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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York.

PRAYER

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

Gracious Father, whose mercies are new every morning, we praise You for Your faithfulness. We exalt You with a rendition of the words of that wonderful old hymn, ''Great is Your faithfulness! Great is Your faithfulness! Morning by morning, new mercies we see; all we have needed Your hand has provided. Great is Your faithfulness, Lord, unto us!''

As we begin this new day, we thank You for Your faithfulness to our Nation throughout history. One of the ways You express that now is through the labors of the women and men of this Senate. May they experience fresh assurance of Your faithfulness that will renew their faithfulness to be God-centered, God-honoring, God-guided, God-empowered leaders. In the quiet of this moment of prayer, grip them with the conviction that their labors today are sacred and that they will be given supernatural strength, vision, and guidance. Thank You in advance for a truly productive day. Through our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HILLARY RODHAM CLINTON 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 17, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. CLINTON thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

UNANIMOUS CONSENT REQUEST—H.R. 3210

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 252, H.R. 3210, the House-passed terrorism insurance bill; that all after the enacting clause be stricken, and the text of S. 2600, as passed in the Senate, be inserted in lieu thereof; the bill, as thus amended, be read a third time and passed; the motion to reconsider be laid on the table; the Senate insist on its amendment and request a conference with the House on the disagreeing votes of the two Houses; and the Chair be authorized to appoint conferees on the part of the Senate with the ratio being 4 to 3, without any intervening action or debate.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BENNETT. Madam President, I came to the floor to make a speech and discovered that my leader is not here. But to protect leadership rights in this matter, I will object until leadership has an opportunity to review the request made by the Senator from Nevada.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. REID. Madam President, there certainly is no surprise. We worked on this all day yesterday. We were told, as we are often told, that given a few more minutes, we will get it all worked out.

We need to have this terrorism insurance bill conferenced and completed. No one knows better than the Presiding Officer what the people of New York have gone through as a result of the terrorist acts of September 11. The people of this country and the businesses of this country need terrorism insurance.

Everyone should understand that on this side of the aisle we have done everything we can to get this passed. We were held up for weeks and weeks before we were allowed to bring it to the floor. Now we have been held up weeks and weeks to try to get the bill to conference.

It is too bad. There is a continuous pattern of obstruction that we have faced. Everyone should understand that terrorism insurance is being held up by the Republican minority.

PROGRAM

Mr. REID. Madam President, today the Senate will resume consideration of the motion to proceed to S. 812, the affordable pharmaceutical bill, time until 10:30 equally divided between the two managers, Senator KENNEDY and Senator GREGG.

UNANIMOUS CONSENT REQUEST—H.R. 5011

Mr. REID. Madam President, before my friend from Utah leaves the floor, I want to renew another unanimous consent request. I, along with a number of other people, were at the White House

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

yesterday. They were asking us what we were going to do about getting appropriations bills passed, especially the military bill that affects our defense.

We have 13 appropriations bills. Two of them are defense related—military construction and defense.

We reported out of the appropriations subcommittee yesterday the largest military appropriations bill in the history of the country—some $350 billion, approximately. The Military Construction Subcommittee reported it out. It came out of the committee, and we want to bring this to the floor. We have wanted to get it here for 2 weeks. They won't let us. The excuse now is forest fires.

The defense of this country depends on our doing these bills. Military construction is important for the fighting men and women of this country. We have 10 or 11 forest fires burning in Nevada right now. The people of Nevada want to go forward to help the service men and women of this country with military construction.

It is an excuse. It doesn't matter what we do over here to get a bill up. It doesn't matter what we do. It isn't quite right.

I renew my request that Senators FEINSTEIN and HUTCHINSON—the two managers of this bill—be allowed to bring this up under the time agreement that has been offered previously, which is 45 minutes for the bill and 20 minutes for Senator MCCAIN.

I would be happy to read it in its entirety. I have done that so many times that I almost have it memorized.

I ask unanimous consent that we be allowed to proceed under the terms and conditions of the previous unanimous consent request that I have made in this body, and that we be able to take the bill up as soon as the two leaders agree that it can be done.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BENNETT. Madam President, on the same basis as before, reserving the right for my leadership to examine it, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. REID. Madam President, I appreciate my friend from Utah, but having the leadership examine it, Senator LOTT has been out here on the floor saying he thinks it is the right thing to do.

It is too bad. I haven't changed a single word of the two requests I have made—one being the terrorism insurance bill going to conference, and the other simply allowing us to bring a bill to the floor. They won't allow us to do that. That is too bad for the country.

RESERVATION OF LEADER TIME

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

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the motion to proceed to S. 812, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug and Cosmetic Act to provide greater access to affordable pharmaceuticals.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. shall be equally divided and controlled between the Senator from Massachusetts and the Senator from New Hampshire or their designees.

Mr. KENNEDY. Madam President, just to state the obvious so all of our colleagues understand exactly where we are, the bill before the Senate is the Schumer-McCain Greater Access to Affordability Pharmaceuticals Act of 2001.

This legislation closes loopholes in the law that deny patients access to low-cost, high-quality generic drugs.

It is the most important single step the Senate can take to slow the galloping increase in the cost of prescription drugs, and make medicines more affordable for all Americans. I anticipate that other constructive measures to control the cost of prescription drugs may be offered as amendments to this underlying legislation when we get to the legislation.

We have been denied the opportunity, for the last 2 days, to get to this legislation, but I believe there will be an overwhelming vote in the Senate to say: Let's move ahead on this legislation.

To a very real extent, what the Senate does with this legislation is a key indication and a key test, I believe, of the Senate of the United States. We have a major problem and concern for families all over this Nation; and that is, the cost of drugs and the availability of drugs. We have carefully thought out solutions to these particular problems. There are different solutions to it, but this institution has the opportunity, over the period of the next 2 weeks, to resolve a public policy concern that is of real deep concern to families all over this Nation.

This debate is not about technicalities, although if you listen to those who have been opposed to bringing this legislation up, they would list the various technicalities. They talk about jurisdictions. They talk about everything but the substance of the facts.

The interesting point is, there has been prescription drug legislation before the Senate in the committees over the last 5 years. This is our first opportunity to address this issue on the floor of the Senate. We have a responsible measure now that is going to be voted on now as to whether we are going to address this. That is how we are going to be able to deal with the problem which is called evergreening, which means that brand name companies can continue their patents on this and deny legitimate generic drug companies from getting into the market to produce lower cost quality drugs. And this is how we will be able to get to the issues of collusion between brand name companies and generic drug companies which also work to the disadvantage of consumers.

Our best estimate is that the savings, when this is scored, will be tens of billions of dollars, as much as even $60 billion. We will wait until that report is in.

Can you say to parents, can you say to children, can you say to families across this country, we can save you $60 billion, and yet our Republican friends refuse to let us get to this issue? We will get to this issue. It is of vital importance.

I look forward to continuing this debate.

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

Mr. KENNEDY. I yield for a question.

Mr. DURBIN. I ask the Senator, is it not true that in the last 2 days we have really failed to seize an opportunity to move this bill forward? Have we not been tied up on the floor of the Senate with tactics from those who oppose prescription drug reform, to slow down the Senate debate, to try to stop us from passing this legislation before the August recess? Is it not true that we are now going to have a vote this morning to finally bring this to an issue so we have Members on the Record—Democrats and Republicans—and maybe once and for all we can see who is willing to stand in the path and who is willing to move forward when it comes to the issue you raised this morning?

Mr. KENNEDY. The Senator is absolutely correct. The measure that is before us passed the committee by a 16-to-5 vote, including five Republicans. It was bipartisan in nature. That is why it is difficult for us to understand why our Republican friends—because the objections were not from the Democratic side; the objections were all from the Republican side—why they would object to this, when five of their members—and I think we have more support from other members of the Republican Party who support this—why they would object to us, the Senate, considering this legislation, and other measures that are going to reduce the costs of prescription drugs for families.

I say to my friend from Illinois, I think the Senate will respond overwhelmingly and say: Let's get on with its business. But I regret the fact it has taken us 2 days in order to move this process forward.

Mr. DURBIN. Will the Senator yield for another question?

Mr. KENNEDY. I will.

Mr. DURBIN. On the substance of the issue, when you use the term ''generic drugs,'' that has a lot of connotations. But is it not true that a drug such as

Claritin, made by Schering-Plough, which is for allergies, widely advertised across the United States, when the patent on that drug expires, other drug companies can make the Claritin formula and sell it? It is exactly the same as the prescription drug that has been sold under patent for years and years, and that what you are talking about is making certain that kind of drug, generic drug, at a lower cost, is available to consumers across America so they can cut their drug bills and still have the same drug, which, under patent for years and years, was advertised as the very best for allergies and problems such as that?

Mr. KENNEDY. The Senator is quite correct.

I welcome the fact that the Senator has pointed out these generic drugs are effectively and actively the bioequivalence of the other brand name drugs. We will deal with those issues. They are effectively the same but at a very reduced cost.

I am glad to yield because I see my colleagues in the Chamber.

Madam President, we have how much time remaining?

The ACTING PRESIDENT pro tempore. Nineteen minutes.

Mr. KENNEDY. Nineteen minutes. So why don't I yield 4 minutes to the Senator from Michigan and do the same for the Senator from North Carolina. And other Senators want to speak.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Ms. STABENOW. Madam President, I thank our leader, the Senator from Massachusetts, who is such a stalwart and passionate advocate on this issue.

I wish to respond to one of my colleagues as to one of the reasons why I think this bill is being held up. I think it is being held up because it is not supported by the pharmaceutical industry.

We know there are six drug company lobbyists for every Member of the Senate. It is clear they would prefer the House plan, which they helped to write. I would, once again, share with my colleagues a quote that was in the Washington Post when the House plan was passed:

> A senior House GOP leadership aide said that Republicans are working hard behind the scenes on behalf of PhRMA [the pharmaceutical lobby] to make sure that the party's prescription drug plan for the elderly suits drug companies.

I believe the reason the bill is being held up is that, in fact, our prescription drug plan does not suit drug companies. Our prescription drug plan is written for the seniors and the disabled of America.

Our plan for lowering prices through the generics bill and through other options, to increase competition, is to make sure that prices are lower for everybody. The small business, which has premiums skyrocketing, and which has difficulty affording health care coverage for its employees, would see a major change as a result of our efforts to lower prices and create more competition. The manufacturers in my State would see decreases as well.

So, in fact, what we have are two distinct views of how to proceed. One, as was indicated in the paper, is a plan for the elderly that suits drug companies. We will have various versions of it on the floor. But I would argue that those fighting proceeding to a real Medicare plan are doing so because our plan does not suit the drug companies.

One of my major concerns is there is so much money that is going into this effort to promote the House plan—the drug company plan. What does the drug company plan do in the end analysis?

When we look at this, they are asking the senior citizens of our country, up front, to pay a $250 out-of-pocket deductible before they get any help. Then, out of the first amount of money, the beneficiary would pay $650 to get help with $1,100. But then the beneficiary would continue to have to pay while they have a gap in coverage. They would pay $2,800 when they received no help in the middle here, as shown on the chart, in order to get some catastrophic help at the end.

So what does this mean? It means, out of pocket, the average beneficiary will pay $3,700 to get $4,800 worth of help.

I am not that great on math, but I would suggest that, in fact, the $3,700 out of pocket for $4,800 is not that great a deal. I would suggest it is not that great a deal for the average person.

I have read a number of stories in this Chamber; one last night was of a gentleman who had an $800 a month income and his prescription drugs were $700 a month. This will not help him. This will not help the individual, the average individual who is struggling to pay their bills versus getting their medicine every day.

We have a better plan, a plan that will, on average, pay for 65 percent of the bill, which is a good start. It is a good step forward. It would not have a deductible. It would be a voluntary plan that would make sense and lower prices.

I realize my time is up, but I would like to also join with my colleagues in advocating that we get on with the business of real Medicare coverage and lowering prices for everyone.

Thank you.

Mr. KENNEDY. Madam President, I yield 4 minutes to the Senator from North Carolina and 4 minutes to the Senator from New York.

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

Mr. EDWARDS. Madam President, this is a very simple proposition. Our friends on the other side of the aisle who oppose this prescription drug benefit largely oppose it because they say it is too expensive; we can't pay for it. They propose a prescription drug benefit that leaves lots of senior citizens behind.

The problem is, when we respond with, No. 1, a more comprehensive prescription drug benefit that, in fact, protects all senior citizens and, No. 2, with a real and meaningful proposal to bring the cost of prescription drugs under control so that we can, in fact, afford a comprehensive prescription drug benefit for all senior citizens, that will work for all senior citizens, then they also block us on that front. This makes no sense. There is no logic to this.

What we are saying is we want to provide a real and meaningful prescription drug benefit, No. 1; No. 2, in order to afford it, we have to do something about the cost of prescription drugs.

The costs of prescription drugs have been going up anywhere from 10 to 20 percent a year, way above the cost of inflation. We have to do something about that.

One of the issues Senator SCHUMER and Senator MCCAIN have worked very hard on is legislation to close the loopholes in the patent system that allow brand companies to keep a patent on a drug when the generic ought to be able to enter the marketplace. We know the way this works. The brand name company has a patent. As soon as the generic is allowed to enter the marketplace, the cost of the medicine goes down so that not only senior citizens but all Americans are able to afford it.

What we are doing and what they did in that legislation was to close loopholes that allowed brand name companies to keep generics out of the marketplace automatically for 30 months, if, in fact, a generic tried to enter the market at the time that a patent was about to expire.

What we have done is worked to close those loopholes so we get generics into the marketplace, so we have real competition and, most importantly, so we lower the cost of prescription drugs for all Americans and so we have a prescription drug benefit that we can, in fact, afford.

Senators MCCAIN and SCHUMER actually had a very good bill. It dealt with the abuses that were occurring, situations such as a brand name company had a patent that was about to expire. They would come in and say: We are entitled to a new patent because our pills have to be in brown bottles; or we are entitled to a new patent because our pills have two lines on them, as opposed to one, for scoring when you have to cut the pills—no innovation, no creativity, no new medical benefit. This is not the reason the patent system was created. It is not the reason the original legislation, the Hatch-Waxman legislation, back in 1984, was created.

What has happened is, the brand name companies have found a way to game the system, to exploit the system. The problem is, the people who pay the price of that are not the generic companies. The people who pay the price are Americans who have to go buy their medicine at the drugstore because when the generic can't get in the market, their cost stays up. And the

only people who benefit are the brand companies that keep their patent, and their profit, as a result, stays much higher.

What we have done, Senators MCCAIN and SCHUMER have done, was help close the loopholes. When that legislation came before our committee, the Labor Committee, the HELP Committee, we worked, Senator COLLINS and I, in a bipartisan way, along with a number of our colleagues on both sides of the aisle, to address some of the concerns that others had about the McCain-Schumer bill. I actually think their bill was a very good bill and the work they did was very good.

We dealt with it in a responsible way, found a bipartisan compromise. That is the legislation that is now on the floor of the Senate. It got the vote of five Republicans in committee. It is the kind of legislation that could actually do something about the cost of prescription drugs so we can afford a real and meaningful prescription drug benefit for all senior citizens in America.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized.

Mr. SCHUMER. I thank my colleague from Massachusetts and my colleague from North Carolina.

We have all been working together on this issue, as the Senator from North Carolina has said. It has been bipartisan—Senator MCCAIN and myself and then he and Senator COLLINS as well. The reason we are all coming together at this moment is a very simple one: These wonderful drugs that make people live longer and make people live better are just getting so darn expensive that most people can't afford them.

It is not just senior citizens, although it is certainly them. What about a family who has a child with a disease and they need that drug and the man works for a small business, the wife maybe works at home; they can't afford this drug for their child? Maybe a year from now it might be affordable, 6 months, because the generic is available. Then the pharmaceutical company goes and hires their lawyers and plays some trick and says the price is going to stay at $250 a month instead of $70 a month. What does that family think?

We have an urgency here. This is not just a political game. This is not just rhetoric. This is not just a stick to beat one party up or the other party. This is what we are all about—life. Our job is to make sure people can get these wonderful drugs.

I have no relish beating up on the drug companies. I think they have done great things, but unfortunately, as the Senator from Massachusetts said last night, they have lost their way. The generic drug proposal we are talking about puts them back on track. It says, instead of spending your time innovating patents, spend your time innovating drugs. Instead of going to Harvard Law School to hire people to come up with new legal tricks, go to Harvard Medical School and come up with the best researchers. For years this system has worked so well, but it has begun to get off track.

I make a plea to people on both sides of the aisle—I make a plea to the drug industry—get back with it. Go back to your noble mission of creating these wonder drugs that save people's lives, that avoid people having to go to the hospital and needing an operation.

The Schumer-McCain bill does that. It doesn't take away any of the incentives, the profits. We are a free market system. When you innovate that drug, you will make some money. But then don't, 15 years later, say: I have a new idea. I will make a blue pill red; I want another 15 years. I have another idea, I am going to say this drug is good for tennis elbow as well as pancreatis; I want another 15 years, not only for tennis elbow but for the pancreatis as well. That is what we are against here.

It is no longer that technical. When the Senator from Arizona and I started on our journey, people said: This is a very technical bill to which no one will pay attention. But now people realize what it is all about. It is about lowering costs dramatically.

By the way, it doesn't just lower the cost to the citizen. That is our paramount goal, to the average citizen. It lowers the cost to American business which has drug plans. Why is General Motors for this plan; why are so many corporate leaders for this plan? Why, when the pharmaceutical industry went to them and said, stop supporting Schumer-McCain, did they say: We can't for the very simple, self-interested reason, it means hundreds of millions of dollars to them? Why are State governments for this? Go to your counties, your State, and ask them what their biggest cost is. It is Medicaid.

What is the biggest cost within Medicaid? Whether it be Utah, Massachusetts, or New York, it is the rising cost of prescription drugs. This will limit it.

I urge that we not try to fight the Schumer-McCain bill but we, rather, try to build on it with some of the other proposals.

I yield the floor.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I have enjoyed being here this morning and hearing the debate. When I came to the Senate, I was interested in health care, anxious to do what I could to improve health care in this country, and recognized rather quickly that one of the major things that has happened in this country is that technology has long since outstripped, overcome, and ignored legislation.

I tell town meetings, among people who talk to me about Medicare, Medicare is the best Blue Cross Blue Shield fee-for-service indemnity plan that we could devise in the 1960s, frozen in time. Legislation does not allow flexibility; legislation freezes things. And we have a Medicare system that, frankly, makes little or no sense in the face of the way we practice medicine today.

In the 1960s, when Blue Cross Blue Shield laid down their fee-for-indemnity plan, which Congress basically embraced and froze in legislation, prescription drugs didn't make much of an impact. The big financial challenge in those days was the cost of going to the hospital. So a plan was frozen in place that said, We will reimburse you for going to the hospital and, today, 40 years later, the way Medicare is structured doesn't make any sense. People take pills rather than having an operation, but the pills, even though they are many times cheaper than the operation, are not reimbursed, whereas the operation would be.

There is a disincentive to practice intelligent medicine under Medicare. So to suggest that any rational individual looking at our present health care system does not support a prescription drug solution to our present dilemma is to misstate the facts. Everybody who looks at this, who has any understanding of the system, is in favor of a prescription drug benefit for Medicare. All right. We are all in favor. Let's do it. It is a little like someone having a medical condition back in the 1700s and turning to a physician and saying: We are all in favor of medical assistance, let's do it. And then the physician, acting on the conventional wisdom of the time, says: Bring in some more leeches, because that is the accepted technology.

Unfortunately, that point of view would cause someone who had greater knowledge to say: Don't seek medical assistance under this circumstance. Do something different.

Oh, no, we have to act quickly, and the prescribed method is to bring in some more leeches. So let's act quickly on this. The prescribed method is to simply attach a prescription drug benefit to the existing Medicare system and not pay much attention to any of the side effects.

I was here in 1993 when we debated health care almost exclusively on this floor. It was the raging issue through the end of 1993 and through almost all of 1994. I was here when the effort to reform our health care system died on this floor. A lot of people think it was voted down. It was not voted down. It simply died of its own weight.

George Mitchell, who was the majority leader at the time, despairing of the committee's not being able to produce a bill that might pass, took the whole process into his office and he produced, without any committee background, the Mitchell bill.

I was part of the effort to defeat the Mitchell bill. We met twice a day in Senator Dole's conference room. We met under the leadership of the then-ranking member of the Senate Finance Committee, Senator Packwood from Oregon, who understood this issue about as well as anybody, and we laid out the traps that we were setting for Senator Mitchell.

Quite frankly, it was not very difficult. His bill was filled with so many problems and so many challenges that we didn't have to be very expert or very careful to be able to shoot it down. As we would raise one issue after another, Senator Mitchell finally withdrew the bill and simply let it die. It was never voted down. It died of its own weight.

During that debate, Joe Califano—who served on the White House staff with Lyndon Johnson and was appointed Secretary of Health, Education, and Welfare, and who some have called the father of Medicare—wrote an editorial. I would like to quote from the Washington Post of August 18, 1994. He was urging caution based on his experience. Here is the relevant paragraph:

History teaches two lessons about Federal health care reform: It will cost more than any reasonable estimate at the time of enactment, and it will provoke a bevy of unintended consequences. The danger is that Congress may repeat history with a vengeance.

Picking up on Secretary Califano's two points—it will cost more than any reasonable estimate at the time of enactment and it will provoke a bevy of unintended consequences—let's talk about cost. I have heard this morning that we can solve the problem of cost by—if I may quote a colleague—''closing a few loopholes.'' We can solve the problem of cost by telling the drug companies to hire fewer lawyers. We can solve the problem of cost by preventing the pharmaceutical industry from having 30 months more of control on the prices of their original drugs.

For just 30 months more, they are somehow raising the price to the point that it is costing us so much money that we cannot afford this bill. And if we can just change that 30 months—just close that one little loophole—suddenly we will have enough money to pay for the whole thing.

Mr. SCHUMER. Will my colleague yield?

Mr. BENNETT. Yes.

Mr. SCHUMER. I thank my friend from Utah. He is always gracious in the spirit of debate. I ask two questions. First, does the Senator realize the generic drug is usually about a third of the cost?

Mr. BENNETT. I realize that. I am talking about loopholes.

Mr. SCHUMER. Second, not only is it one 30-month extension, many of the pharmaceutical companies line them up—30 months, 30 months, 30 months. So after they have made their rate of return, which they should, and I admire them for making these drugs, but I was asking the Senator if he realizes that the new practice is not just to have one automatic 30-month extension when you change the color of the bottle, but to pile them on and to have the patents extend long beyond the 20 years that was expected.

Mr. BENNETT. I realize the battle between the original creators of the patent and the generic drug companies has been going on ever since generic companies were formed, and that one group will always try to get the advantage over the other, and that a number of tactics are going on. I also realize the generic companies have been successful far more than many of the original companies would like, and to step in that battle and legislate that the generics will always win is fraught with all kinds of possibilities and all kinds of unintended consequences that Secretary Califano warned us against.

The Senator from New Jersey wishes to ask a question.

Mr. GREGG. Well, it is New Hampshire, but we are all in the East.

Mr. BENNETT. I am often considered the Senator from Idaho. So that is fair.

Mr. GREGG. I simply ask the Senator if he is aware that under the bill brought forward to us, as amended, the 30-day rolling exclusivity would be able to continue to roll over, that under this bill it is potential—and in fact likely—that second and third 30-day periods could be driven under this bill—and even fourth 30-day periods. There was actually language that would have eliminated that opportunity completely.

Mr. BENNETT. I was not aware of that. If I may, reclaiming my time, make this comment about this whole circumstance, one of the reasons I was unaware of that is because I am not a member of any of the committees that deal with this. I often thought that since I was not a member of the committees, I would not have an opportunity to be involved in the details of the bills. But I have discovered in this circumstance that not being a member of the committee is not a barrier to being involved, because the committee is not writing this legislation. The committee has been dismissed. The members of the committee who have expertise, the committee staffs that have been working on this for the 5 years that the Senator from Massachusetts referred to, have been dismissed. Their expertise is being ignored.

The majority leader has taken the bill into his office, and he has created his own bill, much like Senator Mitchell did back in 1994. I trust it will have the same effect. The Mitchell bill, however well-intentioned, hit the floor with all of the flaws in it that could have been worked had it had a proper committee process.

I submit that this bill is hitting the floor with this process. It is hitting the floor with all of the same potential so that Senators, such as the Senator from New Hampshire, who has expertise in this area, have been frozen out. Senators in the Finance Committee who have tremendous expertise in this area have been frozen out. And the majority leader has taken this all to himself.

That means all of us who have gaps in our knowledge are suddenly confronted with the responsibility of dealing with this issue without a committee report, dealing with this issue without the guidance of ranking minority concurrent opinions. We are just faced with this on the floor, and all of us, willy-nilly, have to do our best to do our homework.

I apologize to the Senator from New Hampshire for not knowing the specific he raised, but I point out that this is to be expected under the circumstances with which we are presented in this bill.

Mr. President, the phrase that is used over and over with respect to medicine goes all the way to the Hippocratic oath, which says: Do no harm. That is a more specific way of summarizing what Joe Califano warned us about in 1994, the unintended consequences and the cost.

The Senator from Massachusetts used the figure $60 billion in savings. I would like to see the background for that figure. He said it has not been scored yet, but I am sure he has some basis for coming up with that figure, and I do not challenge it. I am being told that the bill he would prefer to have passed, which also has not been scored, will eventually cost $1 trillion over a 10-year period—$1 trillion. Somehow, $60 billion does not get us to $1 trillion.

I cannot intuitively think that closing some loopholes in an area where there has been intense competition and litigation for years is somehow going to give us such dramatic savings that we can pay for this bill in a way that will not end up hurting the senior citizens and hurting the people at the bottom of our economic ladder.

Let me make this one additional point because I see one of my colleagues here, the Senator from Pennsylvania, who would like to speak further.

For those who say cost is important but health care is more important, that cost is important but compassion is the most important thing, and we should not let cost stand in the way of our helping our least fortunate citizens, that is an emotion with which I totally identify. That is a feeling that all of us can accept and agree with. But the fact—the cruel fact—is that if the economy is in trouble, if the Government is feeding inflation through tremendous deficits and soaring expenditures, the people who get hurt the most in those difficult economic times are the people at the bottom.

Conversely, in the period we have just gone through when everything was soaring and doing well, someone asked Alan Greenspan: Who benefited the most from this boom?—thinking he would say it was the Donald Trumps and the Bill Gates of the world who benefited the most from the boom.

He said: Without question, the evidence is overwhelming that the people who benefited the most from the sound economy were the people in the bottom quintile; that is, the people in the bottom fifth had the greatest benefit in terms of what happened to make their lives better.

When we talk about costs, we are not being cold hearted. We are not being green-eyeshade accountants. We are recognizing there is an element of compassion that redounds to the benefit of the people at the bottom if we keep our finances under control, if we see to it that the Government is properly funded and properly financed, and we do not allow expenditures to run willy-nilly out of control. That is part of compassion. That is part of taking care of the least fortunate, and that is a debate we are having on this floor now that some would like to wave aside.

I reserve the remainder of the time and yield to Senator GREGG, as he takes over the leadership spot, but yield to the Senator from Pennsylvania.

Mr. GREGG. If the Senator will yield a second, I want to clarify. I wandered in in the middle of the discussion and misunderstood the issue. I believe the Senator from New York is correct in his assessment of the bill on the 30-month issue. It was the 180-day rule to which I was referring.

Mr. BENNETT. So I was correct in saying I did not understand the Senator's point.

Mr. GREGG. Yes, that is correct. That happens to people from New Jersey.

Mr. BENNETT. I will be more than happy, Mr. President, to turn the control of the time over to the Senator.

Mr. GREGG. I yield the remainder of our time to the Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, how much time is remaining on both sides?

The PRESIDING OFFICER. There are 7½ minutes remaining for the Senator from Pennsylvania; 5 minutes 40 seconds for the Senator from Massachusetts.

Mr. SANTORUM. Does the Senator from Massachusetts want to go or have me finish the time?

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to make sure we understand, No. 1, this vote did not have to occur. We saw woeful crocodile tears today about how we have to have this vote today and be delayed 2 days. The Senator from New Hampshire yesterday afternoon agreed to vitiate this vote and agreed to proceed to the bill. We could be discussing amendments right now if we wanted. We could have been discussing amendments last night. When I was on the floor at about 5 o'clock, we could have been debating amendments, but we were debating whether we would allow this vote to be vitiated or not and agree to the motion to proceed.

I have to question how genuine the concern is about having this delay of 2 days when we could have been on the bill yesterday and we could be amending the bill as we speak. That is No. 1.

No. 2, let's understand, the underlying bill is the discussion, which has to do with the generics versus the main line pharmaceutical companies, and how we deal with the issue of reimportation of drugs is going to be an issue—there will be other issues—related to prescriptions. But this is a vehicle for a much broader and I think to the American public more important debate, and that is how we are going to provide prescription drugs for seniors. That is what the majority leader has said this debate is going to be all about that we are going to move to very quickly once this motion to proceed is agreed to, and I believe it will be unanimous.

Let's understand the game that has been set up. The majority leader has set up a procedure on the floor of the Senate to guarantee—and I am underlying that word—to guarantee that no bill to provide prescription drugs would pass the Senate. I do not say that lightly. I use the word ''guarantee.'' We have 100-percent assurance under this procedure that no bill to provide prescription drug coverage will pass the Senate. Why? Because in last year's budget agreement—I say last year's budget agreement and you say: Senator, what about this year's budget agreement? We do not have a budget agreement for this year. We have no agreement of the budget that provides for money to be set aside for a Medicare prescription drug benefit.

So we have to go to last year's budget agreement to see what that provides for with respect to Medicare and prescription drug benefits.

What does that provide for? Two things. No. 1, any bill that is not reported from the Finance Committee to the floor of the Senate on Medicare prescription drugs will have a 60-vote point of order against it. What does that mean? That means if we had a $10 bill, a bill that costs $10 to the American Treasury, on the floor of the Senate it would be subject to a budget point of order. It would have to have 60 votes.

So what the Senator from South Dakota, the majority leader, has done, is he has required every single Medicare prescription drug bill to get 60 votes. The other budget provision says it had to be under $300 billion.

Now, what we are hearing is that there is some outrage that we have delayed this all of less than a day actually, and that the majority wants to go forward and move their prescription drug bill. Fine. Let's look at this prescription drug bill. This is a bill they could not get through committee. Had they been able to get it through committee, I am sure they would have allowed Senator BAUCUS to mark up this bill and go through committee, but they could not get it through committee. So they bypassed the committee, thereby assuring, as the Senator from New Hampshire said, mutual assured destruction. This is a partisan exercise.

So the bill will come to the floor. This is a bill that I have heard out in the hallways is going to cost upwards of a trillion dollars. Nobody has seen this bill. This is the largest expansion of entitlements in the history of this country, and no one has seen the bill. It is going to cost hundreds of billions, potentially a trillion dollars, over the next 10 years; it has not had one hearing in committee and it has not been marked up in the committee. What we are expected to do in the Senate is somehow agree to pass this bill within, according to the majority leader, the next 7 days. Within 7 or 8 days, we are going to pass a prescription drug bill that no one has seen, that nobody knows how much it costs—it could cost up to a trillion dollars—that no hearing has been held on, that no markup has been done on.

If we are serious about getting a prescription drug benefit, this is not the way to present this to the Senate. What this is, pure and simple, is politics. This is about the majority leader being interested in setting up a procedure that will assure that no bill passes so they have the issue of saying, see, we wanted to give you all these wonderful things, we wanted to give you all these benefits, give you Cadillac this and Cadillac that, and these lousy Republicans do not want to let you have it.

I suggest that we have three proposals on this side of the aisle on which we would love to get votes. Senator SMITH from New Hampshire has one; Senators HAGEL and ENSIGN have one; and then there is the tripartisan bill, all of which will move the ball down the field substantially when it comes to providing prescription drug benefits for seniors, all of which I believe could pass the test of the budget, which is getting through the Finance Committee and being under $300 billion in expenditures.

That is what we should be doing. We should be trying to pass a bill that gets through the Senate so we can get it to conference, work with the House, and get a drug benefit by November, not get a political issue by November.

This process has been set up to fail. This process has been set up to fail so some believe they will get political advantage by doing so. I want everybody to understand that when next Friday rolls around and we are at loggerheads because nobody can get 60 votes on a budget point of order and everybody is now gnashing their teeth and wringing their hands and saying, oh, woe is us, we could not get a bill done, we failed the American public, the Republicans would not let us pass our bill, or whatever the case may be, understand the template has been set for that today. The template has been set for that today by bringing a bill to the floor which requires 60 votes as a budget point of order. Once that template was set, once the majority leader decided to bypass the Finance Committee, a Finance Committee that, without question, could pass a bill—there is no question they could pass a bill, but again the majority leader, as he did with trade, as he has done with a whole

lot of issues with respect to the Finance Committee, has basically pushed the Finance Committee aside.

I do not know whether he does not trust the committee, whether he does not trust the leadership. I do not know what it is, but the Finance Committee has pretty much been made irrelevant over the past several months by the majority leader. What we have as a result of that is a procedure that is doomed to failure.

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

Mr. KENNEDY. I understand we have 5 minutes 40 seconds left. Is that right?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. What I would like to do is give 1½ minutes to the Senator from New York and 3 minutes to the Senator from New Jersey.

Mr. SCHUMER. I yield my remaining time. Senator GREGG corrected the time. I would be happy to yield my remaining time.

Mr. KENNEDY. I yield 4½ minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I rise to speak about the unspeakable, as far as I am concerned. I picked up the paper this morning and I read House GOP leaders fight audit plan, an audit plan that passed this body 97 to 0.

There are rumors circulating out among those on the Hill that a procedural process called blue-slipping has been applied to the Senate-passed corporate responsibility act, more formally known as the Accounting Reform and Investor Protection Act, which our Nation is crying out for, in response to corporate malfeasance and the deterioration of the quality of financial reporting corporate governance in this Nation.

If we have ever seen a situation where politics is an overwhelming necessity, where the politics of a given issue is undermining the needs of the American people, investors across this country, retirees, people who are dependent on our financial system having integrity and how it responds to information presented from companies, it is demonstrated by these actions with regard to trying to stop or hold back something that is absolutely essential for making sure that our economy and our markets function properly.

In case people had not noticed, we have lost over $2.5 trillion in our financial markets this year alone with respect to what is going on in corporate governance, corporate malfeasance. Yesterday we heard a positive statement out of the Chairman of the Federal Reserve Board about the underlying fundamentals of the economy. Productivity is up; inflation is down. There is plenty of reason for why our market should be moving forward, why the marketplace should feel comfortable with itself, but what is standing in its way is the integrity of corporate responsibility, the integrity of our financial statements, the integrity of how our marketplace works. We are refusing to deal with this on a straightforward and expeditious manner.

The President has asked for it to be placed on his desk in less than 3 weeks, and now we are being stopped cold dead by the House leadership.

Mr. SCHUMER. Will my colleague yield for a question?

Mr. CORZINE. Absolutely.

Mr. SCHUMER. I could not agree more with what my colleague from New Jersey has said. We passed a 31(e) bill, which reduced taxes on corporate transactions but was supposed to fund the SEC. We could not even get an authorization to have pay parity for the SEC to hire new people. That is one of the reasons we are in the pickle we are in.

So I ask my colleague from New Jersey: Is this not the same type of thing where they say, oh, yes, we are for enforcement, but they do not put any money in to either get enforcers or the quality of enforcers that we need?

Mr. CORZINE. The reason we have had responses like we have had in the marketplace in the last 2 weeks is that people are hot on rhetoric and low, low, low with regard to results and doing anything that is proper action to deal with the problem.

Mr. SCHUMER. If the Senator will continue to yield, the best place we can have action is in the bowels of the agencies where they find the wrongdoing; capable people, Government workers, they find it, nail them, so it does not happen again. Am I wrong about that?

Mr. CORZINE. The Senator is certainly right.

The PRESIDING OFFICER. The Senator has used 3 minutes.

Mr. CORZINE. I hope we take real action soon to stop this crisis of confidence from continuing.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. Fifteen seconds.

Mr. KENNEDY. Vote for cloture and get on with debate. This is an important first step that can take us on the road to lower prices and better availability of drug coverage for people who need it in our country.

I understand under the procedure the yeas and nays are automatic; is that correct?

The PRESIDING OFFICER. That is right.

Mr. KENNEDY. I understand all time has expired.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on the motion to proceed to Calendar No. 491; S. 812, the Greater Access to Affordable Pharmaceuticals Act of 2001:

Senators Harry Reid, Jon Corzine, Byron L. Dorgan, Ron Wyden, Maria Cantwell, Paul Sarbanes, Debbie Stabenow, Dick Durbin, Thomas Carper, Tom Daschle, Jack Reed, Daniel K. Akaka, Kent Conrad, Zell Miller, Charles Schumer, Ernest Hollings, Hillary Clinton.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, shall be brought to a close? The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS is necessarily absent.

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

The yeas and nays resulted—yeas 99, nays 0, as follows:

[Rollcall Vote No. 178 Leg.]

YEAS—99

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	McConnell
Baucus	Ensign	Mikulski
Bayh	Enzi	Miller
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Fitzgerald	Nelson (FL)
Bond	Frist	Nelson (NE)
Boxer	Graham	Nickles
Breaux	Gramm	Reed
Brownback	Grassley	Reid
Bunning	Gregg	Roberts
Burns	Hagel	Rockefeller
Byrd	Harkin	Santorum
Campbell	Hatch	Sarbanes
Cantwell	Hollings	Schumer
Carnahan	Hutchinson	Sessions
Carper	Hutchison	Shelby
Chafee	Inhofe	Smith (NH)
Cleland	Inouye	Smith (OR)
Clinton	Jeffords	Snowe
Cochran	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kerry	Stevens
Corzine	Kohl	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Leahy	Torricelli
Dayton	Levin	Voinovich
DeWine	Lieberman	Warner
Dodd	Lincoln	Wellstone
Domenici	Lott	Wyden

NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 99, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the motion to proceed is agreed to and the clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

The Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 812

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 ''Greater Access to Affordable Pharmaceuticals Act of 2001''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) prescription drug costs are increasing at an alarming rate and are a major worry of American families and senior citizens;

(2) enhancing competition between generic drug manufacturers and brand-name manufacturers can significantly reduce prescription drug costs for American families;

(3) the pharmaceutical market has become increasingly competitive during the last decade because of the increasing availability and accessibility of generic pharmaceuticals, but competition must be further stimulated and strengthened;

(4) the Federal Trade Commission has discovered that there are increasing opportunities for drug companies owning patents on brand-name drugs and generic drug companies to enter into private financial deals in a manner that could restrain trade and greatly reduce competition and increase prescription drug costs for consumers;

(5) generic pharmaceuticals are approved by the Food and Drug Administration on the basis of scientific testing and other information establishing that pharmaceuticals are therapeutically equivalent to brand-name pharmaceuticals, ensuring consumers a safe, efficacious, and cost-effective alternative to brand-name innovator pharmaceuticals;

(6) the Congressional Budget Office estimates that—

(A) the use of generic pharmaceuticals for brand-name pharmaceuticals could save purchasers of pharmaceuticals between $8,000,000,000 and $10,000,000,000 each year; and

(B) generic pharmaceuticals cost between 25 percent and 60 percent less than brand-name pharmaceuticals, resulting in an estimated average savings of $15 to $30 on each prescription;

(7) generic pharmaceuticals are widely accepted by consumers and the medical profession, as the market share held by generic pharmaceuticals compared to brand-name pharmaceuticals has more than doubled during the last decade, from approximately 19 percent to 43 percent, according to the Congressional Budget Office;

(8) expanding access to generic pharmaceuticals can help consumers, especially senior citizens and the uninsured, have access to more affordable prescription drugs;

(9) Congress should ensure that measures are taken to effectuate the amendments made by the Drug Price Competition and Patent Term Restoration Act of 1984 (98 Stat. 1585) (referred to in this section as the ''Hatch-Waxman Act'') to make generic drugs more accessible, and thus reduce health care costs; and

(10) it would be in the public interest if patents on drugs for which applications are approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)) were extended only through the patent extension procedure provided under the Hatch-Waxman Act rather than through the attachment of riders to bills in Congress.

(b) PURPOSES.—The purposes of this Act are—

(1) to increase competition, thereby helping all Americans, especially seniors and the uninsured, to have access to more affordable medication; and

(2) to ensure fair marketplace practices and deter pharmaceutical companies (including generic companies) from engaging in anticompetitive action or actions that tend to unfairly restrain trade.

SEC. 3. FILING OF PATENT INFORMATION WITH THE FOOD AND DRUG ADMINISTRATION.

(a) FILING AFTER APPROVAL OF AN APPLICATION.—

(1) IN GENERAL.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) (as amended by section 9(a)(2)(B)(ii)) is amended in subsection (c) by striking paragraph (2) and inserting the following:

''(2) PATENT INFORMATION.—

''(A) IN GENERAL.—Not later than the date that is 30 days after the date of an order approving an application under subsection (b) (unless the Secretary extends the date because of extraordinary or unusual circumstances), the holder of the application shall file with the Secretary the patent information described in subparagraph (C) with respect to any patent—

''(i)(I) that claims the drug for which the application was approved; or

''(II) that claims an approved method of using the drug; and

''(ii) with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug.

''(B) SUBSEQUENTLY ISSUED PATENTS.—In a case in which a patent described in subparagraph (A) is issued after the date of an order approving an application under subsection (b), the holder of the application shall file with the Secretary the patent information described in subparagraph (C) not later than the date that is 30 days after the date on which the patent is issued (unless the Secretary extends the date because of extraordinary or unusual circumstances).

''(C) PATENT INFORMATION.—The patent information required to be filed under subparagraph (A) or (B) includes—

''(i) the patent number;

''(ii) the expiration date of the patent;

''(iii) with respect to each claim of the patent—

''(I) whether the patent claims the drug or claims a method of using the drug; and

''(II) whether the claim covers—

''(aa) a drug substance;

''(bb) a drug formulation;

''(cc) a drug composition; or

''(dd) a method of use;

''(iv) if the patent claims a method of use, the approved use covered by the claim;

''(v) the identity of the owner of the patent (including the identity of any agent of the patent owner); and

''(vi) a declaration that the applicant, as of the date of the filing, has provided complete and accurate patent information for all patents described in subparagraph (A).

''(D) PUBLICATION.—On filing of patent information required under subparagraph (A) or (B), the Secretary shall—

''(i) immediately publish the information described in clauses (i) through (iv) of subparagraph (C); and

''(ii) make the information described in clauses (v) and (vi) of subparagraph (C) available to the public on request.

''(E) CIVIL ACTION FOR CORRECTION OR DELETION OF PATENT INFORMATION.—

''(i) IN GENERAL.—A person that has filed an application under subsection (b)(2) or (j) for a drug may bring a civil action against the holder of the approved application for the drug seeking an order requiring that the holder of the application amend the application—

''(I) to correct patent information filed under subparagraph (A); or

''(II) to delete the patent information in its entirety for the reason that—

''(aa) the patent does not claim the drug for which the application was approved; or

''(bb) the patent does not claim an approved method of using the drug.

''(ii) LIMITATIONS.—Clause (i) does not authorize—

''(I) a civil action to correct patent information filed under subparagraph (B); or

''(II) an award of damages in a civil action under clause (i).

''(F) NO CLAIM FOR PATENT INFRINGEMENT.—An owner of a patent with respect to which a holder of an application fails to file information on or before the date required under subparagraph (A) or (B) shall be barred from bringing a civil action for infringement of the patent against a person that—

''(i) has filed an application under subsection (b)(2) or (j); or

''(ii) manufactures, uses, offers to sell, or sells a drug approved under an application under subsection (b)(2) or (j).''.

