons and daughters.

It is important to note that this is not simply a Klamath Basin problem. Nor is it a new problem, or one that is specific to the agriculture industry in general, or to federal project irrigators in particular. Small businesses throughout the Sierra Nevada mountains in California face potentially debilitating economic losses because of forest management restrictions associated with extremely dubious concerns about the status of the California Spotted Owl. Water users throughout California have faced extreme hardship as the Government has exercised its power to force federal takings by reducing contractual water deliveries to a mere percentage of their contract amounts because of pumping or other water use restrictions driven by the ESA. A rural area in my northern California Congressional District has incurred millions of dollars in excess costs on critically important infrastructure improvement projects because of ESA-mandated mitigation. In this same area a much-needed high school continues to be delayed at taxpayer expense because of the ESA. There are many examples, but the fact remains that people are suffering economically because of the implementation of the ESA.

These requirements and restrictions are, simply, an unfunded federal mandate. The federal government should not force some to bear the costs, but should bear the burden itself, or, if it cannot pay or is not willing to pay, then it should avoid the action altogether. Or, it must find some middle ground. That is simple accountability.

For these reasons, Mr. Speaker, I rise today to introduce the Klamath Basin Government-Caused Disaster Compensation Act. It requires the Secretary of the Interior to fully compensate the individuals of the Basin who have been economically harmed as a result of the restrictions that have been placed on the operations of the Klamath Project. Such payments would come from within the Department of Interior’s budget. This legislation sends a resounding message to Washington that if the federal government is going to force this kind of social and economic harm on rural America through its laws, it will be held accountable. And if it rebukes those costs as unacceptable, then it will face the question of whether this kind of species protection—recklessly imposing requirements that may or may not benefit species, but that will certainly carry significant costs to real people—is a goal all Americans truly want, and if so, whether they’re willing and prepared to share the impacts.

Ultimately, the ESA itself must be modernized if we are to ensure that people and communities come first. However, real people and real communities are the direct result of the federal government’s actions in the Klamath Basin, and while the long-term social and other hidden impacts from this decision can never be fully mended, fairness and justice demand that the federal government step in to rectify the economic harm that it has caused.

Tribute to McNeil Family for 2001 National Wetlands Award

Hon. Scott McInnis
Of Colorado
In the House of Representatives
Thursday, June 28, 2001

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to offer my congratulations to a couple that has taken extensive efforts to promote land stewardship, wetlands conservation, research and education in the Monte Vista area of Colorado. Mike and Cathy McNeil have truly exemplified the ideals honored with the 2001 National Wetlands Award of the Natural Resources Conservation Service, the U.S. Environmental Protection Agency and the Environmental Law Institute and I would like to add my thank you and appreciation to their labors.

Nestled on the edge of Rock Creek just south of Monte Vista and neighbored by the Monte Vista National Wildlife Refuge, the McNeil ranch persists as a fourth-generation operation. Understanding the importance of responsible development and the intersection with environmental preservation, the McNeils launched the Rock Creek Heritage Project—an effort which protected nearly 15,000 acres of farm and ranch land in the Rock Creek Watershed. This collaborative effort, involving 27 landowners, accentuates 5 aspects including land protection, watershed enhancement, training in holistic management, community building and support for value-added marketing of agricultural products. Extending beyond land matters, the McNeils have adopted innovative calving patterns to provide their 800 mother cows warmer birthing periods during June and July rather than throughout the cooler winter months utilized by most ranchers in the area. In all of these endeavors the McNeils have exhibited innovation, excellence and outstanding effort.

Mr. Speaker, Mike and Cathy have been united in marriage for 20 years and have the blessing of their daughter Kelly who is 14 years of age. The teachings of her parents are allowing Cathy to value and preserve the heritage from which she comes through the extraordinary contributions of the McNeils, wetland protection and land stewardship have been heralded and an example has been established for others to follow in order to obtain ecological health while not compromising agricultural profitability. The National Wetlands Award will be one of many awards that the McNeils have garnered from their hard work—alongside the distinct recognition of being the Colorado Association of Soil Conservation District’s Conservationists of the Year in 1999 and the 2001 Steward of the Land Award issued by the American Farmland Trust.

The McNeils deserve to be applauded on a job well done and I, along with my colleagues, thank them for their sustained efforts in this critically important realm and foundation to life.
Mr. HEFLEY. Mr. Speaker, I rise to speak today about an organization which is headquartered in my district and has had an immeasurable impact on America. The history of Junior Achievement is a true testament to the indelible human spirit and American ingenuity. Junior Achievement was founded in 1919 as a collection of small, after-school business clubs for students in Springfield, Massachusetts.

As the rural-to-city exodus of the populace accelerated in the early 1900s, so too did the demand for workforce preparation and entrepreneurship. Junior Achievement students were taught the accomplishments and principles that business leaders had been using in their own careers to make business decisions. They were taught to acquire supplies and talent, build their own products, advertise, and sell. With the financial support of companies and individuals, Junior Achievement recruited numerous sponsoring agencies such as the New England Rotarians, Boys & Girls Clubs of America, YMCA, local churches, playground associations and schools to provide meeting places for its growing ranks of interested students.

In a few short years JA students were competing in regional expositions and trade fairs and rubbing elbows with top business leaders. In 1925, President Calvin Coolidge hosted a reception on the White House lawn to kick off a national fundraising drive for Junior Achievement’s expansion. By the late 1920s, there were nearly 800 JA Clubs with some 9,000 Achievers in 13 cities in Massachusetts, New York, Rhode Island, and Connecticut.

During World War II, enterprising students in JA business clubs used their ingenuity to find new and different products for the war effort. In Chicago, JA formed a contract to manufacture 10,000 pant hangers for the U.S. Army. In Pittsburgh, JA students developed a specially lined box to carry off incendiary devices, which was approved by the U.S. Army. JA international students in the 1960s made baby incubators and used acetylene torches in abandoned locomotive yards to obtain badly needed scrap iron.

In the 1940s, leading executives of the day hosted Junior Achievement student teams and gave them funds to purchase and operate a bus line, which was eventually sold with a profit. In the 1950s, JA began formalizing the curriculum and offering it to the schools, and in 1955, President Eisenhower declared the week of January 30 to February 5 as “National Junior Achievement Week.” At this point, Junior Achievement was operating in 139 cities and in most of the 50 states. During its first 45 years of existence, Junior Achievement enjoyed an average annual growth rate of 45 percent.

In the 1980s, Junior Achievement introduced a national Business Hall of Fame in 1975 to recognize outstanding leaders. Each year, a number of JA students are recognized for their contribution to the business industry and for their dedication to the Junior Achievement experience. Today, there are 200 laureates from a variety of businesses and industries that grace the Hall of Fame.

Today, through the efforts of more than 100,000 volunteers in the classrooms of America, Junior Achievement reaches more than four million students in grades K–12 per year. JA International takes the free enterprise message and opportunity down to the classroom of the 21st century. Today, there are 200 laureates who grace the Hall of Fame. Today, there are 200 laureates who grace the Hall of Fame. The history of Junior Achievement is truly the story of the indelible human spirit and American ingenuity.

A TRIBUTE TO LIMERICK TOWNSHIP

HON. JOSEPH M. HOEFFEL
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. HOEFFEL. Mr. Speaker, I rise today to congratulate Limerick Township in Montgomery County, Pennsylvania on its 275th Anniversary. Native Americans of the Delaware
tribute were the original inhabitants of this area followed later by William Penn, who in 1682, purchased large tracts of land from the Native Americans from Wales, Germany, Holland, and France, soon began to settle here. Many important and prominent families began to arrive such as the Brookes, Evans, Kendalls, and the Ickes.

A petition to form the township of “Lymmerick” was filed in Philadelphia in 1726 and may still be found in City Hall. Education was of major importance to the citizens of the township. From the beginning many schools were constructed. There were eight one-room schools in the town in 1848 and that number continued to grow throughout the rest of the century. Currently there are four major schools within the township.

Limerick Township has been a farming community for much of its history. Development grew slowly though steadily until the construction of the Pennsylvania Expressway in 1959 which connects Philadelphia with King of Prussia. As one of the oldest townships in Montgomery County, Limerick Township is now home to 18,000 residents, a nuclear generating station, an airport, and several golf courses. It is one of the fastest growing areas within Montgomery County.

I am proud to represent such an extraordinary township. This anniversary should serve as a lasting tribute to the men and women who built Limerick and now make it their home. Their dedication has made this township the wonderful place it is.

HONORING THE LIFE AND WORK OF JOHN L. NINNEMANN

HON. SCOTT McINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. McINNIS. Mr. Speaker, I stand here before you today to honor a man that has made significant contributions to the artistic community, John L. Ninneman. John has not only created a legacy with his photography, but he has also shaped the future with the minds he has taught at Adams State College.

John is currently the Dean of Arts and Sciences at Fort Lewis College. He started his extensive education at St. Olaf College; he then went on to earn a Master’s at North Dakota University. After completion of his Master’s Degree, John received his Ph. D. at Colorado State and his Post-doctoral training at Memorial Sloan Kettering Cancer Center in New York City. With his vast knowledge John became an accomplished research immunologist. His time spent in Colorado created a love for the State, and John eventually returned to Colorado to become a professor at Adams State College. John proved to be a great professor, and was loved by both students and fellow professors. During his time there he served as Chair of Biology, and Dean of the School of Science, Math and Technology. In the little spare time that John had he developed a love for photography.