(2) TRANSITION PROVISION.—

(A) FILING OF PATENT INFORMATION.—Each holder of an application for approval of a new drug under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) that has been approved before the date of enactment of this Act shall amend the application to include the patent information required under the amendment made by paragraph (1) not later than the date that is 30 days after the date of enactment of this Act (unless the Secretary of Health and Human Services extends the date because of extraordinary or unusual circumstances).

(B) NO CLAIM FOR PATENT INFRINGEMENT.—An owner of a patent with respect to which a holder of an application under subsection (b) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) fails to file information on or before the date required under subparagraph (A) shall be barred from bringing a civil action for infringement of the patent against a person that—

(i) has filed an application under subsection (b)(2) or (j) of that section; or

(ii) manufactures, uses, offers to sell, or sells a drug approved under an application under subsection (b)(2) or (j) of that section.

(b) FILING WITH AN APPLICATION.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A), by striking ''and'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) with respect to a patent that claims both the drug and a method of using the drug or claims more than 1 method of using the drug for which the application is filed—

''(i) a certification under subparagraph (A)(iv) on a claim-by-claim basis; and

''(ii) a statement under subparagraph (B) regarding the method of use claim.''; and

(2) in subsection (j)(2)(A), by inserting after clause (viii) the following:

''With respect to a patent that claims both the drug and a method of using the drug or claims more than 1 method of using the drug for which the application is filed, the application shall contain a certification under clause (vii)(IV) on a claim-by-claim basis and a statement under clause (viii) regarding the method of use claim.''.

SEC. 4. LIMITATION OF 30-MONTH STAY TO CERTAIN PATENTS.

(a) ABBREVIATED NEW DRUG APPLICATIONS.—Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii)—

(i) by striking ''(iii) If the applicant made a certification described in subclause (IV) of paragraph (2)(A)(vii),'' and inserting the following:

''(iii) SUBCLAUSE (IV) CERTIFICATION WITH RESPECT TO CERTAIN PATENTS.—If the applicant made a certification described in paragraph (2)(A)(vii)(IV) with respect to a patent (other than a patent that claims a process for manufacturing the listed drug) for which patent information was filed with the Secretary under subsection (c)(2)(A),''; and

(ii) by adding at the end the following: ''The 30-month period provided under the second sentence of this clause shall not apply to a certification under paragraph (2)(A)(vii)(IV) made with respect to a patent for which patent information was filed with the Secretary under subsection (c)(2)(B).'';

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following:

''(iv) SUBCLAUSE (IV) CERTIFICATION WITH RESPECT TO OTHER PATENTS.—

''(I) IN GENERAL.—If the applicant made a certification described in paragraph (2)(A)(vii)(IV) with respect to a patent not described in clause (iii) for which patent information was published by the Secretary under subsection (c)(2)(D), the approval shall be made effective on the date that is 45 days after the date on which the notice provided under paragraph (2)(B) was received, unless a civil action for infringement of the patent, accompanied by a motion for preliminary injunction to enjoin the applicant from engaging in the commercial manufacture or sale of the drug, was filed on or before the date that is 45 days after the date on which the notice was received, in which case the approval shall be made effective—

''(aa) on the date of a court action declining to grant a preliminary injunction; or

''(bb) if the court has granted a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug—

''(AA) on issuance by a court of a determination that the patent is invalid or is not infringed;

''(BB) on issuance by a court of an order revoking the preliminary injunction or permitting the applicant to engage in the commercial manufacture or sale of the drug; or

''(CC) on the date specified in a court order under section 271(e)(4)(A) of title 35, United States Code, if the court determines that the patent is infringed.

''(II) COOPERATION.—Each of the parties shall reasonably cooperate in expediting a civil action under subclause (I).

''(III) EXPEDITED NOTIFICATION.—If the notice under paragraph (2)(B) contains an address for the receipt of expedited notification of a civil action under subclause (I), the plaintiff shall, on the date on which the complaint is filed, simultaneously cause a notification of the civil action to be delivered to that address by the next business day.''; and

(2) by inserting after subparagraph (B) the following:

''(C) FAILURE TO BRING INFRINGEMENT ACTION.—If, in connection with an application under this subsection, the applicant provides an owner of a patent notice under paragraph (2)(B) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent in connection with the development, manufacture, use, offer to sell, or sale of the drug for which the application was filed or approved under this subsection.''.

(b) OTHER APPLICATIONS.—Section 505(c)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)) (as amended by section 9(a)(3)(A)(iii)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (C)—

(i) by striking ''(C) If the applicant made a certification described in clause (iv) of subsection (b)(2)(A),'' and inserting the following:

''(C) CLAUSE (iv) CERTIFICATION WITH RESPECT TO CERTAIN PATENTS.—If the applicant made a certification described in subsection (b)(2)(A)(iv) with respect to a patent (other than a patent that claims a process for manufacturing the listed drug) for which patent information was filed with the Secretary under paragraph (2)(A),''; and

(ii) by adding at the end the following: ''The 30-month period provided under the second sentence of this subparagraph shall not apply to a certification under subsection (b)(2)(A)(iv) made with respect to a patent for which patent information was filed with the Secretary under paragraph (2)(B).''; and

(B) by inserting after subparagraph (C) the following:

''(D) CLAUSE (iv) CERTIFICATION WITH RESPECT TO OTHER PATENTS.—

''(i) IN GENERAL.—If the applicant made a certification described in subsection (b)(2)(A)(iv) with respect to a patent not described in subparagraph (C) for which patent information was published by the Secretary under paragraph (2)(D), the approval shall be made effective on the date that is 45 days after the date on which the notice provided under subsection (b)(3) was received, unless a civil action for infringement of the patent, accompanied by a motion for preliminary injunction to enjoin the applicant from engaging in the commercial manufacture or sale of the drug, was filed on or before the date that is 45 days after the date on which the notice was received, in which case the approval shall be made effective—

''(I) on the date of a court action declining to grant a preliminary injunction; or

''(II) if the court has granted a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug—

''(aa) on issuance by a court of a determination that the patent is invalid or is not infringed;

''(bb) on issuance by a court of an order revoking the preliminary injunction or permitting the applicant to engage in the commercial manufacture or sale of the drug; or

''(cc) on the date specified in a court order under section 271(e)(4)(A) of title 35, United States Code, if the court determines that the patent is infringed.

''(ii) COOPERATION.—Each of the parties shall reasonably cooperate in expediting a civil action under clause (i).

''(iii) EXPEDITED NOTIFICATION.—If the notice under subsection (b)(3) contains an address for the receipt of expedited notification of a civil action under clause (i), the plaintiff shall, on the date on which the complaint is filed, simultaneously cause a notification of the civil action to be delivered to that address by the next business day.''; and

(2) by inserting after paragraph (3) the following:

''(4) FAILURE TO BRING INFRINGEMENT ACTION.—If, in connection with an application under subsection (b)(2), the applicant provides an owner of a patent notice under subsection (b)(3) with respect to the patent, and the owner of the patent fails to bring a civil action against the applicant for infringement of the patent on or before the date that is 45 days after the date on which the notice is received, the owner of the patent shall be barred from bringing a civil action for infringement of the patent in connection with the development, manufacture, use, offer to sell, or sale of the drug for which the application was filed or approved under subsection (b)(2).''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall be effective with respect to any certification under subsection (b)(2)(A)(iv) or (j)(2)(A)(vii)(IV) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) made after the date of enactment of this Act in an application filed under subsection (b)(2) or (j) of that section.

(2) TRANSITION PROVISION.—In the case of applications under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) filed before the date of enactment of this Act—

(A) a patent (other than a patent that claims a process for manufacturing a listed drug) for which information was submitted to the Secretary of Health and Human Services under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (as in effect on the day before the date of enactment of this Act) shall be subject to subsections (c)(3)(C) and (j)(5)(B)(iii) of section 505 of the Federal Food, Drug, and Cosmetic Act (as amended by this section); and

(B) any other patent (including a patent for which information was submitted to the Secretary under section 505(c)(2) of that Act (as in effect on the day before the date of enactment of this Act)) shall be subject to subsections (c)(3)(D) and (j)(5)(B)(iv) of section 505 of the Federal Food, Drug, and Cosmetic Act (as amended by this section).

SEC. 5. EXCLUSIVITY FOR ACCELERATED GENERIC DRUG APPLICANTS.

(a) IN GENERAL.—Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) (as amended by section 4(a)) is amended—

(1) in subparagraph (B)(v), by striking subclause (II) and inserting the following:

''(II) the earlier of—

''(aa) the date of a final decision of a court (from which no appeal has been or can be taken, other than a petition to the Supreme Court for a writ of certiorari) holding that the patent that is the subject of the certification is invalid or not infringed; or

''(bb) the date of a settlement order or consent decree signed by a Federal judge that enters a final judgment and includes a finding that the patent that is the subject of the certification is invalid or not infringed;''; and

(2) by inserting after subparagraph (C) the following:

''(D) FORFEITURE OF 180-DAY PERIOD.—

''(i) DEFINITIONS.—In this subparagraph:

''(I) APPLICATION.—The term 'application' means an application for approval of a drug under this subsection containing a certification under paragraph (2)(A)(vii)(IV) with respect to a patent.

''(II) FIRST APPLICATION.—The term 'first application' means the first application to be filed for approval of the drug.

''(III) FORFEITURE EVENT.—The term 'forfeiture event', with respect to an application under this subsection, means the occurrence of any of the following:

''(aa) FAILURE TO MARKET.—The applicant fails to market the drug by the later of—

''(AA) the date that is 60 days after the date on which the approval of the application for the drug is made effective under clause (iii) or (iv) of subparagraph (B) (unless the Secretary extends the date because of extraordinary or unusual circumstances); or

''(BB) if 1 or more civil actions have been brought against the applicant for infringement of a patent subject to a certification under paragraph (2)(A)(vii)(IV) or 1 or more civil actions have been brought by the applicant for a declaratory judgment that such a patent is invalid or not infringed, the date that is 60 days after the date of a final decision (from which no appeal

has been or can be taken, other than a petition to the Supreme Court for a writ of certiorari) in the last of those civil actions to be decided (unless the Secretary extends the date because of extraordinary or unusual circumstances).

''(bb) WITHDRAWAL OF APPLICATION.—The applicant withdraws the application.

''(cc) AMENDMENT OF CERTIFICATION.—The applicant, voluntarily or as a result of a settlement or defeat in patent litigation, amends the certification from a certification under paragraph (2)(A)(vii)(IV) to a certification under paragraph (2)(A)(vii)(III).

''(dd) FAILURE TO OBTAIN APPROVAL.—The applicant fails to obtain tentative approval of an application within 30 months after the date on which the application is filed, unless the failure is caused by—

''(AA) a change in the requirements for approval of the application imposed after the date on which the application is filed; or

''(BB) other extraordinary circumstances warranting an exception, as determined by the Secretary.

''(ee) FAILURE TO CHALLENGE PATENT.—In a case in which, after the date on which the applicant submitted the application, new patent information is submitted under subsection (c)(2) for the listed drug for a patent for which certification is required under paragraph (2)(A), the applicant fails to submit, not later than the date that is 60 days after the date on which the Secretary publishes the new patent information under paragraph (7)(A)(iii) (unless the Secretary extends the date because of extraordinary or unusual circumstances)—

''(AA) a certification described in paragraph (2)(A)(vii)(IV) with respect to the patent to which the new patent information relates; or

''(BB) a statement that any method of use claim of that patent does not claim a use for which the applicant is seeking approval under this subsection in accordance with paragraph (2)(A)(viii).

''(ff) UNLAWFUL CONDUCT.—The Federal Trade Commission determines that the applicant engaged in unlawful conduct with respect to the application in violation of section 1 of the Sherman Act (15 U.S.C. 1).

''(IV) SUBSEQUENT APPLICATION.—The term 'subsequent application' means an application for approval of a drug that is filed subsequent to the filing of a first application for approval of that drug.

''(ii) FORFEITURE OF 180-DAY PERIOD.—

''(I) IN GENERAL.—Except as provided in subclause (II), if a forfeiture event occurs with respect to a first application—

''(aa) the 180-day period under subparagraph (B)(v) shall be forfeited by the first applicant; and

''(bb) any subsequent application shall become effective as provided under clause (i), (ii), (iii), or (iv) of subparagraph (B), and clause (v) of subparagraph (B) shall not apply to the subsequent application.

''(II) FORFEITURE TO FIRST SUBSEQUENT APPLICANT.—If the subsequent application that is the first to be made effective under subclause (I) was the first among a number of subsequent applications to be filed—

''(aa) that first subsequent application shall be treated as the first application under this subparagraph (including subclause (I)) and as the previous application under subparagraph (B)(v); and

''(bb) any other subsequent applications shall become effective as provided under clause (i), (ii), (iii), or (iv) of subparagraph (B), but clause (v) of subparagraph (B) shall apply to any such subsequent application.

''(iii) AVAILABILITY.—The 180-day period under subparagraph (B)(v) shall be available to a first applicant submitting an application for a drug with respect to any patent without regard to whether an application has been submitted for the drug under this subsection containing such a certification with respect to a different patent.

''(iv) APPLICABILITY.—The 180-day period described in subparagraph (B)(v) shall apply to an application only if a civil action is brought against the applicant for infringement of a patent that is the subject of the certification.''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall be effective only with respect to an application filed under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) after the date of enactment of this Act for a listed drug for which no certification under section 505(j)(2)(A)(vii)(IV) of that Act was made before the date of enactment of this Act, except that if a forfeiture event described in section 505(j)(5)(D)(i)(III)(ff) of that Act occurs in the case of an applicant, the applicant shall forfeit the 180-day period under section 505(j)(5)(B)(v) of that Act without regard to when the applicant made a certification under section 505(j)(2)(A)(vii)(IV) of that Act.

SEC. 6. FAIR TREATMENT FOR INNOVATORS.

(a) BASIS FOR APPLICATION.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (b)(3)(B), by striking the second sentence and inserting ''The notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that, as of the date of the notice, the patent is not valid or is not infringed, and shall include, as appropriate for the relevant patent, a description of the applicant's proposed drug substance, drug formulation, drug composition, or method of use. All information disclosed under this subparagraph shall be treated as confidential and may be used only for purposes relating to patent adjudication. Nothing in this subparagraph precludes the applicant from amending the factual or legal basis on which the applicant relies in patent litigation.''; and

(2) in subsection (j)(2)(B)(ii), by striking the second sentence and inserting ''The notice shall include a detailed statement of the factual and legal basis of the opinion of the applicant that, as of the date of the notice, the patent is not valid or is not infringed, and shall include, as appropriate for the relevant patent, a description of the applicant's proposed drug substance, drug formulation, drug composition, or method of use. All information disclosed under this subparagraph shall be treated as confidential and may be used only for purposes relating to patent adjudication. Nothing in this subparagraph precludes the applicant from amending the factual or legal basis on which the applicant relies in patent litigation.''.

(b) INJUNCTIVE RELIEF.—Section 505(j)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(B)) (as amended by section 4(a)(1)) is amended—

(1) in clause (iii), by adding at the end the following: ''A court shall not regard the extent of the ability of an applicant to pay monetary damages as a whole or partial basis on which to deny a preliminary or permanent injunction under this clause.''; and

(2) in clause (iv), by adding at the end the following:

''(IV) INJUNCTIVE RELIEF.—A court shall not regard the extent of the ability of an applicant to pay monetary damages as a whole or partial basis on which to deny a preliminary or permanent injunction under this clause.''.

SEC. 7. BIOEQUIVALENCE.

(a) IN GENERAL.—The amendments to part 320 of title 21, Code of Federal Regulations, promulgated by the Commissioner of Food and Drugs on July 17, 1991 (57 Fed. Reg. 17997 (April 28, 1992)), shall continue in effect as an exercise of authorities under sections 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 355, 371).

(b) EFFECT.—Subsection (a) does not affect the authority of the Commissioner of Food and Drugs to amend part 320 of title 21, Code of Federal Regulations.

(c) EFFECT OF SECTION.—This section shall not be construed to alter the authority of the Secretary of Health and Human Services to regulate biological products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). Any such authority shall be exercised under that Act as in effect on the day before the date of enactment of this Act.

SEC. 8. REPORT.

(a) IN GENERAL.—Not later than the date that is 5 years after the date of enactment of this Act, the Federal Trade Commission shall submit to Congress a report describing the extent to which implementation of the amendments made by this Act—

(1) has enabled products to come to market in a fair and expeditious manner, consistent with the rights of patent owners under intellectual property law; and

(2) has promoted lower prices of drugs and greater access to drugs through price competition.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000.

SEC. 9. CONFORMING AND TECHNICAL AMENDMENTS.

(a) SECTION 505.—Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended—

(1) in subsection (a), by striking ''(a) No person'' and inserting ''(a) IN GENERAL.—No person'';

(2) in subsection (b)—

(A) by striking ''(b)(1) Any person'' and inserting the following:

''(b) APPLICATIONS.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—Any person'';

(B) in paragraph (1)—

(i) in the second sentence—

(I) by redesignating subparagraphs (A) through (F) as clauses (i) through (vi), respectively, and adjusting the margins appropriately;

(II) by striking ''Such persons'' and inserting the following:

''(B) INFORMATION TO BE SUBMITTED WITH APPLICATION.—A person that submits an application under subparagraph (A)''; and

(III) by striking ''application'' and inserting ''application—'';

(ii) by striking the third through fifth sentences; and

(iii) in the sixth sentence—

(I) by striking ''The Secretary'' and inserting the following:

''(C) GUIDANCE.—The Secretary''; and

(II) by striking ''clause (A)'' and inserting ''subparagraph (B)(i)''; and

(C) in paragraph (2)—

(i) by striking ''clause (A) of such paragraph'' and inserting ''paragraph (1)(B)(i)'';

(ii) in subparagraphs (A) and (B), by striking ''paragraph (1) or''; and

(iii) in subparagraph (B)—

(I) by striking ''paragraph (1)(A)'' and inserting ''paragraph (1)(B)(i)''; and

(II) by striking ''patent'' each place it appears and inserting ''claim''; and

(3) in subsection (c)—

(A) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking ''(A) If the applicant'' and inserting the following:

''(A) CLAUSE (i) OR (ii) CERTIFICATION.—If the applicant''; and

(II) by striking ''may'' and inserting ''shall'';

(ii) in subparagraph (B)—

(I) by striking ''(B) If the applicant'' and inserting the following:

''(B) CLAUSE (iii) CERTIFICATION.—If the applicant''; and

(II) by striking ''may'' and inserting ''shall'';

(iii) by redesignating subparagraph (D) as subparagraph (E); and

(iv) in subparagraph (E) (as redesignated by clause (iii)), by striking ''clause (A) of subsection (b)(1)'' each place it appears and inserting ''subsection (b)(1)(B)(i)''; and

(B) by redesignating paragraph (4) as paragraph (5); and

(4) in subsection (j)—

(A) in paragraph (2)(A)—

(i) in clause (vi), by striking ''clauses (B) through ((F)'' and inserting ''subclauses (ii) through (vi) of subsection (b)(1)'';

(ii) in clause (vii), by striking ''(b) or''; and

(iii) in clause (viii)—

(I) by striking ''(b) or''; and

(II) by striking ''patent'' each place it appears and inserting ''claim''; and

(B) in paragraph (5)—

(i) in subparagraph (B)—

(I) in clause (i)—

(aa) by striking ''(i) If the applicant'' and inserting the following:

''(i) SUBCLAUSE (I) OR (II) CERTIFICATION.—If the applicant''; and

(bb) by striking ''may'' and inserting ''shall'';

(II) in clause (ii)—

(aa) by striking ''(ii) If the applicant'' and inserting the following:

''(i) SUBCLAUSE (III) CERTIFICATION.—If the applicant''; and

(bb) by striking ''may'' and inserting ''shall'';

(III) in clause (iii), by striking ''(2)(B)(i)'' each place it appears and inserting ''(2)(B)''; and

(IV) in clause (v) (as redesignated by section 4(a)(1)(B)), by striking ''continuing'' and inserting ''containing''; and

(ii) by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (F), respectively.

(b) SECTION 505A.—Section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) is amended—

(1) in subsections (b)(1)(A)(i) and (c)(1)(A)(i)—

(A) by striking ''(c)(3)(D)(ii)'' each place it appears and inserting ''(c)(3)(E)(ii)''; and

(B) by striking ''(j)(5)(D)(ii)'' each place it appears and inserting ''(j)(5)(F)(ii)'';

(2) in subsections (b)(1)(A)(ii) and (c)(1)(A)(ii)—

(A) by striking ''(c)(3)(D)'' each place it appears and inserting ''(c)(3)(E)''; and

(B) by striking ''(j)(5)(D)'' each place it appears and inserting ''(j)(5)(F)'';

(3) in subsections (e) and (l)—

(A) by striking ''505(c)(3)(D)'' each place it appears and inserting ''505(c)(3)(E)''; and

(B) by striking ''505(j)(5)(D)'' each place it appears and inserting ''505(j)(5)(F)''; and

(4) in subsection (k), by striking ''505(j)(5)(B)(iv)'' and inserting ''505(j)(5)(B)(v)''.

(c) SECTION 527.—Section 527(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360cc(a)) is amended in the second sentence by striking ''505(c)(2)'' and inserting ''505(c)(1)(B)''.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I will propound a unanimous consent request. It has been agreed to on both sides. And then I would like to put the Senate in a quorum call so we might proceed in an organized way. I think we are just about there.

I ask unanimous consent that the committee-reported amendment be considered and agreed to, and the motion to reconsider be laid upon the table; that the bill, as thus amended, be considered as original text for the purpose of further amendment; that no points of order be considered waived by virtue of this agreement.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The committee amendment was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, I ask unanimous consent the Senator from Arizona be recognized for up to 15 minutes and that I get the floor following the completion of his statement.

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

Mr. REID. The Senator from Arizona has indicated this is for debate only.

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

The Senator from Arizona is recognized for up to 15 minutes.

Mr. MCCAIN. Madam President, I thank the Senator from Nevada.

It is time to talk about the bill that is before us which, as we all know, is going to be used as a vehicle to attempt to address the very controversial issue of prescription drug benefits for Medicare.

I also thank the Senator from Massachusetts for passing this bill through his committee and reporting it to the floor.

I thank especially Senator SCHUMER who really is the person responsible for this legislation. All of us like to take credit for things in this body. The fact is, the reality is, Senator SCHUMER brought this issue, certainly the idea for this legislation, to my attention. He is the one who really worked on it. I am grateful he included me in this very important issue.

It is important to the people of my State and to all Americans. As we all know, there are large numbers of retirees who have been intelligent enough to move from New York to Arizona, and they are deeply affected by the cost of prescription drugs.

Mr. SCHUMER. Will the Senator yield for a brief comment?

Mr. MCCAIN. I am glad to yield to the Senator from New York.

Mr. SCHUMER. I thank my friend. I want to thank him. We have been in this together from the beginning—almost 2 years ago, when we realized that something had to be done. His steadfastness, his courage, and his constant efforts to refine the legislation and make it better and make sure we bring it to the floor has been a large part of why we are here. I thank the Senator for being a great colleague with whom to work. I wanted to repay the accolades and compliment of the Senator.

Mr. MCCAIN. I thank my friend from New York. Again, I reiterate that he really is the one who has been the leader in this issue and in this legislation. He is also well known for his tenacity.

Madam President, first of all, I think we also ought to understand that this issue alone—that of getting affordable drugs to all Americans—obviously, as I spoke of before, particularly seniors and those on fixed retirement incomes are the ones most dramatically affected. That is a critical issue in America today. I don't claim that this bill before us solves the problem of providing prescription drugs for all Americans, particularly seniors, but I do argue that this is a very important step in the right direction in lowering the cost of prescription drugs to all Americans.

Now, the drug companies have mounted a massive attack on this legislation. They were the major contributors in recent fundraisers on both sides of the aisle. It is not complicated. The bill is not complicated. It only has three or four provisions. Basically, what it achieves is an ability to do what the Hatch-Waxman bill was intended to do, and that is to make available generic drugs as early as possible, with respect for the rights of those who invested massive amounts of money, in many cases, in research and development and testing, and for them to have an adequate return on their investment. There is no intent here to harm the drug companies. What it is intended to do is to get drugs to the market in the generic fashion so people would only have to pay less.

Madam President, Allen Feezor, CalPERS' Assistant Executive Officer for Health Benefits, said:

> In two of the past three years, pharmaceutical costs have increased more than any other component in our CalPERS health rate.

CalPERS is the retirement plan for California employees, which are very large in number.

> In our Medicare Choice/Supplemental plans, pharmacy trend can account for over 50 percent of the increase in premium rates that we see in our retiree plans one year to the next.

The obvious result is very clear. Every year, prescription drugs become less and less affordable to all Americans but especially retirees. It should be noted. He goes on to say:

> It should be noted that in both our hospital and [prescription drug] trends, a measurable portion of the trend is due to increased utilization by our enrollees, but this cannot take away from the extraordinarily high trends in both pharmacy and hospital pricing.

The rising cost of prescription drugs is also playing a significant role in the growing financial burden companies experience as they struggle to provide employees with health care coverage. For example, General Motors, the largest provider of private sector health care coverage, spends over $4 billion a year to insure over 1.2 million workers, retirees and their dependents, $1.3 billion of which is on prescription drugs alone. Even with aggressive cost-saving mechanisms in place, GM's prescription drug costs continue to rise between 15 percent and 20 percent per year.

Given the crises in both corporate America and our Nation's health care

system, anticompetitive behavior in the marketplace is particularly onerous. That is what we are trying to get at, the anticompetitive behavior. This legislation is intended not to weaken patent laws to the detriment of the pharmaceutical industry, nor is it to impede the tremendous investments they make in the research and development of new drugs. The purpose of the underlying legislation is to close loopholes in the Hatch-Waxman act, and to ensure more timely access to generic medications. This is an important distinction which must be made clear.

However, to believe that patent laws are not being abused is to ignore the mountain of testimony from consumers, industry analysts, and the Federal Trade Commission. The Commerce Committee heard testimony regarding the extent by which pharmaceutical companies, including generic manufacturers, engage in anticompetitive activities and impede access to affordable medications. During that hearing, Chairman Muris, of the FTC, testified:

In spite of this remarkable record of success, the Hatch-Waxman amendments have also been subject to abuse. Although many drug manufacturers, including both branded companies and generics, have acted in good faith, some have attempted to ''game'' the system, securing greater profits for themselves without providing a corresponding benefit to consumers.

The intent of the Hatch-Waxman act was to address the escalating costs of prescription drugs by encouraging generic competition, while at the same time providing incentives for brand name drug companies to continue research and development into new and more advanced drugs. To a large extent, Hatch-Waxman has succeeded in striking that difficult balance between bringing new lower cost alternatives to consumers, while encouraging more investment in U.S. pharmaceutical research and development.

In the 15 years since the enactment of Hatch-Waxman, research and development has increased from $3 billion to $21 billion. However, some bad actors have manipulated the law in a manner that delays and, at times, prohibits generics from entering the marketplace.

I believe this legislation will improve the current system while preserving the intent of Hatch-Waxman. This legislation is not an attempt to jeopardize the patent rights of innovative companies, nor does it seek to provide unfair advantage to generic manufacturers. Rather, the intent of this legislation is to strike a balance between these two interests so that we can close the loopholes that allow some companies to engage in anticompetitive actions by unfairly prolonging patents or eliminating fair competition. In doing so, we offer consumers more choice in the marketplace.

It is imperative that Congress build upon the strengths of our current health care system while addressing its weaknesses. This should not be done by imposing price controls or creating a universal, Government-run health care system. Rather, a balance must be found that protects consumers with market-based, competitive solutions without allowing those protections to be manipulated at the consumers' expense, particularly senior citizens and working families without health care insurance.

Madam President, today, there are probably buses leaving places in the Northeast and in the Southwest, loaded with seniors who are going either to Mexico or Canada to purchase drugs, which will probably cost them around half of what they would at their local pharmacy. There are people today, as we speak, who are making a choice between their health and their income. That is wrong. It is wrong. It is wrong when patent drug companies game the system by doing things like bringing suits, which then delays the implementation. It is wrong when the patent drug companies actually pay generic drug companies not to produce a particular prescription drug while they continue their profits, and it is wrong to game this system.

So here we are with a bill that with proper debate and perhaps amendments, could be passed by this body and is supported by an overwhelming number of consumer organizations. Even the patent drug companies and the generic drug companies themselves will admit that we need to make reforms.

Unfortunately, this statement that I have made and those made by Senator SCHUMER may be the only debate we have on this legislation which could be passed between now and September. So what are we going to do? What we are really going to do is have a debate over the prescription drug issue, Medicare, and that will bog us down with competing proposals, all of which will require 60 votes, and none of which has the 60 votes. At the end of 2 weeks, rather than passing this bill, which we should, we are going to say, oops, we really cannot come to an agreement, and if we did have an agreement, the House bill is very different, and we would have to go to a conference, from which bills would never emerge.

I think the American people deserve better. Why do we not pass this underlying bill, or at least make a commitment to pass this underlying bill, if the competing proposals that will be before us on Medicare prescription drugs do not receive 60 votes?

What I am afraid is going to happen is that none of the three will receive 60 votes. Then we will drop the bill and move on to other issues, and I think that is wrong. I think we know that with this approach, this underlying legislation, with some changes, absent, of course, the huge campaign contributions of the drug companies, we could reach an agreement which would be fair to the prescription drug companies, fair to the generics, and fair to the American public, and, indeed, in the view of anyone, including a recent study by the Federal Trade Commission that shows that these abuses are having a direct impact on the increasing costs of prescription drugs to all Americans particularly.

I remind my colleagues that we may be doing an injustice and a disservice to Americans for this year by not addressing this particular aspect of it and having it encumbered and bogged down by competing proposals.

I believe this legislation is fairly simple. It passed through the committee of jurisdiction with half of the Republican members voting for it. I know Senator GREGG, the ranking member, has some problems with it. I think with debate, amendment, and discussion, we could resolve those concerns that we might have and move forward.

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

Mr. MCCAIN. I would be glad to yield.

Mr. GREGG. The Senator characterizes my views accurately, and I agree with the Senator that this bill should be moved independent of the drug bill. Unfortunately, the greater issue, or game, of the drug fight has been set up to lose so that nothing will happen, as the Senator from Arizona so appropriately pointed out. I do think this is important legislation. I hope we will pass it somehow.

My concerns go to the expansion of lawsuits under the new cause of action. Much of the rest of the bill—in fact the vast majority of the rest of the bill—I think is excellent. I appreciate the work of the Senator from Arizona in bringing it forward.

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

Mr. MCCAIN. I ask unanimous consent for an additional 5 minutes, for debate purposes only.

Mr. REID. Under the same conditions we put forward earlier.

The PRESIDING OFFICER. There is no objection under the same conditions: When the Senator has completed, the Senator from Nevada will be recognized.

Mr. MCCAIN. I thank the Senator from Nevada.

Again, I thank the Senator from Massachusetts for getting this bill through the committee. I thank Senator GREGG from New Hampshire for his willingness to work with us, even though he has a couple of concerns that I think we could work out.

I urge my colleagues again, if the Medicare prescription drug issue is not resolved, to go back to the underlying bill, pass it, and perhaps we can give the American people at least some relief between now and next year.

This issue is not going away. Maybe after this year's elections we could try to address it in a more nonpartisan fashion.

On another issue, very briefly, in this morning's Washington Post there is an article by Mr. Andrew Grove, who is the chairman of the Intel Corporation.

I believe he is one of the most respected men in America. He makes a case that is very important. He outlines some of the changes he thinks need to be made in the area of increasing corporate responsibility. I think it is worthwhile to be included in the RECORD.

I ask unanimous consent that the article appearing in the Washington Post by Andrew S. Grove called ''Stigmatizing Business'' be printed in the RECORD.

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

STIGMATIZING BUSINESS

(By Andrew S. Grove)

I grew up in Communist Hungary. Even though I graduated from high school with excellent grades, I had no chance of being admitted to college because I was labeled a ''class alien.'' What earned me this classification was the mere fact that my father had been a businessman. It's hard to describe the feelings of an 18-year-old as he grasps the nature of a social stigma directed at him. But never did I think that, nearly 50 years later and in a different country, I would feel some of the same emotions and face a similar stigma.

Over the past few weeks, in reaction to a series of corporate scandals, the pendulum of public feeling has swung from celebrating business executives as the architects of economic growth to condemning them as a group of untrustworthy, venal individuals.

I have been with Intel since its inception 34 years ago. During that time we have become the world's largest chip manufacturer and have grown to employ 50,000 workers in the United States, whose average pay is around $70,000 a year. Thousands of our employees have bought houses and put their children through college using money from stock options. A thousand dollars invested in the company when it went public in 1971 would be worth about $1 million today, so we have made many investors rich as well.

I am proud of what our company has achieved. I should also feel energized to deal with the challenges of today since we are in one of the deepest technology recessions ever. Instead, I'm having a hard time keeping my mind on our business. I feel hunted, suspect—a ''class alien'' again.

I know I'm not alone in feeling this way. Other honest, hard-working and capable business leaders feel similarly demoralized by a political climate that has declared open season on corporate executives and has let the faults, however egregious, of a few taint the public perception of all. This just at a time when their combined energy and concentration are what's needed to reinvigorate our economy. Moreover, I wonder if the reflexive reaction of focusing all energies on punishing executives will address the problems that have emerged over the past year.

Today's situation reminds me of an equally serious attack on American business, one that required an equally serious response. In the 1980s American manufacturers in industries ranging from automobiles to semiconductors to photocopiers were threatened by a flood of high-quality Japanese goods produced at lower cost. Competing with these products exposed the inherent weakness in the quality of our own products. It was a serious threat. At first, American manufacturers responded by inspecting their products more rigorously, putting ever-increasing pressure on their quality assurance organizations. I know this firsthand because this is what we did at Intel.

Eventually, however, we and other manufacturers realized that if the products were of inherently poor quality, no amount of inspection would turn them into high-quality goods. After much struggle—hand-wringing, finger-pointing, rationalizing and attempts at damage control—we finally concluded that the entire system of designing and manufacturing goods, as well as monitoring the production process, had to be changed. Quality could only be fixed by addressing the entire cycle, from design to shipment to the customer. This rebuilding from top to bottom led to the resurgence of U.S. manufacturing.

Corporate misdeeds, like poor quality, are a result of a systemic problem, and a systemic problem requires a systemic solution. I believe the solutions that are needed all fit under the banner of ''separation of powers.''

Let's start with the position of chairman of the board of directors. I think it is universally agreed that the principal function of the board is to supervise and, if need be, replace the CEO. Yet, in most American corporations, the board chairman is the CEO. This poses a built-in conflict. Reform should start with separating these two functions. (At various times in Intel's history we have combined the functions, but no longer). Furthermore stock exchanges should require that boards of directors be predominantly made up of independent members having no financial relationship with the company. Separation of the offices of chairman and CEO, and a board with something like a two-thirds majority of independent directors, should be a condition for listing on stock exchanges.

In addition, auditors should provide only one service: auditing. Many auditing firms rely on auxiliary services to make money, but if the major stock exchanges made auditing by ''pure'' firms a condition for listing, auditing would go from being a loss leader for these companies to a profitable undertaking. Would this drive the cost of auditing up? Beyond a doubt. That's a cost of reform.

Taking the principle a step further, financial analysts should be independent of the investment banks that do business with corporations, a condition that could do business with corporations, a condition that could and should be required and monitored by the Securities and Exchange Commission.

The point is this: The chairman, board of directors, CEO, CFO, accountants and analysts could each stop a debacle from developing. A systemic approach to ensuring the separation of powers would put them in a position where they would be free and motivated to take action.

I am not against prosecuting individuals responsible for financial chicanery and other bad behavior. In fact, this must be done. But tarring and feathering CEOs and CFOs as a class will not solve the underlying problem. Restructuring and strengthening the entire system of checks and balances of the institutions that make up and monitor the U.S. capital markets would serve us far better.

Reworking design, engineering and manufacturing processes to meet the quality challenge from the Japanese in the 1980s took five to 10 years. It was motivated by tremendous losses in market share and employment. Similarly, the tremendous loss of market value from the recent scandals provides a strong motivation for reform. But let us not kid ourselves. Effective reform will take years of painstaking reconstruction.

Our society faces huge problems. Many of our citizens have no access to health care; some of our essential infrastructure is deteriorating; the war on terror and our domestic security require additional resources. Attacking these problems requires a vital economy. Shouldn't we take time to think through how we can address the very real problems in our corporations without demonizing and demoralizing the managers whose entrepreneurial energy is needed to drive our economy?

Mr. MCCAIN. I will read the last paragraph of Mr. Grove's column. He said:

Our society faces huge problems. Many of our citizens have no access to health care; some of our essential infrastructure is deteriorating; the war on terror and our domestic security require additional resources. Attacking these problems requires a vital economy. Shouldn't we take time to think through how we can address the very real problems in our corporations without demonizing and demoralizing the managers whose entrepreneurial energy is needed to drive our economy?

I might point out that a number of the proposals Mr. Grove has made are not incorporated in the Sarbanes bill, and if we have to go back and revisit this issue, which I am afraid we might, I hope everyone will pay attention to some of his proposals.

As is well known to most of us, Mr. Grove grew up in Communist Hungary, escaped at a very early age. He wrote a marvelous book about it. It is a great American success story. I think he is one of the most respected men in America. He has been at Intel since its inception 34 years ago, and it has become the world's largest chip manufacturer and grown to employ 50,000 workers in the United States, whose average pay is around $70,000 a year.

So I hope we will pay attention to Mr. Grove's recommendations, as well as his statements of principle.

I thank my colleagues for allowing me to debate the bill, and I yield back the remainder of my time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam 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. 4299

(Purpose: To permit commercial importation of prescription drugs from Canada)

Mr. REID. Madam President, I send an amendment to the desk on behalf of Senators DORGAN, WELLSTONE, and STABENOW.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. DORGAN, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, and Mr. FEINGOLD, proposes an amendment numbered 4299.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. REID. Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered.

AMENDMENT NO. 4300 TO AMENDMENT NO. 4299

(Purpose: To provide a substitute for the amendment)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. DORGAN, proposes an amendment numbered 4300 to amendment No. 4299.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. REID. Madam President, we appreciate the cooperation of the managers of this bill. At this point, we are now going to be in a posture to debate drug reimportation. We would hope we could have time agreements on this on whatever the minority wishes to offer.

Prior to that, I ask unanimous consent the Senator from Maine, Ms. SNOWE, be recognized for 20 minutes to speak on the bill, or whatever she chooses to speak on.

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

Ms. SNOWE. Madam President, I rise today to begin a discussion on the prescription drug benefit and specifically the one that has been introduced by the tripartisan group including Senator GRASSLEY, Senator BREAUX, Senator JEFFORDS, Senator HATCH, and myself.

Before I proceed, I express my support for the amendment offered by Senator DORGAN regarding reimportation. I have long supported that initiative. Many of my seniors in the State of Maine have to travel across the border into Canada in order to get prescription drugs that are offered lower there than in the United States. It is a tragedy that compels seniors to be put in a situation where they have to cross the border in order to do that. I hope we can support that amendment so they can have the benefit of those lower priced prescription drugs in the United States. It is the only fair approach. It is one way of addressing the issue of controlling costs and making costs competitive so they can have the benefit of lower prices.

I am very pleased to talk about the tripartisan proposal. I regret we have not had the opportunity in the Senate Finance Committee to be able to consider competing proposals, certainly the one that has been introduced by the ranking member, Senator GRASSLEY, Senator BREAUX, Senator JEFFORDS, and Senator HATCH and myself, along with other proposals, that obviously has the support of other members of the committee.

We should do everything we can to have the opportunity to explore, to debate, to consider the various proposals. Obviously, that starts within the committee process. It is unfortunate at this point as we begin to debate the other issues in the underlying bill, which is an important piece of legislation, that we are not in a position of being able to consider a prescription drug benefit plan. That is not the way the process ought to work. If you look at what happened on the tax bill last year, no one knew what the vote would be in the committee, let alone on the floor, but we had the opportunity to address the issue within the Senate Finance Committee. It ultimately passed 14 to 6.

When it came to the floor, it had 53 votes and ultimately yielded a vote of 62 to 38. That is the way the process works. We did not write the ending first. The prologue begins in the committee.

In this case, one of the most significant social domestic issues facing this country today, prescription drug benefits, Medicare authorization, and we have not been able to have a markup in the committee of jurisdiction, the Senate Finance Committee, we are told, because it does not have 60 votes. How many bills that are marked up in the committee have 60 votes before they hit the floor of the Senate? How do we know? How do we know until we begin the process of debating, analyzing, considering various issues? That is what this process is all about.

I truly regret we have not had the chance to be able to consider this bill in the manner it deserves and in the manner it deserves for the seniors of this country who are dealing with the overwhelming burden of the high costs of prescriptions. Why are we allowing this to be politicized? Why are we allowing this to be a matter of partisanship?

We have come a long way just on the funding issue alone. I have been working on this issue in the Senate Budget Committee with then-Chairman DOMENICI, Senator WYDEN, Senator SMITH, and others, and we were able to develop a reserve fund. We started with $40 billion, which was more than then-President Clinton had proposed. We are up to $300 billion, and our tripartisan proposal is $370 billion, recognizing that as every year passes, the price goes up and up. We have come a long way in even understanding that we are going to have to spend more to provide a strong benefit to seniors, and we must start now.

Some people might just want the issue for the next election. Maybe that is what it is all about. Maybe some people want to see a headline that says: Senate fails to muster the 60 votes; the issue is put off for another year. I do not want to see that kind of headline. I do not think it is fair to the seniors in this country because I know this institution can do better, and that is why we put forward this tripartisan proposal because we did not want partisan differences, political differences, philosophical differences to impede our ability to address this most important issue to the seniors in this country.

That is why we undertook this effort more than a year ago in our tripartisan group to see what we could agree to that would provide a most substantial benefit to the seniors in this country. Seniors cannot put off their illnesses. We should not be putting off a solution, and we crossed the political divide to develop our tripartisan proposal.

We worked closely with the Congressional Budget Office to ascertain the precise cost of our proposal so we do not jeopardize the solvency of the Medicare Program for future generations. We developed a competitive, efficient model to yield the best results for seniors as well as for the Government.

I do not want partisanship to jeopardize our ability to send a bill to the President, Madam President. I want to break the logjam here and now. Seniors have heard the excuses. How can we do anything less than give this our full effort here and now, particularly for the one-third of the Medicare beneficiaries who have no coverage whatsoever?

The Medicare Program is outdated, given the fact that it does not include a prescription drug benefit first and foremost, and we need to bring Medicare into the 21st century. The best way we can do it is by adding a prescription drug benefit.

It is simply unconscionable in a country of our means and wealth that older Americans should ever have to choose between filling their cupboards and filling their prescriptions. That is not hyperbole; that is not exaggeration; that is the truth. It certainly is the truth in my State. People are forced to make those tragic choices, and we have within our means right here and now, Madam President, to make the difference so seniors are no longer forced to make that terrible choice.

That is why we have offered the plan that we have. That is why I do not want to bypass the committee, because I know that is our best opportunity to pass a prescription drug benefit when we complete the process that begins in the committee.

We should not have any political motivations or maneuvers to bypass the process. I have been told: We cannot consider a bill in the committee that does not have 60 votes. Since when has that been a precondition for any markup in the committee? Then I am told: We cannot have a bill that is not supported by the Democratic leadership. I never thought that prevented us from doing our job; that eventually we could reach results.

We are not saying our bill is written in concrete. We are saying this is a beginning. It is a basis for action. Henry Ford used to tell his Model T customers that they could have any color they wanted for a car as long as it was black. It sort of reminds me of the situation we are in today: We will consider a prescription drug bill as long as it is ours.