John started what would be an illustrious career in photography by documenting one-room schoolhouses in and around the San Luis Valley. He then began to photograph the rock canyons and mesas in the Four Corners Region. His photography has won numerous awards, and helped make others aware of the beauty in Colorado that needs to be preserved. John’s artistic ability does not stop with his photos; he is also a talented violinist who performs with chamber groups, and at fundraisers. It seems that John’s talent and ability is boundless.

The contributions that John has made to the artistic community of the State of Colorado, not to mention the nation, is why I believe, Mr. Speaker, that John Ninneman is worthy of the praise of Congress. The black and white photos that he has taken will live forever as a reminder to all how beautiful the United States is to all that view them. I thank John for sharing his amazing talents with the public.

“RENEWABLE ENERGY AND ENERGY EFFICIENCY ACT OF 2001” (“REEA”)

HON. LYNN C. WOOLSEY
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Ms. WOOLSEY. Mr. Speaker, this week I introduced the “Renewable Energy and Energy Efficiency Act of 2001” (“REEA”). This bill is a blueprint for the House Science Committee as we develop legislative priorities for the renewable energy and energy efficiency programs at the Department of Energy (DOE). The Committee’s role in the national energy debate is unique, because we are required to envision the future energy needs of our country, and determine the direction of DOE’s research, development and demonstration (RD&D) programs. As the Ranking Member on the Science Committee’s Energy Subcommittee, this bill is my statement on our priorities.

We must establish a more level playing field for renewable energy sources, so we can reduce our reliance on coal and fossil fuels. We must encourage the development of “green industries” through increased emphasis on energy efficiency technologies. We must expand those energy sources that will contribute to a more sustainable, long-term energy future. Increased federal investment in renewable energy sources and energy efficiency technologies is smart public policy because for every dollar invested in current DOE sustainable energy programs, the benefits total $200.

My vision for our energy future is that by the year 2020, twenty percent of our energy will be generated from renewable sources. Environmental groups agree, because we cannot continue to focus our priorities on limited fossil fuel sources. Unfortunately, our federal commitment to the RD&D programs that will help us meet this goal has declined significantly since 1980. This bill is a bold effort to reverse this funding scenario by outlining a robust RD&D program and fund an aggressive energy efficiency agenda.

The comment I’ve heard most often from the renewable energy community is that a critical element of any successful RD&D program is a stable funding stream that gradually increases over time. That’s why over the next five fiscal years, “REEA” authorizes total funding for DOE renewable energy programs at $3.735 billion, and energy efficiency at $5.185 billion with an additional $300 million for NASA to work on aircraft energy efficiency. If Americans are to have a secure energy future, with reliable, clean and environmentally-friendly energy sources, we must invest in renewable energy sources and make great strides in energy efficiency, so we can reduce our overall energy consumption. This means increasing support for wind, solar, geothermal and biomass energy sources.

We must also ensure that promising renewable energy and energy efficient technologies, like hydrogen fuel cells, are given commercialization assistance so that individual consumers can afford to use them. My bill establishes a competitive grant program at DOE so that private sector entities can help advance development of new technologies. Many creative and entrepreneurial individuals need only access to financial assistance to demonstrate the successful application of their renewable energy or energy efficiency technology. That’s why this bill directs that at least fifty percent of the $1 billion provided for such assistance goes to small businesses and startup companies.

Mr. Speaker, for too long we have overlooked renewable energy sources when setting our energy priorities. Now is the time for a responsible energy policy that makes significant investments in clean energy sources to supplement our current energy use. We must ensure that we prevent a repeat of the energy shortages Californians and West Coast residents now face. “REEA” will be a big step toward protecting our environment, and guaranteeing a better future for our children.

IN SUPPORT OF THE LOW INCOME FAMILIES FLOOD INSURANCE ACCESS ACT

HON. GENE GREEN
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. GREEN of Texas. Mr. Speaker, as we witnessed the damage wrought by Tropical Storm Allison after it wept through Texas and up the East Coast, the importance of the National Flood Insurance Program (NFIP) really hit home. Thousands of my constituents suffered substantial flood damage to their homes and businesses, but some of these losses were mitigated because they had federal flood insurance.

Unfortunately, not all my constituents who needed flood insurance could afford to purchase a policy. Because of a recent redraw of Houston’s Flood Insurance Rate Map (FIRM) many of my low-income folks were brought into the 100-year flood plain, but could not afford the insurance. As a consequence of my constituents’ experience, I rise today to introduce the Low Income Families Flood Insurance Access Act.

This legislation helps bridge the insurance gap between those that can afford a flood policy and those that cannot. The bill would provide discounted flood insurance over a five-
year term for low-income homeowners or rent-
ers whose primary residence is placed within a Special Flood Hazard Area (flood plain) by a redrawn of the Flood Insurance Rate Map (FIRM). If their property is worth no more than $75,000, they would be eligible to receive a 50% discount on their flood insurance pre-
miums for a five-year period.

It also provides for limited retroactivity if
their residence is placed within the floodplain within two years of the enactment of the legis-
lation; otherwise, the five years would begin upon the placement of the property within the
flood plain. I hope that this legislation will not only increase participation in the National Flood Insurance Program (NFIP), but make its program more affordable for the economically disadvantaged. It provides an incentive for those who are most vulnerable to huge losses in floods to get the protection they need at a
price they can afford.

The NFIP plays a crucial role in lessening the impact of a major flooding disaster, but to make the program operate most effectively we need greater participation. I believe my legisla-
tion will extend the helping hand associated with flood insurance down to those people in greatest need of assistance.

Mr. Speaker, I hope that we can speed this bill through the 107th Congress.

AMERICAN SCHOLARS OF CHINESE ANCESTRY

SPEECH OF
HON. PATSY T. MINK
OF HAWAII
IN THE HOUSE OF REPRESENTATIVES
Monday, June 25, 2001

Mrs. MINK of Hawaii. Madam Speaker, I rise in strong support for H. Res. 160, which calls upon the Government of the People's Republic of China to immediately and uncondi-
tionally release Li Shaomin and all other American scholars of Chinese ancestry being held in detention. I join in asking President Bush to make the release of these scholars, who include U.S. citizens and permanent resi-
dents, a top priority in our dealings with China.

These Chinese American scholars have been accused of spying but no evidence has been produced by the Chinese government. The detainees have even been denied the basic right of meeting with their families and lawyers. Dr. Li Shaomin, Dr. Gao Zhan, Wu Jianmin, Tan Guangguang, and Teng Chunyan have been unjustly imprisoned and denied due process. We must insist on their immediate release.

The harassment and persecution of intellec-
tuals is yet another attempt by the Chinese government to stifle any freedom of expres-
sion among its people. China's leaders should be ashamed of its government's abysmal record of human rights abuses but instead re-
main indifferent to the condemnation of the world community. The Chinese government regularly violates the International Covenant on Civil and Political Rights, which it signed in October 1998.

We must make sure that the Chinese gov-
ernment understands that it will pay a price for flouting international norms of behavior. This is

why I support rescinding Permanent Normal Trade Relations with China and going back to an annual review. I would hope, moreover, that China's human rights record will be a factor in the International Olympic Committee's choice of which country will host the 2008 Olympics.

I urge all my colleagues to send a strong message to the Chinese government by unanimously passing this important resolution.

IN RECOGNITION OF DR. MARK JOHNSON

HON. ROBERT MENENDEZ
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Dr. Mark Johnson, who will be recognized by the New Jersey Medical School's Family Practice Residency Program for his outstanding achievements in the fields of family medicine and medical research. Dr. Johnson will be honored on Friday, June 29, 2001, at a private reception at the Landmark II in East Rutherford, New Jersey.

Mark Johnson graduated from Coe College in Cedar Rapids, Iowa, where he majored in Black Literature. He furthered his studies by graduating from the University of Medicine and Dentistry at New Jersey's Medical School in Newark, New Jersey. After graduating from medical school, Dr. Johnson spent his family practice residency at the University of South Alabama in Mobile, Alabama. In addition, he was a Robert Wood Johnson Clinical Scholar at the University of North Carolina at Chapel Hill, where he received his Masters Degree in Public Health.

Dr. Johnson's notable career as a family physician and medical researcher has earned him widespread praise from his peers and col-
leagues. The American Medical Association has recognized him on four separate occa-
sions for his diligent work and exceptional en-
deavors, by presenting him with the Physi-

Currently, Dr. Johnson is the Chair of the Department of Family Medicine at the Univer-
sity of Medicine and Dentistry at New Jersey's Medical School in Newark. Prior to his tenure at New Jersey's Medical School, Dr. Johnson taught at the University of North Carolina at Chapel Hill, the University of South Alabama, and Meharry Medical College in Nashville, Tennessee.

Today, I ask my colleagues to join me in honoring Dr. Mark Johnson for his distin-
guished service and commitment to family medicine.

GINA UPHURCH RECEIVES COMMUNITY HEALTH LEADER AWARD

HON. DAVID E. PRICE
OF NORTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. PRICE of North Carolina. Mr. Speaker, I want to offer my congratulations to Gina Upchurch, one of 10 recipients of the 2001 Robert Wood Johnson Community Health Leader Award. Ms. Upchurch has earned this honor for her pathbreaking work with the Senior PHARMAssist Program based in Durham, North Carolina.