We are saying let's bring out the proposals in the committee, let's go through the committee process, and then let's report out a bill to the floor. The tripartisan bill has the support of 12 members of the committee as we speak—12 members of the 21. We have the support in the committee, but let's go through the committee process. Let's do what we need to do.

Refusing to have a markup in the Senate Finance Committee is hiding behind false pretenses that we should only act if we have 60 votes.

Madam President, I want to discuss the tripartisan proposal and what it is.

First and foremost, it is a plan that offers an affordable, comprehensive, and available prescription drug benefit to seniors. It maximizes the benefits for the low-income seniors, and finally, it is a fully funded, permanent part of the Medicare process. There will be no sunsets. Providing a sunset in legislation, as has been recommended by the other competing plan offered by the Senator from Florida, is really providing a false hope to seniors. How can we tell them: Oh, by the way, in 7 years your benefit will expire? I think that is doing a tremendous disservice to seniors in this country, saying we are only willing to give this benefit for 7 years, so you had better not have an illness because we are not going to be able to give you a benefit in 7 years.

Our plan is fully funded and a permanent part of Medicare. It has been scored and estimated for cost by the Congressional Budget Office. They have vetted every aspect of our proposal. It is right here in a major legislative initiative. It is right here for everybody to review and to evaluate.

The plan is universal. It is offered to every Medicare beneficiary. That was a major priority for us, and it was a major priority for the seniors in this country in all the discussions we had with seniors and AARP. They wanted a universal, at the lowest possible monthly premium, and that is exactly what our benefit provides. It is lower than any other proposal that has been offered: A monthly premium of $24.

It will be offered to seniors whether they live in urban areas or rural areas. They will have a choice of a minimum of two plans, no matter where they live in America. The plan is targeted for seniors between 135 percent and 150 percent of the poverty level. That is about $18,000 for an elderly couple. They will receive coverage for about $12 a month at 150 percent of the poverty level. Below 135 percent they will pay no premium, no deductible whatsoever.

The plan is comprehensive. They will have access to every drug, whether it is a generic drug or the most advanced innovative therapies. It also will provide relief from catastrophic costs from high annual prescription drug costs.

Most of all, the plan will save the seniors real money, anywhere from 33 percent to 98 percent in out-of-pocket expenses, with the average senior saving more than $1,600 every year, as my colleagues can see on this chart. The average spending for seniors without any drug benefit in 2005 will be $3,059 per year; more than a quarter of Medicare beneficiaries spend more than $4,000.

The average savings under our proposal for seniors above 150 percent of the poverty level will be more than 53 percent. For those below 135 percent, they will save 98 percent—98 percent—in their costs of prescription drugs. But no matter, the average savings to seniors will be at least one-half, more than $1,600.

Our plan eliminates the so-called donut for lower income seniors, the seniors hardest hit by high drug costs. There are 11.7 million Medicare beneficiaries who have incomes below 150 percent of the poverty level, and they are exempt from the $3,450 benefit limit. The enrollees between 135 percent and 150 percent of the poverty level will have a monthly premium based on a sliding scale that ranges from anywhere from zero to 24 percent.

The 10 million Medicare beneficiaries who have incomes below 135 percent of the poverty level will see, as I said, 98 percent of their prescription drug costs covered by this plan with no monthly premium. These seniors are exempt from the deductible and will pay an average coinsurance of anywhere from $1 to $2 for prescription drugs.

They also have the protection of catastrophic limits, which will be $3,700 under our legislation. That is where the catastrophic benefit limit will begin, at $3,700. And they will have full protection against all drug costs with no coinsurance.

All enrollees will have access to discounted prescription drugs after reaching the $3,450 benefit limit and before the $3,700 catastrophic benefit limit.

They will all still have access to discounted drugs between the $3,450 and the $3,700 catastrophic benefit. In fact, 80 percent—let me repeat, 80 percent—of the enrollees will never be affected by the benefit limit of $3,450.

As you can see from this chart, I want to repeat, it has the lowest premium of any of the comprehensive proposals that have been introduced, at $24. Ninety-nine percent of Medicare beneficiaries, according to CBO, will be participating under this program—99 percent. Let me repeat, 99 percent.

The coinsurance paid for the top 50 drugs is $21. I want to compare that to the proposal offered by the Senator from Florida, because under the nonpreferred drug plan, of the top 50 drugs, we provide a lower coinsurance on all but one. And for the top 50 drugs in the preferred drug list, we provide a lower coinsurance than the proposal offered by Senator GRAHAM of Florida on all but 11 of the 50 drugs on the top 50 list.

So we are not only more substantial when it comes to providing the coinsurance on all of these preferred and nonpreferred drugs—as you see listed on the chart are the preferred drugs. For all but 11 out of the 50 drugs, we are lower in our copays than the proposal offered by Senator GRAHAM of Florida. And for the nonpreferred drug list, we are lower for all but 1 out of the 50 drugs. In other words, for 49 out of the 50 we are lower. We provide a lower copay for these prescription drugs, not to mention the fact that we provide a lower monthly premium of $24 a month for those who are 150 percent above the poverty level. For those that are below 135 percent of the poverty level, they pay zero. And more importantly, our proposal is not sunsetted.

CBO estimated, as I said, that 99 percent of seniors will have coverage under this proposal—99 percent of seniors. I think it is important for everybody to understand that if we are going to offer a prescription drug benefit, and if we are serious about making sure it is part of the Medicare Program, then, clearly, it is important that we make sure that it never expires, that we do not resort to budget gimmicks or artificial sunset requirements that provide a false hope to seniors.

Seniors deserve better than a false hope of a drug benefit that expires after 7 years with no guarantee of further coverage. I think that would be regretable if we decided to take that approach.

That is why we initiated this effort more than a year ago, to provide a benefit that was generous, that would help the low incomes first and foremost, that was universal, that was affordable, that did not jeopardize the future financial stability of the Medicare Program—because, obviously, that has to be the foremost concern to all of us as well as to seniors—and that we had the maximum benefits possible for seniors against high annual drug costs.

So I hope we will have the opportunity to have an honest, thorough debate on a prescription drug benefit that can be included as a permanent part of the Medicare Program.

Seniors are struggling under the burden of high prescription drug costs. We cannot allow election year politics to overwhelm any chances, any possibilities of getting a Medicare drug benefit through the Senate this year. We must allow a full debate to occur on this issue both in the committee and on the floor.

The Finance Committee should be a part of this process. Each of us has a stake—individually and collectively—about the kind of process we are willing to embrace in the Senate.

It does make a difference as to whether or not we are going to choose to bypass the committees repeatedly and bring up significant legislation on the floor without having the benefit of the committee process and for those Members who serve on those respective committees to be part of that process.

So each of us has a responsibility to that process, and, most critically, when it comes to such an important issue to millions of Americans: Those who are struggling under the weight of

high prescription drug costs and those who can expect to face the same problem in the future.

I think each of us here knows that without a markup in the committee we are creating a predetermined train wreck. We are heading for a train wreck because we are creating a process designed for failure. It is designed for politics. It is not designed for creating a solution to a serious problem.

I think if we continue to resort to these ill-advised procedures and political maneuvers and charades, and if we continue to allow this political choreographing which sort of superficially addresses the issue but does not really because we do not really want to create a consensus and a compromise because we want the issue for this year's elections, then we have failed and this Senate has abrogated its responsibility to do what is right.

That is what it is all about. It is whether or not we choose to do what is right. I think we all know what is right. Those of us in our tripartisan group—I am not saying that our proposal, as I said earlier, is written in stone. It is not a finite product, but it is a serious product. It is one that has evolved for more than a year. It is one that has been evaluated by the Congressional Budget Office. And it is the only proposal that has been introduced that has bipartisan, tripartisan support, and the only one that has been scored by the Congressional Budget Office.

It is the only one that has the lowest monthly premium. And it is the one that is not sunsetted. It is a permanent part of Medicare.

Getting back to this chart, seniors pay less for the top 50 prescriptions under the tripartisan plan versus the Graham-Kennedy-Miller proposal. They pay less. So they pay less on their monthly premium, and they pay less in their copays for the top 50 prescriptions, either on the preferred drug list or on the nonpreferred drug list.

Those are the facts.

I just hope that we will have the opportunity to consider this legislation and other competing proposals—such as the one offered by the Senator from Florida, Senator GRAHAM—in committee; utilizing the committee process to amend, to debate and to vote on a final measure. My proposal, as it stands, has the votes in the committee.

But let us go through the committee process. We would be more than happy to evaluate other issues and other amendments of the members of the committee.

I just do not understand why we can't have a markup in the Senate Finance Committee. We are here to do our job. That is our responsibility. That is why we have the committee process. I want to be able to legislate the best solution to the problem. We have come up with a proposal. Others have other proposals. But let us have a competition of ideas and debate in the committee that allows for the best hope for getting a bill through on the floor of the Senate that will yield the 60 votes, that will go to conference, and the differences worked out with the House.

As others have said, let us get a bill to the President for his signature this year. I don't want another year to go by. That is what I have been hearing every year. I have been hearing it every year now. Four years ago, they said next year. Next year turns into 2 years, 4 years, 6 years. How long do we think seniors can wait for this prescription drug benefit? How long? How long is it going to take? Why is it that we have to have these political machinations? Our group—Senator GRASSLEY, Senator BREAUX, Senator JEFFORDS, Senator HATCH—has worked long and hard for more than a year. Why can't we have a markup in the committee on this issue?

I would like to have a reasonable answer to that question. But I don't think I am going to get a reasonable answer. There is nothing to justify precluding us from doing our jobs in the committee. There is nothing acceptable by what is happening here.

I am here to legislate. I don't expect everybody to agree with my thoughts or my ideas or my proposals. But I do expect that we will honor the process by which we have the ability to do our job. Otherwise, we have all failed.

I don't care if it is a day before the election. I don't care. The time is now. To be frank with all of you, I think that we should reach the limits of our frustration with this process. Why do we continue to say it is acceptable? The same machinations existed with the health care proposal back in 1994. It is exactly the process it took. It bypassed the committee process and came to the floor. Guess what. Nothing happened.

Here we are in the year 2002—2002. We don't have a bill. The same is going to happen with prescription drugs. People will say next year: We can't do it.

We are getting paid to do our jobs now—not next year. We were elected to do our job now. Senator GRASSLEY has worked long and hard.

Senator GRASSLEY, the ranking member of the Senate Finance Committee, has gone the extra mile to reach out to both sides, to the chairman, to other members of the committee, and to others here on the Senate floor across the aisle, and as he did in this tripartisan proposal. Senator BREAUX and Senator JEFFORDS have also worked with us. We have been working together because we know this is the only way we can accomplish this most important issue for the seniors of this country.

I hope we will do the right thing. Let's begin this process in the Finance Committee so that we can consider the proposals on the floor which will ultimately yield the best results, not only in terms of policy but for the seniors of this country.

I yield the floor.

The PRESIDING OFFICER (Mr. REED of Rhode Island). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I intend to speak for a very few moments, and then hopefully we will be on the amendment of the Senator from North Carolina.

First of all, I thank my good friend, the Senator from Maine, for her very eloquent and passionate speech and statement in favor of the strong prescription drug program. It was eloquent, indeed. There were parts of it that I agree with very much. There were some parts to which I take exception. But I welcome the opportunity to have the kind of discussion and debate that she eagerly awaits here in the Senate.

I agree with her that it is long overdue. I agree with her that the time is now. I agree certainly with her that we are going to have to find common ground. I hope very much that we can.

I respect those who have gone forward and supported the tripartisan proposal.

Let me offer a few quick facts. Virtually none of the senior groups are supporting the tripartisan program. That doesn't have to be the bottom-line test. But they believe it doesn't provide the kind of protections that are in the Graham-Miller legislation—I think that they believe this for a very good reason. The tripartisan proposal has an assets test that will exclude many of the neediest of our senior citizens. The assets test says that if you have assets worth more than $1,500, or a car worth more than $400, or personal property worth more than $4,000, you are not eligible. That would affect a great many of the people in my State.

I think it is also demeaning to seniors to have to go in and try to give an assessment of what these personal items really are. I think we will have a chance to debate that.

One of the very important aspects of the Graham bill is that it doesn't have that test.

Second, there has been a good deal of talk about the estimated premium of $24. That is just an estimate because this program is turned over to the insurance companies. There is virtually no guarantee that the premium is going to remain $24. It may be $34 or $44.

I find that senior citizens in my State want certainty, they want predictability, they want to know exactly what that premium is going to be now. That is something that we will have to debate.

Third, as the Congressional Budget Office indicated, it will mean that 3.5 million seniors who are covered by their employer will be dropped for a less adequate program because there is no reimbursement for the employers.

That is not a finding that I make. It is a finding that the Congressional Budget Office makes.

Finally, I want to make this point. The issue of prescription drugs has been before the Finance Committee for 5 years. For 4 of the last 5 years, the Finance Committee has been under Republican control, and we have had Republican leaders on the committee.

This is the first chance we have had to debate it.

I listened to the Senator talk about wanting an answer to why we are not having a markup. I question why we didn't have one over the last 4 years. Now, under a Democratic leader, we are going to debate and hopefully take action on the floor.

I don't think people in my State are wondering about the committee process and how we are going to give adequate time for the committees to work. They want the Senate to act. That is the commitment of our leader. That is what they want.

I look forward to having the opportunity to act.

As the leader has pointed out, we want to try to deal with some of the issues of accessibility and also cost containment. In that cost containment debate, we have had strong bipartisan support in our committee—now 16 to 5. We had five Republicans who worked very closely on this issue.

We are going to find that there will be substantial savings for seniors as a result. We are going to hopefully have the opportunity to consider other amendments on this that are going to help deal with the problems of the cost of prescription drugs. Then we will have an opportunity to debate the other provisions.

But, as always, the Senator from Maine is eloquent, she is passionate, and she is knowledgeable about these issues.

I am very hopeful that before the end of this debate we will be on the same side in terms of supporting a program that will be worthy of the people of Maine as well as Massachusetts.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, it is appropriate to address again the issue of why this bill should have been vetted—not this bill we are hearing about, the big bills that are coming at us, the drug bills for drug benefits under Medicare—why they should have been vetted by the Finance Committee.

The Senator from Massachusetts represents that it didn't happen the last 5 years. There was no bill reported out of the committee. So why should the committee have to take it up this year? Why not just write it in the office of the majority leader, which is what has happened here? We haven't seen the bill. It is ironic. We have had all the representations as to what the Democratic bill is. We haven't even seen the bill. It hasn't been scored. It doesn't exist, as far as we know. Yet there are people out here puffing its strengths.

The reason you have to take this to committee is that if you don't take it to committee, you guarantee, almost, that you will not pass a bill. You are certainly not going to pass a bill that was drafted in some back office around here. If the bill does not go through the Finance Committee, it requires 60 votes to pass this body. It is subject to a point of order under the Budget Act.

It appears that the reason Senator GRASSLEY, being ranking member on the Finance Committee, Senator BREAUX, Senator SNOWE, being members of the Finance Committee, and Senator HATCH is supportive of this bill and is a member of the committee—it appears within the Finance Committee there is a working majority to pass a bill out, specifically the tripartite bill. Senator JEFFORDS is a member of the committee who is on this bill. There is a working majority to pass the bill out of the committee right now. If that happens, when the bill comes to the floor, it only needs 51 votes to pass and you actually get a drug benefit for senior citizens.

The way this process has been set up by the Democratic leadership is to create a hurdle that makes it virtually impossible to get a bill off the floor of the Senate. That is the difference. That is why you need to go through committee. The difference is that simple.

If you want to pass a bill, you go through the committee so you only need 51 votes to pass it. If you don't want to pass a bill, don't take it through the committee, because then you create a hurdle of 60 votes, and it makes it virtually impossible to pass the bill.

This is a process which has been set up to fail, as has been mentioned by innumerable speakers. It has been set up to fail. It has been set up to create a political issue as we go into the August recess before the November elections.

That is unfortunate. It is cynical. The Senator from Maine has, in terms of considerable outrage, expressed her frustration with that type of process. She has worked conscientiously with the Senators from Iowa and Louisiana, and other Senators in this body, to develop what is a consensus piece of legislation which will give seniors who are in dire need of it a very significant benefit in the area of drugs, for purchasing the drugs they need to live a decent life. It is a bill which is fairly expensive. We are talking, I believe, about $400 billion. That is a lot of money. Maybe it is $350 billion over 10 years.

Whatever it is, it is a very expensive bill. We are talking about taking a large amount of money from working Americans out of their paycheck through taxes and using it to support a seniors drug benefit, a very reasonable approach. Because it is such a large amount of money, it is outside the budget which we presently have in place. We have a $300 billion number which we put in place as a Congress last year to try to address the drug issue to help seniors. The plan, bipartisanly reached, tripartisanly reached, exceeds that number, as does every other plan being proposed, except for the Hagel-Ensign plan which is below that number.

All the other plans, with the exception of Hagel-Ensign, are subject to a point of order and, thus, subject to 60 votes. And it is extremely unlikely, considering the nature of the Senate, that you will get 60 votes for a final package. There are three different competing packages on our side, and there is this phantom package on the other side being written in an office, or a cloakroom, or a closet somewhere, and which we will see someday.

In any event, we know it has not been adequately vetted and we know the number is very high, over $600 billion minimum, maybe as high as $1 trillion if it is honestly scored.

That is why you have to go through committee. The committee has the expertise on it. That is important. More importantly than that, the committee gives the imprimatur of budgetary action, and if a bill is reported out of the committee, it meets the budgetary guidelines; it is not subject to a point of order.

So the misrepresentation that if it didn't happen the last 4 years that the committee reported out a bill on this issue, why should the committee have to report now, is a bit of a red herring. The issue isn't that you didn't do it 4 years ago. The issue is, do you want to pass a drug benefit package today or do you want a political issue? If you want a political issue, don't run it through the committee, bring it out on the floor and guarantee it fails because it can't get 60 votes. If you want a drug benefit package, put it through committee, and the committee comes out with a package, which would probably be the package outlined by Senator SNOWE, and it gets 51 votes at least. I suspect it will get more than 51—in the midfifties, probably.

Then you have a package with which you can turn to your senior citizens and say: This will be a significant benefit to you as you deal with the issue of prescription drugs. That is the difference. That is why you need committee action on this bill. As long as there is no committee action, I suspect you are guaranteeing failure.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we will move on from here, but the fact is, as the Senator stated correctly, if it were less than $300 billion, then it would need 51 votes. But the Senator from Maine's proposal is $370 billion. So they are going to need 60 votes, too. Do we understand? I don't understand what the Senator from New Hampshire was talking about. They are going to need 60 votes for their proposal because they are going to violate the point of order.

When we are talking about the fact that the seniors are going to spend, over 10 years, $1.8 trillion. With $300 billion you are going to do very little to offset the kinds of challenges they are facing.

Finally, I have listened to our Republican leader, to my good friend from New Hampshire about following the committees and how important it is to follow the procedures. I am so thankful that we have a leader who is bringing this to the floor of the Senate at last.

Now we hear this is circumventing procedure.

In May of 2000, Republicans brought S. 2557 to the floor, an energy bill sponsored by Senator LOTT, without committee approval; that was the big energy bill. In March 2000, Republicans brought legislation to the floor to eliminate the earnings test for individuals without committee approval. I voted for that. I am glad they did it. In June of 1999, Republicans brought the Social Security lockbox to the floor without committee approval. In July 1996, Republicans brought the Taxpayer Bill of Rights.

It seems they were prepared to bring a lot of other things, but they didn't bring a prescription drug bill to the floor. This leader has said this is the priority and that is why we are having this debate today.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, the amendment we are now considering, a first- and second-degree amendment, I have offered for myself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Ms. SNOWE. It is a bipartisan amendment. It is a very important amendment—one that addresses a part of that which we are here to consider on the floor of the Senate on the issue of prescription drugs.

Let me describe what the problems are. One, we don't have a prescription drug benefit in the Medicare Program, and we need to change that. We need to add a prescription drug benefit to the Medicare Program. Why do we need to do that? Because when Medicare was created, many of the lifesaving miracle drugs that exist now that allow senior citizens to live a longer and healthier life did not exist. So Medicare was basically an opportunity to provide health insurance coverage for doctors and hospitals but no prescription drug coverage. That was back in the 1960s. Things have changed.

Were we to write a Medicare Program today, we would clearly include prescription drug coverage in that Medicare Program. I mentioned senior citizens especially because that is who benefits from the Medicare Program. They represent about 12 percent of the population of our country, and they consume one-third of all prescription drugs. It is not unusual at all to talk to a senior citizen who has a series of health issues, as they have reached the later stages of their lives, and they have to take 4, 5, 10, and in some cases 12 different prescription medicines every day in order to deal with their health issues.

The problem is, when senior citizens reach that time of their lives where they have retired and have a lower income, they have less ability to be able to afford those prescription drugs. With the cost and spending increasing substantially, senior citizens are finding all too often that the prescription drugs they need to take are simply out of reach.

Let me describe some of the consequences that result. I talked yesterday about the woman who came up to me—and all of us have had this experience—she grabbed me by the elbow and said: Senator DORGAN, can you help me?

I said: What is wrong?

She said: Well, I have very serious health problems and my doctor prescribed prescription drugs that I must take, but they are too expensive. I don't have the money to be able to afford them.

Her eyes welled up with tears and her chin began to quiver and she began to cry.

She said: Can you help me, please?

This happens all across the country every day. Let me just read some letters. This is from a North Dakotan who wrote me some while ago, about 2 months ago:

> DEAR SENATOR DORGAN: I just returned from a drug store, where I happened to witness a very pathetic situation that brought tears to my eyes. Standing in front of me at the counter was an elderly gentleman about 80 years of age. He handed 2 prescriptions to the pharmacist. He said, ''Before you fill these, can you tell me what the price is?'' The pharmacist checked the price through her computer and told the elderly man, ''The first prescription is $94.76. The next prescription is $49.88. Do you want me to fill them for you?'' The old man looked around and was deep in thought and said, ''No, I guess not. I haven't bought Christmas presents for my wife and grandchildren. I will just put up with the pain.'' Using his cane, he walked away.
>
> ''God bless America,'' she writes. ''I just thought,'' she said, ''you and your Senate colleagues who have reservations about the need for lower priced prescription drugs ought to understand that this is going on in our country.''

A North Dakotan wrote to me and said:

> I am 86 years old, so I cannot work.

Her first thought, of course, would be to work.

> I am 86 years old, so I cannot work. I am writing in regard to the medication I take. I get $303 in Social Security every month. I have never worked out of my home. I pay $400 a month for my medication. I have had heart surgery and have osteoporosis of the bones. The medicines are very high priced. We need help. We are using all of our savings. I am 86 years old, so I cannot work.

Another woman from my State says:

> I am a person with scleroderma, diagnosed at the Mayo 24 years ago. While this disease attacks different parts of my body, it's mainly my lungs. I have been on oxygen for 2 years now. A new medication is out named Tracleer. One pill a day is $3,600 a year. I called Medicare to see if there was an insurance I can buy for medications. I was told I could not do that. I am a farm wife, 74 years old, who drove a tractor until 2 years ago when I lost my husband and then my lungs got worse.

She goes on at some great length.

I recall a snowy North Dakota day in January, in a small van going to Canada with some senior citizens from my State. Among the people who traveled to a little one-room drugstore in Emerson, Canada, that snowy day was Silvia Miller, a 70-year-old Medicare beneficiary from Fargo, ND, with no prescription drug coverage. She has diabetes, heart problems, and emphysema. She takes 10 to 12 medications every day. In 1999, she spent more than $4,900 for her medications. Well, Silvia Miller, like a lot of others, struggles to try to make do and deal with very serious health problems and tries to catch an increased price every year—increased costs of prescription drugs. Of course, she cannot catch that. It is moving out of sight.

Last year, there was a 17- to 18-percent cost increase for prescription drugs. The year before that, it was about 16 percent. The year behalf that, it was about 17 percent. So year after year after year, there are relentless increases in the cost of prescription drugs. This trend continues. What can we do about it?

Well, the point we make with this amendment is this: We support fully putting a prescription drug benefit in the Medicare Program. That ought to be done. I hope it will be done. But if that is all we do—if we do nothing to try to dampen down prices, put some downward pressure on prescription drug prices, we will have done nothing but hook up a hose to the Federal trough and we will suck it dry.

The American taxpayer beware. If we don't do something to try to put some downward pressure on prescription drug prices, we cannot afford putting a prescription drug benefit in the Medicare Program. We must do both, in my judgment. Let's put the benefit in the Medicare Program, make it optional, make it good, and at the same time let's do some things that put downward pressure on prescription drug prices.

I mentioned that I went to Canada with a group of North Dakota senior citizens. More recently, the Alliance For Retired Americans arranged 16 bus trips to Canada between May and June of this year to highlight the enormous price differences that exist for the identical prescription drugs between the United States and Canada. Participants in those 16 trips saved $506,000, or $1,340 per person.

I think it is important that we talk about policy in theory in the U.S. Senate, but let me do something a bit more than that, if I can.

I ask unanimous consent to show some prescription drug bottles that describe the real problem.

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

Mr. DORGAN. Mr. President, if I might go through a few of these, it will be useful for people to understand what senior citizens are discovering with respect to pricing.

This prescription drug is Celebrex, quite a remarkable drug for pain. It is sold both in the United States and Canada bottles that are essentially identical. The U.S. consumer is charged

$2.22 per tablet. The Canadian consumer is charged 79 cents per tablet. Same drug, same bottle, made by the same company; the difference is the American consumer is charged dramatically more for the same prescription drug.

Mr. President, Paxil is a prescription drug used to treat depression. As you can see, these two pill bottles are identical. The cost is $2.22 per tablet to the U.S. consumer; for the Canadians, for the same drug, it is 97 cents. Again, it is $2.22 for the American purchaser and 97 cents for the Canadian purchaser.

One might ask, as you go through this—and I have a couple more examples—why the difference in pricing? Well, that is a good question. We have had hearings on this and it is not that there is a difference in the tablets in the bottles.

This is Zocor. A famous football coach talks about Zocor on television every day. He says he takes this prescription drug and recommends it to others who need it. Zocor is sold in the United States in this bottle. It is $3.33 cents per tablet in the United States, and it is $1.12 per tablet in Canada.

Finally, this is a prescription drug called Prevacid. As one can see, this prescription drug, like the others, is marketed in an identical bottle in the U.S. and Canada. This is used for ulcers. It has a label that is of a slightly different color, but the bottle is identical—same pill, same bottle, made by the same company. In the United States, a purchaser pays $3.58 per tablet; in Canada, it is $1.26 per tablet. I have more.

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

Mr. DORGAN. I will be happy to yield.

Mr. WELLSTONE. What was the last drug?

Mr. DORGAN. Prevacid. It is used for ulcers.

Mr. WELLSTONE. May I add to the Senator's list two drugs? So much of this is personal. I am sure he hears from people in North Dakota what I hear from people in Minnesota, that this drives them crazy.

Permax is a drug to manage Parkinson's disease. The same bottle in the United States is $398.24, and the Canadian price is $189. I mention this because I ran into a teacher a couple months ago in my hometown who, when I met him—I have not seen him for a while—I said: How are you doing? We shook hands. I know Parkinson's. Both my parents had it. I know it in the palm of my hand. I felt the shake. I said: Are you taking Sinemet?

He said: Yes, but there is a better drug.

I said: Are you taking the other one?

He said: I cannot afford it.

This is by way of an example.

Did the Senator from North Dakota mention tamoxifen? It is a breast cancer drug. The United States price, same bottle, is $287; Canadian price, $24. I wanted to add two more examples to what my colleague mentioned.

Mr. DORGAN. Tamoxifen is a good example because it is priced at 10 times the Canadian price for those in this country who need it to deal with breast cancer. It is a good example.

This is a chart that shows other drugs, which I have not listed. It shows the substantial changes in prices between the United States and Canada.

Let me make a couple additional points.

I do not come here suggesting that the pharmaceutical manufacturing industry or the manufacturers themselves are bad. I do not suggest they are bad companies. In many cases, they do good work. They produce lifesaving miracle drugs. I might say, they could from time to time give more credit to the American taxpayer for some of that because a substantial amount of research also goes on through the National Institutes of Health that is federally funded, the benefits of which then are used by the pharmaceutical manufacturers.

It is not my intention to tarnish those manufacturers as somehow unworthy companies. It is my point to say that the pricing strategy employed by those manufacturers is wrong and it penalizes the American consumer.

They say: We must have this kind of pricing practice and pricing strategy by which the American consumer pays the highest prices by far because that is the way we get the money to do research and development.

It is interesting that a report I read says they do slightly more research and development in Europe than they do in the United States: 37 percent in Europe; 36 percent in the United States. And still in virtually every country in Europe, they charge a much lower price for the identical prescription drug they sell in the United States.

It is not the case that this is all about research and development. The legislation we have introduced, the Prescription Drug Price Parity for Americans Act, would allow U.S. consumers to benefit from the international price competition for prescription medicines.

We have changed this approach from the previous legislation that was enacted by the Congress because we make this apply only to the country of Canada. We would like licensed and registered pharmacists and distributors to be able to reimport into this country prescription drugs that are approved by the FDA. We are limiting that to Canada only. We will allow in this legislation pharmacists and distributors to access FDA-approved drugs from Canada and bring them into this country and pass the savings along to the American consumer.

This bill would become effective immediately. We have, as I said, passed this legislation before. It has not been implemented by two administrations because some have raised the question that this would pose risks for the consumer. However, we have included provisions in this legislation on page 9 addressing suspension of importation which will minimize those risks.

While I talk about that for a moment, let me describe why I think those risks are very minimal. Of course, we now have risks with respect to the shipment of prescription drugs across borders. We ship a substantial amount of United States manufactured drugs to Canada. In fact, the Congressional Research Service has a report quoting an information officer from Canada who says that most of the pharmaceuticals marketed and distributed in Canada originate from U.S. manufacturers.

The question we should ask, it seems to me, as policymakers, is, Why should an American citizen have to go to Canada to get a fair price on a prescription drug made in the United States? It is a rhetorical question but I suspect one without an answer in this Chamber.

In any event, a substantial amount of the prescription drugs sold in Canada are prescription drugs originating in the United States, and there is now a law on the books that says the United States consumer, through their pharmacists or through their licensed distributors, may not access those drugs even if they are less costly in Canada. In my judgment, that makes no sense at all.

Included in the legislation we have introduced is a provision that would allow the Secretary of Health and Human Services to suspend reimportation. Let me read the language we are including in the second-degree amendment:

> The Secretary shall require that importations of a specific prescription drug or importations by a specific importer under subsection (b) be immediately suspended on discovery of a pattern of importation of the prescription drugs or by the importer that is counterfeit or in violation of any requirement under this section or poses an additional risk to the public health until an investigation is completed and the Secretary determines that the public is adequately protected from counterfeit and violative prescription drugs being imported under subsection (b).

David Kessler, former head of the FDA, had this to say in a letter to us:

> The Senate bill which allows only the importation of FDA-approved drugs, manufactured in approved FDA facilities, for which the chain of custody has been maintained, addresses my fundamental concerns.

This is a larger description of his letter:

> Let me address your specific questions. I believe U.S. licensed pharmacists and wholesalers who know how drugs need to be stored and handled and would be importing them under the strict oversight of the FDA are well positioned to safely import quality products rather than having American consumers do this on their own.

The Congressional Research Service report I referred to a few moments ago is a report that I had asked they complete in which they should evaluate the chain of custody in Canada so we would understand whether there is a chain of custody issue.

If we manufacture a prescription drug, for example, in the United States and send it to end up on the shelf of a drugstore in Winnipeg, Canada, is there a chain of custody problem that would allow someone to say: You cannot have a pharmacist go to Winnipeg and buy that drug because that is inherently unsafe?

The answer is no, that is just sheer nonsense that there is any kind of a problem with that.

The CRS report says both countries have similar requirements and processes for reviewing and approving pharmaceuticals, including compliance with good manufacturing practices. We have similar rules for requiring labeling. The Canadian Federal Government inspects drug manufacturing facilities. Pharmacists and drug wholesalers have to be licensed. There is no chain of custody question.

I understand one thing about this. If I were a pharmaceutical manufacturer, I would want to kill this legislation. Why? Because the pharmaceutical industry confronts price controls in some other countries, and they do not like them. Those price controls allow them to charge their costs and add a profit to it, and that is the price they are able to exact.

There are no price controls in this country. So the pharmaceutical manufacturers make the point that, if you can reimport prescription drugs from somewhere else such as Canada, you are reimporting price controls from Canada.

We have price controls in this country really. It is just that the prescription drug manufacturers control the price, and they control the price by charging the U.S. consumer the highest prices in the world. Medicine after medicine, we find the U.S. consumers paying the highest prices in the world.

Lifesaving prescription drugs save no lives if you cannot afford to purchase them. Show me something else in the daily lives of the American people, or especially of senior citizens, that they need—that they don't have a choice on—that is increasing at 16, 17, 18 percent a year. Can anyone come up with anything that relates to those kinds of relentless increases? I do not think anyone can.

I want us to continue an aggressive search for miracle drugs and lifesaving medicines. That is why many of us in this Chamber have agreed to double the amount of funding at the National Institutes of Health. This is the fifth and final year to do that. We have gone from $12 billion to $24 billion. That was bipartisan. We did it. I want the drug manufacturers as well to also engage in robust research and development. I support research and development tax credits for that purpose, from which they benefit. But I do not want the pharmaceutical manufacturers to say to the American people: We have a scheme by which we will impose upon you the highest prices of any group of people in the world for our prescription drugs. We will have multitiered price policies, and you, American citizens, shall pay the highest. We want you to pay 10 times the cost for tamoxifen that our friends in Winnipeg, Canada, are charged. We want you to pay substantially higher prices for Zocor, Lipitor, Premarin, and Celebrex. It is simply not fair.

The point of this amendment is not to try to force anyone to go to Canada to buy prescription drugs. It is to try to force a repricing of prescription drugs in this country, for if our registered pharmacists and licensed distributors can access an FDA-approved drug in Canada and bring it back and pass the savings along, it will certainly force a repricing of prescription drugs in this country. That is my goal. That is our goal.

So what we have today is an amendment that will allow the reimportation, under very strict circumstances, of FDA approved prescription drugs from Canada to the United States only by licensed distributors and licensed pharmacists, and that will put downward pressure on prescription drug prices.

What we also have in this Chamber, I think, are those who want to kill this because the pharmaceutical industry does not like it. I understand that. If I were the pharmaceutical industry, I would not like it either. They have the best deal in the world in the United States, but it is unfair to American consumers. It is unfair to those in this country who need prescription drugs, who need lifesaving drugs, who need these miracle drugs, and cannot afford them.

So even while we put a prescription drug benefit in the Medicare plan, which I fully support, we must pass the underlying generic amendment, which also has the effect of putting downward pressure on prices.

We must pass this amendment, the reimportation amendment, which gives very careful consideration to the safety issues that others have raised, and we should not fear, and we should not shrink from, the pharmaceutical manufacturers' attacks that somehow this is bad public policy.

It is good public policy. They just do not like it. It is good public policy for the American consumer, and it is safe for the American consumer as well. My hope is that my colleagues will support this amendment and I strongly urge them to do so.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, during the fine presentation of the Senator from North Dakota, which is standard for the Senator from North Dakota, I have been speaking with the managers of the bill. The other side would accept his amendment by voice vote. I have not had a chance to speak to the Senator from North Dakota, but it is my understanding that he does want a recorded vote.

Mr. DORGAN. That is correct.

Mr. REID. May I ask the manager of the bill and Senator COCHRAN, who is heavily involved in this, if we could set a time—we would draw something up on paper—for a vote on this amendment at 2:30? I do not, frankly, know if all the time would be taken up on this amendment. This would give the Senator from Mississippi time, if he were so inclined, to talk about his amendment. Part of the deal would be that the next amendment in order would be the amendment of the Senator from Mississippi, which will, of course, occur if this passes, and it obviously is going to.

Mr. GREGG. As long as the position of the Senator from Mississippi is protected as being the next amendment offered, I certainly have no objection, but it is the call of the Senator from Mississippi.

Mr. COCHRAN. Mr. President, if the Senator will yield, I am happy to recommend that to our side of the aisle. The only Senators I know of who want to be heard on this amendment I will offer after the amendment of Senator from North Dakota are Senator BREAUX and Senator ROBERTS, both of whom have expressed an interest in this amendment. I would like the opportunity to see, though, if there are others who want to speak and make sure we can accommodate everybody. But I personally do not have any objection to a 2:30 vote.

Mr. REID. I say to my friend from Mississippi, I am sure his amendment will take a little bit of time because he has people who want to speak on it; the majority and others want to speak on it. We will not set a time for dealing with his amendment.

Mr. COCHRAN. Good.

Mr. REID. If it gets out of hand, we can always move to table, but I am sure the Senator from Mississippi, being one of the most experienced legislators we have, understands the rules. We will try to be fair and move this along as quickly as possible.

Mr. COCHRAN. Mr. President, I appreciate the assistance of the distinguished Senator from Nevada. We will be glad to try to work with him to accommodate that suggestion.

Mr. REID. What we will do is have the staffs prepare something on paper, but generally we all understand what it would be; there would be a vote on the Dorgan amendment at 2:30.

Mr. GREGG. With no intervening action?

Mr. REID. No intervening action. The person next to be recognized to offer an amendment would be the Senator from Mississippi.

Mr. GREGG. With the time equally divided.

Mr. WELLSTONE. Mr. President, if I could say to the Senator from Nevada, and I will relinquish the floor in a second, one of the things we need to do on our side—I know Senator STABENOW wants to speak on this. There are other Senators who also want to speak.

Mr. REID. That is why I set the time. We have until 2:30, and even though

there is a conference, people can step out of that and speak. So we will prepare something, and we should have it in the next few minutes.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Before there is any unanimous consent agreement propounded, I do want to make sure I state to my colleague from North Dakota we have quite a few Senators who have worked on this for some time and we want to make sure they do have a chance to come down.

I thank my colleague from North Dakota and my colleague from Michigan, and all the other Senators on both sides of the aisle, who support this legislation. I think this has been like about 5 years of work, as I think back to when some of us first started this journey.

One of the things I want to do right away is deal with one of the arguments that are made against this legislation. It is an argument by the pharmaceutical companies that, look, we have to charge American citizens a lot more because we need that money for the research. Senator STABENOW was there, Senator GRAHAM was there, as well as Senator MILLER.

One of the arguments we hear over and over again from the pharmaceutical companies, the drug companies, is they need to make this excessive amount of money, they need to have the very high priced drugs because this goes to research for the miracle drugs that help everyone.

When the President was in Minneapolis in my State last week, he adopted the pharmaceutical or the drug lobby's position and said that the high prices everyone sees are necessary to sustain the research and development.

One of the arguments made against this reimportation bill is, if you begin to do that and people start getting discounts and we cannot charge as much, we cannot put the money into the research. Families USA came out with a report they called ''Profiting From Pain.'' They looked at the drug company's recent submissions before the Securities and Exchange Commission about their activities in 2001. They looked at the nine publicly traded companies that market the top 50 drugs to seniors. I will go over their key findings.

The first finding is these large pharmaceutical companies spent $45.4 billion on marketing and advertising and administration—this is from their own SEC report—and $19 billion for research and development—2½ times more for marketing, advertising, and administration as for research and development.

The second finding for profits over the last 10 years, profits last year as percentage of revenue, was 18.5 percent, 5.5 times the median profit for the Fortune 500 companies.

The third key finding is these companies lavish huge compensation packages and even larger stock options—does this sound familiar to anyone—to the top drug executives. Mr. C.A. Heimbold, the former chairman at Bristol-Myers, had the following compensation package, not including unexercised stock options: Ready? $74.9 million; John R. Stafford, chairman of Wyeth, $44.5 million. The five highest paid executives received over $183 million last year.

Looking at the unexercised stock options, Mr. Raymond Gilmartin, president and CEO of Merck, $93.3 million; Mr. C.A. Heimbold, $76.1 million; two Pfizer executives, $60.2 million and 56.5 million.

I make the plea in the Senate because pharmaceutical companies do not want this bill. By the way, I said to my colleague from Michigan, who has worked so hard on this, one of the reasons I love this legislation, this helps all of our citizens, all our families. Pharmaceutical companies and wholesalers can meet every strict FDA safety rule, reimport back the prescription drugs and pass on the savings. That is what this is about.

The drug industry should stop scaring citizens in our country, seniors and others, with the false claim that if there is a discount and people are charged a reasonable price, this will prevent research in medicine. I thank Families USA for their excellent study. I make the point which they made today, in light of the huge industry profits, enormous executive compensation and big marketing budgets, these claims that we need to rip people off with the obsessive, obscene profits in order to do the research, are irresponsible and wrong.

The next point, by way of context of this amendment, it seems to me the drug companies in this country are making Viagra-like profits—you get the meaning of what I am saying—on the backs of American consumers, on the backs of Minnesota consumers. The thought that these companies, acting as a cartel, can make Viagra-like profits based on the misery and illness and sickness of people is obscene.

We are going to do something about it and we are going to make sure people in Minnesota and people around the country get a discount and they get the same fair price that people in Canada get so people can afford these prescriptions that are so important.

What does our amendment do? It allows for the reimportation of the drugs from Canada. Believe me, many citizens from Michigan and Minnesota and North Dakota know all too well what the differences are. People can save as much as 40 percent, if not more, for their prescription drugs. The amendment of Senator DORGAN, myself, Senator STABENOW, and others would allow pharmacists, drug wholesalers, and individuals to reimport safe and effective FDA-approved prescription drugs from Canada. These drugs, developed in the United States, are available in Canada for a fraction of the price of what we get charged. This would help not only senior citizens but other Minnesotans and other Americans as well.

Some examples to add to what my colleague from North Dakota mentioned: Coumadin, blood thinner, same bottle, $20.99 in the United States; Canadian price is $6.23. Zocor, a cholesterol drug, is $116.69 in the United States and $53.51 in Canada—same bottle, same prescription. Permax, for Parkinson's disease, which so important to people with that neurological disease, is $398.24 in the United States, $189 in Canada. Tamoxifen, a breast cancer drug, is $287 in the United States, $24.78 in Canada.

When I am traveling around Minnesota, people are asking me, more than anything else, can't we get a discount? Isn't there something to do to make the drugs affordable? A lot of Minnesotans ask why we can't have the same price as our neighbors to the north. This is the best of free trade and fair trade. Let our pharmacists and wholesalers meeting FDA guidelines reimport these drugs back and pass on the savings to the citizens we represent.

We have a provision for a suspension. If there is a problem with the drug, the Secretary can stop the batch of drugs coming into the United States until the investigation is completed.

Now we made it stronger, saying if there is any risk to public health, any kind of risk at all to people in this country who deals with public health where we have to worry about a batch of drugs that should not be in here, that violates safety standard, then the Secretary can stop the importation immediately. It is important to protect the health of people. We do that. This language assures that bad drugs are not going to reach patients in the United States and the Secretary at that point in time can suspend those drugs.

What we cannot do, and what I want every Senator to be aware of, we cannot let the pharmaceutical industry gut this amendment. We cannot say that the Secretary of Health and Human Services, be it Democrat or Republican, can set out conditions and certify those conditions have to be met before we have the reimportation. If that is the case, we will allow any Secretary of Health and Human Services in any administration to kill this.

Our citizens are tired of being ripped off. They are tired of the pharmaceutical companies running the show. Our people want a discount. We move forward with this. If, God forbid, there is any tampering with any drugs or any violation of public safety, then the Secretary of State can immediately suspend. But we do not want to have any kind of provision or any kind of amendment that passes that creates a huge loophole that enables the pharmaceutical industry to do all their behind the scenes lobbying and kill this legislation so that, in fact, the Secretary of Health and Human Services never ends

up implementing it. That is not what the people in Minnesota are asking. That is not what people in the country are asking.