Each year, the Community Health Leadership Program recognizes ten individual who have found innovative ways to bring health care to communities whose needs have been ignored or unmet. Ms. Upchurch was selected for this prestigious recognition from a field of 577 nominees.

As founder and executive director of Senior PHARMAssist, Ms. Upchurch created a model to help seniors on limited incomes purchase expensive medications. PHARMAssist monitors the medications of their clients to help prevent life-threatening interactions and provides financial aid to those on limited incomes. The program has helped more than 2,600 seniors get the medications they need and has educated over 800 older adults about safer usage of medication.

The counseling and support provided by PHARMAssist works. A recent study con-
ducted by the University of North Carolina at Chapel Hill found that emergency room visits and over-night hospital stays had decreased by almost a third for seniors who had been in the program for at least one year.

Ms. Upchurch graduated from UNC with de-
grees in pharmacy and public health. She served in the Peace Corps in Botswana before returning to North Carolina to write her master's thesis, a policy analysis which recom-
manded a program to provide health care to seniors throughout the state. This laid the groundwork for what eventually became Senior PHARMAssist. She now oversees a $500,000 budget and has written a manual to help other communities establish a similar program.

Gina Upchurch has improved health care and helped those in need in our community. I am proud to recognize her achievements today.

DIRECT AIR SERVICE BETWEEN LOS ANGELES INTERNATIONAL AND WASHINGTON'S REAGAN NA-
TIONAL AIRPORTS

HON. JANE HARMAN
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Ms. HARMAN. Mr. Speaker, today I have been joined by a bipartisan group of my colle-
agues in introducing legislation to preserve direct air service between Washington's Reagan-National Airport (DCA) and Los Angeles International Airport (LAX).
This legislation is necessary because the Department of Transportation (DOT) decided to eliminate this critical service last Friday. Instead of permitting American Airlines, which purchased TWA, to have the TWA slots to continue to fly this route, the Department awarded them to Alaska Airlines, which will use them to start nonstop service between Washington and Seattle. The DOT's decision disappointed tens of thousands of Californians and other passengers who have come to rely on this route and its connections to Bakersfield, Fresno, Monterey, Oakland, Palm Springs, San Diego, San Francisco, San Jose, San Luis Obispo, Santa Barbara, and elsewhere in the state.

Without this route, Los Angeles will be the largest U.S. city without non-stop air service to Washington's Reagan-National. In fact, California, the most populous state in the Union, will have no direct air service to the nation's capital. Earlier this year, 57 Members of Congress—including House Majority Leader Dick Armey and Democratic Leader Richard Gephardt—and most Members of the California congressional delegation—wrote the DOT in support of American's efforts to preserve this critical service.

The legislation introduced today allows American Airlines to use two existing slot exemptions for service between Washington's Reagan-National and Los Angeles. As such, it does not increase the total number of flights at Washington's Reagan-National and permits Alaska Airlines to fly direct to Seattle.

Mr. Speaker, Californians rely upon nonstop air service between Los Angeles International Airport and Washington's Reagan-National Airport. Without congressional action, this convenient nonstop air service will end in September. Without congressional action, this convenient nonstop air service will end in September. Without congressional action, this convenient nonstop air service will end in September. Without congressional action, this convenient nonstop air service will end in September.

I urge all my colleagues to support this legislation.

HONORING THE 125 YEAR HISTORY OF LA VETA, COLORADO

HON. SCOTT McCNINIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. McCNINIS. Mr. Speaker, I would like to take this opportunity to pay special tribute to La Veta, Colorado on its 125th Birthday. For over a century, the people of La Veta have contributed a rich heritage and cultural diversity to the state of Colorado. I would like Congress to wish the citizens of La Veta a very happy 125th birthday.

In 1862, Col. John M. Francisco, a former settler with the US Army at Fort Garland, and Judge Henry Daigle built Fort Francisco on high ground south of the San Luis Valley bound traffic. When Col. John Francisco looked down on the future site of La Veta, he said, "This is paradise enough for me." The town of La Veta was incorporated on October 9, 1876.

As more settlers moved into this beautiful and fertile valley, the Fort increased in importance as shelter from Indians and as the commercial center for the area. The first Post Office, named Spanish Peaks, opened in the Plaza in 1871. By 1875 the Indian threat was almost completely gone. In 1876 the narrow gauge railroad came through La Veta several blocks north of the Fort on its way westward through the newly surveyed La Veta Pass. In 1877 the permanent rail depot was built beside the railroad and the business community slowly moved north toward it. For many years, this stretch of the line between La Veta and Wagon Creek was the highest in the world. The old depot building at the summit is listed on the National Register of Historic Places.

The mountains of the Sangre de Cristo Range were long known by the Indians of the Southwest. Relics of the Basket Weaver Culture have also been found within the county. The Spanish Peaks are a historic landmark to travelers—from the early Indians to the vacationer. Besides being the railroad, La Veta has also been the center of local agriculture and coal mining.

Mr. Speaker, the citizens of Colorado are proud of La Veta’s 125-year history. It is an area rich in culture, history and heritage. For that Mr. Speaker, I would like to wish La Veta happy birthday and wish its citizens good luck and prosperity for the next 125 years.

HONORING YAKOV SMIRNOFF ON THE 15TH ANNIVERSARY OF HIS CITIZENSHIP

HON. CHRISTOPHER COX
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. COX. Mr. Speaker, I rise today to pay tribute to Yakov Smirnoff, who will celebrate his 15th anniversary as a United States citizen on July 4, 2001.

When Yakov left the Soviet Union in 1977, he arrived in the U.S. with less than $100 in his pocket. But like so many new immigrants, Yakov quickly found a way to put his talents to use in his new country—and in only a few years he became one of America's most recognized comedians.

Yakov's brand of comedy appealed to so many Americans because it carried real insight. He poked fun at the daily consequences of Soviet tyranny, while displaying a remarkably American irreverence for our own foibles. "In the Soviet Union, I'd line up for three hours just to get a tasteless piece of meat and some stale bread; but in America, you can walk into any fast-food restaurant and get the same thing right away." But he also reminded us of how fortunate we are to live in a free and democratic nation. "What a country!" became his signature line. In fact, Yakov has said that his comedy has helped him share his attempts at becoming a real American with the audience.

Yakov's dream of becoming an American citizen was finally fulfilled on July 4, 1986, in a ceremony held at the Statue of Liberty. De-scribing his joy at the occasion, Yakov says: "I suddenly had a new revelation. You can go to Italy but never become Italian. You can go to France but never become French. But you can come to America and become an American."
Second, drilling in the lakes threatens fresh waters not salt waters, and a spill would compromise drinking water for millions.

Third, drilling in and along the lakes would yield only miniscule increases in energy supply for our nation.

When the risks are so high and rewards so low, it makes no sense to move forward with plans to implement drilling of any kind.

Finally, I wish to highlight an often overlooked fact about Michigan’s relationship with the Great Lakes. They are the foundation of our state’s robust tourism industry. In fact, tourism is the second largest industry in our state.

Americans from throughout the Midwest and beyond come to our lakeshores for recreation and relaxation. Just as Florida fears significant negative economic consequences when fuel spills threaten her coastline, so does Michigan.

The Great Lakes supply fresh water to many. They offer recreational resources to millions. They contribute to the ecology of a significant portion of the United States. We would be foolish to endanger.

Vote yes on this amendment.

**EXTENSIONS OF REMARKS**

Our lakes, especially Lake Superior, are not isolated.

We are a part of a great chain of lakes. What happens in one lake does have an impact in all of the Lakes.

Mr. Chairman, the Great Lakes provide over 35 million people with their fresh drinking water. These lakes constitute twenty percent of the Earth’s fresh water, 95% in the United States.

Why would anyone put our nation’s largest source of fresh drinking water at risk?

Data from the Michigan Department of Environmental Quality shows that only 28.5% of one day’s consumption of natural gas and 2.2% of one day’s consumption of oil in the United States has been produced. Not enough for even one day has been produced in over 20 years.

The House last week wisely stopped the President’s proposal to drill off the shores of Florida and in our national monuments. The Great Lakes are no less important.

I oppose drilling of any sort for oil and natural gas beneath the Great Lakes. Not because we do not need to find additional resources. We do. These lakes are just too vital to too many families and it’s not worth the risk.

We are making progress in using energy more efficiently and reducing our reliance on oil and natural gas through energy efficiency technology and conservation. We must make bigger investments in current programs. Investments don’t have to cost money either. We can and we must reduce our consumption by supporting wind and solar power and renewable fuels like ethanol.

Future generations depend on us not to jeopardize our nation’s greatest natural resource. An oil spill or any related disaster on the shores of a Great Lake would impact the fresh drinking water for 35 million people. And for what? Less than a day’s worth of oil and natural gas.

The Great Lakes are important to this nation. They are important to my state and to millions of families. They have been crucial in the historical and economic development of our communities and they continue to play a significant role in Minnesota, the nation and the world.

I urge my colleagues today to protect the drinking water of future generations. I urge my colleagues to support this important amendment.

**ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2002**

**SPEECH OF**

**HON. BETTY MCCOLLUM**

**OF MINNESOTA**

**IN THE HOUSE OF REPRESENTATIVES**

Wednesday, June 27, 2001

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2311) making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes:

Ms. MCCOLLUM. Mr. Chairman, I strongly oppose drilling of any kind beneath the Great Lakes and urge my colleagues to support the Baion amendment. Visit Minnesota’s North Shore and you will immediately know why.

Lake Superior is a constant source of wonder. It helps shape our landscape and climate, it supports our economy and it enhances our quality of life.

Mr. Chairman, water is a precious resource in my state. We have over 10,000 lakes. Lake Superior, of course, is the most identifiable of Minnesota’s lakes. Its familiar wolf head shape visible from outer space.

Did you know the greatest of the Great Lakes (Lake Superior) is over 31,000 square miles, the same size as the entire state of Maine? Lake Superior also holds more fresh drinking water than all the other Great Lakes combined—Lake Ontario, Lake Michigan, Lake Huron, and four Lake Erie’s.

Each year, millions of people from all over the world visit the lake in Minnesota for sightseeing, fishing, scuba diving and boating.

Lake Superior also is important to the economies of Minnesota and the entire Upper Midwest. Duluth, Minnesota and Superior, Wisconsin make up the busiest international inland port in America.

Our nation’s beaches contribute to our national economy—four times as many people visit all of our National Parks as our nation’s beaches each year. Yet, Congress provides copious funding for national parks—as it should. It is estimated that 75% of Americans will spend some portion of their vacation at the beach this year. Beaches are the most popular destination for foreign visitors to our country as well. The amount of money spent by beach-going tourists creates an extensive economic benefit—a portion of which goes back to the Federal government in the form of income and payroll taxes.

So to suggest, as the amendment from Mr. TANCREDO does, that beach protection confers benefits to only a handful of beach-house owners, is simply false. Just look at my own State of New Jersey. Tourism is the second greatest contributor to the New Jersey economy. In 1999, tourism brought $27.7 billion to the state. Out of the 167 million trips made in New Jersey in 1999, 101 million were to the Shore area.

I would also like to thank the Committee for setting aside $413,000 in funds to complete the next stage of the Manasquan Inlet Project, which extends from the Manasquan Inlet to the Barnegat Inlet and includes the beaches of several coastal towns in Ocean County, which are in my district.

**SPEECH OF**

**HON. CHRISTOPHER H. SMITH**

**OF NEW JERSEY**

**IN THE HOUSE OF REPRESENTATIVES**

Wednesday, June 27, 2001

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2311) making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes:

Mr. SMITH of New Jersey. Mr. Speaker, I would like to express my strong support for setting aside sufficient funding for Beach Protection projects, and to keep the current language in the bill which states that 65 percent of the initial construction costs of beach replenishment projects are to be financed by the Federal Government, and 35 percent of the costs are to be paid by states and local governments.

The fact of the matter is that our beaches are national assets that deserve national protection. Just like our national parks, our beaches are not enjoyed solely by those who live near or on them. Just the opposite is true: our beaches are visited by tens of millions of people from all over the country. Foreign tourists come from all parts of the globe to visit our coasts and beaches.

My good friend, Representative Tom TANCREDO of Colorado, has offered an amendment today to strike language in the bill that directs the Secretary of the Army to honor existing Federal contracts with States, counties, and cities throughout coastal America. Under the gentleman’s amendment, the Federal government would essentially shirk its responsibility, and shuffle it onto the shoulders of state and local governments, by switching the cost share ratio to 35 percent federal/65 percent local.

I rise in opposition to this amendment, because it is bad national policy, as well as bad for local taxpayers in coastal communities.

Mr. Speaker, the record is clear: states and local governments have consistently shown their commitment to assist in the preservation and replenishment of beaches along the nation’s coastlines. The proposed Federal change in cost sharing would result in the delay or elimination of several important Corps of Engineers projects, which would potentially increase the property damage from hurricanes and severe storm events. Additionally, states and localities would not be able to absorb the increased costs without raising taxes or cutting other vital priorities.

Our nation’s beaches contribute to our national economy—four times as many people visit our nation’s beaches each year than visit all of our National Parks. Yet, Congress provides copious funding for national parks—as it should. It is estimated that 75% of Americans will spend some portion of their vacation at the beach this year. Beaches are the most popular destination for foreign visitors to our country as well. The amount of money spent by beach-going tourists creates an extensive economic benefit—a portion of which goes back to the Federal government in the form of income and payroll taxes.