Mr. REID. Mr. President, will my friend yield?

Mr. WELLSTONE. Yes.

Mr. REID. Mr. President, I ask unanimous consent that the time until 2:30 today be for debate on the pending amendments, with the time equally divided and controlled between Senators DORGAN and GREGG or their designees; that no intervening amendment be in order prior to the disposition of amendment No. 4300; that a vote on or in relation to amendment No. 4300 occur at 2:30 this afternoon, without further intervening action or debate; provided further, upon disposition of that amendment, Senator COCHRAN be recognized to offer an amendment on the issue of drug reimportation.

The PRESIDING OFFICER (Mrs. CARNAHAN). Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the Senator from Minnesota is recognized.

Mr. WELLSTONE. Madam President, I will take 1 more minute. Other Senators want to speak. Senator STABENOW has been a leader on this legislation for a long time and has been coordinating the effort of all Democrats.

Let me just conclude this way: I know Senators do not want to be seen as opposing an amendment that would enable all of our seniors and all of our citizens to be able to get a reasonable price for prescription drugs. My fear is that we will have an amendment out here with fine-sounding language which will create a huge loophole and will basically kill this amendment by giving any Secretary of Health and Human Services the ability to stop this legislation before it is ever implemented. That is unacceptable. That is unacceptable. We cannot let the pharmaceutical industry kill this bill and kill this amendment.

I believe that people in Minnesota, people in Michigan, and people around the country look at this as simple. I have said it before. I will conclude it this way. I think this is a test case of whether we have a system of democracy for the few or a democracy for the many. If it is a democracy for the many, we will support this provision. If is democracy for a few of the pharmaceutical companies, the devil is in the details. They will be able to create a huge loophole, which will mean this will never be implemented and they will be able to kill it.

I urge all colleagues to support this Dorgan, Wellstone, Stabenow, et al, amendment and to resist any amendment to essentially gut this amendment and stop this piece of legislation from being implemented.

I yield the floor.

APPOINTMENT OF CONFEREES—H.R. 3763

The PRESIDING OFFICER. Under the authority of the order of July 15, the Chair appoints the following conferees on the part of the Senate on H.R. 3763.

The Presiding Officer appointed Mr. SARBANES, Mr. DODD, Mr. JOHNSON, Mr. REED of Rhode Island, Mr. LEAHY, Mr. GRAMM of Texas, Mr. SHELBY, Mr. BENNETT, and Mr. ENZI conferees on the part of the Senate.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mrs. STABENOW. I thank the Chair, I yield myself up to 15 minutes under the agreement.

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

Ms. STABENOW. Madam President, this is a very important second-degree amendment that not only will help our seniors be able to lower the prices they pay for prescription drugs, as my colleagues have said. I thank the Senator from Minnesota for his ongoing leadership on this issue and, of course, the Senator from North Dakota for his sponsorship and ongoing leadership and advocacy, as well as my other colleagues who are cosponsoring this amendment.

This not only affects our seniors, this affects everyone. It affects the president of Michigan State University, who called me about his health clinics and his college of medicine looking for ways to be able to lower prices so that he does not have to deal with possibly laying off more staff, which he had to do this year as a result of the dramatic increases in the health care costs at the university.

It addresses the big three automakers, small businesses, families, and everyone who is paying exorbitant prices for prescription drugs.

I want to start by quoting our President, President Bush, when he was a candidate for President. He indicated that he thought this idea was a good idea. He said:

> Allowing the new bill that was passed in the Congress made sense to allow for, you know, drugs that were sold overseas to come back and other countries to come back into the United States.

That was what then-candidate George W. Bush and now President Bush said makes sense. It does make sense. It made sense before. The problem before was that there was an amendment added which basically killed our ability to be able to do this. We know that same amendment which is supported by the pharmaceutical industry will be offered later. There will be an attempt to kill it again.

But we are hopeful that our colleagues will join with us in what is a very reasonable proposal that addresses any legitimate issues regarding safety and health and allow us to open the border to Canada and be able to provide the kind of competition we need to lower prices.

I think it is important also to reiterate that at a September 5, 2001, hearing before the Senate Commerce Committee's Subcommittee on Consumer Affairs, William Hubbard, FDA Senior Associate Commissioner, testified:

> I think as a potential patient, were I to be ill and purchase a drug from Canada, I would have a relatively high degree of confidence in Canadian drugs.

We know the Canadian system is similar to ours as it relates to the regulatory and safety system.

We feel very confident that this modest proposal of simply opening the border to Canada—and we know that Canada right now exchanges goods and services with us every single day. We have the largest port of entry in Detroit, MI, which I am proud to represent, with over $1 billion in goods going across. We trade every day with them.

We believe this proposal will allow one thing to be traded which is desperately needed by our citizens and is not now allowed to go back and forth across that port of entry. It makes sense. This is a reasonable, modest proposal.

Instead of opening all of our borders, some would argue that this does not go far enough; that we should open to Mexico, Europe, or other places around the world. But we are taking a modest step to begin to show that this kind of approach can work.

We want to simply start with Canada with a very modest approach that will allow us to be able to share with our neighbors to the north the ability to bring back to our citizens American-made prescription drugs which are sold in Canada.

I think this is an issue of fairness as well because we are talking about prescription drugs on which we helped to underwrite research. As I have said so many times, $23.5 billion this year alone was given by the taxpayers of this country. And I support that strongly. I support having that be a higher number. I think basic research into new potential treatments is absolutely critical and is a good investment. But we are making those investments. We are then giving that information to the drug companies, that pick up the information and then proceed to do their own research and development.

We allow tax writeoffs for that research and development, tax credits, and tax reductions. We subsidize them further. We allow up to 20-year patents so they can recover their costs because we know it costs a lot to research and develop new drugs. So we let them be able to recover those costs without competition for their name brand. So we highly subsidize—highly subsidize—this area; the most profitable industry in the world, highly subsidized by American taxpayers.

Then what do we get at the end of that process? The highest prices in the world. One of the reasons is we close the borders to competition. And we are subsidizing heavily all of the research and development of new medications that the Canadians enjoy, that people around the world enjoy, while we in fact pay the highest prices in the world.

I have had an opportunity to take a number of bus trips to Canada; the latest was on June 10 of this year. I will just share with you some of the differences. My colleagues have talked about that as well. But it is shocking to take a mere 5-minute bus trip across a bridge or through a tunnel and see the dramatic differences in prices.

I might add, I am not interested in continuing to put people on buses or in cars to have to go over to Canada to get those lower priced medications. What we want is the ability to bring them back, so that the neighborhood pharmacy can offer these same kinds of prices. That is what this is all about, to bring them back and place them in the local pharmacy.

But it is shocking when we look at the differences. Zoloft is an antidepressant drug. In Michigan, it costs $220.65 for a monthly supply; in Canada, $129.05. So it is $220 versus $129. That difference can buy food, pay the electric bill, pay the rent, it can be the difference between someone having a quality of life that makes sense and one that involves struggling every day to pay for their medications.

We also know one of the most dramatic differences is tamoxifen, which I have spoken about here before. Tamoxifen is a breast cancer treatment drug. When we went to Canada, we were able to get it for $15. And back in Michigan it is $136.50.

If you have breast cancer and you are struggling to pay for your medications to get the treatments you need to deal with all of the other issues in your life as well, the difference between $15 and $136 a month is a big deal. That is why this amendment is a big deal. I hope our colleagues will join overwhelmingly in our amendment—which is, in fact, a bipartisan amendment, a tripartisan amendment—to say: Yes, it is time to be fair to Americans.

This is about fairness for Americans. It is about competition. It is about opening the border in a way that maintains safety for our citizens.

I would like to speak to a couple of the arguments that I know we will hear from colleagues who are opposing this amendment and what the drug companies have said.

The drug companies have said that bringing those prescription drugs back from Canada is not safe. For the record, drugs are already frequently imported into this country, but predominantly by the companies themselves, by manufacturers.

I also note that individual consumers now are allowed to bring back up to a 90-day supply. Because of the concerns that have been raised, they have looked the other way at the FDA and allow people, for personal use, to bring back up to a 90-day supply.

In fact, according to the International Trade Commission, $14.7 billion in drugs were imported into the United States in the year 2000, and $2.2 billion in drugs sold in Canada were originally made in the United States.

So it is ironic that the drug makers are saying that drugs cannot safely move between the borders of the two countries. They do already. The issue is price. The issue is who controls them moving back and forth. When the companies want to move them back and forth, they think it is fine. When the pharmacists want to move them back and forth or individuals want to move them back and forth and get a lower price, it is not fine. They are the same medications. It is a question of who controls them.

In fact, in recent years the FDA has allowed thousands of American consumers to import from Canada medications for their personal use every year. The FDA Senior Associate Commissioner, as I said before, indicated that as a consumer he would have a relatively high degree of confidence in drugs purchased from Canada. So these arguments do not make sense. The arguments we will hear about safety do not make sense.

We will hear that safety standards in Canada are more lax than here in the United States. There was a September 2001 report by the nonpartisan Congressional Research Service—which we all use—which confirms that the United States and Canadian systems for drug approval, manufacturing, labeling, and distribution are similarly strong in all respects. Both countries have similar requirements and processing for reviewing and improving pharmaceuticals, including ensuring compliance with good manufacturing practices.

Both countries also maintain ''closed drug distribution systems'' under which wholesalers and pharmacists are licensed and inspected by Federal and/or local governments. All prescription drugs shipped in Canada must, by law, include the name and address of each company involved along with the chain of distribution.

Let me finally address one of the other myths I am sure we will hear more about today, and that is that somehow our bill will allow Canada to become a conduit for counterfeit or contaminated drugs into the United States.

On the contrary, this bill provides for safe protections, many of which are not in current law. We go beyond current law, which we all know needs to be done now as we look at so many areas of homeland security.

We have gone beyond what is currently in place. If implemented, this bill would have the potential to decrease, more than today, the possibility of allowing counterfeit drugs into the United States.

We would provide there be strict FDA oversight, proof of FDA approval of imported medicines. There must be a paper chain of custody, which is important. Only licensed pharmacists and wholesalers would be able to import medications for resale. They would have to meet requirements for handling as strict as those in place by the manufacturers—equally strict as what the manufacturers do today.

There will be lab testing to screen out counterfeits, registration with Canadian pharmacists and wholesalers by HHS. There will be lab testing to ensure purity, potency, and safety of medications.

We also say that the Secretary of Health and Human Services can immediately suspend this provision, immediately suspend the importation of prescription medicines that appear to be counterfeit or otherwise violate the law.

We have made it very clear that they can immediately suspend ''on discovery of a pattern of importation of the prescription drugs or by the importer that it is counterfeit or in violation of any requirement under this section or poses an additional risk to the public health''—they can immediately suspend.

This is a responsible provision. It is a moderate provision. It opens the border to a country that we trade with every day, whose system is similar to ours. It allows actions if in fact anything is found to create a threat to Americans in terms of our health and safety. It allows immediate action and suspension of this new provision.

I believe we have put into place something that is reasonable. It is logical. It is long overdue. I am hopeful that we will have a strong bipartisan vote.

If we want to lower the prices immediately, without much, if any, expenditure of taxpayers' dollars—if we want to do it immediately—all we have to do is drop the barrier at the border to Canada.

I urge my colleagues to join us.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I yield myself 5 minutes.

The Dorgan amendment before the Senate has enormous potential to make more prescription drugs more affordable for more people. The amendment is particularly important for our seniors, most of whom live on fixed incomes and constantly have to decide whether they can afford to fill those prescriptions.

We have a bizarre situation. We manufacture drugs in America, but they are sold at cheaper prices in other countries. Just a few examples: Brand name drugs cost an average of 31 percent less in the United Kingdom than they do in the United States; 35 percent less in Germany; 38 percent less in Canada; 45 percent less in France; 48 percent less in Italy. The General Accounting Office has studied 121 drugs

and found that on average prescription drugs in the United States are priced 34 percent higher than the exact same products in Canada.

I travel around Michigan, and I listen to the stories of citizens who are trying to pay for expensive prescriptions and wonder why their neighbors in Canada, just a few miles away, are able to buy the exact same drug, manufactured in America, often for half the price.

We conducted a survey this last February of two of the most commonly prescribed prescription drugs. In every case, the prescription in Canada cost significantly less than the same drug in Michigan. For example, we looked at a number of pharmacies on both sides of the border. A 1-month supply of Prilosec, a gastrointestinal drug, costs about $126 in Michigan but only $71 in Canada. Similarly, a 1-month supply of Lipitor, a cholesterol-lowering drug, costs $74 in Michigan but $41 in Canada.

As a result of these enormous price disparities, we have the spectacle of American citizens, mostly seniors, going into Canada by the busload to buy American-made prescription drugs at a fraction of what they have to pay here. It is absurd. It is unconscionable that we give pharmaceutical manufacturers tax breaks and direct grants to bring new drugs to the market, and then those drugs cost more in America, where they are made, than they do in other countries. We subsidize the drug costs for the rest of the planet, and that has to change.

The Dorgan amendment fixes this problem in two fundamental ways: First, the amendment allows U.S. licensed pharmacists and drug wholesalers to import FDA-approved medications from Canada. Second, the amendment would allow individuals to import prescription drugs from Canada as long as the medicine is for their own personal use, as evidenced by a prescription, and is a 90-day supply or less.

These provisions will allow American citizens, through the appropriate channels, to take advantage of lower prescription drug prices in Canada.

According to a Boston University School of Public Health study, drug reimportation, just from Canada, could have saved consumers $38 billion in the year 2001, an enormous sum.

In the year 2000, the Senate approved strikingly similar legislation by a strong bipartisan vote of 74 to 21. Unfortunately, a technical amendment blocked implementation of the legislation. Now the Senate can act again to bring lower priced prescription drugs to people who desperately need them. We can act to bring in some competition. We can act to bring in some free trade. American scientific know-how has led to the development of hundreds of lifesaving and life-enhancing prescription drugs.

Some of the newer prescription drugs are modern-day medical miracles which help millions of Americans lead healthy lives well into their golden years.

These drugs won't do any good if people can't afford them. It is that simple and that demanding.

I hope our colleagues will support the Dorgan amendment and allow for the reimportation of prescription drugs.

I yield the floor.

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

Mr. FRIST. Madam President, I yield myself 20 minutes to speak in opposition to the amendment.

The PRESIDING OFFICER. From whose time?

Mr. COCHRAN. The time should be charged to that under the control of Senator GREGG. He has asked me, as his designee, to yield.

The PRESIDING OFFICER. The Senator is recognized.

Mr. FRIST. Madam President, I rise to address the issue introduced in the last hour and a half; that is, the issue of reimportation of drugs, especially as it affects the safety of the American people. They have been introduced by the proponents of this legislation as myths. By calling them myths, it is as if in some way we should say they are myths. They are not real, therefore, let's proceed down this path.

I want to give a little bit of historical perspective to these so-called myths and explain to my colleagues why I believe they are not myths but reality. The potential of such reality can result in direct harm as we look at public health and safety.

I look forward to the afternoon because the debate will continue. The debate ultimately will start with cost and buses running back and forth to Canada. Then Senators will say that this idea is appealing and critically important to pass so we can lower the cost of prescription drugs. We are all for lowering prescription drugs costs. Prescription drugs cost too much; they are out of reach today for too many people.

The focus is on cost. It is motivating and a driving force because it is something on which we all agree. Prescription drugs costs too much today—the rate of increase is too much. But to focus on cost without focusing on public health and safety is wrong and irresponsible.

If we look at the legislative history of the consideration of reimportation of drugs and pharmaceutical agents from other parts of the world outside of the borders of the United States to this country, we have a lot to learn. It is a rich history in terms of lessons learned.

I will not focus on the cost issue, but let me just dismiss the cost issue in terms of my comments now by saying there is no evidence that this amendment will guarantee price savings. For seniors, individuals with disabilities, or the American people who are listening today, there is no evidence to indicate this. It is pretty dramatic, holding up two bottles and saying one comes from another country and one from the here. The assumption is that it will reduce the cost of prescription drugs in the United States, however, that evidence is not there.

What I want to focus on—and I think it is even worse than not being able to make that assurance to the American people—is my concern with health.

From July 1985 to June 1987, nine hearings were held and three investigative reports issued regarding the issue of reimportation of pharmaceuticals. These efforts, over that time, led to the enactment of the Prescription Drug Marketing Act of 1987. That law was specifically designed to protect America's health and safety against the risks of drugs that in some way may have been altered or counterfeit imported medicines.

The act, a product of the debate at that time, found among other things, ''a significant volume of pharmaceuticals are being reimported. These goods present a health and safety risk to American consumers because they may become subpotent or adulterated during foreign handling and shipping.''

The overall purpose of the Prescription Drug Marketing Act of 1987 was to ''to decrease the risk of counterfeit, adulterated, misbranded, subpotent or expired prescription drugs reaching the American public.''

In the Committee report which accompanied the Prescription Drug Marketing Act, the Commerce Committee concluded:

> Reimported pharmaceuticals threaten the American public health in two ways. First, foreign counterfeits, falsely described as reimported U.S.-produced drugs, have entered the distribution system. Second, proper storage and handling of legitimate pharmaceuticals cannot be guaranteed by U.S. law once the drugs have left the boundaries of the United States.

I mentioned the history because it is incumbent upon us—as we look at this legislation and change, modify, defeat, pass, improve, strengthen this legislation—that we have to address the issues that were so prominently raised at that time. That was from 1985 to 1987. At that time, we did not have nearly as many cost concerns as we do today.

In 2000, as was mentioned on the floor, Congress revisited the issue and passed at that time the Medicine Equity and Drug Safety Act. This act allowed reimportation of prescription drugs if the Secretary of Health and Human Services could guarantee the safety and certify that cost savings would result. Safety and cost savings, again, are two issues that remain current today. We want to bring down the cost of prescription drugs, but we certainly do not want to do it if it is going to hurt the American people.

Since that time, two Secretaries of Health and Human Services—of two administrations—have stated that the Food and Drug Administration cannot guarantee the safety of reimported prescription drugs.

In fact, then-Secretary Shalala called it ''impossible . . . to demonstrate that [reimportation] is safe

and cost effective.'' Let us jump to the next administration.

Secretary Thompson also concluded that reimportation would ''pose a greater public health risk than we face today and a loss of confidence by Americans in the safety of our drug supply.''

Those were Secretaries of Health and Human Services and their overall approach in reimportation.

Let us now turn to the Commissioners of the FDA. When FDA Deputy Commissioner Lester Crawford was asked to comment on ''whether reimportation (from Canada) now raises greater challenges than it did previously''—meaning prior to September 11—and ''what is your view as it relates to safety as it relates to drugs for the consuming Americans,'' Deputy Commissioner Lester Crawford replied, ''The problem would be if it becomes apparent to the rest of the world, including the world of terrorists that we are not interdicting shipments of drugs that come from Canada. . . . I think this is a signal to a would-be terrorist that this might be a way to enter the United States. . . . It also would be a signal to a community that it is not as dangerous as terrorists obviously, but to the transshippers and these would-be people in various countries that may not have a regulatory system or may not have a regulatory system for exported drugs. . . .

I think the important issue is that we are in a new world, compared even to 2 years ago, and that it is incumbent upon us to address this whole idea of having drugs produced or imported or reimported from outside our boundaries at the same time we are trying to strengthen our boundaries in terms of what comes into this country. How careful can we be, how assured can we be that a product is not counterfeit, has not been adulterated, or is not the product of somebody who has ill intent against America. At the same time, we are working to make the borders less porous and tightly overseen, we want to make our borders more porous when it comes to chemical and pharmaceutical agents.

Former FDA Commissioner, Dr. Jane Henney, expressed severe reservations regarding the importation of drugs. This is from a different administration than the current one. Dr. Henney said:

> The trackability of a drug is more than in question. Where did the bulk product come from? How is it manufactured? You're just putting yourself at increased risk when you don't know all of these things.

Let us go back to another FDA Commissioner. Remember, the FDA Commissioners are those people who we have, as a nation, given the responsibility of overseeing the public's health and safety of food and drugs. Dr. David Kessler, former head of FDA, stated:

> In my view, the dangers of allowing reimportation of prescription drugs may be even greater today than they were in 1986. For example, with the rise of Internet pharmacies, the opportunities of illicit distribution of adulterated and counterfeit products have grown well beyond those available in prior years.

That is David Kessler, former head of FDA. He continues:

> Repealing the prohibition on reimportation of drugs would remove one of the principal statutory tools for dealing with this growing issue.

Let us look back to an FDA Commissioner from the Carter administration, Dr. Jere Goyan, who said it best. This is FDA Commissioner Goyan:

> I respect the motivation of the Members of Congress who support this legislation. They are reading, as I am, stories about the high prescription drug prices and people which are unable to pay for the drugs they need. But the solution to this problem lies in better insurance coverage for people who need prescription drugs, not in threatening the quality of medicines for us all.

It is important because, again, in our urge to bring down the cost of prescription drugs and restrain that skyrocketing of costs, we do not want to put drugs out of the reach of the American people. We do not want to do that unintentionally.

Given the statements of the FDA Commissioners and the Secretaries of Health and Human Services, we do not want to open the door and increase the risk to the public health.

Last fall the FDA affirmed its concern about the safety of reimported drugs—even those from Canada, and I understand the underlying amendment is focusing on one country—stating they could not even provide safety assurances for those drugs entering the Nation over our northern border. The FDA further noted that reimported drugs ''pose considerable risks to consumers because they may be counterfeit, expired, superpotent, subpotent, simply tainted, or mislabeled.''

I point this out early in the debate and want to turn to other people and to the other side, who say: Yes, our amendments are written with more safeguards in the pieces of legislation that come forward. I think that needs to be debated. Ultimately, the safety issue is the key issue in addressing this legislation as we shape it and vote for or against it.

I fear that, in spite of the proponents' attempts in the underlying amendment to establish a mechanism to assure safety—and it is fairly elaborate—a lack of success, lack of assurance of having these safety mechanisms, at the end of the day, puts at risk the American people. This is all in the interest of bringing down the cost of prescription drugs, which is something that we agree with, but there are better and more direct mechanisms to deal with that issue of cost.

We see an elaborate set of safety mechanisms that I think are impossible to implement, which wholesalers and pharmacists are not equipped to handle and, more importantly, mechanisms that only ultimately add—and nobody talks about it—to the cost of prescription drugs. Regardless of whether a pharmaceutical is originally manufactured here in the United States, once a drug leaves this country and crosses borders, I believe it is impossible to ensure that it is properly handled. It is out of our reach and our vision. We can sort of pass the laws and pass regulations, but in truth, we are not going to see it.

It is impossible to guarantee how it is handled, stored, at what temperature it is stored, and whether it is safe for eventual use.

Most people know—we have talked about this in the Chamber of this body—it is very important how drugs are stored, at what temperature, and their potency. In fact, certain drugs that are used in a routine way, if improperly handled, can become lethal if mishandled in being brought back into this country.

Even more hazardous to the health of Americans is counterfeit medicines. I mentioned terrorism, and I do not want to overstate that, but again, we are currently working very hard to fight issues such as bioterrorism. We are working hard to make sure we are able to track and regulate contents of agents that can be used against us. I do not think we should be moving in the direction of opening those borders broadly when I contend it is impossible, or next to impossible, to guarantee their safety.

There is one interesting example. Gentamicin sulfate is a prescription medicine to treat people with resistant infections, abdominal infections, and people who are very ill. Several years ago, FDA reported that this drug resulted in 17 deaths and 202 serious reactions. This drug is a very powerful drug, a very good drug, and one of the best antibiotics out there when used in a targeted, specific way.

Ultimately, it was no surprise to later find that the medicines causing these 17 deaths were being imported from another country. It was not Canada. It happened to be China. Both the current and former leaders of the FDA have made it ultimately clear, really crystal clear, that they will have a tough time establishing mechanisms that are sufficiently elaborate, complex, and detailed enough to ensure pharmaceuticals coming into this country from foreign manufacturers are safe to use.

The underlying amendment purports to address drug safety by only allowing U.S.-approved drugs to be reimported and incorporating a drug testing requirement. Again, it sounds very good, but let me state up-front—and we can debate it as the day goes on—end product testing, after a drug has traveled and handled in certain ways, simply is not adequate. End product testing is not adequate to demonstrate that a drug was manufactured in accordance with U.S.-approved standard and quality requirements.

Also, testing at the moment of import, at the time it actually comes into the country, does not ensure the integrity of the drug throughout its shelf

life once it arrives here. Drugs are fluid agents. They are agents that can be adulterated. They can be changed, and, as I mentioned, their storage is critically important.

I will close mentioning this whole danger of counterfeiting drugs because, again, in this environment post-September 11, it is one we need to look at. We need to address this issue up-front. It is the new environment in which we are working. In that regard, I am hopeful we can address this amendment to make absolutely sure we have safe drugs for the American people. We need to make sure that we have not opened the door at the same time we are putting interest in lowering costs and reducing costs over time, opened the door, opened our borders, or made them more porous in a way that ultimately will hurt the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. How much time remains on each side?

The PRESIDING OFFICER. The Senator from North Dakota controls 21 minutes; and the Senator from Mississippi controls 25 minutes.

Mr. DORGAN. Madam President, I yield 8 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I thank the Senator from North Dakota for bringing this matter to the attention of the Senate. I am very hopeful it will be accepted in the Senate in a short time. There are some interesting underlying facts. What we are finding now has been referenced during the course of this debate. The United States and its taxpayers are subsidizing the world in terms of prescription drugs. That happens to be a fact.

The research for brand and generic drugs is basically now conducted in the United States. They have moved dramatically from Europe over the recent years. With the doubling of the NIH budget, much of that is funding basic research which is essential for the development of drugs. So the taxpayer is paying for the funding of the NIH and then paying the additional costs at home. Furthermore, these drugs are a good deal cheaper outside the United States.

We are doing for the rest of the world in the area of prescription drugs what we are doing for our national security. We keep the Straits of Malacca open, the Suez Canal open, and the Panama Canal open. The great choke points of the world are free because of the U.S. Navy and that is the way it is. We wish that it could be better. There are things that could be done and should be done in this area. Nonetheless, that is the case. That is one issue, if we are able to have prices that are reasonable for the American consumer, but we do not have that. One of the principal efforts of what we are discussing in the Senate is taking steps to assure those families who are in need of prescription drugs that they are going to have access to them.

We have an underlying bill that will make a very important difference. The Dorgan amendment, cosponsored by our Democrat and Republican colleagues, can make an important contribution to that as well, and we will have follow-on amendments.

Rightfully, it has been identified that safety is a key issue. However, we are talking about drugs that are FDA approved and produced in plants that have FDA inspections. Many of the safety issues raised in Secretary Shalala's letter some years ago in criticism of a much broader amendment by the Senator from North Dakota have been addressed in this legislation. The safety issues that have been addressed included the counterfeiting, the proliferation of handling, and a wide range of other issues. They have been addressed in a very serious and responsible way.

We are doing this against a background where we are free, thank goodness, of examples or incidents where there has been contamination of drugs imported from Canada. That has not been true in terms of Mexico and other countries, but it certainly has been true with Canada.

This is a very modest program, but it is an important one. It is a vital program certainly for millions of our citizens who live in or around the northern tier States. It has caught on because of the frustration of our fellow citizens. And it is a legitimate frustration because of the fact that we in the Congress have not taken steps to assure that the generic drugs or that brand-name drugs are going to be sold at a more reasonable cost. It is out of frustration for that.

I do not hear those supporting this proposal saying they are in strong support of the underlying proposal that will make the availability of drugs less expensive for the consumer, or other means as well. It is a question of the cumulative effect. This is targeted to Canada, where we have high regard and respect for their system of handling these ingredients.

I think the issues which have been outlined and detailed expressing reservations about this proposal, certainly with regard to Secretary Shalala, and to a significant extent Secretary Thompson, have been addressed by the Dorgan amendment. This will be a measured but very constructive and important step in assuring that some of our citizens get vitally needed drugs.

As the Senator from North Dakota has pointed out, the fact is that if people are not able to get drugs at all because they cannot afford them, they are willing to take some risks to be able to get them. That is what this is about. We cannot make the excellent the enemy of the good.

The opportunity for getting good quality drugs at reasonable prices will make a difference, as the Senator has pointed out with his examples of individuals with cancer who otherwise would not be able to afford any of the higher-priced drugs. So with all the inevitable health hazards that they are facing, it is either these drugs or no drugs.

This is a measured step. It is one that is eminently worthwhile. I commend my colleague for offering it, and hopefully it will be accepted.

The PRESIDING OFFICER. Who yields time?

Mr. DORGAN. Madam President, how much time remains?

The PRESIDING OFFICER. The Senator from North Dakota has 14½ minutes.

Mr. DORGAN. Do we know with respect to those who are yielding time to the opponents of this legislation, or at least yielding time on behalf of Senator GREGG, whether they will be using their time at this point?

The PRESIDING OFFICER. The Senator from Mississippi has 25 minutes.

Mr. COCHRAN. Madam President, we are happy to abide by the unanimous consent agreement which calls for a vote at 2:30. We have an indication that there are Senators who want to talk. I will speak on the subject. We already have had remarks by Senator FRIST on this subject.

Mr. DORGAN. Madam President, as the Senator who offered the amendment, I reserve some time to close debate.

I yield 5 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I thank my colleague from North Dakota, who has worked so hard on this legislation and has done such a wonderful job of crafting what is a very reasonable and modest approach.

I did want to respond to comments that had been made a little while ago to emphasize again that this is a different proposal than was brought before the Congress before it was passed. It is limited to Canada where we know there is a very similar safety regulatory structure. We are trading back and forth. Our manufacturers of prescription drugs go back and forth across the border all the time. The only difference is they control the prices, as opposed to giving consumers the ability to have lower prices. So this is a different system. This is a system that sets up a number of protections, in fact more protections than we have in current law.

So this is actually strengthening, and given the current times that we are in, that makes sense. It makes sense to limit this to Canada as a way to begin this process and see how it works, and it makes sense to add all the safety provisions that are put in. It also makes sense to allow the Secretary of Health and Human Services to have the power to immediately stop reimportation if, in fact, there is a

problem. If there is a safety problem, if there is a health problem, if there is a concern at all about counterfeit drugs, then the Secretary has the ability, based on the evidence, to be able to stop this process.

So I believe we have built in a number of provisions that are very important, that are very responsible, and I believe this plan should go forward.

My colleague from Tennessee also said that there is no evidence we will see prices lowered or that we will see the lower prices passed on. First, I would absolutely say what we do know. There is great evidence that in fact our seniors—in fact everyone—are going to be paying higher prescription drug prices every year. We do know that. We do know in the last year, the brand name companies raised the prices over three times the rate of inflation. We do know that. We do know there is an explosion in advertising, two and a half times more in advertising, than research. We know there is in fact an explosion in prices going on in this country. We do know that our families are desperate, that our seniors are desperate, and many have drug bills that are higher than their incomes; families struggling to help mom and dad, grandma and grandpa.

We do know our small businesses are struggling to provide health care for themselves and their employees. We do know too many workers find themselves in a situation where their employer says: We have to have a pay freeze in order to be able to afford your health care benefits.

We know that is predominately because of the rising prices of prescription drugs.

So even if one thinks this is not the best proposal in the world, it is better than what is occurring today for American consumers, for American families, American seniors. I am very confident, in talking to pharmacists, community pharmacists, those who are on the front lines around this country, that they would welcome the ability to have a lower cost product brought into their pharmacies so they can offer it to American citizens.

They are on the front lines. They see the senior that walks up, gives the prescription for a 30-day supply of a drug, and then looks at the bill and comes back and says: Can I get one week's supply or I cannot get this at all. Or they take it home and they cut the pills in half. I have known couples who both needed the same heart medicine. They buy one and share it. We all know the stories.

I know that pharmacists in our neighborhood pharmacies are very much in support of efforts to bring in lower priced prescription drugs. One way to do that is by opening the border to Canada.

So I would simply rise to, again, voice strong support and my pleasure at being a cosponsor of this amendment, having worked on this issue for a number of years. I urge my colleagues to get beyond the scare tactics and to support us in this reasonable, moderate effort to add competition and lower prices for our citizens.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Madam President, as the designee of Senator GREGG, I yield myself such time as I may consume.

To refresh the memory of Senators on this subject and the fact that we have had this issue before the Senate on an earlier occasion, 2 years ago during the consideration of the annual appropriations bill for the Department of Agriculture and the Food and Drug Administration and related agencies, the Senator from Vermont, Mr. JEFFORDS, offered a similar amendment to allow drug reimportation. These were prescription drug reimportation rights.

Senator KOHL, who was the ranking Democrat at the time on the appropriations subcommittee, and I, serving as chairman, offered an amendment to that amendment which required a finding by the Secretary of Health and Human Services that the implementation of that amendment would not increase risk to public health and safety and that it would result in a reduction in the cost of products to consumers.

This language was modified slightly in conference with the House. The word ''demonstrate'' was substituted for the word ''certified,'' but in all other respects the amendment survived conference and was a part of the law.

Subsequent to that, Secretary Shalala, who was serving as the Secretary of Health and Human Services in the Clinton administration, wrote a letter to President Clinton describing her views about whether the Department could demonstrate, as required by the law, that the reimportation rights would not cause any failure of safety standards and that it would reduce the costs of prescription drugs to those who reimported them.

Her letter suggested that she could not make such a demonstration; she could not meet the requirements of the law and certify that.

Then at some point Senator KOHL became chairman of the subcommittee, and we thought we would be confronted in the next Congress with the same amendment. So we had a meeting in his office with FDA officials, Department of HHS officials, and others, to discuss the views of the administration on this subject. We had a new administration come to town. Secretary Thompson was in the meeting.

I was impressed and surprised at how much counterfeiting of drugs goes on; that countries manufacture and label and package drugs all over the world to look exactly like the drugs, some of which are off-the-shelf medications in our drugstores throughout our country; others are prescription drugs you can buy only if you have a prescription from a physician. They showed us parcel after parcel, illustration after illustration, of how much of this is going on around the world. They cautioned we should be very careful about accepting any language that would make it easier for the counterfeiters and for those who would want to do harm and bring such drugs into the country because there is no guarantee of their safety or efficacy, or that the strength stated on the package is really what is on the inside.

By looking at the drugs or the medical devices, one could not tell the difference. I could not tell the difference. No one could tell the difference to decide whether this was safe or without a chemical analysis.

The point of the story was, we were prepared to insist upon the same language in the appropriations bill that we had gotten the Senate to approve unanimously the year before, 96 to 0. They voted on the language that would make sure we would not be doing anything that would affect safety and that we really would be doing something to help reduce the cost of prescription drugs to America. But no amendment was offered.

I say that now by way of background and also to suggest to the Senate, after we vote on the Dorgan amendment, which says if you are going to permit reimportation and you find there is counterfeiting going on, you can suspend it. That is what this amendment says. OK, that is harmless enough. Let's approve that when we vote at 2:30 on a regular vote. We agreed to accept this amendment by voice vote, but there will be a recorded vote. I will vote for it. Sure, they ought to be able to suspend reimportation if they find it to be counterfeit. But guess what. There is counterfeiting and they will find it. It is no big secret.

This amendment is meaningless. What we will need to do after we adopt the Dorgan amendment at 2:30, under the agreement I will offer the same amendment. We will say that the Secretary of Health and Human Services must be able to certify that this will not adversely affect safety or be a threat to U.S. consumers, and it will result in cost savings. I want the Senator to know we will have an opportunity at that time to consider another amendment to this proposal which I hope the Senate will also adopt, as it has in the past, by unanimous vote.

I yield to the distinguished Senator from Utah.

Mr. HATCH. I thank my colleague.

Almost 2 years ago today, we visited the issue of whether to allow importation of prescription drugs from other countries. The Senate has before it today The Prescription Drug Price Parity for Americans Act, designed to permit the commercial importation of prescription drugs from Canada and to permit personal importation of prescription drugs from any country.

S. 2244 is intended to modify the Medicine Equity and Drug Safety Act of 2000, MEDSA, attempts both to address the safety concerns voiced by FDA, DEA, U.S. Customs, Secretary of HHS,

and others and also expand the personal importation exemption contained in current law.

As I will explain, reimportation was not a good idea then, and it is an absolutely terrible idea today, especially after 9/11.

The high cost of pharmaceuticals in indeed one of the most difficult matters facing our society today. We face a harsh reality: At a time when scientists are able to offer an unbelievable new array of medication, diagnostics, and vaccines, many Americans are encountering difficulties in affording these state-of-the-art and often cost therapeutics.

We have all heard stories of Americans going across the borders to Mexico and Canada to purchase cheaper drugs. This type of activity is also increasing over the Internet.

It may appear that the solution is simply to allow the importation of prescription drugs into our country. While I do not question the good intentions of those who believe this is the correct solution, we all must be aware of the disturbing, lasting unintended and negative consequences this proposal would have.

It have not possible to assure safety of reimported pharmaceuticals 2 years ago. Sadly, it is even more difficult to do so today.

We are facing an unprecedented time in history. I need not point out to my colleagues the challenges this country is already facing in our war on terrorism. Allowing drug reimportation is only going to further threaten our safety and inundate our law enforcement and regulatory agencies.

As always, there are many issues at play in this debate. But, the number one fundamental issue at stake here is the safety of the American people.

Assuring the American public that these imported drugs are safe and effective and unadulterated is next to impossible, especially now, in the midst of a war on terror. I worry that a day will come when either an underpotent or over-potent or adulterated, either intentionally or unintentionally, batch of imported drugs will cause injury and even death.

Yes, we can have certifications and regulations and foreign inspections and every other policing mechanism you can think of, but the fact remains we cannot police everyone around the world.

With this bill, we are opening a door that Congress prudently closed in 1988 when it enacted the Prescription Drug Marketing Act.

Let me give you a little background regarding the history of drug importation law.

During the 1980s, the House Energy and Commerce Committee conducted a lengthy investigation into the foreign drug market that ultimately led to enactment of the Prescription Drug Marketing Act legislation—PDMA.

This bill was enacted after our nation experienced a series of serious adverse events due to improperly stored, handled, and transported imported drugs. There were serious threats to public health and safety. That investigation discovered, among other things, that permitting reimportation of American drugs ''prevents effective control or even routine knowledge of the true sources of merchandise in a significant number of cases.'' As a result, the House Committee found that ''pharmaceuticals which have been mislabeled, misbranded, improperly stored or shipped, have exceeded their expiration dates, or are bald counterfeits, are injected into the national distribution system for ultimate sale to consumers''. It was determined that we could not prevent the introduction of substandard, ineffective, or even counterfeit pharmaceuticals.

The PDMA was necessary to eliminate health and safety problems before serious injury to consumers could occur. the Committee report was clear on why the PDMA was needed:

''[R]eimported pharmaceuticals threaten the public health in two ways. First, foreign counterfeits, falsely described as reimported U.S. produced drugs, have entered the distribution system. Second, proper storage and handling of legitimate pharmaceuticals cannot be guaranteed by U.S. law once the drugs have left the boundaries of the United States.''

Now we place a high premium on our citizens receiving safe and effective products, free from adulteration and misbranding. The Dorgan bill, could unravel the protection that the PDMA provides us.

Dating from the 1906 Pure Food and Drugs Act, through the 1938 Federal Food, Drug and Cosmetic Act, the 1962 efficacy amendments written by the Senate Judiciary committee, and the 1988 Prescription Drug Marketing Act, our Nation has devised a regulatory system that painstakingly ensures drug products will be carefully controlled and monitored all the way from the manufacturer to the patient's bedside.

Under the current Federal Food, Drug, and Cosmetic Act, FDCA, it is unlawful for anyone to introduce into interstate commerce a new drug that is not covered by an approved New Drug Application, NDA, or Abbreviated New Drug Application, ANDA. When a product is introduced into interstate commerce that does not comply with an approved application, it is considered an unapproved new drug in violation of section 505 of the FDCA. It is also misbranded under section 502. These basic rules cover importations, since importing is a form of introducing a drug into interstate commerce. Under FDCA, a drug that is manufactured in the US pursuant to an approved NDA and shipped to another country may not be reimported into the US by anyone other than the original manufacturer.

The provision restricting the right to reimport US drugs to the original manufacturer was designed to ensure that only the party that can truly vouch for the purity of the drug is allowed to bring that medicine back into the country. The prohibition on reimportation of products previously manufactured in the US and exported abroad was added to the law in 1988 to guard against the entry of counterfeit and adulterated products into this country.

On the issue of importing drugs for personal use, FDA has had a ''personal importation'' policy since the mid 1980s, which permits the importation of an unapproved new drug for personal use, meaning the individual may import no more than a 90 day supply, in certain situations.

It was intended solely to allow unapproved medications into the US for compassionate use. But over the years, there has been a tremendous increase in volume and FDA has recently taken the position that the personal importation policy has outgrown its usefulness and now presents a threat to public health.

In a letter to Congress, FDA reported that the personal importation policy ''is difficult to implement . . . due in part to the enormous volume of drugs being imported for personal use and the difficulty faced by FDA inspectors, or even health practitioners, in identifying a medicine by its appearance''. FDA lacks the ability to adequately monitory the enormous volume of mail-order pharmaceuticals.

The FDA has therefore proposed to the Department of Health and Human Services that it eliminate its personal use policy for mail imports. The Dorgan bill proposes to expand personal importation at a time when the FDA is telling us that it can't handle this and wants us to stop this policy.

In 2002, Medicine Equity and Drug Safety Act—MEDSA—included a provision that allowed an importer or wholesaler—in addition to the original manufacturer—to reimport US-manufactured drugs into the United States. But this provision would become effective only if the Secretary of HHS demonstrated to Congress that its implementation would impose no additional risk to the public's health and safety and that it would result in a significant reduction to the cost of covered products to the American consumer.

In December 2000, HHS Secretary Donna Shalala said she could not make this determination, citing flaws in the legislation that could ''undermine the potential for cost savings associate with'' prescription drug reimportation and that prescription drug reimportation ''could pose unnecessary public health risks''.

In July 2001, HHS Secretary Tommy Thompson also declined to make this demonstration on the premise that the safety of prescription drugs could not be adequately guaranteed if reimportation were permitted under its provisions.

So we have certifications by the top health officials of both the Clinton and

Bush administrations that reimportation is inherently unsafe. Are we willing to say, that it is safer today to import drugs by mail and other avenues and that we can do a better job ensuring the safety of these imported drugs? Especially after the tragic events we have been through?

The Dorgan bill, S. 2244, is a modified version of MEDSA. A review of S. 2244 will show that the new language is not significantly different from the MEDSA provisions that Secretary Shalala and Secretary Thompson rejected. Senator DORGAN, the sponsor of the bill, has stated that it is very similar to MEDSA.

Although the modifications in S. 2244 are intended to address original concerns inherent in MEDSA, they fall short of providing these safeguards—safeguards which are nearly impossible to implement. The new bill suffers from the same flaws as did MEDSA.

For example, S. 2244 is limited ostensibly to drugs imported from Canada. In fact, however, a drug could be imported from anywhere in the world under this bill, as long as it entered the U.S. through Canada.

There is no effective way under this bill to prevent the transshipment of drugs—legitimate or not—from other countries into Canada and then into the U.S. This would permit the entry of drugs that have been manufactured, stored, shipped, and handled anywhere in the world—in unsanitary conditions, unregulated conditions—and drugs that have become adulterated and even toxic.

At a September 2001 hearing before the Senate Consumer Affairs, Foreign Commerce, and Tourism Subcommittee, FDA's Senior Associate Commissioner for Policy, Planning, and Legislation, Bill Hubbard, warned of this very risk. Mr. Hubbard stated, ''Even if the Canadian system is every bit as good as ours, and I don't know whether it is or not . . . the Canadian system is open to vulnerabilities by people who will try to enter the U.S. market again because that's where the money is.''

To give another example, S. 2244 differs from MEDSA insofar as it would require manufacturers to allow importers to use their FDA-approved U.S. labeling free of charge. This could lead to an influx of misbranded products into the U.S., as importers paste FDA-approved labeling onto products from other parts of the world.

These drugs would be seen as an FDA-approved product manufactured and sold by a U.S. manufacturer—but could easily be a different product—a drug that could have deteriorated, or been contained, subpotent, or toxic. The products would be indistinguishable to a consumer in a local pharmacy, to a health professional, and even to the FDA. Consumers would be deceived by this practice, thinking the U.S. manufacturer had vouched for the purity, safety, and effectiveness of the product when in fact the manufacturer could not and had not.

Our top health care financing official has concerns as well. In March 2002, the Administrator of the Centers for Medicare and Medicaid Services—CMS—told the Senate Finance Committee that CMS opposes the reimportation of prescription drugs into the U.S. ''We have opposed it,'' he stated. ''There is no way for FDA to monitor and regulate drugs coming in from Canada, Mexico, or other countries.''

The Dorgan bill also permits a significantly lower standard for personally imported drugs than applies to domestic drugs. The Dorgan bill could also open up a loophole in the FDCA for unscrupulous commercial importers. It permits FDA to issue regulations permitting individuals to reimport prescriptions not only in their personal luggage but also through the mail or other delivery services.

We all know there is no way for FDA to limit mail order shipments to personal use. A commercial importer could simply divide its shipments into 90-day quantities and mail them separately, taking advantage of the personal use policy to introduce counterfeit products into the stream of U.S. commerce. This would overwhelm the ability of FDA and Customs to process the millions of incoming packages. Many of the criticisms of MEDSA—voiced by FDA, DEA, and others—apply equally to the new Dorgan Bill.

Many senior officials in various agencies, including FDA, U.S. Customs Service, the DEA, the Secretary of HHS warned of the difficulty in ensuring the purity and safety of reimported drugs.

Let's hear again what the experts have to say about reimportation.

William Hubbard, FDA Senior Associate Commissioner for Policy, Planning and Legislation, June 7, 2001:

> We are very concerned that a system, if designed to be a different system than the current system, poses risks and we cannot be assured that we could successfully implement such a system and bring in safe drugs because we do not have the same level of confidence about where it was manufactured, and how it was manufactured, and by whom it was manufactured, that we have under the current system.

Elizabeth Durant, Executive Director, Trade Programs, U.S. Customs Service, June 7, 2001:

> You can see the kinds of drugs that come through the mail. They are not even in bottles many times, just loose in paper. We have counterfeit drugs. We have gray-market drugs. We have prohibited drugs and we have unapproved drugs. And this is a situation that is pretty much replicated around the country.

We live in a very different world now after 9/11—a more dangerous, less certain world. We must question the safety of reimportation of prescription drugs even more than ever.

As Secretary Thompson cautioned on June 9, 2002:

> Opening our borders to reimported drugs potentially could increase the flow of counterfeit drugs, cheap foreign copies of FDA-approved drugs, expired and contaminated drugs, and drugs stored under inappropriate and unsafe conditions. In light of the anthrax attacks of last fall, that's a risk we simply cannot take.

That's the Secretary of Health and Human Services warning us.

Here's another quote from William Hubbard, FDA Senior Associate Commissioner for Policy, Planning and Legislation, July 9, 2002:

> The cheaper drugs are there. We just have no way to say to a given consumer, ''You have gotten a product that will help—will save your life,'' and we fear that many people will get a bad product that will hurt them.

We invest lots of money and resources in the United States to ensure that medications and other therapeutics are made and distributed at the highest quality and standards. Our agencies, while not perfect, have a remarkable record of protecting the public from contaminated, ineffective, and unsafe drugs.

We cannot guarantee an acceptable level of quality and safety with re-imported drugs. We can't sacrifice quality and safety in the hopes of getting cheaper medications. What's the use of cheap drugs if they can potentially do a great deal of harm and threaten the public's safety?

Reestablishing a system where wholesalers and pharmacists may import prescription pharmaceuticals through Canada to the U.S. would recreate the public health risk of counterfeit, unsafe, and adulterated drugs that Congress sought to eliminate in the late 1980s with the Prescription Drug Marketing Act.

Even if we put aside these very real safety concerns, the idea that the Dorgan bill can achieve the goal of bringing cheaper drug products to US consumers is unlikely.

This bill requires drug manufacturers to disseminate their drug formulations to potentially thousands of pharmacies and wholesalers. This information, currently protected under patent laws, could be worth millions of dollars per drug, on the black market. Unscrupulous individuals could obtain drug formulations and learn how to make their fake drugs look real and survive chemical analysis.

Allowing individuals to pirate the hard work and innovation of American drug companies to produce so called ''gray market'' products, counterfeit products, is no way to ensure that Americans have access to the latest pharmaceuticals in the long-run because they simply will not exist if we do not protect the work of our private sector companies.

While there is a clear and obvious health danger in a contaminated, pirated product, there is also great detriment to the American public if the unscrupulous are allowed to reimport America's inventions back into America without compensating the inventor. Few will be willing to invest the upfront capital—hundreds of millions of dollars—to develop a drug if another

party can make and sell the drug while it is under patent protection.

It takes an average of 15 years and a half a billion dollars to create one of the blockbuster drugs. So we have to be careful. We must be able to continue to attract the private sector investment into committing to the research and development that has made the American drug development pipeline so successful. We jeopardize this with reimportation of drugs.

We can't just do what appears on the surface to be good but, in essence, could kill people and undermine our fundamental system of encouraging innovation and rewarding hard work.

How successful is pharmaceutical innovation in Canada? They have price controls, and nobody is going to invest the money into developing these lifesaving and cost-saving drugs over the long run in those countries with price controls.

This is another step toward price controls that will weaken one of the most important industries in America at a time when we just mapped the human genome, and we are at the point where we can actually create more lifesaving medicines.

When the value of American inventions is stolen, it is American inventors and American consumers who suffer. The United States cannot and should not allow free riders around the world essentially to force the American public to underwrite a disproportionate amount of the research and development that results in the next breakthrough product. On the surface it seems there's no harm if drugs obtained from outside the United States at prices lower than U.S. prices can be resold in the U.S.; presumably this could lower prevailing U.S. prices. But great harm can come from this. I can say that where nations impose price controls, the research and development we count on to bring us miracle cures is jeopardized.

How can we guarantee that foreign government price controllers will not set an artificially low price on some new badly-needed Alzheimer's or Parkinson's or Lupus drug? We can be sure that this will have the unintended, but real, effect of convincing company officials to forgo research on this new class of drugs for fear that, in conjunction with the new liberal re-import policy, they will not be able to recoup their investment?

Let's stop the free riders and cheap riders overseas while American citizens are paying the full freight of R&D. Look, I understand the appeal of bringing goods sold cheaper abroad back to the United States at presumable savings to U.S. citizens. Yet, the amendment provides no guarantee that those wholesalers and pharmacists importing the products would pass their savings on to the consumer. And so, at best, with this bill we could be trading public safety for middleman profits.

We would also incur far more costs policing this endeavor. The cost of implementing the Dorgan bill would require very substantial resources at a time when we are stretching our funding to HHS and other federal departments to prevent future terrorist incidents.

We have to find a way around this drug access problem in this country without creating a public health hazard and ''gray market''.

We will be importing not just drugs but some other government's questionable safety standards and price controls into U.S. market dynamics.

In our valid and justified quest to help make drugs more affordable to the American public, we would be mindful not to unwittingly impede innovation.

Even the Dean of the House, Representative JOHN DINGELL of Michigan did not support similar legislation in the past when the House Energy and Commerce Committee issued a report that concluded that ''the very existence of a market for reimported goods provides the perfect cover for foreign counterfeits.''

The concerns are relevant to the Dorgan bill that we are considering today.

In our haste to bring cheaper drugs to seniors and other needy Americans—an important and laudable goal—we risk making changes to key health and safety laws and changes in our innovative pharmaceutical industry that no one can afford. We must bring safe, effective drugs to Americans, and particularly seniors, through avenues such as the Tripartisan Medicare Bill.

We need to focus our efforts on passing a Medicare prescription drug benefit bill. We should not pass another feel-good drug reimportation bill before the election that we already know today will not and cannot be implemented after the election.

UNANIMOUS-CONSENT AGREEMENT

Mr. REID. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate may proceed to the consideration of Calendar No. 486, H.R. 5011, the Military Construction Appropriations bill; and that it be considered under the following limitations; that immediately after the bill is reported all after the enacting clause be stricken and the text of Calendar No. 479, S. 2709, the Senate committee-reported bill be inserted in lieu thereof; that debate time on the bill and substitute amendment be limited to a total of 45 minutes; with an additional 20 minutes under the control of Senator MCCAIN; that the only other amendment in order be an amendment offered by Senators FEINSTEIN-HUTCHISON, which is at the desk; with debate limited to 10 minutes on the Feinstein-Hutchison amendment; that upon the use or yielding back of time on the amendment, without further intervening action or debate, the Senate proceed to vote on adoption of the amendment; that all debate time, not already identified in this agreement, be equally divided and controlled between the chair and ranking member of the subcommittee or their designee; that upon disposition of the Feinstein-Hutchison amendment, and the use or yielding back of all time, the substitute amendment, as amended, be agreed to; the bill, as amended, be read three times, that Section 303 of the Congressional Budget Act be considered waived; and the Senate then vote on passage of the bill; that upon passage of the bill; the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses; and that the chair be authorized to appoint conferees on the part of the Senate, without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

The PRESIDING OFFICER (Mr. CARPER). The Senator from Mississippi.

Mr. COCHRAN. Mr. President, under the designation of the Senator from New Hampshire, I yield to the distinguished Senator from Louisiana, Mr. BREAUX.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. BREAUX. Thank you very much.

I thank the distinguished Senator from Mississippi who I think is preparing an amendment which will be offered later on in the debate on the whole question of importation of drugs, which in essence is the same amendment that 97 Senators voted for the last time we addressed this issue on the question of importation of drugs.

Let me mention, to start with, that I think the topic of the debate on how we can provide prescription drugs for all of our Nation's seniors is really the challenge that is before the Senate. We can get waylaid, or delayed, or sidetracked by saying we are going to fix the problem by opening our borders to imported drugs coming from foreign countries or from Canada. That is something we need to discuss. But it is certainly not, by any stretch of the imagination, going to solve the problem of prescription drugs for seniors until we come up with a comprehensive, across-the-board Medicare package that can guarantee insurance coverage for prescription drugs just as every Member of the Senate has when we buy prescription drugs. That is the type of plan we have. People compete for the right to sell us those drugs. We have a choice between the plans that best can serve our families' needs at the best possible price.

That is the type of system on which I think we should be working and, in fact, on which we are spending a great deal of time.

With regard to the specific issue before this body at the current time—the

question of importation of prescription drugs from our neighbors to the north in the country of Canada—the concern I have with that is guaranteeing, before you allow these drugs to come into this country, that they are going to be just as safe and just as real as the drugs we buy in this country which are certified by the FDA and tracked from the manufacturer all the way to the pharmacist and to the customer.

We had hearings just a week ago in the Senate Aging Committee where we discussed the issue of counterfeit drugs. We had U.S. Customs come in, we had the FDA Administrator come in, and give us information from their perspective about imported drugs coming from Canada or from other foreign countries. Here are some statements from the FDA about the issue of imported drugs.

It is not just a question of whether they are cheaper. Of course, they could be cheaper. I can get open heart surgery in Juarez, Mexico, a lot cheaper than I can get it at the Houston Medical Center. The question is, Is that the type of open heart surgery I want? The answer, from my perspective—and I think most Americans—is that it is not. I want it to be not just the cheapest price, I also want the best service.

The issue is not where you can get the cheapest drugs but where you can get drugs that are also affordable and are also the real thing.

It is estimated that about 8 percent of the drugs coming into the United States right now are counterfeit, and the projection is, if you open up the borders, that amount will increase greatly.

Here is what the FDA said when testifying before the Senate Aging Committee:

> For those who buy drugs overseas, we have been consistently saying that you are really taking a great risk. You certainly risk your pocketbook, but you may be risking your health, and you may even be risking your life.

FDA also said:

> Unapproved drugs and reimported approved medications may be contaminated, subpotent, superpotent, or counterfeit.

The final thing they said, which I think is significant because the argument is this is from Canada, and they are our friend, they are a democracy and not a third-world country, and it is all right to do it from Canada; we are not going to let you do it from Bangladesh, they said in our hearing:

> Throwing the door open to drugs purchased by individuals directly from Canadian sellers will encourage unscrupulous individuals to devise schemes using Canada as a transshipment point for dangerous products from all points around the globe.

It is not just going to be drugs manufactured in Canada that can penetrate our border under an importation policy but drugs manufactured in Colombia, manufactured in Bangladesh, and manufactured in some very unsettled parts of the world that can be transshipped through Canada and come into the United States.

Here is an example. I have a lot of examples. Some of our colleagues have held up two bottles and said: This bottle cost $350 in America, and this bottle of the same stuff cost $20 in Canada. That is fine, if it is the same stuff. The problem is when it is not the same stuff.

Here is an example of a product that is supposed to be an anti-inflammatory drug. This is great. This is a prescription drug. In this particular case, they took a white powder. They stamped the name of the product into the little bitty pills. You can't tell the difference in the pills. They put it in a blister pack and sold it as the drug Ponstan. The only problem is that it sure looks like Ponstan. The package looks like Ponstan. It has every word on it that the real thing has, and the dosage is the same in fine print. The pill is exactly the same. It has the name Ponstan stamped into it.

Here is what is really in it. When you analyze it, the yellow powder which they put in it, instead of being the real thing, ended up being stuff that could do grave damage. This happens to be boric acid, floor wax, and yellow, leaded highway paint. That is a heck of a thing to be able to do. Is this cheaper than the real stuff? Oh, yes, it is a lot cheaper. But I don't want to take a pill that says it is the real thing but is yellow, leaded highway paint which they pressed into these packages and sold.

Can they sell it a lot cheaper? Yes. I can sell it for 2 cents a pill. I don't care what I sell it for because it does not cost much to make yellow, leaded highway paint and sell it as a pill and take it across the border.

It is my understanding, in reading the legislation and amendment before this body, that you can immediately suspend importation, but after the fact, after they have exhibited a pattern of importation of drugs ''that is counterfeit or in violation of [these] requirement[s] . . . or poses an additional risk to the public health.'' After we determine that it is being done, then you can stop it from being done.

Isn't it better to have to have that certification up front before we allow them to start bringing things over the border that may be real or may not be real; may be half real and half not real? Shouldn't we establish what the rules are before we let them in?

The Senate has discussed and debated that issue. And by a unanimous vote, every single one of us who voted on this issue before supported the Cochran amendment, 97 to 0, that said, before we can allow it to start coming in, we have to have a system in place that is guaranteed by our Food and Drug Administration that it is coming in and it is not counterfeited; it is safe; we have tracked the manufacturer and we know how they make it, what they are doing, and what is in the little packets of pills.

The legislation before the committee, I fear, now says that only after our Government determines that there is a pattern of counterfeiting or a pattern of bringing in drugs that pose a risk to the human health—then, and only then, can we suspend their operations.

Don't do it after the horse is already out of the barn. You have to stop it before it starts. How many people are going to have to take yellow, leaded highway paint before they can show there is a pattern of doing this in order to come in with a suspension of these importations? Do we have to have five people—to create a pattern—get sick from taking yellow, leaded highway paint? Do we have to have 100? I would not want to be 1 of the 100, if that is the establishment of what we have to do before we can suspend their operations.

It is far superior to take the approach: Yes, we will let you bring in imported drugs from Canada, but only if there is established, prior to the time it starts, a guarantee that these drugs can be brought in and are not counterfeit and are not harmful to your human health and are, in fact, not yellow, leaded highway paint.

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

Mr. BREAUX. I am happy to.

Mr. DURBIN. Can the Senator tell me, in this particular instance, was this drug imported from Canada?

Mr. BREAUX. I am not sure where it was from.

The point I make is, Canada is our good friend, a civilized society, with high-quality manufacturers. But what Food and Drug says about Canada is the following:

Throwing the door open to drugs purchased by individuals directly from Canadian sellers will encourage unscrupulous individuals to devise schemes using Canada as a transshipment point for dangerous products from all points around the globe.

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

Ms. COLLINS. Mr. President, I rise in support of the amendment offered by my colleague from North Dakota, Senator DORGAN, to allow for the reimportation of prescription drugs from Canada by pharmacists and wholesalers.

The United States leads the world in the discovery, development and manufacture of cutting-edge pharmaceuticals. Yet too many citizens who live in Maine and elsewhere must travel over the broader to Canada to buy the prescription drugs that they need to stay healthy for much lower prices than they would pay at their neighborhood drug store.

It is well documented that the average price of prescription drugs is much lower in Canada than in the United States, with the price of some drugs in Maine being twice that of the same drugs that are available only a few miles away in a Canadian drug store.

It simply does not seem fair that American consumers are footing the

bill for the remarkable, yet costly, advancements in pharmaceutical research and development, while our neighbors across the border receive these medications at substantially lower prices.

That is why I cosponsored legislation in the last Congress, the Medicine Equity and Drug Safety Act, to allow American consumers to benefit from international price competition on prescription drugs by permitting FDA-approved medicines made in FDA-approved facilities to be re-imported into this country. A modified version of that bill was signed into law last October, and I am extremely disappointed that the Department of Health and Human Services continues to refuse to implement the law.

I am therefore pleased to cosponsor this amendment, which will allow American consumers to benefit from international price competition in two ways:

First, it allows U.S. licensed pharmacists and drug wholesalers to import FDA-approved medications from Canada, which has a drug approval and distribution system comparable to ours.

Second, the amendment codifies existing U.S. Customs' practices that allow Americans to bring limited supplies of prescription drugs into this country from Canada for their personal use. That way, consumers who follow the rules won't have to worry that their medicines will be confiscated at the border.

While this amendment is a step in the right direction, it is not the solution to the prescription drug problem in the United States. I believe that our top priority should be to strengthen Medicare and include a prescription drug benefit, and I look forward to working on a bipartisan basis with my colleagues to give all Americans better access to affordable prescription drugs.

Mr. DORGAN. Mr. President, how much time remains for both sides.

The PRESIDING OFFICER. The Senator from North Dakota controls 7½ minutes.

Mr. DORGAN. Is that total time?

The PRESIDING OFFICER. Total time.

Mr. DORGAN. I yield 3 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. JEFFORDS. Mr. President, it is not often I disagree with my good friend from Louisiana, but when you come from a northern State such as Vermont, and when you see what is happening, and you are buying a drug from a drugstore, which is certified under Canadian law, which is just as strong as ours, and you can pay half the price for it—to say you cannot go across the border to do that just does not make any common sense.

The real threat as far as drugs coming into this country, because of the disproportionate pricing, is the utilization of the Internet. That is where the problems are. On the Internet there is no checking, and you can order your drugs over the Internet. That is where you ought to look to try to prevent sales coming into this country. And that is wide open now.

When I was chairman of the committee that put together the pharmaceutical bill, we worked carefully with the FDA to make sure that when this bill passed, it gave them authority for sales across the border, and that they would have full authority to make sure that any sales are stopped that should not be allowed under the law. So I think the statements that are being made now just do not fit the reality of the situation.

To deny our people the ability to purchase these drugs, under a safely designed plan, which the FDA has the authority to approve, to make sure there is no counterfeiting or unlawful sales—it is just without merit to say that we need the protection there. It is there. We did that before. We passed it by a large vote, I believe, and put it into law. But the Secretary had authority not to let it go forward. And under the previous administration, that happened.

So what we should do now is pass this bill to allow our people the opportunity to get good pharmaceuticals that are not overpriced, which are safe and available. I think all the comments to the contrary are missing the point and missing the bill.

This amendment will allow pharmacists and wholesalers to import safe, U.S.-made, FDA-approved lower-cost prescription drugs from our neighbor to the north—Canada. This amendment will do nothing to undermine the gold standard of safety in this country because our northern friends have virtually the same standards. What this amendment will do is rein in the platinum standard we have for prices we pay for our medicines.

Prescription drugs have revolutionized the treatment of certain diseases, but they are only effective if patients have access to the medicines that their doctors prescribe. The best medicines in the world will not help a person who cannot afford them.

Americans pay by far the highest prices in the world for prescription drugs, and for many the prices is just too high. What's worse is that those Americans who can least afford it are the ones paying the highest prices. Americans who don't have health insurance that covers drugs are forced to pay the ''sticker price'' off the pharmacist's shelf.

It is sad that during a time when the United States is experiencing economic problems and higher unemployment it is becoming more common to hear of patients who cut pills in half, or skip dosages in order to make prescriptions last longer, because they can't afford the refill.

This is not about the Medicare benefit that we will also have an opportunity to debate later. But this too is a tripartisan effort. And, it is equally important because this will effect all Americans—not just our Medicare seniors. The question that we must ask is, can we put politics aside and work in a nonpartisan manner to deal with this national crisis? I say we must. And I am hopeful that today we can.

This amendment is based on legislation I introduced in the last Congress, the Medicine Equity and Drug Safety Act. Then, as now, we were joined by my friends Senators DORGAN, SNOWE, WELLSTONE, and COLLINS. I am also glad to see that this year our group has been joined by Senator STABENOW and Senator LEVIN. That measure passed on an overwhelming vote of 74 yeas to 21 nays. It is time for us to take that vote again, and again pass this legislation.

This amendment has been substantially revised to address the concerns over safety that have been raised.

Two key elements. First, the FDA approved drugs can only be brought in from Canada. These are the same drugs that are currently being brought in under existing FDA policy. There have been no reports of adverse events, poisonings or counterfeit by the senior citizens taking buses to Canada. In addition, it gives the Secretary the authority to suspend this program should these safety issues arise.

I would also point out to my colleagues that this amendment specifically authorizes FDA to incorporate any other safeguard that it believes is necessary to ensure the protection of the public health of patients in the United States.

It is important to remember—these are exactly the same drugs that have been approved by the FDA except they are sold for far less.

Why is it that Canada and the rest of the developed world pays less for drugs than the U.S. It is because drugs are somehow exempt from the laws of the open market and free trade. And for that reason we have been subsidizing the rest of the world, in spite of the fact that we have U.S. citizens going without health care and without the medicines they need.

Why should Americans pay the highest prices in the world for prescription drugs? All this amendment does is allow international competition to bring rational pricing practices to the prescription drug industry. It introduces competition which is the hallmark of our success in this Nation.

I want the record to clearly reflect that I still feel strongly that Vermonters should not be in violation of Federal law if they go a few miles across the border into Canada to get deep discounts on prescriptions. We do nothing in here to indicate they should not be allowed to do so.

This amendment will provide equitable treatment of Americans, particularly those who do not have insurance, or access to big discounts for large purchases like HMOs. This is not the only solution. I strongly believe we need a good competitive prescription drug benefit in the Medicare program. And I

look forward to working with all of my colleagues to develop a balanced, generous prescription drug benefit that can be supported by Members from both sides of the aisle.

But right now, this is a commonsense measure that we can enact now to ease the burden of expensive prescription drugs on our people, for those on the borders, and all Americans.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President it is unusual we have a real debate on the floor of the Senate. I think it is interesting to do so. It is also interesting to listen to the debate and see the tactics we have heard about terrorists, terrorism, heart surgery in Tijuana, everything but poppy seeds from Afghanistan—yellow highway paint from somewhere around the world. He is not sure where it comes from.

Well, he just won a debate no one is having. It is the easiest debate in the world to win. Congratulations.

The real subject, however, is vastly different than the presentation you just heard. This is about FDA-approved drugs, only FDA-approved drugs produced in FDA-approved manufacturing plants, moved across the border by licensed pharmacists and licensed distributors, and only those.

Apparently—obviously—the pharmaceutical industry does not like what we are doing here. I understand that. And I understand why people stand up and say the pharmaceutical industry does not want this to happen.

But what they are saying is, it is OK for the manufacturers to move prescription drugs back and forth across the border—and they do; they do a lot of it every day—but it is not appropriate for licensed pharmacists or distributors to do so.

Why is it we trust the manufacturers so much more than the Main Street pharmacists? Tell me about that, if you will. Why is one trustworthy and the other untrustworthy. And is it not the case that there might be a price differential, I say to my colleague from Louisiana, between the United States and Canada?

It is a fact that there is a very substantial price differential, and that the American consumer is charged the highest prices in the world for the identical prescription drug.

There is a lot of fog in this debate and very little light. We are talking about something very simple. We are not talking about counterfeit drugs or adulterated drugs. We are not talking about terrorism. We are talking about very careful circumstances under which a licensed pharmacist or distributor goes to Canada, which has a chain of custody that is similar to ours, accesses the identical prescription drugs that are FDA approved, brings them back across the border, and passes the savings along to the American consumer.

Why don't the pharmaceutical companies like that? Because it will force them to reprice their drugs in this country. It will force down drug prices to the U.S. consumer. That is why they do not like that.

I renew the question I have asked time and time again, for which no one in this Chamber has an answer—no one. Why should American citizens have to go to Canada to get a fair price on a prescription drug that was manufactured in the United States?

There is no answer to that in this Chamber. No one has attempted an answer. What we have seen is a discussion about——

Mr. SANTORUM Will the Senator from North Dakota yield for an answer?

Mr. DORGAN. I have very limited time. I am sorry.

Mr. SANTORUM. I would be happy to answer at some point.

Mr. DORGAN. The Senator will have ample time to answer the question. I will inquire when he does so.

In the minute or so I have remaining, let me say this: This is life or death for a lot of people, this issue of prescription drug pricing. Yes, we need to put a prescription drug benefit in the Medicare Program. I support that strongly. But if we do not do something to put downward pressure on prescription drug prices, we will simply break the bank, in my judgment.

That is why we need reimportation. And we need the generic amendment—the base bill. We need to do both of these things. I am not interested in compromising safety under any condition or any circumstance. This amendment is very simple. It says, in part, that the Secretary of Health and Human Services can suspend and will suspend and shall suspend the implementation of this reimportation if, in fact, there is a counterfeiting problem, or other problems such as terrorism.

The issue of counterfeit drugs that had been raised, the issue of terrorism, has nothing at all to do with this amendment. We are talking about licensed pharmacists, licensed distributors, FDA-approved drugs, FDA-approved plants—a system in which those from the U.S. who are licensed to do so can get the exact same prescription drug safely from Canada at much cheaper prices and pass those savings along to customers.

I understand we will have another amendment following the vote on this amendment. That amendment will have the effect of essentially making this provision unworkable. We will have to debate that at that time.

How much time remains?

The PRESIDING OFFICER. Twenty seconds.

Mr. DORGAN. I yield back my time.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 4300 offered by the Senator from Nevada for the Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''no.''

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

The result was announced—yeas 69, nays 30, as follows:

[Rollcall Vote No. 179 Leg.]

YEAS—69

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Baucus	Edwards	McConnell
Biden	Feingold	Mikulski
Bingaman	Feinstein	Miller
Bond	Fitzgerald	Murkowski
Boxer	Graham	Murray
Brownback	Grassley	Nelson (FL)
Burns	Gregg	Nelson (NE)
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carnahan	Inouye	Rockefeller
Chafee	Jeffords	Sarbanes
Cleland	Johnson	Schumer
Clinton	Kennedy	Sessions
Cochran	Kerry	Smith (NH)
Collins	Kohl	Smith (OR)
Conrad	Landrieu	Snowe
Craig	Leahy	Specter
Crapo	Levin	Stabenow
Daschle	Lieberman	Stevens
Dayton	Lincoln	Wellstone
Dodd	Lott	Wyden

NAYS—30

Allen	Ensign	Nickles
Bayh	Enzi	Roberts
Bennett	Frist	Santorum
Breaux	Gramm	Shelby
Bunning	Hagel	Thomas
Campbell	Hatch	Thompson
Carper	Hutchinson	Thurmond
Corzine	Hutchison	Torricelli
DeWine	Inhofe	Voinovich
Domenici	Kyl	Warner

NOT VOTING—1

Helms

The amendment (No. 4300) was agreed to.

The PRESIDING OFFICER. Under the previous order the Senator from Mississippi is to be recognized to offer an amendment.

The Senator from Mississippi.

AMENDMENT NO. 4301 TO AMENDMENT NO. 4299

(Purpose: To protect the health and safety of Americans)

Mr. COCHRAN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for himself and Mr. BREAUX, proposes an amendment numbered 4301 to amendment No. 4299.

On page 15, line 17, strike ''section.''. and insert ''section,'' and insert the following new subsection:

''(2) CONDITIONS.—This section shall become effective only if the Secretary of Health and Human Services certifies to the Congress that the implementation of this section will—

''(A) pose no additional risk to the public's health and safety, and

''(B) result in a significant reduction in the cost of covered products to the American consumer.''.''

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I support the effort to make prescription drugs more affordable for all Americans. However, I am concerned that creating new opportunities to bring counterfeit or dangerous drugs into the United States from foreign countries is not the way to do it.

The amendment I have sent to the desk on behalf of myself and the Senator from Louisiana, Mr. BREAUX, will provide an opportunity for the Secretary of Health and Human Services to make a certification that the reimportation of drugs from Canada will not jeopardize human safety, the consuming public who buys these drugs, and it will, in fact, lower the cost of prescription drugs for Americans.

I have also been asked to state that other Senators who want to be added as cosponsors to this bill are Senator ROBERTS of Kansas and Senator SANTORUM of Pennsylvania. I make that request.

The PRESIDING OFFICER (Mr. WELLSTONE). Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, the amendment of the Senator from North Dakota could very well make it easier to avoid U.S. standards and inspections at a time when we are increasing border surveillance and trying to prevent acts of terrorism.

Two years ago, a similar amendment was added to the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act for Fiscal Year 2001. However, the Senate-approved language that I offered at that time required the Secretary of Health and Human Services to certify that implementation of the amendment would pose no additional risk to the public's health and safety and would result in a significant reduction in prescription drug costs for U.S. consumers.

Secretary of HHS Donna Shalala was not able to make such a demonstration as required by that law.

I ask unanimous consent that a copy of her letter to President Clinton dated December 26, 2000, be printed in the RECORD.

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

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, December 6, 2000.

Hon. WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The annual appropriations bill for the Food and Drug Administration (FDA) (P.L. 106–387), signed into law earlier this year, included a provision to allow prescription drugs to be reimported from certain countries for sale in the United States. The law requires that, prior to implementation, the Secretary of Health and Human Services demonstrate that this reimportation poses no additional risk to the public's health and safety and that it will result in a significant reduction in the cost of covered products to the American consumer.

I am writing to advise you that I cannot make the demonstration called for in the statute because of serious flaws and loopholes in the design of the new drug reimportation system. As such, I will not request the $23 million that was conditionally appropriated for FDA implementation costs for the drug reimportation system included in the FY 2001 appropriations bill.

As you know, Administration officials worked for months with members of Congress and staff to help them design safe and workable drug reimportation legislation. Unfortunately, our most significant concerns about this proposal were not addressed. These flaws, outlined below, undermine the potential for cost savings associated with prescription drug reimportation and could pose unnecessary public health risks.

First, the provision allows drug manufacturers to deny U.S. importers legal access to the FDA approved labeling that is required for reimportation. In fact, the provision explicitly states that any labeling information provided by manufacturers may be used only for testing product authenticity. This is a major loophole that Administration officials discussed with congressional staff but was not closed in the final legislation.

Second, the drug reimportation provision fails to prevent drug manufacturers from discriminating against foreign distributors that import drugs to the U.S. While the law prevents contracts or agreements that explicitly prohibit drug importation, it does not prohibit drug manufacturers from requiring distributors to charge higher prices, limit supply, or otherwise treat U.S. importers less favorably than foreign purchasers.

Third, the reimportation system has both authorization and funding limitations. The law requires that the system end five years after it goes into effect. This ''sunset'' provision will likely have a chilling effect on private-sector investment in the required testing and distribution systems because of the uncertainty of long-term financial returns. In addition, the public benefits of the new system are diminished since the significant investment of taxpayer funds to establish the new safety monitoring and enforcement functions will not be offset by long-term savings to consumers from lower priced drugs. Finally, Congress appropriated the $23 million necessary for first year implementation costs of the program but did so without funding core and priority activities in FDA, such as enforcement of standards for internet drug purchase and post-market surveillance activities. In addition, while FDA's responsibilities last five years, its funding authorization is only for one year. Without a stable funding base, FDA will not be able implement the new program in a way that protects the public health.

As you and I have discussed, we in the Administration and the Congress have a strong obligation to communicate clearly to the American people the shortcomings in policies that purport to offer relief from the high cost of prescription drugs. For this reason, I feel compelled to inform you that the flaws and loopholes contained in the reimportation provision make it impossible for me to demonstrate that it is safe and cost effective. As such, I cannot sanction the allocation of taxpayer dollars to implement such a system.

Mr. President, the changes to the reimportation legislation that we have proposed can and should be enacted by the Congress next year. At the same time, I know you share my view that an importation provision—no matter how well crafted—cannot be a substitute for a voluntary prescription drug benefit provided through the Medicare program. Nor is the solution a low-income, state-based prescription drug program that would exclude millions of beneficiaries and takes years to implement in all states. What is needed is a real Medicare prescription drug option that is affordable and accessible to all beneficiaries regardless of where they live. It is my strong hope that, when Congress and the next Administration evaluate the policy options before them, they will come together on this approach and, at long last, make prescription drug coverage an integral part of Medicare.

Sincerely,

DONNA E. SHALALA.

Mr. COCHRAN. More recently, on July 9, 2001, a letter from the current Secretary of Health and Human Services, Tommy Thompson, indicated that based on an analysis by the Food and Drug Administration on the safety issues and analysis by his planning office on the cost issues, he could not make the required determinations, and he stated his view that we should not sacrifice public safety for uncertain speculative cost savings.

Secretary Thompson also indicated that prescription drug safety could not be adequately guaranteed if drug reimportation were allowed and that costs associated with documentation, sampling, and testing of imported drugs would make it difficult for consumers to get any significant price savings.

I ask unanimous consent that Secretary Thompson's letter be printed in the RECORD at this point.

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

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC July 9, 2001.

Hon. JAMES JEFFORDS,
U.S. Senate,
Washington, DC.

DEAR SENATOR JEFFORDS: I am writing to follow up on my earlier response to your letter of January 31, 2001, co-signed by fifteen of your colleagues, regarding the Medicine Equity and Drug Safety Act of 2000 (MEDS Act).

You and other Senators and Representatives asked that I reconsider former Secretary Shalala's decision and make the determination necessary to implement the MEDS Act. As I mentioned in my prior communication, I asked the Food and Drug Administration (FDA) to carefully reexamine the law to evaluate whether this new system poses additional health risks to U.S. consumers, and the Office of the Assistant Secretary for Planning and Evaluation (OASPE) to examine whether the new law will result in a significant cost savings to the American public.

I believe very strongly that seniors should have access to affordable prescription drugs. I applaud your leadership in this area, and agree that helping seniors obtain affordable medicines should be a priority. However, as my earlier response stated, I do not believe we should sacrifice public safety for uncertain and speculative cost savings.

SAFETY CONCERNS

After a thorough review of the law, FDA has concluded that it would be impossible to ensure that the MEDS Act would result in no loss of protection for the drugs supplied to the American people. As you know, the drug system as it exists today is a closed system. Most retail stores, hospitals, and other outlets obtain drugs either directly from the drug manufacturer or from a small number

of large wholesalers. FDA and the states exercise oversight of every step within the chain of commercial distribution, generating a high degree of product potency, purity, and quality. In order to ensure safety and compliance with current law, only the original drug manufacturer is allowed to reimport FDA-approved drugs.

Under the MEDS Act, this system of distribution would be opened to allow any pharmacist or wholesaler to reimport drugs from abroad; this could result in significant growth in imported commercial drug shipments. As you know, the FDA and the states do not have oversight of the drug distribution chain outside the U.S. Yet, opening our borders as required under this program would increase the likelihood that the shelves of pharmacies in towns and communities across the nation would include counterfeit drugs, cheap foreign copies of FDA-approved drugs, expired drugs, contaminated drugs, and drugs stored under inappropriate and unsafe conditions.

While the MEDS Act requires chain of custody documentation and sampling and testing of imported drugs, these requirements cannot substitute for the strong protections of the current distribution system. Counterfeit or adulterated and misbranded drugs will be difficult to detect, and the sampling and testing proposed under this program can not possibly identify these unsafe products entering our country in large commercial shipments.

I can only conclude that the provisions in the MEDS Act will pose a greater public health risk than we face today and a loss of confidence by Americans in the safety of our drug supply. Although I support the goal of reducing the cost of prescription drugs in this country, no one in this country should be exposed to the potential public health threat identified by the FDA in their analysis. Further, the expenditure of time and resources in maintaining such a complex regulatory system as proposed by the MEDS Act would be of questionable public health value and could drain resources from other beneficial public health program.

COST SAVINGS

The clear intent of the MEDS Act is to reduce the price differentials between the U.S. and foreign countries. The review of the Office of the Assistant Secretary for Planning and Evaluation (OASPE) concludes there are significant disincentives for reimportation under the MEDS Act, including the costs associated with documenting, sampling and testing, the potential relabeling requirements and related costs and risk associated with such requirements, the overall risk of increased legal liability, the costs associated with the management of inventories by wholesalers and pharmacists, and the risk to existing and future contractual relationships between all parties involved. Moreover, there are a number of reasons (including potential responses by foreign governments) why lower foreign prices may not translate into lower prices for U.S. consumers. Insufficient information exists for me to demonstrate that implementation of the law will result in significant reduction in the cost of drug products to the American consumer.

CONCLUSION

Since I am unable to make the determination on the safety and cost savings in the affirmative, as required under the law, I cannot implement the MEDS Act. Please find attached to this letter a more detailed analysis of the factors influencing the public-safety and cost-savings questions. If you need further clarification of my position on these issues, please do not hesitate to contact me.

Thank you for your leadership in health care. I look forward to working with you on new initiatives for making medicine more affordable to our citizens, and on other health issues of importance to our Nation.

Sincerely,

TOMMY G. THOMPSON.

Mr. COCHRAN. Even though the amendment being offered by the Senator from North Dakota, Mr. DORGAN, would apply under its terms only to drugs exported to and reimported from Canada, it would seem prudent that the safeguards we adopted 2 years ago by a vote of 96 to 0 should also be applied to this reimportation proposal. That is why I am offering this amendment.

We should be certain that any change we make results in no less protection in terms of the safety of the drugs supplied to the American people and will indeed make prescription drugs more affordable. Liberalization of protections that are designed to keep unsafe drugs out of this country, especially following the terrorist threats we face now, should occur only if the necessary safeguards are in place. This amendment will ensure that the concerns of the last two administrations regarding the safety and cost-effectiveness are addressed prior to the implementation of this proposal.

Currently, under the Federal Food, Drug, and Cosmetic Act, it is unlawful for anyone to introduce into interstate commerce a new drug that is not covered by an approved new drug application or an abbreviated new drug application. Approval must be sought on a manufacturer and product-by-product basis. A product that does not comply with an approved application, including an imported drug not approved by FDA for marketing in the United States, may not be imported, even if approved for sale by that country.

A product introduced into interstate commerce that does not comply with an approved application is considered an unapproved new drug in violation of the Food, Drug, and Cosmetic Act, as well as ''misbranded'' under the section of that act.

Under section 801 of the act, a drug that is manufactured in the United States pursuant to an approved new drug application and shipped to another country may not be reimported into the United States by anyone other than the original manufacturer. This prohibition on reimportation of products previously manufactured in the United States and then exported was added in 1988 to prevent the entry into this country of counterfeit and adulterated products.

Section 801 was enacted not to protect the corporate interests of pharmaceutical companies but to protect the safety of American consumers. Counterfeit drugs are a very real threat and can be deadly. Any liberalization of drug reimportation laws must assure safety from this threat. Limiting reimportation of drugs from Canada does not necessarily solve that problem.

During testimony before the Senate Finance Committee on March 7 of this year, the administrator of the Centers for Medicare and Medicaid Services, Tom Scully, was asked whether the administration opposes or supports the importation of prescription drugs into the United States. He said, and I quote:

> We have opposed it . . . there is no way for FDA to monitor and regulate drugs coming in from Canada, Mexico or other countries.

Others have told us there is no effective way to prevent transshipment of drugs from other countries into Canada and then into the United States. Limiting reimportation to Canada will only make Canada a port of entry for counterfeit and substandard drugs into the United States.

William Hubbard, who is FDA's Senior Associate Commissioner for Policy Planning and Legislation, told us at a September 5, 2001, hearing, before the Senate Consumer Affairs Foreign Commerce and Tourism Subcommittee, the following:

> Even if the Canadian system is every bit as good as ours, the Canadian system is open to vulnerabilities by people who will try to enter the U.S. market because, again, that is where the money is.

Last year, U.S. Customs and Drug Enforcement Administration officials testified before the House Energy and Commerce Committee that thousands of counterfeit and illegal drugs are already coming across our borders and through the mail from other countries. Far from supporting the reimportation proposals before Congress, these agencies recommended tightening our current regulations on reimportation of pharmaceuticals.

In a July 11, 2001, letter to the Energy and Commerce chairman and ranking member, William Simpkins, Acting Administrator of the Department of Justice Drug Enforcement Administration, who was referring to reimportation amendments, said the following:

> (W)e oppose . . . these amendments because they would hinder the ability of law enforcement officials to ensure that drugs are imported into the United States in compliance with long-standing Federal laws designed to protect the public health and safety.

On March 5 of this year, the New York Times in some articles explained that the illegal production in the United States of popular stimulants such as methamphetamine reflects lax regulation in Canada for the chemical ingredients. As a result, Canada has become the leading supply route for the raw ingredient into the United States where the substances are more tightly controlled. In the last 11 months, the U.S. Customs Service has seized more than 110 million tablets of decongestants that contain the primary ingredient for making methamphetamines, or speed, as smugglers attempt to bring shipments across the border in everything from furniture to glassware.

The article notes:

> An alliance of diverse organized crime groups, stretching from Mexico to Iraq to Jordan, have found Canada an easy entry point into a growing American market for synthetic drugs.

The Canadian Government concedes that they have relatively loose control on the powder used to make methamphetamine, which criminal elements have easily circumvented. According to an intelligence report by DEA and the Royal Canadian Mounted Police in January:

The diversion of pseudoephedrine from Canadian suppliers to the illicit market is reaching a critical level.

The FBI and DEA officials have tracked the profit trail to the Middle East where they are probing to see if it is being used to fund terrorist networks.

This amendment would also permit personal importation of drugs from any country. It is illegal to import unapproved drugs into the United States, but the FDA has for years, in the exercise of its enforcement discretion, allowed U.S. citizens to bring a 90-day supply of prescription drugs for their personal use. The reason for this policy is one of compassionate use. It was to allow patients with life-threatening or serious diseases to have access to non-FDA-approved therapies that are available in other countries. Under this policy, the patient affirms it is for his or her own use and provides the name and address of the U.S.-licensed doctor responsible for treatment.