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I would also like to thank the Committee for setting aside $413,000 in funds to complete the next stage of the Manasquan Inlet Project, which extends from the Manasquan Inlet to the Barnegat Inlet and includes the beaches of several coastal towns in Ocean County, which are in my district.
Additionally, the Manasquan Inlet is absolutely crucial to the fishing industry and the general economic health of the New Jersey metropolitan shore. It is through the Manasquan Inlet that many large deep-sea fishing vessels gain their entry to the ocean and where they can return with their catch. Nearly 22,000 people are employed by the fishing industry in New Jersey, with an economic output of almost $2.1 billion. Protecting the beaches and preventing erosion benefits more than just the tourism industry.

Mr. Speaker, I urge all members of Congress to protect our nation’s beaches, coastal communities and tourism industry by keeping the Federal/Local cost share at 65 percent.

PCBs POSE MAJOR HEALTH THREAT TO NEW YORK CITY, AND BEYOND

HON. MAURICE D. HINCHHEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. HINCHHEY. Mr. Speaker, I rise today to commend to my colleagues the following article written by Ned Sullivan on the issue of PCB contamination in the Hudson River of New York. Ned is the highly respected executive director of Scenic Hudson, Inc., a 37-year-old nonprofit environmental organization dedicated to protecting and enhancing the scenic, natural, historic, agricultural and recreational treasures of the Hudson River and its valley. Ned and I have worked together for many years in pursuit of removing sediment contaminated by polychlorinated biphenyls (PCBs) from the “hot spots” in the upper Hudson River, in order to reduce threats to public health, revive local economies, reopen recreational opportunities along the river. I appreciate Ned’s thoughtful analysis of this important issue.

For decades masses of the invisible, virtually indestructible cancer-causing PCBs that General Electric dumped from its factories on the Upper Hudson have moved down the majestic river, reaching dangerous levels in New York Harbor. They are still coming, clinging fiercely to the river’s shifting silt, threatening the health of millions.

There is no question that GE has the responsibility for cleaning up the worst of them at their source, as the U.S. Environmental Protection Agency has ruled after years of intensive study. In doing so the EPA employed methodologies endorsed by the General Accounting Office (GAO) and worldwide peer review.

GE has mounted a massive advertising and public relations effort aimed at reversing the EPA’s decision. It has a force of seventeen high-powered lobbyists hard at work on the matter in Washington. For good measure the company’s legal battalions have challenged provisions of the U.S. Superfund cleanup laws as unconstitutional.

However these are the facts of the matter:

According to the EPA, the Agency for Toxic Substances and Disease Registry (U.S. Public Health Service) and the World Health Organization among others, PCBs are “an acute and chronic health hazard.” Humans exposed to the lethal substances are subject to skin, liver and brain cancers; respiratory impairments; severe acne-like skin rashes; impaired immune systems, adult reproductive system damage, and perhaps worst of all neurological defects and developmental disorders in the children of exposed females.

David Carpenter, the highly respected former dean of the School of Public Health at SUNY/Albany, has stated: “Our understanding of hazards from PCBs is growing much more rapidly than PCB levels are declining. So over time, the net reason for concern has only gotten greater, not less. Any time you decrease the IQ of your next generation, that’s the ultimate pollution.”

The PCBs enter the food chain through fish and move upward rapidly through animals and humans. EPA health risk assessments reveal that humans consuming just one meal of fish from the Hudson River per week are one thousand times more susceptible to cancer. The risk of other deleterious effects also increases significantly. The New York State Department of Health advises women of childbearing age and children under age 15 not to eat any fish from anywhere in the Hudson.

Unfortunately large numbers of people, including the underprivileged who fish for subsistence and not sport; ethnic groups whose cultures embrace fishing, and even upscale sportspersons whose enjoyment includes cooking the catch, continue to eat Hudson fish in quantity despite the warning signs posted up and down the river.

PCBs build up in the environment, the technical word is bioaccumulate, becoming more concentrated as they move up the food chain to the human level. Less than a month ago, scientists retained by the New York State Department of Environmental Conservation (DEC) released new evidence that the PCBs have been moving from the river’s bottom onto land, where they are contaminating soil and animals along the banks, and in residential back yards.

This stands in sharp contrast to the advertising campaign GE has been waging on the upper Hudson, showing abundant, flourishing wildlife flying over and splashing in a sparkling river.

The public has not been taken in by GE’s massive disinformation campaign. A statistically valid (plus or minus 3.5 percent) Marist College poll sponsored by Scenic Hudson reveals that 84 percent of those interviewed said the river should be cleaned up. That qualifies as a landslide.

There is no question that the Hudson must be cleaned up. Scenic Hudson has interviewed senior representatives from more than two dozen scientific, academic, governmental and environmental institutions and found every one of them in favor of a clean-up. GE stands alone in insisting that science is on its side.

It is high time General Electric honored its obligations to the public.

EXTENSIONS OF REMARKS

June 29, 2001