The FDA has not officially permitted the importation of foreign versions of U.S.-approved medications because it has been unable to assure these products are safe or effective. In testimony before the Subcommittee on Oversight and Investigation in the House Committee on Energy and Commerce, in June 2001, William Hubbard of FDA indicated:

Under the FD&C Act, unapproved, misbranded, and adulterated drugs are prohibited from importation into the U.S., including foreign versions of U.S.-approved medications, as is reimportation of approved drugs made in the U.S. In general, all drugs imported by individuals fall into one of these prohibited categories. From a public health standpoint, importing prescription drugs for personal use is a potentially dangerous practice. FDA and the public do not have any assurance that unapproved products are effective or safe, or have been produced under U.S. good manufacturing practices. U.S.-made drugs that are reimported may not have been stored under proper conditions, or may not be the real product, because the U.S. does not regulate foreign distributors or pharmacies. Therefore, unapproved drugs and reimported approved medications may be contaminated, subpotent, superpotent, or counterfeit. In addition, some foreign web site offer to prescribe medicines without a physical examination, bypassing the traditional doctor-patient relationship. As a result, patients may receive inappropriate medications because of misdiagnosis, or fail or receive appropriate medications or other medical care, or take a product that could be harmful or fatal, if taken in combination with other medicines they might be taking.

The importation of personal use amounts by mail continues to increase according to FDA. A 5-week survey of mail in Carson City, California, conducted by Customs and the FDA in 2001 found serious public health risks associated with drugs intercepted. These included drugs that could not be identified because they had no labeling, drugs once approved by the FDA but withdrawn from the market due to safety concerns, and drugs that should only be used under the supervision of a doctor licensed to administer the drug.

In a letter to Congress last July, Mr. Hubbard indicated that the personal importation policy ''is difficult to implement'' partly ''due to the enormous volume of drugs being imported for personal use and the difficulty faced by FDA inspectors, or even health care practitioners, in identifying a medicine by its appearance.''

When I was discussing the amendment of the Senator from North Dakota, Mr. DORGAN, which we just approved, I told the story of how Senator KOHL and I had a meeting in Senator KOHL's office. We were anticipating a second amendment to the appropriations bill last year to find out more about the dangers and the difficulties our inspectors have at the border when dealing with imported prescription drugs. The Internet and mail resources, buying drugs here and there by mail, were another example of bypassing the inspections and bypassing the enforcement of a lot of U.S. regulations.

It is amazing the number of drugs that are now on the shelves in drugstores in America that are counterfeit and no one knows about it. These are difficulties that we now face. The proposal of this amendment by the Senator from North Dakota will further relax our capability to find illegal drugs, to find those drugs that are dangerous that are being brought into this country. It will create a new opportunity for transshipping drugs all over the world into our country which will be a great danger to the citizens of our country.

The conditions contained in my amendment, which would be added to the legislative proposal before the body, are the same as those previously adopted by this Senate and included in the 2001 Agriculture appropriations bill. They were adopted at that time by a unanimous vote of the Senate during our consideration of that appropriations bill. I ask my colleagues to again support this amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I compliment Senator COCHRAN for his amendment. I ask unanimous consent to be added as a cosponsor of the amendment.

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

Mr. NICKLES. Senator COCHRAN alluded to 2 years ago when we passed this amendment unanimously. He said if we are going to do it, let's make sure it does not impose significant additional risk on consumers, thereby saving money. I don't know why anyone would vote against that amendment. I hope no one will vote against this amendment. It is a very important amendment.

Let me make a couple of comments. Someone will ask, didn't we already do that in the Dorgan amendment which passed by a nice vote? The Dorgan amendment is full of loopholes. It says it would be suspended upon the discovery of a pattern of importation of prescriptions by the importer that is counterfeit or in violation of any requirement in this section. If this is the case, how many people will have to die before we realize there is a pattern? How many will realize those yellow tablets that Senator BREAUX was holding up are actually paint instead of maybe a lifesaving drug? How many patterns have to exist before we realize this really didn't work?

We have the FDA where we spend millions and millions of dollars inspecting, trying to make sure we have quality drugs for our citizens. We are just going to open up a gigantic loophole for unscrupulous manufacturers. I wish that were not the case, but if anyone travels anywhere in the world, they know it happens often. When you talk with our State Department about counterfeit drugs or copyright violations on software, they will tell you that it happens lots of time. Unfortunately, it should not happen. But we have a pretty closed system right now where FDA goes to great lengths to ensure the drugs coming into the United States are safe.

Last year, Senator DORGAN said, let's have it basically open ended coming from Canada and Mexico. Now we are just saying Canada. How safe is that?

My staff did some homework. Canada has a provision under the Canadian Food and Drug Act, section 37. It reads:

This Act does not apply to any packaged food, drug, cosmetic or device, not manufactured for consumption in Canada and not sold for consumption in Canada, If the package is marked in distinct overprinting with the word ''Export'' or ''Exportation'' and a certificate that the package and its contents do not contravene any known requirement of the law of the country to which it is or is about to be consigned has been issued in respect of the package and its contents in prescribed form and manner.

In other words, the Canadian Food and Drug Act does not apply to drugs brought in strictly for export. Canada can import drugs from Sudan and export them to the United States and they are not covered by Canadian Food and Drug regulations.

Yet Senator DORGAN's amendment says: Bring them on, bring them on. Our FDA people, our leaders, both past administrations as well as present administration, say we cannot do that safely.

Here is a letter that was addressed to Senator COCHRAN. It is an extensive letter that is critical of Senator DORGAN's approach. I will just read one paragraph:

The bill would actually create an incentive for unscrupulous individuals to find ways to sell unsafe or counterfeit drugs that, while

purporting to be from Canada, may actually originate from any part of the world. Canada could become a transshipment point for legitimate or nonlegitimate manufacturing concerns throughout the world, and in many cases we would not be able to determine the true country of origin. For all these reasons we find this provision would greatly erode the ability of the FDA to ensure the safety and efficacy of the drug supply and protect public health.

I could go on.

If Canada says we are not going to regulate drugs that are brought into Canada for export only, and we are saying wait a minute, Canada, we want to be able to import your drugs.

I listened to a lot of the debate. Almost every example that was given was of United States-manufactured drugs sent to Canada that are a lot cheaper in Canada than they are in the United States. There is nothing in Senator DORGAN's amendment that says these drugs have to be manufactured in Canada or the United States. These drugs could come from Sudan.

There was a pharmaceutical plant in Sudan that was bombed a few years ago. There are pharmaceutical plants all around the world. Some of them may have great quality controls, some of them may not. Some of them may be in terrorist states. Yet we are leaving ourselves wide open.

So I urge my colleagues——

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

Mr. NICKLES. I will be happy to, but I tell my colleagues I hope and pray the Cochran amendment will pass. If it does not pass, I will have an amendment that says the drugs that are covered should be of American or Canadian origin, manufacture, or control. American drugs are controlled. Even the drugs that we import, if they have FDA approval, we send FDA inspectors over to those plants to certify them. We have what is called a pedigree requirement to follow those drugs, to know where they are manufactured, know where they are distributed, before FDA puts their approval on them.

So we try to and do protect safety. We do not have that for all drugs that would be coming from Canada.

I would just mention there is a fatal flaw, in my opinion, in the Dorgan amendment we just adopted. One of those is that there has to be a pattern. If you look at the language of the amendment we just adopted, there has to be a pattern of importation from each importer.

That is too late when there are people who have already died, are already sick, when there are people who did not get cured because we waited for a pattern, we waited for evidence, we waited for unfortunate results—not to mention, there is no telling how many people would have been cheated out of money, and so on.

So I think the amendment we just adopted is probably not worth the paper it was written on.

I also find it kind of clever to think we had the original Dorgan amendment, then they had a second degree. They left out one paragraph, and then the second-degree was reinstating that one paragraph. I am guessing it was saying we will use this as a substitute for the Cochran amendment. That is a false and faulty substitute. It is not a satisfactory substitute.

The Cochran amendment—and I urge my colleagues to read it, and I cannot imagine anyone would oppose it—says:

> This section shall become effective only if the Secretary of Health and Human Services certifies to Congress that the implementation of this section (A) will pose no additional risk to public health and safety.

How could anybody oppose that?

And, second:

> . . . result in a significant reduction of cost of covered products to the American consumer.

We are all in favor of that. I compliment the Senator from Mississippi for his leadership on it this year and 2 years ago. As a result of the amendment of the Senator from Mississippi, we have saved lives and eliminated a lot of fraud and counterfeiting and abuse that would have transpired had he not been so vigilant for the last couple of years. I compliment him and urge all my colleagues to support the Cochran amendment, and I am happy to yield.

The PRESIDING OFFICER. Is the Senator yielding the floor?

Mr. NICKLES. I yield to the Senator for a question.

Mr. SANTORUM. I have a question. Listening to your comments, are you suggesting that a product made in Iraq or Yemen or Iran or some other country that may have terrorists in their country, they could actually send a drug through Canada into the United States, without anybody inspecting it, and have it show up here not marked as from what country it came, and be sold here in America, under the Dorgan amendment?

Mr. NICKLES. Under Canadian law, which I just read—this is section 37 of the Canadian Food and Drug Act—it said any item, whether it be packaged food, drug, cosmetic, or other devices—and if that item is imported and exported, not to be consumed or utilized in Canada, then it is not under their regulatory scheme.

Mr. SANTORUM. So it would come in here under the Dorgan amendment, reimportation, not being reviewed by the FDA before it came here? Only if we found out the terrorist attack was successful through this scheme would we then find out that we have a problem?

Mr. NICKLES. That would be too late.

Mr. SANTORUM. That would be far too late.

Mr. NICKLES. That would be under the category of the pattern of action.

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

Mr. NICKLES. I am happy to yield for a question.

Mr. DORGAN. I appreciate the courtesy. The amendment deals with FDA drugs, so the condition under which that drug from Canada would come into this country would be it was purchased at a Canadian-licensed pharmacy or distributer by a licensed facility or distributor in this country, and therefore it must be FDA approved and produced in an FDA-approved plant. Is that not the case?

Mr. NICKLES. I am reading a letter from the FDA, and they said absolutely. I ask unanimous consent to have printed in the RECORD a letter dated July 17, from the Department of Health and Human Services addressed to Senator COCHRAN.

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

DEPARTMENT OF
HEALTH & HUMAN SERVICES,
Rockville, MD, July 17, 2002.

Hon. THAD COCHRAN,
U.S. Senate, Washington, DC.

DEAR SENATOR COCHRAN. We take this opportunity to provide the views of the Food and Drug Administration (FDA) on S. 2244, the Prescription Drug Price Parity for Americans Act, introduced by Senator Byron Dorgan on April 24, 2002.

The Administration is sympathetic to the goal of making prescription drugs more affordable for American citizens, including senior citizens. However, FDA is concerned about the negative impact on public health of a proposal such as S. 2244 that aims to open the nation's drug regulation system and allow drugs from outside that system into U.S. commerce and our citizens' medicine cabinets. We therefore must oppose enactment of this legislation.

S. 2244 would allow wholesales, pharmacists and individuals to import drugs from Canada under certain specified conditions. The bill would create a new section 804 of the Food, Drug, and Cosmetic Act (the Act), replacing the current provisions of section 804, which are the drug re-importation provisions enacted in 1999 (the MEDS Act).

Currently, drugs marketed in the United States must be approved by FDA based on demonstrated safety and efficacy; they must be produced in manufacturing plants inspected and approved by FDA; and their shipment and storage must be properly documented. This ''closed'' regulatory system has been very successful in preventing unapproved, adulterated or misbranded drug products from entering the U.S. stream of commerce. Legislation that would establish other distribution routes for drug products, particularly where those routes routinely transverse a U.S. border, creates a wide inlet for counterfeit drugs and other dangerous products that are potentially injurious to the public health and a threat to the security of our nation's drug supply.

S. 2444 would establish two new routes for introducing drugs from Canada into U.S. commerce. First, new section 804(b) would require the Secretary of Health and Human Services (the Secretary) to promulgate regulations to permit pharmacists and wholesalers to import prescription drugs from Canada into the U.S. The bill purports to safeguard the domestic drug supply by requiring, in new section 804(c), that these drugs comply with sections 505, 501 and 502 of the Act, and that importers comply with detailed recordkeeping and testing requirements.

As a practical matter, meeting these requirements would be an enormous undertaking, and the testing required under the bill would be costly and time consuming,

both for the government and importers. Moreover, some of the testing requirements cannot even be met, as there is no testing that can ensure that a shipment of drugs does not contain counterfeits. Since counterfeits can easily be commingled with authentic product, either by the case, by the bottle, or by the pill, there is no sampling or testing protocol sufficient to protect against the grave public harm they pose. No random sampling plan will be able to detect and protect such criminal conduct since the threat does not depend upon the nature of the reimported product, but upon the integrity of those handling it. Furthermore, the legislation fails to require reporting of any counterfeits that may be found by testing, so even if counterfeits are discovered, FDA may never learn of them.

It is unlikely that Canadian sellers and U.S. importers would be willing to endure these new requirements, but even if they were, it is likely that the intended cost savings for consumers would be absorbed by fees charged by exporters, pharmacists, wholesalers, and testing labs. Because the bill requires that the drugs comply with sections 501, 502 and 505 of the Act, it may be found, in practice, that for the bill to have its intended effect U.S. manufacturers would have to sell drug products manufactured, labeled and intended for the U.S. market to Canadian distributors specifically for re-sale to the U.S. Even if they were willing to do so, these sales may represent illegal shipments to the Canadian market under Canadian law. All of these concerns make the proposed program for importation by pharmacies and wholeasalers both impractical and unworkable.

The second route proposed by S. 2244 for importing drugs into the United States is by allowing individual consumers to import drugs on their own from Canadian pharmacies. New section 804(k)(2) would compel the Secretary to promulgate guidance to allow consumers to directly import drugs and medical devices from Canada. This represents an enormous intrusion on the Department's enforcement discretion, and it would over-ride existing statutory provisions that allow FDA to refuse personal importation of prescription drugs from Canada if they are believed to be unsafe, ineffective, adulterated, radioactive, or contaminated.

In surveys conducted by FDA over the past several years, we have found that a wide variety of dangerous drug products have been imported by individuals from outside the United States, both by mail and by traveling to other countries. The bill would actually create an incentive for unscrupulous individuals to find ways to sell unsafe or counterfeit drugs that, while purported to be from Canada, may actually originate in any part of the world. Canada could become a transshipment point for legitimate or non-legitimate manufacturing concerns throughout the world, and in many cases we would not be able to determine the true country of origin. For all of these reasons, we find that this provision would greatly erode the ability of FDA to ensure the safety and efficacy of the drug supply, and protect the public health.

FDA has numerous other specific concerns that S. 2244 may undermine current law regarding drug labeling, record keeping, testing, and enforcement, and we have laid out these concerns in an attachment to this letter.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

LESTER M. CRAWFORD, D.V.M., PH.D.
Deputy Commissioner.

Mr. NICKLES. This is the quote from FDA. I might say this is the position that is consistent, not only with this administration but the previous administration. They state:

The bill would actually create an incentive for unscrupulous individuals to find ways to sell unsafe or counterfeit drugs that, while purporting to be from Canada, may actually originate in any part of the world. Canada could become the transshipment point for legitimate or nonlegitimate manufacturing concerns throughout the world, and in many cases we would not be able to determine the true country of origin. For all these reasons we find this provision would greatly erode the ability of FDA to ensure the safety and efficacy of the drug supply and protect the public health.

Mr. DORGAN. If the Senator will yield for one additional question, the Senator is aware, I am sure, that today pharmaceutical manufacturers reimport a substantial amount of prescription drugs from Canada. What is to prevent the circumstance you just described from occurring now, with respect to current law?

Mr. NICKLES. Current law requires FDA, for their certification—for FDA to give their certification, you have a pedigree requirement. The pedigree requirement means we have FDA inspectors go visit the plants in Canada to certify that yes, these are FDA-approved drugs. They do the sampling. They make sure the packages are safe. Inspections are done at great expense. That is already done for FDA, for drugs that are manufactured in the United States or reimported into the United States. It would not be done under any drug in Canada or under the Canadian law, which basically says if these drugs are purchased strictly for export purposes, they do not fall under Canadian regulation.

Mr. DORGAN. But is it not then the case that they are not FDA-approved drugs and therefore our amendment deals with that?

Mr. NICKLES. Mr. President, I will reclaim the floor. That is not correct.

Mr. DORGAN. It is correct.

Mr. NICKLES. Again, I am reading to my colleague. I have a statement from the past FDA Administrator as well that says they can't guarantee the safety of these drugs. They do not have the regulators. The Senator's amendment did not have the pedigree requirement for drugs that would be imported into the country. That is a possible amendment that I am considering offering.

If the Cochran amendment doesn't pass, we are going to be on this bill for a while because I am going to offer an amendment—I will tell my colleague, and maybe you will accept it—I am going to offer amendment that says all the drugs covered by this act shall be manufactured in the United States or Canada, because that has been implied but it is not factual under the bill.

Ms. STABENOW. Will my friend from Oklahoma yield for a question?

Mr. NICKLES. Let me finish. I am also going to offer an amendment that will replace language under the Dorgan amendment that says there is a pattern of importation of drugs, counterfeit and so on. That would be replaced by ''any instance.'' So we are not going to wait for a pattern if this amendment is adopted. Again, I hope my colleague from North Dakota would agree, with this amendment, that it could be suspended if there were an instance of counterfeit drugs, if there is an intent of abuse of the system. Then they can be suspended and not wait for a pattern.

I think both of those amendments are very acceptable. I hope my colleagues will agree to consider them favorably.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I think the Senator from Oklahoma has made a vitally important point. We have gone through I can't tell you the number of steps to try to stop terrorism.

The Senator from Kansas has just come to the floor. He has been a leader in the area of bioterrorism and agriterrorism.

Under this provision that we are debating right now—the underlying Dorgan bill—you are creating an incredible loophole for terrorist attacks and bioterrorist attacks in this country. We are creating a loophole that allows any foreign country to go through Canada to import drugs into the United States. And the Canadian Government doesn't even inspect it and does not even open it. It can come right in here.

Ms. STABENOW. Mr. President, will the Senator yield for a question?

Mr. SANTORUM. Yes. I am happy to yield for a question.

Ms. STABENOW. The trading of drugs is probably more highly regulated than any kind of trade. I am wondering if my friend would also object to all the food that comes into the United States from Canada and other countries. We have foods and vegetables coming in every day. We have bottled water and alcoholic beverages coming in. We have all kinds of things that go back and forth across the border from a lot of countries that are not regulated nearly as much as prescription drugs. I am wondering if the Senator is also concerned about or would object to that kind of trade as well.

Mr. SANTORUM. That is why we have Customs inspectors and FDA inspectors, who do, in fact, monitor things coming into this country for purposes that are fundamentally different. When you are talking about pharmaceutical products, that is a fundamentally different area.

All I am suggesting is that what is being created in the Dorgan amendment is an opportunity. As the amendment says, you have to have a pattern of problems with these drugs before you can do anything.

I think that creates a loophole that is in today's world of terrorism, one

that would be certainly filled by any number of terrorist organizations that want to hit the United States with some sort of bioterrorism.

I want to get back to what the Senator from North Dakota said prior to the vote on the last amendment. He said he would like to have someone come here and explain to him why drugs in Canada are so much less expensive than they are here in the United States, why we pay such premiums for those drugs here in the United States, and why Canada can sell them so much less expensively than they do here. There are a lot of reasons. Let me give you a few.

No. 1, the Canadian health care system is a single-payer system. It is a government-run health care system. It is run through the provinces and the territories.

This government-run health care system negotiates prices. Not all drugs that are made available in the United States are available in Canada. Why? Because the Canadian Government has a formulary. There may be four arthritis drugs that may be very effective in dealing with different forms of arthritis. The Canadian Government basically negotiates with companies, plays one against the other, and gets the cheapest price. They make one available. That one available may be the right particular drug for this group of arthritis sufferers. But it may not be the best drug for the whole class. That is why there is probably four of them. They have different little initiatives that make their drug more effective on certain people in certain circumstances. But in Canada, you get one. Maybe you get two in a general class. They negotiate it based on the best price they can get.

That is one thing.

In Canada, people don't get access to the variety of different drugs that may be the best therapy available. They negotiate a price because they are a big purchaser. They purchase for the entire 35 million people in Canada. They purchase drugs, and they compete it so they get one company getting the entire market, in many cases. So they can get a much reduced price as a result of the volume discount which they give.

Again, they limit the access to a variety of different drugs to the people of Canada. It is a balancing act for the drug company that wants to compete in Canada to get access to that market.

I am sure the Senator from North Dakota and the Senator from Michigan are familiar with this.

The second thing is there is a provision in the Canadian law called ''compulsory licensing.'' Most Senators on the other side of the aisle know what compulsory licensing is. But just in case they don't, let me explain to Members what the impact of compulsory licensing has on drug prices.

Compulsory licensing is the ability for the Canadian Government, if they do not get a satisfactory negotiation for a drug they believe is necessary to be offered in Canada, and if they aren't happy with the price the pharmaceutical company is willing to sell that drug at, they can basically, in a word, steal the patent.

Let me repeat that.

If Merck, which happens to be a big pharmaceutical company in my State, wants to sell a particular drug that is effective for arthritis—maybe it is a very new drug, an important drug, one on which they have spent a lot of money, and it has tremendous results and they want to sell it in Canada—said: We will sell it for $2 a pill here in the United States. Canadian says: That is nice. We are not going to pay $2. We want a volume discount. Merck says: OK. We will negotiate some sort of volume discount. We will sell it to you for $1.50 a pill. Canada says: That is nice. We will pay you 50 cents. Merck says: That is not a fair price. So they negotiate back and forth.

OK. Fine. We believe this is an important drug for our people. If you want to sell it to us for 50 cents, you lose your patent. We will license it to someone here in Canada. They will make the drug, and you get nothing.

Most people would say that doesn't seem particularly fair. No. It is not fair. But under Canadian law, I would suggest to you that not just Canada but in most countries around the world, unfortunately, that is a fact of life for many drug companies. If you point to Brazil, to South Africa, or to France, or to some other country, and ask, How can they get these drugs? It is because if they do not sell the drug at the price the national government wants the drug sold at, they steal the patent, they compulsory license it.

You are now looking at a drug company that says: Wait a minute. We want to sell this drug for $2. It cost us 25 cents extra to make the pill. They say: Wait a minute. Why do you want to sell if for $2? It took us $800 million to bring this thing to market. We have a few research costs involved in getting this drug formulated, approved, and all the things that are necessary to make sure it is safe and effective. It cost us a lot of money. Yes, but making the pill doesn't cost a lot. But to get to where we can make the pill, it costs an enormous amount of money. We would like to recoup that. Because they are in business, they would like to make a profit. The Canadian Government says: Look, it only cost you a quarter to make this pill, but we are giving you 50 cents. You are making money. It is better than making no money. If you don't sell it to us for 50 cents, you make no money.

So the drug company has to make this decision. Do I sell the drug at 50 cents and make some money, or do I choose not to sell the drug?

They may have it be made somewhere else. Even if they don't compulsory license it—even if they say, no, they are not going to compulsory license it, they are not going to sell it, put aside compulsory licensing. They say: We want to sell the drug. It is 50 cents. You don't have access to our market.

So the drug company has to make a decision. Do I sell the drug at 50 cents and make a small profit to help underwrite the cost of the research that was done on this drug, or do I choose not to sell?

You can make the argument that they shouldn't sell. You can make the argument that they should try to negotiate a better deal. But there is one negotiator, the Government of Canada, and they set the price. If you do not like the price, you either don't sell, and no drug is made available in Canada, which is no skin off the back of Canadian Government because in most cases, most drugs are not available in Canada. It is just another drug that is not available.

If they really want your drug, and if they really believe it is important to get your drug, they simply license it to someone in Canada, and they make the drug, which they buy. They can make the drug in such sufficient quantities that they can actually import that drug into the United States. So they can steal your patent. And under this bill, a stolen patent can be imported.

I understand it is very, very popular to be beat up on pharmaceutical companies. They make money. We do not like anybody that makes money around here. So they make some money. They do some things that are cutting edge. For some reason this is a problem.

It is very popular to go out and beat up on pharmaceutical companies for charging all this money for products that people need. But let me remind you, the Senator from Massachusetts said this bill will save $60 billion. If I am wrong on that, that is what I thought I heard yesterday. The Senator from Massachusetts said this will save $60 billion for the American consumer.

My question is, save it from whom? Who is it going to cost? It comes from somewhere. The obvious answer is, it is going to save it from the pharmaceutical industry.

Let's look at the pharmaceutical industry in this country, the much maligned pharmaceutical industry. What did this pharmaceutical industry do to deserve this treatment? What it did to deserve this treatment is invest more as an industry in research and development than any other industry in America.

Let me repeat that. What have they done to incur the wrath of the U.S. Senate today? What they have done is invest more money in research and development than any other industry in America. As a result, they have come up with breakthrough drugs, which cost a lot of money but, by the way, save lives and improve the quality of life for millions in America.

So what are we doing to thank them, to congratulate them, for being one of

the leading exporters in this country, for improving our balance of payments in this country, for employing people in high-priced jobs in this country, for moving scientific research in this country, for curing diseases in this country, for improving the quality of life in this country, for extending lives in this country?

We say we are going to whack off $60 billion out of your bottom line, which means, of course, the research will stop or be dramatically reduced.

So understand what we are doing. We are all beating our chests saying: We are going to get the big, bad pharmaceutical companies that are pillaging the American public with outrageous drug prices, and we are going to cut those prices by 30 to 50 percent.

Understand the consequences. Less money in research. Less money in research means fewer new drugs. Fewer new drugs mean people will die who would otherwise be saved by those innovations. That is what the consequences are.

All I am suggesting is, if that is the tradeoff, if 30 percent less on your pharmaceutical price is a good tradeoff for not having the next generation of lifesaving drugs or quality-improving drugs, that is fine. That is a worthy debate in the Senate. It is one that we should have, but it is not one that we are having.

The debate we are having is, corporate greed versus poor senior citizen. That is the debate here: These horrible pharmaceutical companies that are raping and pillaging the people of America while making these enormous profits.

Look at their profit lines, look at the prices for their stock, and I will assure you, they are not showing those enormous profits.

What is going to happen—if this were successful and we did take $60 billion out of this industry—and that is where it is coming from. It is not coming from anywhere else. It is not being drawn out of whole cloth. It is coming out this industry, which means $60 billion less of research.

We run around this country, and we are very proud in the Senate talking about how we are increasing the budget for the National Institutes of Health and how we care deeply about improving the quality of health in this country and how we are going to put more and more taxpayers' dollars into solving diseases, into fighting problems that perplex us, into finding out more about how our bodies work. Wonderful. Wonderful. That is great basic research. It is important to do. It is great scientific discovery. But where does all this stuff lead? Where does this lead?

In many, many cases it leads to research then being handed off to a private-sector organization that goes ahead and develops that lifesaving cure, that pharmaceutical product that, in the end, saves lives.

Mr. FRIST. Mr. President, will the Senator yield for a question?

Mr. SANTORUM. I am happy to yield for a question.

Mr. FRIST. Mr. President, I will be very brief. The Senator from Pennsylvania addresses a very important point, which forces us to look to the future in terms of future cures, whether it is for HIV/AIDS, emphysema or heart disease.

He hit the point very directly, in a way that I have not heard on this floor, in response to one of the main reasons why drug prices are higher in the United States than in Canada.

I would like to ask the Senator the following question. Typically, in the United States an individual company will set prices in such a way to cover research. They will look at supply, demand, and the efficacy and efficiency with which the goal of cure or prevention is carried out.

In order for the prices of medicine to be sustained over time, you must allow some recoupment of that investment in research. We all know that, on average, only 3 out of 10 medicines that are eventually approved in this country actually generate enough revenue to pay for that investment over time in the United States.

Mr. SANTORUM. Not to mention all the hundreds or thousands of compounds that were even tried to be researched, and they ended up where they decided: No, we are not even producing a drug that could be sought for approval.

Mr. FRIST. That is correct. That is the United States.

The real question goes to the following: In Canada they have a very different system. Everybody looks to Canada's system as if it is similar to or in some ways better than ours. In Canada, not the United States—this is what you essentially said—is it not correct that each company is denied the freedom to set prices for its own innovative medicines?

Mr. SANTORUM. Let me explain to you exactly how that process works. It is not a free market. They cannot set their prices. They have to negotiate with a board, and it is called the Patented Medicines Price Review Board. That board sets the prices in Canada.

They do so in the following way. The statute mandates that the price of most new patented medicines may not exceed the price of the most expensive drug marketed in Canada that treats the same disease.

So let's take HIV/AIDS. You have a regiment of drugs that are out there to treat it. Someone comes on the market with a brand new AIDS drug that may cure AIDS or may substantially improve the quality of life for someone with AIDS.

In Canada, they cannot, under the statute, charge more than what the highest priced drug already in the market is, which may have an improving effect on the quality of AIDS but may not be one of those transformational drugs.

So, No. 1, statutorily they are limited. No. 2, the price in Canada of a drug constituting a breakthrough drug, in therapy, may not exceed the median of its price in seven countries.

Let me tell you, all of those specified countries, with the exception of the U.S.—that is one of the seven—the other six, interestingly enough, are all price-controlled countries where the government sets the prices.

So it is a spiraling-down effect. One refers to the other country as a way to set the price, and so they each keep setting lower and lower prices, and they rachet the price down by having all these price control countries as the reference point for Canada.

Ms. STABENOW. Will my friend from Pennsylvania yield?

Mr. SANTORUM. I will as soon as I finish the question from the Senator from Tennessee.

Mr. FRIST. Just a quick followup question.

Based on what you have said, the only choice a manufacturer has is to set it at the price that Canada allows or to not sell it.

If a manufacturer decided not to sell a medicine at a price the government allowed, then is it correct that the government would authorize a Canadian company to copy and sell the drug, even without the patent holder's permission, which, it would seem to me, throws out the meaning of patents?

If we throw out the meaning of patents when it comes to pharmaceuticals and drugs, what are the implications for us in this country or the person listening today who has heart disease or HIV/AIDS, as they look with hope for that cure?

Mr. SANTORUM. There are enormous implications if we allow the Canadian Government to deny and basically say to the company: Either take it at this price or we will go ahead and manufacture it ourselves.

By the way, once they license it in Canada, the Canadian manufacturer can appeal to the government and say: Look, yes, we are manufacturing it here, but for us to make a profit, we have to export some because we have to make it in sufficient quantities. And if that is approved, they can send the drug back here to the United States.

Our companies could do all the research, expend all the money, and then be forced not to be able to sell the drug. In that case, the Canadian Government will say, it is not important enough. If you don't give it to us at the price we want, you lose the competition between three other drugs that may be similarly situated. You just don't sell the drug in Canada. Or, if we think it is important enough, if we think it is vital to our national health and you don't want to sell it to us at a price we believe is reasonable, we will have compulsory licensing. They simply license it to another.

That is not some far off concept. Right after the anthrax scare in the Senate, the Canadian health minister said that if they cannot get enough quantities of Cipro, they were going to

revoke the patent of Bayer and produce it in Canada.

So just understand, this is not a theoretical concept. This is a real concept. Even if it is not done routinely, which it is not, it is certainly a hammer that the government uses to get prices at a level that they want, not that the manufacturer believes is fair for their product.

Ms. STABENOW. Will my friend yield?

Mr. SANTORUM. I yield for a question.

Ms. STABENOW. I appreciate the ability for us to debate this important issue. I am wondering, as a result of what you have described, and I appreciate the sympathies for drug companies, if you then support the fact that the average pharmaceutical drug for Americans is going up three times the rate of inflation?

Mr. SANTORUM. That is important because another provision of the Canadian system is that the price may not increase more than the consumer price index. They fix prices even after they have set them in place.

The prices of drugs are going up. The research involved in discovering new drugs and the complications of doing so is driving up drug prices. That is a problem. I think we do need to do something.

But the issue is not price control. It is access to insurance. That is the key. What we need to do is to provide, for the private-sector American, the Medicare-eligible American, an opportunity to get insurance to reduce the cost of drugs to them. That is vitally important.

Ms. STABENOW. I am wondering if my friend might also respond then to the well-known practice now that the companies are spending 2½ times more on advertising than they are on research and development, and how you might feel about that.

Mr. SANTORUM. I must respectfully disagree with my colleague's assertion on that point, for it is factually incorrect, although a commonly cited myth. According to recent findings by NDC Health, a health care information company, the pharmaceutical industry spends significantly more on research and development than it does on advertising. For 2001, $2.8 billion was spent on direct-to-consumer advertising. This is less than one-tenth of the $30.3 billion America's pharmaceutical industry spent on research and development. Moreover, I am someone who believes that a company is entitled to advertise and sell their product. Certainly, I don't know of any business that makes a product that doesn't tell anybody what their product is. If you look at the research and development cost of every other industry compared to their advertising cost, the pharmaceutical industry would probably stack up better than any other industry. You could say they are spending a lot on advertising. I would hope they are spending money to try to tell people what their products are about.

Are you telling me they shouldn't be able to spend money to tell American consumers or physicians or hospitals what their product is and how it can be used? Of course, they should. They have an obligation to.

Mr. FRIST. Would the Senator yield for another brief question?

Mr. SANTORUM. Yes.

Mr. FRIST. Mr. President, clearly the United States does subsidize the world in terms of research and development. For better or worse, many other countries do have strict price controls. Those price controls ultimately translate pretty uniformly across the world into less investment in terms of research and development and investigation and experimentation for future cures of a broad range of diseases that we globally suffer with today.

The hope out there—whether it is Parkinson's disease, emphysema, heart disease, or lung disease—comes in the development of new drugs.

My question to the Senator is to verify the data that at least has been made available to me. In the United States our pharmaceutical industry—and I will phrase this as a question—spends about how much? The answer is the United States spends around $30 billion for research and development in the private sector coming from private investment in this country. In Canada, the cost for all research and development in pharmaceutical agents is not $30 billion; it is $1 billion.

I mention that because people glorify the Canadian system and how inexpensive it is. We need to be very sensitive to the fact that the United States is doing the world's research and development in the pharmaceutical arena which gives us the hope. Canada does not. The system described does not.

Would the Senator agree with that?

Mr. SANTORUM. That is absolutely right. The initial comment the Senator made is right. This is the fundamental issue we need to debate. Should the American public, through its pricing system, free market pricing system of drugs, continue to subsidize the rest of the world in pharmaceutical research? If the answer is no, we need to state that. If the answer is, no, we don't want that to continue, we should come out in front and say: We are not going to let the United States consumer bear the brunt of researching new drugs. If that is what we want to do, we need to be very upfront about that.

That may be a very legitimate position to take. I don't share that view. I don't believe that is the right thing for us to do. I don't think that moves this country forward. I don't think that keeps us on the cutting edge of an industry that is a world leader.

If that is what this body wants, then we are going to make the short-term trade, and the underlying bill on generics is exactly in this direction. We are going to make the short-term trade. We will have to charge our consumers less, allow more generic drugs, allow reimportation of drugs, all of which will undermine and cut into the revenues and intellectual property of the pharmaceutical industry, which will subsequently reduce their ability to do research on drugs for the short-term gain of having cheaper prices on the drugs available today.

The exchange is, lower prices on the existing pot of drugs available today versus a cure for heart disease or cancer or emphysema or Parkinson's or you name it down the road. That is the tradeoff.

Let's be honest. Of the drugs available today, many of them are very good, but some of them are not as accessible. You could make the argument, it is more important to get those drugs to people today than it is to get that next generation of cures tomorrow. Maybe we will have to wait. Instead of getting them next year or 2 years from now, we will have to make it 5 or 10 years. That is a tradeoff.

Let's have a debate about that. But let's understand that all this other talk is just glossing over the broader issue. That is the fundamental issue.

I haven't seen any polls on this issue. There may be Americans who believe that is the way to go. There may be others who feel strongly the other way. We have to understand that is the debate.

With that, understand the bottom line: Lower prices, either on generic drugs or reimported drugs, versus cures tomorrow and the next. That is the debate. We must make a choice.

The PRESIDING OFFICER. The Senator from Nevada has sought the floor.

In my capacity as Chair, I might say to colleagues, I will try to switch back and forth on positions so I will recognize the Senator from North Dakota next.

Mr. REID. I say to my friend, you should recognize who asks, not back and forth. Unless there is some agreement, I respectfully suggest that the Chair should not do that.

The PRESIDING OFFICER. The Chair apologizes.

Mr. REID. Mr. President, if I could have the attention of the minority, I have talked to Senator COCHRAN, and he tentatively agreed to this schedule. We would have a vote at approximately 5:40 today; that the time between now and then would be equally divided, even though that perhaps is unfair. The Senator from Pennsylvania has spoken for such an extensive time, but I don't think we need to worry much about that.

So I would like to propound a unanimous consent agreement that we would have a vote on the Cochran amendment at 5:40; that following the vote, we would proceed to the Stabenow amendment, which would be in the form of a second-degree amendment to the underlying amendment; then following that, tonight, as soon as that amendment is laid down, we would go to the MILCON bill—which we got consent on earlier today, and I appreciate that—and we would complete that debate tonight and vote on that in the morning.

In the morning, we will start off with the Stabenow amendment, which will be debatable.

Mr. GREGG. Mr. President, if the Senator will yield, at this time we cannot agree to such an understanding. As the Senator has noted, this amendment has generated a very significant interest. Debate has been, obviously, substantive and there is still a fair amount of debate that has to flow under the bridge before we can close the game, if I can mix metaphors.

Mr. REID. I understand the statement of the Senator from New Hampshire, even though I do not agree. We have agreed to accept the amendment tentatively—unless something has changed in the interim. I think there would be an agreement that we could accept this amendment.

All I say to my friend is, if that is the case—and I think it is—again, we are legislating by virtue of slow-walking. As I say, we have tried—and if they would like to tango, we will play music; if they want to rumba, we will do that. But we need to move this legislation. We have a lot of things to do. We are constantly told by the President there are things he would like done. We do our best to meet what the administration wants. For example, if we are going to be able to get to the bill where he is talking about consolidating different agencies, we are going to have to do that. We have to finish this first. Here it is Wednesday at 4 o'clock at night. We have had one vote today—that is all I remember—and we are not able to go ahead with anything else. As I indicated, the homeland security issue is something the President believes we should do. The majority leader wants to do it. We cannot do it like this. Now we want to get to the military construction bill tonight.

I don't understand what we can do to be more cooperative and move things along. It is not as if we are asking the impossible. I am going to propound this request. I will yield to the Senator from Oklahoma for a question.

(Mr. DAYTON assumed the Chair.)

Mr. NICKLES. Will the Senator withhold propounding the request for a few moments until we have a little more time to look at it?

Mr. REID. I will be happy to do that. I say this respectfully, and I know the Senator from Pennsylvania has been talking and has not had an opportunity to look at this. We have been floating this for an hour or 2. Another few minutes will not matter.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. The Senator from Pennsylvania was speaking about advertising costs and so on. Toward the end of his speech, I know the Senator from Michigan wanted to be yielded to. I yield to her for a question at this point.

Ms. STABENOW. Mr. President, if I might share this for the RECORD for my colleagues and ask my friend from North Dakota to respond, I did want to put into the RECORD, as we were talking about advertising versus research and so on, that, in fact, today two and a half times more is spent on advertising and marketing of a product than is spent on research and development. What is more startling is the fact that according to a report released today by Family USA, we have companies that are having two or three times more in profits than they spend on research and development. This is no longer a research and development driven industry—which it needs to be. It has become much more about sales, marketing, and ''me too'' drugs rather than new breakthrough drugs.

Today, Family USA showed us in a report that, for instance, America, last year—in 2001—had a profit, a net income, that was three times more than what they spent on R&D. Pfizerpen's was one and a half times more. Bristol-Myers was two times more in profit.

What is also disturbing is that, while I appreciate the sympathies for the drug companies, it is really quite shocking when we look at where the money goes as opposed to R&D. This chart shows the five highest-paid drug company executives. I won't say them by name, but the CEO of Bristol-Myers gets $74 million, not counting unexercised stock options. Wyeth's gets $40 million, not counting stock options. If you include the stock options, you are looking at another $93 million for one company, $76 million for another, $60 million, and so on.

So I appreciate the concern about the drug companies and the different system in Canada. But if our concern is about research and development—which we should be concerned about because not enough is being done now—we have a lot of money going in a lot of other places that I think would be of concern to the average senior who is trying to figure out tonight at supper time whether they eat or get their medication. I appreciate the time.

The PRESIDING OFFICER. The Senator from North Dakota has the floor.

Mr. DORGAN. Mr. President, I have heard a generous and interesting presentation for 45 minutes or so—in fact, I think it was the most effective discourse I have heard for some while on behalf of the pharmaceutical industry and their pricing policies. Of course, I disagree with it very strongly. Nonetheless, I think it was a good representation of what the pharmaceutical industry believes about pricing strategies.

As I listened to the back and forth, it reminded me of a small grease fire in a small restaurant; a lot is going on, but nothing real urgent. Let me react to some of the statements made recently.

Statement: ''Some people in the Senate don't like anybody who makes any money.'' That is absurd, but obviously in the Senate we can say those things, I guess. I would like to see one Member stand up and say: All right, here is what I stand for. I stand for a pricing strategy by which the American consumer is charged the highest prices for prescription drugs of anybody in the world. I want to see one Senator stand and say that I stand with the pharmaceutical industry and the pricing strategy, and I want the American consumer to pay the highest prices in the world.

Nobody will stand and say that. Instead, they will use metaphors that mean something different. We are told, for example, the problem is that, if we don't pay those high prices, we don't get the R&D. The information that was used was, of course, incorrect. Actually, more money is spent in Europe on R&D than in the United States 37% versus 36%—not a lot more, but more—and in every country in Europe their consumers pay far lower prices for prescription drugs. How does that figure add up?

We just heard our colleague say to us that if you don't pay the highest prices for prescription drugs, you don't get the R&D. Tell us about the Europeans.

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

Mr. DORGAN. If the Senator will let me finish my statement first—I listened for 45 minutes to the great case the Senator made on behalf of the pharmaceutical industry—I will be happy to yield when I finish.

The point is this: We are told that the pricing strategy by which Americans are charged the highest prices is fair and is necessary—fair because it is the only way we will get the R&D, and it is necessary because nobody else will pay those prices. So we need to accumulate that cash from the American consumer in order to pay for the R&D.

There are a couple things wrong with that. One, we spend a substantial amount of taxpayers' money at the National Institutes of Health. We have gone from $12 billion to $24 billion. I supported that. It was bipartisan in the Senate. We doubled the amount of money for the National Institutes of Health for health and research, and the pharmaceutical industry benefits from that as well because they take that accumulated research and use it to create new and miracle medicine. Yes, they do research as well, and I commend them for that.

My point is, we do a lot in public policy, such as research at the NIH. We passed a tax credit—I assume my colleague from Pennsylvania supports that, as I do—to say we will give you a tax credit for research and development. This country gives a very substantial tax credit for research and development, and I support that. I voted for it for two dozen years. I bet my colleague did as well.

This is not about research and development, it is about a pricing policy, that says that we will do more research in Europe and charge them lower prices then the American consumer, and, oh, by the way, when someone wants to raise questions about that, we will say: No, you cannot raise questions about

that; this is a pricing strategy that is fair to the American people.

Not where I come from, and I come from a much smaller town, I am sure, than some others here, a town of 400 people. We had a drugstore. We had a fellow who came to my town when he was just out of medical school. His name was Doc Hill. He was the doctor and ran the drugstore in town. He knew everything about everything. There was not anything he could not treat or any diagnosis he could not make. He was just a wonderful guy.

I grew up with that kind of medicine in a small town. In my small town, if someone said: We have a little deal here in the county—we have three towns—Mott, Regent, and New England. Regent is mine, by the way. We have a policy. What we would like to do is charge you folks in Regent 10 times as much for tamoxifen. If you women have breast cancer and are using tamoxifen, we are going to charge you 10 times as much as we are going to charge the people in New England and Mott.

Do you know what the people in Regent would say about that? Are you nuts? Are you stark raving mad? For God's sake, what kind of a pricing policy is that? It is fundamentally unfair, they would say.

Let's take that globally. We are told this is a global economy, after all, and just as it would be for my county, we are told by the pharmaceutical manufacturers that with tamoxifen, Premarin, Zocor, Lipitor, or dozens of other medicines, we should ask the American consumer to pay much more than others.

I understood there are people here who represent the interests of those who want higher prices. That is not the President's position, by the way. This is the President's position. The third Presidential debate in St. Louis, from George W. Bush, now President Bush:

> Allowing the new bill passed in Congress, you know, for drugs that were sold overseas to come back into the United States, that makes sense.

That is President George W. Bush. That is called reimportation. That is President George W. Bush in 2000 saying it makes sense. Sure, it makes sense. It does not make sense to the pharmaceutical industry, and I understand why. They have price controls. They control the price. People say we do not have price controls in America. Yes, we do; of course, we have price controls. The pharmaceutical industry controls the price. With respect to this global economy, it is interesting, my colleague said: In effect, you are going to import price controls from Canada. Canada has price controls on prescription drugs. Yes, that is true. Canada has price controls on prescription drugs. So do many other countries. We reimport a lot of products from other countries. That is one of the factors that makes the global economy interesting. If my friend the Senator from Pennsylvania has a necktie that is made in China today—and I do not know if he does or not, but there is a pretty good likelihood many of us are wearing neckties made in China—then one might make the case that the price of that necktie supports the salary of the leader of a Communist government.

Does that make it tighter around our necks? I do not think so. It is the global economy. Do I like to buy something from a country that perhaps supports a Communist government? No, no, no, but a global economy means we move products back and forth, and sometimes we inherit policies we may not like. But inheriting the capability through reimportation to allow the American consumer to pay less for prescription drugs than they would otherwise pay is good public policy and makes good sense for our citizens.

The Capitol is full of people who care a lot about drug prices, and they are very concerned about this—they are lobbying this issue on behalf of the pharmaceutical industry. They have every right to do that. I talked about a woman named Elizabeth earlier. I know there was some chiding about that, the teary stories about individuals. But I am wondering if Elizabeth has anyone who is going to grab somebody by the arm before they vote and say: You know, it is very important that you cast your vote the right way.

Remember, Elizabeth is a farm wife who is 74 years old who drove a tractor until 2 years ago when she lost her husband and her lungs got worse.

She has scleroderma and was diagnosed at Mayo. She talks about how she has been on oxygen for 2 years. She talks about the one new pill that would cost $3,600 or more a year. She cannot afford it. But I ask: If there is anybody in the Capitol Building today who is representing Elizabeth today? There are plenty who represent those who want to keep the current pricing strategy.

Or Velma:

> I am 86 years old. I can't work.

That is pretty reasonable. She is 86 years old and says: I can't work.

> I get $303 in Social Security each month, and I pay $400 a month for medicines.

She has had heart surgery and osteoporosis.

Sylvia Miller, 70 years old, diabetes, heart problems, emphysema. She went with me to Emerson, Canada, to buy prescription drugs. In recent years, she has spent $4,900 on her medicines. It was up $1,000 from the previous year.

The point is, this is a very important issue. This is a tripartisan bill that is supported by Senator JEFFORDS and many on both sides of the aisle. There is no one advocating reimportation who wants in any way ever to diminish the safety standards that exist that allow the American people to access a safe supply of prescription drugs.

An important point is this: Prescription drugs are lifesaving and miracle drugs only to those who can afford them when they need them. They save no lives when those who need drugs cannot have access to them. These prices are unfair, and reimportation will help put downward pressure on prices.

I say to those who oppose reimportation, what approach do you have to put downward pressure on prescription drugs prices, or is it simply Katie bar the door? Is there another approach? I am willing to embrace almost any approach that attempts to put downward pressure on drug prices.

The Cochran amendment is offered, I know, to try to effectively scuttle the issue of reimportation because it was effective in doing so to the bill we passed 2 years ago. At the time we did not know it would scuttle that legislation, but it did, with two Secretaries.

I think those who bank on the Cochran amendment effectively killing this legislation this time are wrong. We have changed the reimportation amendment this year. Our legislation now does not permit reimportation of medicines from Mexico. It does not allow for the reimportation of medicine from Bangladesh. It does not allow for the reimportation of medicines from China or Taiwan or South Korea. It allows for the reimportation of medicines from one country, Canada, a country that has a nearly identical chain of supply to this country.

It will be, in my judgment, nearly impossible for a secretary to assert that there is additional risk by allowing the reimportation of prescription drugs from a country that has a nearly identical chain of supply, a country that is our nearest neighbor, a country that is our largest trading partner.

I do not believe the Cochran amendment is effectively going to kill reimportation. I know some believe this is a great way on behalf of the pharmaceutical industry to do that, but I do not think so. As a matter of fact, I think the Cochran amendment will not have the impact it had 2 years ago because the bill 2 years ago was not country specific. This bill is limited and deals only with the country of Canada.

The Senator from Pennsylvania answered a question I did not ask, so let me ask the real question and then answer that. I was asked a question: Why are prices higher here than in Canada? That is not the question I asked. I asked the question I have asked a dozen times, which is: Who here believes that an American citizen ought to have to go to Canada to get a fair price on prescription drugs made in the United States? That is the question I asked. That still has not been answered, and I do not believe it will be answered.

If I were to try to answer the question the Senator has asked—why are prescription drugs higher priced in the United States than in Canada?—the answer is fairly simple on two fronts. One, it is true that Canada does have price controls and we do not. Second, I have held a couple of hearing on this subject, and the answer as to why drug

costs in the U.S. are so high for prescription drugs is because the charges are set in this country at whatever the consumer will bear. That was essentially what the pharmaceutical manufacturers told us.

My feeling is that it is not a fair pricing system, and on behalf of a lot of Americans, not just senior citizens who have to find a way to access these prescription drugs to deal with their serious medical problems, I think we need to find ways to put downward pressure on prescription drug prices.

I do not want people going to Canada to access prescription drugs. That is not the goal of this amendment. Our goal is to allow pharmacists and distributors to bring them back, pass the savings along, and that will force the pharmaceutical industry to reprice those prescription drugs in this country. That is our goal.

I finish with this point. It is interesting to me that some on the other side say those of us who want reimportation are saying the pharmaceutical industry is a big, bad industry; shame on them for making profits. I have heard none of that rhetoric today. I certainly have not taken part in that myself. I have said repeatedly, the pharmaceutical industry is a big industry, a profitable industry. It has done some terrific things. I commend it. I want them to do well. I wish them well. Their pricing strategy is wrong, and I want them to change it.

They will not change it voluntarily, and I fully understand that. If that is the industry I worked for, I would not change it voluntarily, I suppose, because their responsibility to the stockholders is to maximize profits. Since they have the ability to control prices in this country and maximize profits for their stockholders, that is exactly what they do. But if we are going to put a prescription drug benefit in the Medicare program and if we are going to care about the needs of all Americans, not just senior citizens, who can't afford prescription drugs, then we have to do more.

We have to employ ways to put downward pressure on prescription drug prices. We have to do that. Failing to do so means we will break the bank, and I am not prepared to allow that to happen.

So that is why we offer this, not to tarnish the prescription drug industry and the pharmaceutical manufacturers. I trust the Main Street pharmacists. I trust those distributors. I trust the Canadian system which is nearly identical to ours.

I have heard this bizarre argument about counterterrorism and counterfeit drugs. In fact, one of my colleagues brought some yellow paint, I guess yellow cement paint, and some other devices, none of which came from Canada. Isn't that interesting? Maybe I could have brought some kangaroos to the floor of the Senate and watched them jump. Wouldn't that be interesting? Sure, it is all interesting, but it has no relevance to the discussion. So we can be interesting but maybe what we should do is care a little more about pricing of pharmaceuticals in this country in a manner that is fair to the American people. That is all we are trying to do with this amendment.

We are not trying to tarnish anybody. We are saying, give the American people a fair break. If 10 cents is going to be charged for a breast cancer drug in Canada, then do not charge a dollar for it to a woman with breast cancer in the United States. Do not do that. It is not fair to the American consumer. That is all we are saying.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I rise today in support of the Breaux-Cochran amendment to the Dorgan amendment on this subject of reimportation of prescription drugs from Canada. It is not my intent to stand here as an expert in regards to how much money the pharmaceutical companies of the United States should spend on advertising, how much money they should spend on R&D or to talk about the global imports where we have price controls in various countries, or even as to where my tie came from.

I think the Senator from North Dakota indicated that we have a lot of imports. My tie is from Italy, by the way. It is a gift from my daughter. But the thing I want to talk about is safety, and this tie which came from Italy is safe, at least to the best of my knowledge it is, unless somebody gets ahold of me and yanks on the tie.

It is not my desire to talk about the hometown druggist whether it be in North Dakota or in Kansas, where I grew up, or whether you trust the druggist. I do want to talk about safety, and I do want to talk about the fact that Senator SANTORUM was kind enough to mention that I serve on the Intelligence Committee, used to be chairman of the Subcommittee on Emerging Threats on the Armed Services Committee. I am now the ranking member with Senator LANDRIEU, who is doing an excellent job as chairman.

I am a little worried about this in regards to the language—I am not a little worried, but I am concerned about the language of the Dorgan amendment which passed and the safety issue that is raised by the Cochran amendment, which I think is the better approach.

Basically, this amendment, for which I am a cosponsor, would require the Secretary of Health and Human Services to certify that prescription drugs that are reimported from Canada are indeed safe before—and that is the keyword, ''before,'' not after. You survey and you have some sort of a panel discussion and determine that at some date later we have a situation where some drug was imported from Canada and it indeed was unsafe. I would hate to think what would happen before we would take notice of that, even in terms of lives being lost. So the key word is ''before'' we allow my constituents in Kansas or the constituents of the distinguished Senator from North Dakota or the distinguished Senator from Michigan and others throughout the United States to receive them.

As I have indicated, as a member of the Select Committee on Intelligence, ranking member on the Subcommittee on Emerging Threats, I see reimportation as another way—I would not have thought of it before 9/11, but today I see it as another way for a terrorist organization to cause many human lives to be put at risk without the proper security measures in place.

One might say: Now, Senator ROBERTS, come on. Prescription drugs from Canada—this really represents a threat?

Well, we asked all the experts in the Emerging Threats Subcommittee some time ago, prior to 9/11, what keeps you up at night in this unsafe world? Bioterrorism came in No. 1, and I won't go into the rest of them. We could probably list 100 different threats and the terrorists in their own inimical way would say we are going to do 101. It is an asymmetrical approach. How easy would it be to reenact the Tylenol scare that happened some years ago in regard to some kind of a terrorist threat?

We have seen the situation at the Capitol of the United States in regards to anthrax. Dr. FRIST, the distinguished Senator from Tennessee, can give us about an hour lecture on that, what we saw then and what we see now in regard to what we have to do in terms of safeguards.

I remember Operation Dark Winter, which was done about 2 years ago, about the possibility of using a strain of smallpox from the former Soviet Union in Oklahoma City. Do you know how they distributed that? They did it by basically walking through shopping centers and spraying plants. How easy would it be to use imported drugs from Canada?

So this year and years past, during the reimportation debate, Members of both the House and Senate have received statements from people who ought to know in regard to the fact, is there a safety issue? That is from former FDA commissioners, the current and former heads of the Department of Health and Human Services. The statement was made about this administration, past administration—their testimony was exactly the same—and officials of the Food and Drug Administration.

They state they cannot assure the American people that reimported drugs are safe. Cheaper, yes. I understand that. I understand the compassion and the caring and the difference between drugs in regard to border States and Canada or, for that matter, any State and Canada. I hope we can bring the prices down.

However, are they safe? They have even recently given testimony, all the people I just talked about, as of July 9,

about a week or so ago, before the Select Committee on Aging. Why the Select Committee on Aging? Obviously, every letter read by the distinguished Senator from North Dakota was a senior citizen who desperately needs drugs. There is a quote by the Senator from Michigan indicating that Mr. Hubbard said, on balance, he would say it would be OK for somebody who is suffering from some malady to use a Canadian drug.

I suppose if I were not in your home State and I were in Canada and sick and I didn't have much of a choice, I would say: OK, Mr. Hubbard, I think that is OK. I think I will take my chances. He is the senior associate commissioner for policy, planning, and legislation at the Food and Drug Administration.

But he also testified, as the statement demonstrated by the distinguished Senator from Michigan:

FDA cannot assure the public that reimported drugs made in the U.S. have been stored under proper conditions or that they are even the real product because the agency does not regulate foreign distributors or pharmacists. Therefore, unapproved drugs and reimported approved medications may be contaminated, subpotent, superpotent, or counterfeit.

I don't know how the supporters of the underlying amendment can read these statements by these experts and possibly indicate we are trying to scuttle the bill. I don't want to scuttle the bill. I want to put in the proper safeguards. I don't want to put lives at risk without assurance to the safety of the American consumer.

The question is, Are we, the Members of the Senate, willing to put a new burden of proof on an agency or agencies having to deal with a new set of priorities since September 11? We know in terms of trying to put together a new Homeland Security Agency, it is like pushing a rope; that we will get it done, hopefully by September 11. Here we have yet another large-scale security undertaking that they, the Customs Service, in coordination with other departments and agencies, will have to administer without the resources, without the manpower and training available to them to stop the counterfeit drugs that will put human lives, or could put human lives, at risk.

An example from Mr. Hubbard's testimony outlines exact fears we should have in allowing reimportation without the safety guarantee. On May 14 of this year, the Ontario College of Pharmacists, which is a Canadian Government agency, filed charges under the Ontario law against the Canadian Drugstore, Ink. for unlawfully operating an unlicensed pharmacy and using an unregistered pharmacist in filling prescriptions for United States residents. The college also filed charges against a licensed pharmacy and physician in Ontario for helping to facilitate the delivery of prescription and nonprescription drugs to U.S. residents. A drug wholesaler was charged with supplying medications to a nonlicensed pharmacy.

Here is the key of the whole debate. As noted by Elizabeth Durant, the executive director of Trade Promotions for the U.S. Customs Service, at the same hearing on the Select Committee on Aging, Customs is working with the Food and Drug Administration to better identify adulterated or misbranded drugs entering our borders. However, she said, at this time they clearly do not have the manpower nor the infrastructure in place to ensure adequately and screen all of the prescriptions that would enter our borders.

As an example given in Ms. Durant's testimony, we have a program. Nothing has been said about this program during this entire debate, or at least I am not aware of it, and Customs has really initiated a program called Operation Safe Guard. During a recent phase of this program that took place at two international mail branches, 31 parcels containing 52 types of questionable pharmaceuticals underwent intensive analysis. The analysis shows that eight of the so-called pharmaceutical drugs—and, yes, they were less expensive—or 15 percent contained no identifiable active ingredient. They were phony. And 18 contained a substance that is regulated under the Federal Controlled Substances Act.

There is example after example of unscrupulous practices by individuals looking to take advantage of consumers desperately trying to find a more affordable way to get the prescriptions they must have. Yes, we need to provide relief to Kansas seniors, to Minnesota seniors, to West Virginia seniors, to Massachusetts seniors, to Michigan seniors, North Dakota seniors, Oklahoma seniors, and Tennessee seniors. But I cannot in good conscience support a measure that is a public health safety and security risk.

Instead of looking to our neighbors to the north for pricing relief and instead of relying on unsure and unsafe practices without the proper personnel and training in place to roll out a plan such as this, we need to focus on passing meaningful prescription drug legislation. Until I can assure my constituents in Kansas that the drugs they are receiving are indeed what is labeled on the package, or an FDA-approved package, I do not think the underlying amendment can be supported. This is why I urge my colleagues to support the Cochran-Breaux amendment.

The key word is ''before''; before a drug gets here, it is determined safe. That is what this argument is all about. That is what the debate is all about.

Mr. FRIST. Will the Senator yield?

Mr. ROBERTS. I am happy to yield.

Mr. FRIST. Mr. President, the Senator made the point which is important and I tried to introduce earlier today. In this environment where we do have a lower threshold for worrying about terrorism and worrying about what comes across our borders, he made the linkage, based on his experience dealing in the field of bioterrorism and the agriterrorism arena and the field of intelligence, that we are moving in one direction of bioterrorism to close our borders to the potential for counterfeit agents, potential bioterror agents coming in. I made the point earlier that we need to look at it in this new environment.

My question is, Does he agree with a recent op-ed published on July 16 in the Washington Times by a former FBI agent linking bioterrorism and prescription drugs and reimportation? The agent states:

During my 3 decades with the FBI, however, I worked with other Federal agencies whose main goal was preventing illegal narcotics from crossing our borders. When going after prescription drug shipments it usually was large quantities, mostly acting on tips. Neither we nor the 3 Federal agencies we cooperated with on such efforts—the U.S. Food and Drug Administration, the Drug Enforcement Administration, and the Customs Service—had enough personnel to go after prescription drug smuggling at the time. With the massive new threat of terrorism, we have even less resources to devote to such activities. Terrorists easily could use the cover of counterfeit drug smuggling to sneak lethal prescription drugs or worse, biological and nuclear weapons, into our country.

Do you agree with the thrust of the FBI's statement?

Mr. ROBERTS. In the Emerging Threat Subcommittee we heard from the Bremmer commission, the Gilmore commission, the Hart-Rudman commission, the Center for Strategic and International Studies Group, and the Rumsfeld commission. In virtually every one of those commissions, they indicated the need for greater border security with all of the threats you have mentioned.

We just had a hearing before the Senate Agriculture Committee, and Director Ridge just came before the committee. Secretary Ann Veneman of the Department of Agriculture came before the committee. It is another one of those cases where, as we try to reorganize the Department of Homeland Security, people get a little worried about their turf. People get a little worried about past practices. People say: Wait a minute; do we need to transfer that whole agency over to the superagency?

There is an agency within the Department of Agriculture called the Animal and Plant Health Inspection Service. As you know, in working with the bioterrorism bill, I had an agriterrorism section. We tried to ramp up the funding for our basic research universities: Athens, GA, for salmonella; Ames, IA, for the livestock industry; Plum Island, where you don't want to open up any refrigerator doors under any circumstance because of the pathogens that are there. We found now that we can use 3,200 of these employees who have the capability to take a closer look and provide the kind of security the Senator is mentioning, to the Department of Homeland Security, keep the rest of the employees so if a farmer from Kansas or, for that matter, North Dakota says, ''Hey, I

have wheat rust,'' he doesn't have to pick up the phone and call Tom Ridge. Or if he is going to try to enforce the Animal Welfare Act, there is no need to do that. But 3,200 more people are needed just to prevent some kind of problem with security and danger or agriterrorism and food security and how easy it would be for the terrorist to use the pharmaceutical that you are talking about to come in and do great damage in our country.

The issue is safety, and the higher bar that we must have, now, to guarantee it.

The whole thing is, we used to talk about we have to detect, we have to deter, and then, in the worst case scenario, we have to get into consequence management. Are we ready? The answer to that is no.

The new paradigm is we have to detect and preempt. We have to go on the offensive and then deter and then get into consequence management.

What the Senator from Mississippi has done is simply said to the Department of Health and Human Services, please guarantee the safety of these products before they come in, not afterwards; not after we see some evidence that something will happen. It is a before-and-after question. Sure, that senior citizen before may get a drug that is more inexpensive. He may die. That is a dramatic kind of statement, but it could happen.

That is how I would answer the Senator.

The PRESIDING OFFICER. The Senator yielded the floor. The Chair recognized the Senator from West Virginia. The Chair permitted a question. The question has been answered. The floor belongs to the Senator from West Virginia.

Mr. ROBERTS. I think the Senator already asked the question.

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

Mr. ROCKEFELLER. We had an interesting and important discussion this afternoon for quite some time. I want to add a little bit to the discussion.

The PRESIDING OFFICER. The Senate will be in order. Senators will take conversations off the floor so the Senator can be heard, and others will be recognized thereafter.

The Senator from West Virginia.

Mr. ROCKEFELLER. I say to the Presiding Officer, I would like to put a little perspective in what I see at least as the prescription drug aspect of all this, which permeates part of this discussion, although it is not immediately apparent in the debate of this afternoon.

We have this historic opportunity to do something real in prescription drugs. We also have the historic opportunity to fail to do it or we have the historic opportunity to do it in such a way that it will make us feel good but will not do anything to help seniors. In other words, that we would pass something which we could say we passed when we went home in August but would not in fact really help seniors in ways that are meaningful, something that I will not have anything to do with, that kind of strategy.

I say to the Presiding Officer, who is my good friend over many years, that nowhere is the problem more visible with respect to prescription drugs, and therefore creating a sensible plan that will address the problem of prescription drugs, than in the State I represent where 30 percent of the seniors have no drug coverage at all and 19 percent have very little drug coverage; therefore, basically half are more or less untouched entirely or to a great degree.

About a third of rural seniors as opposed to about a fourth of urban seniors—this is a 10 percent difference, but it makes a difference—pay more than $500 out of pocket each year. So my first overriding concern is the 336,000 seniors in the State of West Virginia. I will yield or sit down to nobody in fighting for them and for a plan which works for them in one of the poorest States in the Nation.

The question is, seniors know there are no easy solutions. We talk as if there are, but there are not. We have to be honest with our constituents about that. I know there is an election coming up. So what. A prescription drug bill that passes is a prescription drug bill that lasts for a substantial period of time. We have to do it right. There are a variety of alternative plans. I am not going to be referring to any of them individually, but some of them are a whole lot better than others and people better start thinking about some of the issues involved. I am going to try to raise some of those issues.

Providing a real drug benefit to all seniors, a benefit that covers all seniors all the time for all drugs at a price they can afford, that is what we need to do. At the end of the day, to be quite honest with you, seniors are not really enormously moved and do not care tremendously about whether it is a Democratic bill or whether it is a Republican bill, whether it is a White House bill. That may have some short-term advantage, but in terms of the way it affects their lives, which is what I care about, which is why I am here in this body, it doesn't make any difference to them. They don't want to be promised something we cannot actually deliver. There is a lot of talk about that kind of stuff.

As seniors consider all the competing prescription drug bills, they need to ask a number of very basic questions. One of the matters which I think people need to focus on is that the most important issue in all this is the delivery mechanism. People say: What is that? It is the core of the whole argument. It needs to be explained. It is a question of, really, who takes the risk?

One of the plans we are looking at—that is the way I am going to refer to it, one, then another, et cetera—says that the insurance companies will take the risk. Chip Kahn was President of the Health Insurance Association of America. He says that is like insuring against haircuts. An insurance company is not in the business of taking risk. They can't, and they particularly can't where people are older, sicker, and frailer and are less likely to be able to afford either to join them or to pay what it is that they charge.

On the other hand, you can also have a system where you use what you call a government/private partnership, PPMs. That is in another plan. I happen to favor that. They don't have to make a profit. They can set the price on the medicine which is best for the senior. But the business of who takes the risk is really important in all of this.

You say: How can you prove that? I will prove it indirectly. Since we do not have this before us, in West Virginia we have one plan on Medicare+Choice. We have Medicare and we have Medicare+Choice. We have Medicare, but we only have one plan that affects one part of the State involved with one university and some counties right around it. It covers 2 percent of the people in the State of West Virginia. That means it does not cover 98 percent. That means 98 percent of the people in West Virginia are not covered at all. They have a cap in their plan of $500 on their drug benefit.

That means if you use up your $500, you have a catastrophic something or other, by February, March, April, or May that is it—there is nothing you can do. There is no more expended. You have to pay for it yourself.

One good thing, though, that can be said about Medicare+Choice is that, if the plan pulls out, the senior, the Medicare beneficiary, has the option of a fallback position. That is to go back to fee-for-service medicine. That is not included in any of the other plans. I use the word ''other'' in the prescription drug plans that are before us. It is included in one, but it is not included in the others. It is not included in the one from the House. It is not included in one of the several that are wandering around the Senate Finance Committee.

If you do not have a fallback position, you can't do anything. That means you are just out of it. The plan decides to pull out and you get nothing. If it is Medicare+Choice, and the plan decides to pull out because they can't make money, because you are poor, you have a lot of people using services, and at least, therefore, you have the fallback position and that is, you can go back to fee-for-service medicine. It is an extremely important aspect of all of this.

So the question that seniors ought to ask and we ought to ask ourselves is, first, does the final plan that we vote on cover all seniors? Does it cover all seniors? Medicare does; not prescription drugs but in other things it does.

Does it cover all seniors, as prescription drugs should? All seniors need to know that they won't be left out of the prescription drug bill just because they

come from a State that has a lot of rural area where the cost of providing services is much higher. The plan I support covers all seniors in every State.

Seniors can get their drugs through their local pharmacy, just as they do now. There is no difference. The government and the private sector would be working together to make sure all seniors are covered just like Medicare today. That makes sense to me. The other plans say that every senior is ''eligible'' for coverage. But, in fact, many seniors won't get any benefit at all under these other plans. That is because those plans leave up to private insurers the decision where and when and to whom they will offer coverage.

The experience of rural areas—and certainly in my State—is the plans and insurance companies have said they want to have nothing to do with ensuring prescription drug benefits. They made it very plain. The other plans pretend they haven't said that and go ahead and include them.

Private insurers are focused on profits. ''Profits'' is not a dirty word. But it becomes an important word when you are talking about the distribution and accessibility and the affordability of prescription drugs.

We know from experience that the insurance companies will simply not voluntarily ensure seniors in parts of the State of Minnesota. They will in others but they won't in other parts. Or insurance companies will have the ability to have certain kinds of benefits in these kinds of areas, and other kinds of benefits in other kinds of areas. In other words, nothing is defined, and nothing is consistent that people can really count on. That is really wrong in prescription drugs. If we pass a bill that does that, that is wrong. That is the wrong thing to do to seniors.

We need to think about that. Seniors need to be on the alert for exactly that kind of behavior.

Second, does the final plan cover all seniors all the time?

Seniors need a benefit that is universal. They do not know when they are going to get sick or have a catastrophic incident. They have to know that it is going to be there for them all the time. They need benefits that help them 365 days a year.

The plan I support covers all seniors, all year, without a gap in benefits, and with no gaps in coverage. Other plans stop after a senior's drug costs exceed $2,000, and even if it happens to be in the first month of the year, or gives seniors no coverage at all for costs between $2,000 and $3,700. That is called a doughnut. It is a very serious problem, and a very real problem.

When you say people do not know what you are talking about necessarily out there, even in here a doughnut is a bad thing to do. When you say that you are stop-loss at $2,000 through $3,700, you have to pay everything in between, that is a wrong policy. Some of the other plans have it. The House plans have that. One of the plans floating around in the Senate Finance Committee has that. It is wrong.

Third, does the final plan cover all seniors all the time for all drugs?

That is the third question seniors need to ask us and that we need to be asking ourselves as we evaluate what we are going to do, if we are going to do something.

Seniors want to make decisions about which drugs are taken on advice of their doctor. They don't want to have it done on the advice of their insurance companies. We have heard about that for years—doctors having to dial insurance companies to get permission to do something which they know they have to do. They resent it. They are denied. Nobody can do anything about it. Doctors and patients should make key health decisions. I think that is a moral compass for how we look at a prescription drug bill.

Under the plan I support, seniors have a guaranteed benefit. Seniors and their doctors will decide which medicines are best for them to take, and they will take those medicines.

The other plans, as I say, talk about a standard benefit—the beauty of words in the Congress. But the fact is they too often leave it up to the insurance companies to decide which drugs will be covered. And that is not a guaranteed benefit for all drugs.

We went through this in the Medicare Commission for a year. It was a question about do you have a defined benefit? Do you have an actuarial? People ask, What does actuarial mean? The point is that in one you get a benefit for all seniors all across America, and in others you get a certain amount of money. When the money runs out, you are on your own.

It is cruel. It is cruel. It is wrong. But it is in two of the three main plans that we are considering on prescription drugs, and people need to know about it.

Four, does the final plan cover all seniors all the time for all drugs at a price which they can afford?

None of these questions strike me as unreasonable, if we are doing something as stark as this.

We have been talking about this for 5 years. I have sat for the last 4 years in sometimes up to three meetings a day in Finance Committee meetings and with staff trying to discuss all of these things, and here we are again. That is fine, if we produce a decent product. I don't care. The senior Senator from Massachusetts has a theory that sometimes things take 10 or 12 years to pass. If you have to do that for prescription drugs, that is a bad thing because, in the meantime, a lot of people are dying and suffering needlessly. But the plan I support on this matter of affordability is the only one with the guaranteed affordable premium for every senior in the country of just $25 a month—not 50 percent; for every senior, therefore, in the country, just $25 a month, and no large, upfront deductible.

Seniors would pay $10 for any generic drug up to $40 for more expensive brand name drugs. That is fair. After $4,000 in total dollars in out-of-pocket spending, all drug costs would be covered by—guess what—the Federal Government. Yes, medicine is expensive. Seniors are important. They are growing in size and in frailty. We are involved in their lives.

Just as under Medicare, seniors pay the same amount regardless of where they live or how much their income is each year. Some people dispute that. It is the moral principle of a social contract.

The other plans, again, as I say, in the spirit of not being unkind, mostly provide what they call ''estimates,'' or ''averages,'' like the word ''actuarially.'' It is one of those good words that makes you believe that everything is in good hands, except when the time comes for this to work it just doesn't quite work. Rather than real costs, seniors can compare. They talk about ''estimates,'' or ''averages.'' But if you look at the details, it is clear that every one of those plans has a higher premium, and large, upfront deductibles and higher copayments. That is a fact.

For example, the premium under the House-passed bill is ''estimated'' at $33 a month. But the insurance companies can set it higher. Why? Because they are establishing the risk. They are setting the price. If they don't like the risk, the price goes up. If they are out in Westchester County, the price goes down. If they go to West Virginia, the price goes out of sight. So they don't come to West Virginia because they can't make any money.

We are not blaming them for it. It is a fact of the way the free enterprise system works. Should West Virginia seniors, if anybody is interested, pay more than those in other States?

The House bill also has a suggested $250 upfront deductible that seniors have to pay every year, although that could be set higher by these same insurance companies for the same reasons.

Again, it is the benefit of how you do the mechanism which sends these benefits out. If you do it through the insurance company, they do not like risk. They don't like old, frail people. For those eligible to do it through the PBM, they do not have to make money, and they look at it differently.

So, again, for costs between $2,000 and $3,700, seniors get nothing. That is a big gap in coverage. It means millions of seniors will pay thousands more under the House bill.

I am about to conclude.

Seniors have been waiting for more than a decade while we in Congress fight about all this. I want to repeat what I said when I started by saying some of my colleagues have suggested—my colleagues on my side of the aisle—that if we cannot achieve a fair and comprehensive benefit, then we should accept a weak and watered-down bill. And what is it that is getting us all worried?

We all know we are going to have to get 60 votes. We are going to have to get 60 votes. None of the plans has enough votes right now, so we have to get 60 votes.

So that is what leads you to a watered-down plan, just so we can go home in August and say that we have done something.

We all get good benefits. Seniors all across America being left with the results of a watered-down prescription drug bill is not something that I am going to be a part of, I say to the Presiding Officer.

We have a once-in-a-lifetime chance to do something extraordinarily meaningful for every senior and every American family. Anything else is, and should be, unacceptable to every single one of us.

In the end, I want to enact a bill that guarantees West Virginians the same access to lifesaving and life-enhancing prescription drugs as people in other States. But the bill has to be right, it has to be fair, and it has to cover the right aspects. If it does not, we should not do it.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, we are now at a point where the Republican leader signed off on our being able to have a vote. We wanted to do that at 5:40. The last vote was at 2:30. We have been on this amendment, we have basically agreed to, now for 2½ hours.

My point is, I know Senator ENSIGN is in the Chamber and wishes to speak.

I ask my colleague how long he would like to speak.

Mr. ENSIGN. About 15 minutes.

Mr. REID. OK. Senator DURBIN, 10 minutes; Senator WELLSTONE—

Mr. WELLSTONE. Ten minutes.

Mr. REID. And 5 minutes for Senator KENNEDY. So that is 40 minutes, I think. Does anyone else on the Republican side wish to speak?

Mr. ENSIGN. I understand Senator BUNNING would like 15 minutes, and Senator ENZI would like 10 minutes.

Mr. REID. OK. If I could have someone add up that time, that is an hour and 5 minutes. I wonder if we could work that out to save a few minutes. We need to get to military construction tonight. So rather than an hour and 5 minutes, let's do an hour.

Do you think Senator BUNNING could go for 14 minutes? I bet he could. He is a good guy. Senator BUNNING for 14 minutes—I say to my friends in the minority, they have had most of the time this afternoon. I think if we can just cut a few minutes, and if I could stop talking, it would help a little bit, too.

So I am wondering if we could ask unanimous consent that the vote will occur at 6 o'clock, with the time proportionately taken from every speaker that has requested time—30 seconds, something like that, from every speaker. I think we can work that out. The vote would be on or in relation to the amendment, No. 4301, and the time is as indicated.

Mr. ENSIGN. If the Senator would yield, I will keep mine under 10 minutes.

Mr. REID. That will take care of the problem.

I say to my friend from Nevada, thank you very much.

So I ask unanimous consent that the vote occur at 6:05, as per the agreement, with no intervening amendment in order prior to disposition of the Cochran amendment.

The PRESIDING OFFICER (Ms. CANTWELL). Is there objection?

Mr. WELLSTONE. Madam President, I will not object. But I ask the Senator, you locked in time?

Mr. REID. Everybody has the time except Senator ENSIGN. He graciously took 5 minutes off his time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Nevada.

Mr. ENSIGN. Madam President, while I support the underlying amendment, I want to talk about a prescription drug proposal that I believe, and the other authors of this bill believe, could be the answer that seniors are looking for around the country.

Senator HAGEL and Senator GRAMM and Senator LUGAR and myself have been working on a proposal that I have worked on for a couple years along with Senator HAGEL.

This proposal, to keep it very brief, has two major components. The first component of our proposal allows every senior to participate on a voluntary basis. They sign up for a $25 fee. This takes care of just the administrative costs. This $25 fee allows them to get a prescription drug discount card.

We use the private sector. The private sector will set up what are called pharmaceutical benefit managers. These managers will offer certain drug plans. Seniors can choose between those drug plans. The better the drug plan, the better chance they have of attracting seniors.

It is estimated there will be somewhere between 25 to 40 percent savings for seniors using this prescription drug discount card. The reason they will save money is, very simply, that they are taking advantage of volume buying.

We see volume buying all the time. HMOs buy in volume, in bulk. So seniors will get the advantage of this volume buying when they are on Medicare and they sign up for this card.

The second part of our plan caps out-of-pocket expenses.

The biggest thing that we hear from seniors these days is that they are afraid they are going to be bankrupt. We had an e-mail in our office that came in a little after 11 o'clock Pacific Coast Time last week. It was from a person who said that many seniors have to choose between rent and prescription drugs. So they were saying: Will you step up to the plate, the ''moral plate,'' as this person called it, and do something that seniors really need?

Our plan actually does something that seniors really need. It provides them the prescription drug coverage by capping out-of-pocket expenses.

Let me give a couple illustrations.

For a senior citizen who has now signed up for the plan, let's say they make anything less than 200 percent of poverty—which is, for an individual $17,700 per year; for a couple it is almost $24,000 a year—if they are below 200 percent of poverty, our bill caps their out-of-pocket expenses at $1,500, so basically $120 a month.

So let's take, for instance, somebody who has diabetes or somebody who is a cardiac patient or a cancer patient, and they have $4,000, $5,000, $6,000 a year in drug expenses. This is what they are going to pay. Those are the seniors who need it the most.

The nice thing about our plan is—we are hearing about cost estimates of the, quote, ''tripartisan'' bill as being somewhere around $370 billion over the next 10 years. Other plans are floating around out there, and that may be $650 billion-plus.

Our plan looks like it is going to come in at an estimate of about $150 billion over 10 years. The other plans, in the next 10 years, really skyrocket. Ours goes up, like every plan does, but it does not go up significantly.

This is something for which the next generation can afford to pay; the other plans that are being talked about, the next generation cannot.

The reason our bill costs so much less money is a simple fact: If you keep the senior citizen, who is going to be getting these prescription drugs—the Medicare recipient—in the accountability loop, that means when they are paying the first dollars out of pocket—up to, for the lower income seniors, $1,500 per year—they will be cost conscious. That means they will go out and shop. They will make sure those plans have the drugs they need at a price they can afford. So we will have seniors all across the country shopping for their prescription drugs.

If we just give them a plan and say we will cover everything, the seniors quit shopping. The market forces then don't keep the competition where it needs to be. Because about half the seniors in America have less than $1,200 per year in prescription drug costs, that is where the huge savings comes to the taxpayer in our plan. We are looking out for the senior with our plan, but we are also looking out for the taxpayer. For the future of the next generation and the generation after that, we cannot afford to ignore the taxpayer because somebody has to pay for this prescription drug benefit.

All of us want to take care of our parents and our grandparents, and we want to be taken care of someday. Especially for those who really cannot afford it and are having to choose between sometimes what they are eating

and whether they are taking their medicines or whether they are able to pay rent that month and whether they are going to be able to take their medicine, it is a real problem. But we have to do it in a way that is fiscally responsible. We think our bill does that.

I have a real life example—we have received some numbers—of a senior citizen who is around 68 years of age. This is a profile of a real senior, but we won't release any names because of privacy. This patient makes around $17,000, is being treated for diabetes, has no prescription drug coverage today, and pays a total of about $5,700 currently per year. Under the Democrat proposal, at least the parts we can tell from it, this person would pay around $2,100 a year, saving about $3,900 a year. Under the tripartisan proposal, the person would pay about $2,300, saving about $3,700 a year. Under our proposal, this person would pay about $1,900 a year, saving around $3,800 a year.

So for the person who really needs it, who has serious disease and has a lot of prescription drug costs, our bill actually saves that person more, by a couple hundred dollars at least, than either the Democrat proposal or the tripartisan proposal. Yet it does this in a way that is responsible to the taxpayer because our bill is literally hundreds of billions of dollars less than the competing proposals.

I am urging my colleagues to take a look at this plan. This plan would go into effect at least a year earlier than any of the other competing plans. It can go into effect on January 1 of 2004. The other plans don't go into effect until January 1, 2005. Our plan is permanent as well. One of the other plans is sunsetted.

Our plan is easy to understand. If you take a look at it, it doesn't sound that easy to understand except when compared to the other plans which are much more complicated. It is much easier to understand for the senior. It provides the benefit and most of the benefit to those who truly need it.

I reiterate—and this must be reiterated time and time and time again—it is responsible to the next generation. We cannot afford to pay for seniors today and forget about the next generation. We all want to take care of the seniors today, but we must do it in a fiscally responsible way.

To sum up, a $25 fee, you get into the plan. You get a prescription drug discount card which saves you 25 to 40 percent. Then, depending on income, we cap your out-of-pocket expenses. For those 200 percent of poverty and below, their cap will be $1,500. For those 200 or 400 percent of poverty, they are capped at $3,500 out-of-pocket expenses for the year. For those at 400 to 600 percent, they are capped at $5,500. And for the wealthiest, they can still participate. But for the Ross Perots of the world, they have to pay 20 percent of their income in prescription drug costs before they benefit. So the Ross Perots of the world, those people who do not need the coverage like that, will not get the coverage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Madam President, there are other Senators on the floor. I had spoken earlier. I think I can probably cover the ground in 3 or 4 minutes.

I think it is best to be as concrete as possible. Coumadin is a blood thinner widely used in the United States. A bottle is $20.99. For the same bottle, dosage, the Canadian price is $6.23. Zocor, which is a cholesterol drug, in the United States: $116.69; our neighbor Canada, $5.51; Permax, to manage Parkinson's disease, $398.24; Canadian price, $189.26; tamoxifen, breast cancer drug, $287.16; the Canadian price, U.S. dollars, 24.78.

That is what this amendment is about that Senator DORGAN and I, Senator STABENOW, and others have supported. Our amendment passed overwhelmingly.

I have heard so much said in the last couple hours. That is why it is hard to get started, because if you get started, it goes on and on.

Families USA came out with a study today that makes it pretty clear that by a 2-to-1 margin, pharmaceutical companies spend the money on advertising and marketing as opposed to research, with profits beyond belief—what I have described as Viagra-like profits—based upon the misery, sickness, and illness of elderly people.

The pharmaceutical industry hates this amendment that has passed. They don't want to see people in Minnesota or Illinois or anywhere in the country get this discount, and they don't want to see downward pressure on prices. They don't want this to happen. The industry would be happy for us to pump in as much money as possible, as long as we give them a blank check and they can fill it in.

The amendment we have before us, the Cochran amendment, basically says that this amendment we just passed, this legislation, only becomes effective if the Secretary of Health and Human Services certifies to the Congress that implementation of this section will ''pose no additional risk to the public health and safety and will result in a significant reduction in cost of covered products.''

I don't know about the ''reduction.'' I think it is pretty clear it is going to be a significant reduction.

I have two views about this. The first is, we have had two prior Secretaries of Health and Human Services—it creates such a loophole that they have refused to provide the certification. The pharmaceutical industry, which is so powerful and has always gotten its way, it gives them the perfect opportunity to lobby against it and stop it—no question about that.

This amendment may have passed with all of our votes, although I must say I will vote for it with very mixed feelings because I believe in my heart of hearts that this Secretary of Health and Human Services will do everything to block implementation of the legislation we passed earlier today.

However, there are at least two or three things that are different, and now the optimist in me will conclude. One is that we are only talking about Canada. Anybody who really looks at this with any kind of rigor will realize it is hard to argue when you don't have the same stringent health and safety guidelines, and all of this has to be FDA guidelines in any case, No. 1.

Second of all, expectations are up. If you don't think this isn't a big deal to people—to have a dramatic reduction in the price of prescription drugs so they can afford it—you are wrong.

Therefore, I believe what has happened today—this amendment will pass overwhelmingly, close to a 100-percent vote. It has raised people's expectations. I don't mind that. I would rather have expectations raised than lowered around the country. And it is not just senior citizens; it is all citizens who benefit from this.

My final message to the Senior Federation of Minnesota and the other citizens groups who have been fighting so hard is that we should have an overwhelming vote for prescription drug reimportation, and then a strong vote for the Cochran amendment. I think we have more to deal with on health and safety issues, but we have to do it this way. But if this Secretary of Health and Human Services should block this in perpetuity—and it is clear he has no intention of certifying this—or any Secretary of Health and Human Services, representing either party—as a couple colleagues on the other side of the aisle give me that look—I say to the seniors of Minnesota, and all other citizens, all those buses you have been taking to Canada, take them right here to Washington, DC. Come right to the office of the Secretary of Health and Human Services and demand that he or she not block this in the future.

We are expecting Secretary Thompson to move on this. We are not expecting him to use the Cochran amendment as a gigantic loophole to block the legislation we passed today that would provide a serious discount and would provide many more affordable prescription drugs to people.

As a Senator from Minnesota, I will join the buses if we need to go down to the office of the Secretary of Health and Human Services. Let's hope we don't need to go.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. BUNNING. Mr. President, I rise today to talk for a few minutes about adding a prescription drug benefit to the Medicare Program.

Over the next few weeks, the Senate will debate one of the most important issues we will consider this year whether to provide a medicare prescription drug benefit to seniors.

But I am afraid that if we do not get our act together and start really working together it will all be a huge waste of time.

I think we can all agree that something needs to be done. The cost of drugs is going up and up. It is the fastest rising medical expense that seniors and many other Americans face.

And it is clear that medicare now is not set up to deal with this problem.

Medicare is still basically a 1965 program that is struggling to keep up with health care in the year 2002.

Health care has changed dramatically in the last three and a half decades.

When Medicare was first set up, prescription drug costs were low. People were more concerned about being able to afford hospital stays.

Now because of medical advances and the amazing things we can do with these medicines, the relative costs of hospital stays are less important. But the cost of prescriptions are rising.

However, the medicare fee structure is not flexible enough to adapt to this change.

It must change.

In a perfect world, we would be debating a broader Medicare reform bill now along with a prescription drug benefit.

It would be the most effective way to go, and it is something I hope we can address before too long.

But for today, we are talking about a drug benefit. We are all for it. The question is: How do we set it up and how do we pay for it?

Before I get into the substance of this issue, I think we need to first talk about process.

The Senate is built on procedure. Here we still follow precedents and rules that were handed down over two centuries ago.

It is important, and it makes a big difference when it comes to passing legislation.

In the case of the bill before us today, that process has not worked very well.

In fact, it hasn't worked at all.

I hope we have a long, thorough debate to make sure that members have time to closely examine the base bill.

After all, it doesn't even have a committee report attached to it to allow Members and staff to fully examine and assess what is in the legislation.

It was rushed through the help committee and to the floor for this debate because the committee of jurisdiction—the finance committee—couldn't agree on its own Medicare proposal.

Finance has had problems because this is a tricky, complicated issue. And the only way the majority could start today's debate was by bringing up the generic bill instead.

In my book, that is putting the cart before the horse. This is too important an issue not to get right.

We have to be careful.

Procedurally, we got off on the wrong foot, and while it might not seem that important on the surface, little twists and turns like this can make a difference when it comes to the fine print of the legislation.

We all know this is going to end up really being a debate about a prescription drug benefit. Generics are part of that, and I have no objection to considering this issue in the Senate.

That is why we are here—to legislate and make the tough calls.

But when the bill before us today is brought to the floor in such a backwards way it makes me nervous.

The fact is that we are doing the body a disservice by not letting the finance committee finish its work.

They have the most expertise in this area.

They have been wrestling with this the longest. I sure hope the majority does not try to rush them, and the full Senate, anymore into writing a bad bill.

This is a pattern we have seen before, and the results have been bad.

Virtually the same thing happened with the energy bill.

In that case, the majority leadership didn't like how things were going in the energy committee, so they brought their own separate bill to the floor and bypassed the committee.

In the end we passed legislation, but I know that it was not as good a bill as we could have passed if the committee of jurisdiction had been able to finish working its will.

We have seen this happen again and again—on the farm bill, the economic stimulus bill, the railroad retirement bill, and the patients' bill of rights.

In each case, we passed something. But we as a body didn't do our best work.

It is just as important to get things right than to get them done fast.

In the case of Medicare and prescription drugs, the majority is pushing us and pushing aside the only bipartisan prescription drug bill.

That should tell you something. And it can make a big difference when it comes to the substance.

We all know that many older Americans are faced with making some tough choices when deciding how to pay for their prescription drugs.

We have all heard of the sacrifices seniors make to afford their prescription drugs.

Some cut their pills in half to make their medication last longer or cut back on their grocery purchases to have enough money left over for another month's supply of their medication.

Many seniors can't get their doctor's prescriptions filled because they simply cannot afford them.

These are decisions that no American living in the year 2002 should have to make, and we in Congress have a moral obligation to pass a prescription drug bill this year, and get it to the President to sign.

I support the tripartisan plan that has been put together by several members of the Finance Committee.

In a nutshell, this proposal establishes a new voluntary prescription drug benefit in the Medicare Program, along with making some changes to the Medicare+Choice program to make it more competitive.

Monthly premiums are relatively low—$24. There is an affordable deductible of $250 per year.

Those who need the most help—those seniors living 150 percent below poverty receive extra assistance with costs.

And there is extra protection when out-of-pocket costs skyrocket too high.

It is a sensible proposal that means real relief to all seniors.

It is these seniors who benefit the most from this bill, and we have a responsibility to help them today—not tomorrow or the day after. But now.

Because of the way this issue is being handled on the Senate floor, we could very easily end up at the end of this prescription drug debate with no bill at all.

Because it has been rushed to the floor—because the Finance Committee is still working on a number of competing proposals—there is no real consensus about what to pass.

This could mean that no one bill gets a majority of the votes and nothing passes.

If that happens, we'll be back exactly where we started—with no relief for American seniors.

Congress can pass a prescription drug bill this year, and we can start helping seniors with their prescription costs in the near future.

We have been talking about it for years. Now we have a chance to do it.

But it is going to take real dedication by all Members of this Chamber to actually pass a bill.

And it is going to take more respect for the process, for the time and chance to make thoughtful, deliberative decisions.

Personally, I hope we don't succumb to playing politics with what is literally a life or death issue for many older Americans.

While the process we are working under looks like it has been set up to fail, I still think and hope we can come up with some sort of proposal.

Madam President, I thank you for the time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, all here today have the same goal in mind, and that same goal is to be sure we have the lowest priced, best, and most available prescription drugs in the world. We do want to make sure the cost is as low as possible. How we get there we have some disagreement over, and I would like to take a moment to address the first-degree amendment that is before us right now, which I hope will be corrected with the second-degree amendment.

The first-degree amendment would allow for pharmacies and pharmaceutical distributors to reimport drugs

from Canada. I continue to have two major concerns about the amendment.

First, as my colleague from Mississippi has articulated, there is no way to assure the safety of drugs reimported from Canada. Experts, including two Secretaries of Health and Human Services, said it cannot be safely implemented for consumers. That is probably even more true since September 11 and the anthrax attack. Safety is the reason we do not have it right now.

I believe we are presently operating under the Prescription Drug Marketing Act of 1987, which expressly bans the reimportation of drugs to protect the public health and the integrity of the distribution market in the United States. It passed the Senate unanimously. That means everybody who was here on March 31, 1988, agreed for it to go through.

Former Senator Al Gore was a cosponsor, and on the House side it was implemented and backed by such outstanding conservatives as Representative JOHN DINGELL and Representative HENRY WAXMAN. They were the key House sponsors of the legislation. The finding in the bill as passed did focus on the risk of reimportation to consumers.

I ask unanimous consent that the findings from that bill be printed in the RECORD.

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

SEC. 2. FINDINGS.

The Congress finds the following—

(1) American consumers cannot purchase prescription drugs with the certainty that the products are safe and effective.

(2) The integrity of the distribution system for prescription drugs is insufficient to prevent the introduction and eventual retail sale of substandard, ineffective, or even counterfeit drugs.

(3) The existence and operation of a wholesale submarket, commonly known as the ''diversion market'', prevents effective control over or even routine knowledge of the true sources of prescription drugs in a significant number of cases.

(4) Large amounts of drugs are being reimported to the United States as American goods returned. These imports are a health and safety risk to American consumers because they may have become subpotent or adulterated during foreign handling and shipping.

(5) The ready market for prescription drug reimports has been the catalyst for a continuing series of frauds against American manufacturers and has provided the cover for the importation of foreign counterfeit drugs.

(6) The existing system providing drug samples to physicians through manufacturer's representatives has been abused for decades and has resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

(7) The bulk resale of below wholesale priced prescription drugs by health care entities, for ultimate sale at retail, helps fuel the diversion market and is an unfair form of competition to wholesalers and retailers that must pay otherwise prevailing market prices.

(8) The effect of these several practices and conditions is to create an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs will be sold to American consumers.

Mr. ENZI. Madam President, I will read a couple:

(1) American consumers cannot purchase prescription drugs with the certainty that the products are safe and effective.

(2) The integrity of the distribution system for prescription drugs is insufficient to prevent the introduction and eventual retail sale of substandard, ineffective, or even counterfeit drugs.

(5) The ready market for prescription drug reimports has been the catalyst for a continuing series of frauds against American manufacturers and has provided the cover for importation of foreign counterfeit drugs.

It is interesting; some of the people who debated in favor of doing that—and, as I mentioned, it passed unanimously—we are having that same debate right now, and the same arguments are valid for why that would not provide a good solution for consumers.

I also mention S. 2244 would create a second route for transporting drugs into the United States outside the existing regulatory system. The bill would allow pharmacists and wholesalers to purchase drugs from Canadian sellers over which the United States authority, the FDA, and others have no jurisdiction or control. It provides the threat of counterfeits and does not depend on the integrity of the product itself but on the integrity of those handling the product.

Even worse, the bill would require drug manufacturers to disseminate their drug formulations and chemical fingerprints to potentially thousands of pharmacies and wholesalers. This information, currently protected as a trade secret, could be worth millions of dollars per drug on the black market.

Counterfeiters could obtain drug formulations and learn how to make their fake drugs look real and survive chemical analysis. Notwithstanding these very real safety concerns, it is unlikely the bill would achieve the goal of bringing cheaper drug products to U.S. consumers.

The cost savings we talk about might be obtained but more likely would be absorbed by the fees that would be charged by the exporters, the wholesalers, the pharmacists, and the testing labs.

The bill also requires Canadian sellers to register with the FDA. However, because the FDA has no authority to inspect foreign facilities, the agency will have no way of knowing whether these registered firms are legitimate, whether they handle and store drugs properly, or whether the drugs were manufactured under current good manufacturing practices. That is the first reason.

I hope our colleagues who support the amendment and have been on the floor today urging us to support the amendment so seniors can have access to the drug pricing structure that Canada has imposed on drug companies will look a little bit at Canada. Canada, which operates a socialized national medical system, has imposed price controls on prescription drugs. Canada has also imposed rationing in other health care services, such as dialysis for elderly patients suffering from kidney failure. But we probably do not want to import that policy.

I know a lot of people from Canada who come down to the United States to get their health care because they cannot get all of the choices the United States has, and even when they can get the choices, have to wait in line for it. I think it has already been covered a little bit by my colleague from Pennsylvania that in Canada they bid for the drugs.

You do not get all of the drugs. You get the one drug that will handle that general practice, and the country gets competition by bidding among the several people who try to handle that particular ailment. By bidding on it, they are able to drive some of the prices down. They also eliminate choices for doctors and for consumers, ultimately the consumers.

If what we are trying to do is price controls, we can do price controls, too. We probably ought to be debating them as price controls, legislate them, affirmative approval, and setting U.S. price controls. I hope we do not do that. I am not serious at all in suggesting that because when my wife and I first went into the shoe business, it was at the time that Nixon was in office and they talked about price controls. As soon as they talked about price controls, the companies that were supplying us with shoes did a 30-percent increase in the price of the shoes. Then, as soon as price controls went into effect, they did the 20-percent increase that they were allowed to do.

People were paying 50 percent more for shoes than they should have been just because the companies were worried about how they were going to be able to continue their profits. I can say that each and every year on the date they were allowed to raise their prices, they raised their prices. It had nothing to do with what the cost of the shoes were, but it affected the consumer dramatically.

Passing the Dorgan amendment is not only having Canada legislate for America, it is denying Congress and the American people the opportunity to fairly debate the matter. I do not think we are ready to do that yet. We all want to have the lowest priced pharmaceuticals we possibly can, but we do want to have the safety factor, and I do not think we want to have price controls or the Canada method of doing health care.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, if I understand the unanimous consent, I am entitled to 10 minutes; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. Madam President, this debate about prescription drugs really comes down to a very fundamental issue. It is an issue about whether or not the pharmaceutical companies will prevail and continue to charge the highest prices in the world to American consumers or whether the consumers of America, the families and the small businesses, will prevail and finally bring to this marketplace some competition, some form of oversight, that gives them a fighting chance.

America believes in its drug industry. We understand the miracles that have occurred because of research and hard work within that drug industry. Look at the money we pump every year into the National Institutes of Health, taxpayer dollars spent by this Congress at the National Institutes of Health, to find new cures for diseases—last year, $23.5 billion. I supported it. I will support it again this year; it is money well spent to find cures for diseases that plague Americans and the world.

Look at what we do as well: We say to these pharmaceutical companies we will give them a tax credit for research and development. We give them a tax break to continue to find new cures, and then we say we will give them a tax break for advertising and other costs of business.

Our Government is friendly, supportive, and encouraging of the drug industry, as it should be. What do we get in return? Well, American consumers get the highest drug prices in the world. That is right. Our taxpayers invest more money in this industry and pay more back to it than any other country in the world.

Take a look at this chart. It was prepared by the House Committee on Government Reform. They said, if Americans pay an average of $1 for a pharmaceutical product, how much would that same product cost in other countries around the world? In other words, the American pill that we have paid the research money on and the tax credits for, that cost us $1, well, what does it cost in the other countries around the world?

In France, it is 55 cents; Italy, 52 cents; Germany, 65 cents; England, 69 cents; in Canada, 62 cents.

What is wrong with this picture, Americans? We are the ones subsidizing this industry, and we are paying the highest prices. Our thanks to PhRMA for giving them all of this assistance, all of this encouragement, and in return being asked to pay the highest prices in the world. Why? Because, frankly, we as a government have never stood up and said we have had it.

The Canadians have. I heard an allusion earlier to the socialism of Canada. Well, I do not consider them to be lockstep Fabian Socialists. This is a country which decided a long time ago that when it came to the health of Canadian citizens, they were going to do everything they could to make it affordable and available, and one of the first things they did was to say to the American drug companies: If you want to sell the same pills that you are charging so much for in America, if you want to sell them in Canada, you are going to have to face price restrictions. We will not let you sell them at those inflated prices that you charge your own American citizens.

As a result, the same drugs made by the same companies, subject to the same inspection, cost a fraction in Canada of what they do in the United States.

When you take a look at some of these drugs, for example—and you will recognize these names, incidentally, because they are all over your television screen, they are in every magazine you pick up now, newspapers, every single day.

Paxil: Feel a little anxious this morning? Take your Paxil. If you take it, it is $2.62 in the United States. Go to Canada, and it costs $1.69. It is a beautiful ad they have on television. Americans, you are paying for that ad. You are paying for it about a dollar more a pill.

Zocor, $3.75 in the United States, $2.32 in Canada; Prevacid, $3.91 in the United States, $2.24 in Canada, because the Canadian Government said: We are not going to let you rip off Canadians. You can rip off Americans. They will pay for it, no questions asked. Do you know why? Because PhRMA, this lobby, has a death grip on Congress. Congress is not going to rock the boat. It is not going to pass a law to protect American consumers as the Canadian Parliament did, no way. That is what this debate is all about.

The Dorgan amendment basically says we are so despondent, we have reached the point of despair where we are going to allow people to bring in drugs from Canada, the cheap drugs from Canada, because we cannot hold the American pharmaceutical companies to a standard of charging Americans a fair price. Boy, have we really reached that point, where we have to rely on the Canadians' bargaining authority to give American consumers a fighting chance? It appears we do. But that amendment passed 69 to 30. It shows you the desperation of the Senate, that we will not pass a law demanding fair prices for Americans; we are going to piggyback on the Canadians who have the political courage to do it.

Now comes the Cochran amendment. Senator COCHRAN of Mississippi is my friend. He is an honorable man. There are two ways to look at this amendment. Let me look first at the positive side. He has said the Secretary of Health and Human Services has to be able to certify that if these drugs come in from Canada, they are going to be safe for American consumers. Well, I hope so. Most of them are exactly the same drugs we sent to pharmacies all around our country.

The second thing is that if we import them from Canada, there is a significant reduction in price for the consumer.

I think both of those tests would be met, and if that is the case, it is hard to vote against Senator COCHRAN. I am going to support him. I think it is a good standard. I sincerely hope this is not part of an agenda by the pharmaceutical companies that believe if they cannot win a vote on the Senate floor and they cannot win a vote on the House floor, they may be able to persuade one member of the President's Cabinet to put an end to the reimportation of drugs from Canada.

Think about that for a second. This one person, man or woman, serving as Health and Human Services Secretary, will have the power to stop the discounted drugs from coming from Canada into the United States. It is a considerable amount of authority.

We have had statements from Dr. Kessler at the FDA, and from people currently at the FDA, who say the Canadian drugs are safe, there is going to be no problem. And we know they are cheaper. This should not be anything other than a formal decision saying the approach of the Dorgan amendment—which I am proud to cosponsor—is an approach which is good for America.

Step back for a minute and look at this debate. Look at the fact that this Congress and this President cannot pass a law that gives the American consumer a fighting chance when it comes to the cost of prescription drugs.

We are going to rely on the political courage of the Canadians to stand up to the same companies and hope we can bring in discounted Canadian drugs into the United States. Is this upside down or what?

I hope we go further than this underlying bill on generic drugs, than the Dorgan amendment on Canadian reimportation, and actually put in place something we can be proud of, something that says to every American, rich or poor, they are not going to die, they are not going to be forced into the hospital because they have to choose between food and medicine. Is that a radical, socialist notion? I don't think so. It sounds like an American notion that we believe in this land of compassion, that we can find the resources and the wherewithal to help our people.

I have seen them. I have met them. Every Senator in this Chamber has met them. They are men and women who have worked hard all of their lives, have retired in their little homes with their savings accounts, and want to live in happiness, follow the sports page and tend to their garden and enjoy their retirement. Then comes an illness—unexpected, perhaps. The doctor tells that person—your mother, grandmother, father or grandfather—this pill will keep you out of the hospital. They go to the local drugstore and realize they cannot afford to take the medicine that keeps them out of the hospital.

That is a fact of life in America.

Meanwhile the drug companies—there will not be any tag days for the drug companies—are making a lot of

money. They are in business for a profit and deserve a profit. Look at this chart showing the profitability of Fortune 500 companies in the last 10 years: The drug industry, 18.5 percent; the median for other Fortune 500 companies, 3.3 percent.

Drug companies are doing extremely well. They say: We need to make a lot of money because we have to put the money into research for new drugs.

But look at this chart which shows how much they are spending on marketing and how much on research. The blue line is research; the yellow line is marketing. Look at the disparity in companies such as Merck, Pfizer, Bristol-Myers Squibb, Abbott, Wyeth, Pharmacia, Eli Lilly, and Schering-Plough. They make Claritin. You have seen that. They have switched over to the brand new drug called Clarinex. They used to show on television the people skipping through a field of wildflowers: I am taking Claritin and will never sneeze again.

Schering-Plough spent more advertising Claritin than PepsiCo spent on Pepsi-Cola.

Let us hold them to a standard in which we believe. The drugs are safe and will save the American consumer money.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I say to the Senator from Illinois, half the money in advertising for drug companies is for free samples, samples to physicians that end up going to patients for free medication. Just understand half of that money, roughly half, is for free samples given out to hospitals and doctors. That is a way many people who do not have prescription coverage end up getting some medication.

I find it remarkable the Senator says that PhRMA has the Congress in a death grip, and then says somehow the bill that passed last year over PhRMA's objection will pass this year both in the House and the Senate. He says PhRMA has us in a death grip, but at the same time they are passing legislation willy-nilly. I find that inconsistent.

I also find it inconsistent when the Senator says somehow or another we are relying on the courage of the Canadians—that is an often used term—to stand up to the drug companies. What courage is he talking about? He is talking about price controls. He was very forthright in saying we do not have the courage in the Congress to do price controls, so this is the next best thing. We all know how successful price controls are in America. They are an abject failure. We tried that in the 1970s. We have not tried it since because of the horrible disasters that occurred in our economy because of it.

What we are doing here is trying to impose price controls. On whom? We are trying to impose price controls on an industry that invests more on saving lives and preserving the quality and quantity of people's lives than any other industry in America. How are we doing that? We are doing it by reimporting drugs. And the safety issue is clear.

I encourage everyone to vote for the Cochran amendment. That is not going to be enough. Under this measure, the Dorgan proposal, drugs from all over the world—from terrorist countries—can come through Canada into this country without anybody inspecting them in Canada, no one. The law in Canada says they do not have to inspect it. As long as it is not to be used in Canada, all they have to do is mark it Canadian and ship it to the United States, and God knows what will be in the drugs. It could be terrorists, but it could be just phony drugs. We have no ability to check.

This is a huge safety issue. While the Cochran amendment gets at it, it is very important we need to do other things on this legislation to ensure that we are not opening up another avenue for terrorism, another avenue for people to die. The Dorgan amendment says we are not going to do anything to stop the reimportation of drugs until we have a pattern of people dying. So if one person dies, we will keep going until we see three, four, or five? This is remarkable. For what? So we can get lower prices on pharmaceuticals.

Understand what that means. The Senator from Illinois held up a picture of all the countries that have low prices for drugs. Every one of them have price controls, every one of them. They have price controls. They say to the company: Sell at the price we want you to sell it at or you cannot sell it.

In Canada, yes, you pay a lower price. If the company does not take the lower price, No. 1, they cannot sell their drug in Canada. No. 2, if they do not take the lower price, Canada can go ahead and license someone in Canada to make it and infringe on their patent.

What choice does the drugmaker have? None. He is absolutely correct. We in America subsidize that. He is absolutely right on that. There is no bone of contention. The question is, If we don't, what are the consequences? The consequences are very clear. There will be a dramatic reduction in the amount of research that is done. There will be less new drugs coming to market. There will be less cures. There will be less improvement of the quality of people's lives. That is a tradeoff.

But to sit up here and say this is somehow the big bad drug companies against poor patients who cannot get their drugs because of the expense of the drugs here, we have to go to Canada to get them, is a false choice. The choice is, giving that drug at a lower price, yes; putting price controls in it. If that is what the Senator from Illinois wants, he ought to offer an amendment. The choice is less research and less cures in the future.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, in just a few moments we will take a vote on the Cochran amendment. I intend to support the Cochran amendment.

I thought it might be useful to sum up where we are on the issue of trying to get a handle on the costs of drugs in the United States and also on the availability and the accessibility of drugs for our population.

There has been prescription drug legislation before the Senate for 5 years. Four years of this 5 years we were under the Republican control of the Senate, both in terms of the Finance Committee and the floor of the Senate. During that period of time, the Republican leadership found all kinds of ways to circumvent various committees to prioritize issues they wanted to do, but they never did it with regard to the availability of prescription drugs.

And now our Republican friends have been complaining all afternoon. We just heard another complaint.

This debate is about is how we are going to reduce the cost of prescription drugs, and hopefully on how we will increase the availability and the accessibility of prescription drugs.

The underlying amendment is the Dorgan amendment. It will mean many billions in terms of savings for consumers.

Mr. CORZINE. Mr. President, I rise in strong support of the Cochran amendment to allow reimportation of drugs from Canada with important safety protections, and in opposition to the Dorgan amendment, which would allow such reimportation without these important precautions.

As so many of my constituents, I am very concerned about increasing drug costs. Spiraling costs have a real impact on not just seniors but all Americans and health care costs generally.

That is why we need to find ways to contain costs. And Congress needs to enact a Medicare prescription drug benefit that will ensure that all seniors have access to the medicines they need.

Reimportation would allow American consumers to benefit from lower priced drugs available in Canada. It would provide much needed relief for seniors, and it would also provide assistance for the 39 million Americans who have no health care coverage at all.

Reimportation is not without risks, however. I feel strongly that opening our borders without ensuring that adequate protections are in place puts in danger our national security and the health and safety of our citizens. That is why I supported the Cochran amendment, which would enable the Secretary of Health and Human Services to fully assess and determine the safety of drug reimportation before allowing it to go into effect.

I opposed the Dorgan amendment because it lacked these safety precautions and could result in Canada becoming the portal for dangerous counterfeit drugs. In fact, this concern is only heightened now that we face bioterrorist threats, which we witnessed firsthand in New Jersey, where we found ourselves on the front lines of the anthrax attack.

The bottom line is that without a prescription drug benefit seniors will continue to struggle to afford all of their drugs—be they brand name, generics, or reimported drugs. Before us now, we have the opportunity to pass a prescription drug benefit that ensures the safety of our pharmaceuticals and provides access to affordable medicines for our seniors.

For those who are watching this debate, let me share some figures. I want to tell the cancer patients who are watching this debate that, as a result of the pharmaceutical companies abusing the Hatch-Waxman Act and what is called the evergreening of payments, we have seen a 19 month delay of the generic drug Taxol at a cost to consumers of $1.2 billion. Families watching and those affected with breast cancer should know they paid $1.2 billion, because the pharmaceutical companies abused the Hatch-Waxman bill.

For those families affected with epilepsy, the 30 month delay of Neurontin has cost them $1.4 billion. For patients with depression, six evergreened patents have delayed the generic drug Wellbutrin for 31 months, at a cost to consumers of $1.3 billion. For the many seniors with high blood pressure, collusive agreements have delayed generics for months, costing them hundreds of millions of dollars.

For Americans who are watching now, let me say that we are going to do something about it. That is, the underlying bill will do something about it. And we are committed to doing something about it, in spite of all the opposition we have heard this afternoon from those on the other side.

We have the Dorgan amendment, which will make a difference for all the reasons that have been outlined by Senator DORGAN, Senator DURBIN, and others. It will help to put pressure on the drug companies.

Now we are anticipating that, after this vote we will consider the Stabenow amendment. The Stabenow amendment will permit States to bargain with drug companies in order to make available to low-income, uninsured seniors and needy people, necessary drugs at the lowest possible prices.

With all these measures we are trying to give some assurance to the American people that we will make every possible effort to see a damping down on the high costs of prescription drugs.

There are other amendments which we will have an opportunity to debate through tomorrow and into Friday. Hopefully, next week we will have the opportunity to ensure the American people that they are going to have access to prescription drugs that will be dependable and affordable.

I was here in the Senate when we passed the Medicare bill in 1965. I was here in 1964 when it failed by 16, 18 votes, and about 8 months later it passed with 4 or 5 votes to spare. There was a switch of 22 votes in the Senate.

In 1965, the Senate went on record. What we did was to give an assurance to the American people that, if they played by the rules and paid their share, that when they turned 65 they would have health security. We have provided that in terms of hospitalization and physician care.

Prescription drugs are just as important as hospitalization and physician care. Can anyone believe that if we had left out physician care or hospitalization and instead included prescription drugs in 1965, that we would not be debating including hospitalization or physician care tonight in the Medicare system? Of course we would.

When we achieve it, people will say: Why did it take so long? What was the big deal about it? It is absolutely essential to our senior citizens.

Finally, I think this is also a moral issue. When we find that we have prescription drugs that can be life sustaining for our fellow citizens—the elderly and the sick, the men and women who fought in World War II and lifted this country out of a depression and sacrificed for their children—and they can't afford them, that we must act. We have the ability to help improve their quality of life and to reduce their suffering, and we are talking about sending bills to subcommittees and committees? And it is out of order?

It is about time we address this issue. That is what the American people want us to do. That is what they are challenging us to do. That is what the Democratic leader pledged we will do. And we will continue to battle and fight in the days ahead.

I believe our time has expired and under the previous order a roll call vote has been ordered.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Pennsylvania.

Mr. SANTORUM. 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 amendment No. 4301. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 180 Leg.]

YEAS—99

Akaka	Bunning	Conrad
Allard	Burns	Corzine
Allen	Byrd	Craig
Baucus	Campbell	Crapo
Bayh	Cantwell	Daschle
Bennett	Carnahan	Dayton
Biden	Carper	DeWine
Bingaman	Chafee	Dodd
Bond	Cleland	Domenici
Boxer	Clinton	Dorgan
Breaux	Cochran	Durbin
Brownback	Collins	Edwards
Ensign	Kohl	Santorum
Enzi	Kyl	Sarbanes
Feingold	Landrieu	Schumer
Feinstein	Leahy	Sessions
Fitzgerald	Levin	Shelby
Frist	Lieberman	Smith (NH)
Graham	Lincoln	Smith (OR)
Gramm	Lott	Snowe
Grassley	Lugar	Specter
Gregg	McCain	Stabenow
Hagel	McConnell	Stevens
Harkin	Mikulski	Thomas
Hatch	Miller	Thompson
Hollings	Murkowski	Thurmond
Hutchinson	Murray	Torricelli
Hutchison	Nelson (FL)	Voinovich
Inhofe	Nelson (NE)	Warner
Inouye	Nickles	Wellstone
Jeffords	Reed	Wyden
Johnson	Reid	
Kennedy	Roberts	
Kerry	Rockefeller	

NOT VOTING—1

Helms

The amendment (No. 4301) was agreed to.

Mr. COCHRAN. 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.

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

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

AMENDMENT NO. 4305

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator STABENOW.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Ms. STABENOW, proposes an amendment numbered 4305.

Mr. REID. 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 clarify that section 1927 of the Social Security Act does not prohibit a State from entering into drug rebate agreements in order to make outpatient prescription drugs accessible and affordable for residents of the State who are not otherwise eligible for medical assistance under the medicaid program)

At the end, add the following:

SEC. . CLARIFICATION OF STATE AUTHORITY RELATING TO MEDICAID DRUG REBATE AGREEMENTS.

Section 1927 of the Social Security Act (42 U.S.C. 1396r–8) is amended by adding at the end the following:

''(1) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State from—

''(1) directly entering into rebate agreements that are similar to a rebate agreement described in subsection (b) with a manufacturer for purposes of ensuring the affordability of outpatient prescription drugs in order to provide access to such drugs by residents of a State who are not otherwise eligible for medical assistance under this title; or

''(2) making prior authorization (that satisfies the requirements of subsection (d) and that does not violate any requirements of this title that are designed to ensure access to medically necessary prescribed drugs for individuals enrolled in the State program under this title) a condition of not participating in such a similar rebate agreement.''.

MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2003

Mr. REID. Mr. President, on behalf of the majority leader, pursuant to the unanimous consent agreement previously entered into, and after having consulted with the Republican leader, I ask unanimous consent that Calendar No. 486, H.R. 5011, the military construction bill, be called before the Senate.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5011) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes.

Mr. REID. Mr. President, before the Senators start discussing this bill, Senator MCCAIN has asked for 5 minutes in the morning rather than having his 20 minutes now.

I ask unanimous consent that when the Senate resumes consideration of H.R. 5011 on Thursday, there be 15 minutes of debate time with the time divided as follows: 5 minutes each for Senators FEINSTEIN, HUTCHISON, and MCCAIN; that upon the use of that time, without further intervening action or debate, the Senate proceed to vote on passage of the bill, with all other provisions of the previous order remaining in effect.

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

Mr. REID. I thank the Chair.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause is stricken and the text of S. 2709 is inserted in lieu thereof.

The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I am pleased to join with my ranking member, Senator HUTCHISON of Texas, to bring the Fiscal Year 2003 Military Construction Appropriations bill to the Senate for consideration. This is a balanced, bipartisan bill intended to meet some of the most pressing infrastructure requirements of our military forces.

This bill provides $10.6 billion in new budget authority. It represents an increase of less than one tenth of one percent over last year's $10.5 billion military construction bill. But it is nearly 10 percent more than the President's 2003 budget request.

The 2003 budget request submitted by the President severely underfunded the Guard and Reserves. The request was 52 percent below last year's request. Congress is left to make up the shortfall. As all Members know, the Defense Emergency Response Fund funded all projects identified by the President as necessary for the war on terror. While it may be tempting to blame the decrease in military construction funding on the costs of fighting a war on terror, the fact is that the war on terror is fully funded through the Defense Emergency Response Fund.

This bill was coordinated carefully with the Armed Services Committee, and each project in this bill is included in the National Defense Authorization Act passed by the Senate. All of the projects in this bill meet the stringent standards for military construction funding set by the Senate. Every project we funded is in the Services' Future Years Defense Plans, and every project is a top priority of the installation commanders.

Mr. President, the bill was unanimously reported out of the Appropriations Committee on June 27. The package before the Senate today includes technical and conforming changes in the bill and report, as authorized by the full Committee. These changes include clarification of report language as needed and, in one instance, a correction in the tables to delete an unauthorized project that was inadvertently included in the committee print.

The bill provides $5.6 billion—53 percent of the total—for military construction for active and reserve components. Included in this funding is $1.1 billion for barracks; $26 million for child development centers; $137 million for hospital and medical facilities; $159 million for the Chemical Demilitarization Program; and $610 million for the Guard and Reserve components.

An additional $4.23 billion, or 40 percent of the total bill, goes to family housing. This includes $1.33 billion for new family housing units and improvements to existing units; and $2.9 billion for operation and maintenance of existing units.

This bill also includes two new military construction initiatives. The first is the Army and Air Force Transformation Initiative, which sets aside funding for the Army and the Air Force to be used for infrastructure requirements.

For the Army, the funding is allocated for construction related to the Interim Brigade Combat Teams. The Interim Brigades, which were just recently renamed Stryker Brigades, are essential to the Army's effort to become a lighter, more mobile, more effective fighting force. Army officials testified before the Defense Appropriations Subcommittee earlier this year that current levels of military construction funding are not adequate to meet the Army's time line for these brigades.

Likewise, the Air Force is in need of additional funding to move forward quickly with the beddown of aircraft associated with its Air Mobility Modernization Program. The Air Force is facing a serious shortfall in airlift capability. The Air Mobility Modernization Program, which encompasses the acquisition and upgrading of C–17s, C–5s, and C–130s, is urgently needed.

Simply put, the timetables for Army and Air Force transformation that were in place prior to September 11 are no longer adequate. The war on terror has placed pressing new demands, not only on personnel and equipment, but also on infrastructure. The large increase in defense funding that has occurred since September 11 reflects those demands. Under the transformation initiative, the committee has made $100 million available each for the Army and Air Force to be used for infrastructure requirements of the Stryker Brigades and C–17 Air Mobility programs, as determined by the Services.

The second major initiative in this bill is the BRAC Environmental Cleanup Acceleration Initiative. This initiative provides an extra $100 million above the fiscal year 2003 budget request to accelerate the cleanup of dangerous contaminants at military bases that have been closed or realigned as part of the BRAC process. Until the environmental cleanup process is completed, these closed bases are the equivalent of giant white elephants. The services no longer need them, but the communities cannot complete the conversion of them to productive use. In some cases, the lengthy cleanup process presents a problem far worse than just an economic drain on the Services and the communities—in some cases, the contaminants polluting the soil of closed military bases present a serious hazard to human health and the environment.

In my home state of California, for example, plutonium contamination at McClellan Air Force Base continues to present a hazard to the community and to impede progress towards profitable reuse of the property. In Texas, toxic groundwater that has migrated to nearby neighborhoods from the former Kelly Air Force Base has raised fears among residents that the pollution could be causing health problems. These are only two of many examples. The fact is, we have a responsibility to the American people to clean up the buried ordnance and hazardous wastes that contaminate many of our closed or realigned military installations. And I believe that we have a responsibility to act expeditiously. Although the President requested only $545 million for BRAC environmental cleanup, the Services, at the request of the Committee, identified another $237 million in environmental cleanup requirements that could be executed in 2003 if funding were made available. We could not provide the full $237 million needed, but the extra $100 million we recommended will help to speed the cleanup process. Simple common sense indicates that the military should finish the cleanup from the first four rounds of BRAC before diverting scarce resources and creating additional cleanup costs in another round of base closures.

I want to point out that all the projects added to military construction authorization and appropriations bills that are not part of the President's budget request are carefully screened and vetted by the Services. They are the priorities of the men and women who live and work on military installations throughout the country, and sometimes those priorities differ from the priorities of the Pentagon. Installation commanders are uniquely attuned to the needs of their bases, whereas the budget officers at the Pentagon and the Office of Management and Budget are focused on the corporate needs of the Defense Department as a whole. In some cases, a child care center or a barracks may be essential to the well-being of a base, but may not score high enough at the Pentagon to make it into the President's budget. In other cases, a worthy project may be programmed for funding down the road when it is urgently needed now.

Mr. President, this bill meets many military construction needs—all of the projects are authorized, are in the military's Future Year's Defense Plan, and are the base commander's priority. I urge my colleagues to support it. I would like to thank my ranking member for her support in developing this bill. It is a privilege and a pleasure to work with Senator HUTCHISON. I also thank Chairman BYRD, Senator STEVENS, and Senator INOUYE for their guidance and support in developing this package. And I thank the staff of the subcommittee for their dedication and hard work in putting this package together.

I thank my ranking member for her support in developing this bill. I also thank Chairman BYRD, Senator STEVENS, and Senator INOUYE for their guidance and support in developing this package.

I also thank the staff, specifically Christina Evans, B.G. Wright, and Matt Miller on the Democratic side, and Sid Ashworth, Alycia Farrell, and Michael Ralsky on the Republican side.

I reserve the remainder of my time and yield to the ranking member, Senator HUTCHISON from Texas.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Texas.

Mrs. HUTCHISON. I thank the Chair.

Mr. President, I thank the Senator from California, the chairman of the committee. We certainly have worked together on this bill, and Senator FEINSTEIN outlined some of the problems we faced in trying to make up for some of the shortfalls in the budget that we had before, particularly in the environmental cleanup and Guard and Reserve accounts.

We have been able to address the major issues for the Department of Defense and also try to stay on the course that we set to improve the quality of life for our military personnel.

In 2001, when President Bush took the oath of office, he made a promise to America that we would see a transformation of our military. He wanted to take a 25-year look at what our military needs would be, and he appointed Secretary of Defense Donald Rumsfeld, who has the most experience of any Secretary of Defense, having been Secretary of Defense before, to do that very job.

After 9/11, of course, our priorities immediately changed because we then became immediately involved in a crisis, a war on terrorism. Now we are prosecuting a war on terrorism at the same time that we still are trying to look to the future needs of our national defense.

Our bill for military construction attempts to address the top priorities of the Department of Defense. It is a balanced bill and is quite bipartisan.

I am particularly pleased to see that we are going to put a large part of this bill, $1.17 billion, in barracks and dormitories for our military quality of life; $4.23 billion for family housing. We are asking so much of our military today. Our military personnel on active duty know that they may well be deployed overseas and perhaps on dangerous missions. So we want them to have a quality of life for themselves and for their families that will allow them to serve, knowing that their families will be taken care of in good housing and with good health care. Our part is housing, and we are fully funding the new barracks, dormitories, and family housing.

In recent years, we have made real progress in improving housing for single servicemembers and for families. We are also trying to improve workplaces. We have funding in this bill for the upgrading of the work facilities, the battalion headquarters, and the units where they are working. It is my hope that in future budgets we will see sufficient resources to continue this effort to modernize, renovate, and improve our aging defense facilities and infrastructure.

The effects of sustained inattention by the Department and the military services to basic infrastructure are certainly apparent on nearly every military installation in our country. This will continue to have long-term implications as facilities continue to age disproportionately without sustained investment in maintenance and repair.

This bill also provides $599 million for the Reserve components, which is a substantial increase over the President's budget request primarily because of the increased use of the Guard and Reserve since September 11. These are important increases that signal a renewed commitment to upgrading and rebuilding the infrastructure that is truly the backbone of our Nation's military, which has so long been neglected.

Guard and Reserve members have stepped up to the plate for our country, even before 9/11, but more so after. These are men and women with full-time civilian jobs. They answer the call when our country asks, and their employers sacrifice, too. We are asking a lot, and they always come through. That is why we are trying to upgrade the facilities and the equipment they need to do their jobs well.

The bill also addresses several key Department of Defense initiatives. First are the Army and Air Force transformation initiatives. We have provided $100 million for critical infrastructure needed to support the Army's interim brigade combat teams and $100 million for the Air Force's aircraft mobility programs.

Senator FEINSTEIN discussed those programs earlier. These programs are essential to ensuring that the Army and Air Force have the infrastructure in place to move forward with the transformation efforts over the next several years. Without this assistance, they would not be able to meet their established milestones.

The committee report also includes a $100 million increase over the President's budget request for environmental cleanup at military installations that have been closed as a part of the base realignment and closure effort. This additional funding is necessary to enable the military to accelerate the cleanup of dangerous contaminants at closed and realigned bases throughout the Nation.

Senator FEINSTEIN mentioned my home State of Texas where Kelly Air Force Base is one of those that were closed and where there are very significant reported health problems that many believe—and there is evidence to support—are caused by environmental contaminants at that closed base. Certainly California is experiencing similar problems. We are going to try to do what we said we would do for the people in the communities where we have closed bases.

I support this bill. It is exactly what we need to address the infrastructure problems that will support our military and Department of Defense budget.

I thank the chairman of the subcommittee, Senator FEINSTEIN, for her leadership in crafting this bill. She and her staff—Christina Evans and B.G. Wright—have done an excellent job in putting together a bipartisan bill.

I also thank my staff—Sid Ashworth, Alycia Farrell and Michael Ralsky—for their invaluable work on our Committee on Appropriations every year. Michael Ralsky has done a wonderful job for me and will soon be going over to the Pentagon where we know he will contribute his expertise, gained from working in the Senate for so many years.

Their support has been really terrific, and we appreciate that. I appreciate that Senator FEINSTEIN also thanked Senator INOUYE and Senator STEVENS for their work. They do the Department of Defense budgets, and we certainly dovetail with them in our military construction budgets. I cannot think of any two people who are more committed to our strong military than TED STEVENS and DANNY INOUYE,

two veterans who have served our country in the military and who would never, ever walk away from our responsibility to take care of our military personnel. They have been so supportive of this military construction effort that Senator FEINSTEIN and I have put together.

I support the bill and urge my colleagues to support it when we vote tomorrow.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Again, I thank my ranking member. It was great to work with her, and I think she knows that. I think we have a very good bill.

AMENDMENT NO. 4306

Mrs. FEINSTEIN. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mrs. HUTCHISON, Mr. THURMOND, Mr. DOMENICI, Mr. BINGAMAN, Mr. BIDEN, Mr. CARPER, Mr. WYDEN, Mr. SMITH of Oregon, Mr. FRIST, and Mr. THOMPSON proposes an amendment numbered 4306.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Army'', $8,000,000 may be provided for a parking garage at Walter Reed Army Medical Center, District of Columbia.

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Army'', $3,000,000 may be provided for a Anechoic Chamber at White Sands Missile Range, New Mexico.

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Air Force'', $7,500,000 may be provided for a control tower at Dover Air Force Base, Delaware.

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Army National Guard'', $9,000,000 may be provided for a Joint Readiness Center at Eugene, Oregon.

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Air National Guard'', $8,400,000 may be provided for a Composite Maintenance Complex, Phase II in Nashville, Tennessee.

Mrs. FEINSTEIN. Mr. President, Senator HUTCHISON and I authored this amendment on behalf of Senators THURMOND, DOMENICI, BINGAMAN, BIDEN, CARPER, WYDEN, GORDON SMITH, FRIST, and THOMPSON. The amendment would include in the military construction bill five projects that were authorized by the Senate during consideration of the National Defense Authorization Act. These projects include a parking garage at Walter Reed Medical Center in the District of Columbia; an Anechoic testing chamber at White Sands Missile Range in New Mexico; a control tower at Dover Air Force base in Delaware; a Joint Readiness Center at Eugene, OR; and a composite maintenance complex in Nashville, TN.

All of these projects have been authorized. They meet all the requirements of the military construction program, and I urge my colleagues to adopt the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 4306.

The amendment (No. 4306) was agreed to.

Mrs. FEINSTEIN. 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.

Mr. SCHUMER. Mr. President, I would like to take a moment to thank Senator FEINSTEIN for her stewardship of the Military Construction Appropriations Act for Fiscal Year 2003. Her work on this bill will provide billions of dollars in funding to support our Nation's defense efforts, and I support those efforts wholeheartedly.

My colleague from New York, Senator CLINTON, and I would like to take a moment to engage our colleague in a colloquy.

Mrs. FEINSTEIN. I thank my colleague for his kind words and would be happy to engage in a colloquy with the Senators from New York.

Mr. SCHUMER. Last month, Senator CLINTON and I had the special honor of joining in the welcome-home celebration of the men and women of the 10th Mountain Division at Fort Drum. From fighting in Afghanistan to peacekeeping in Kosovo, our troops help make the world safe for people who cherish freedom. These soldiers were prepared for whatever obstacles came their way in Afghanistan precisely because of the training they received at Fort Drum. As we look to transform our nation's military to fit the needs of 21st century warfare, Fort Drum-trained soldiers are exactly the kind of troops we need.

Mr. CLINTON. In April, I had the privilege of visiting the Walter Reed Army Medical Center, where other soldiers from the 10th Mountain Division were recuperating from wounds suffered in battle in Afghanistan. I know that all American feel the same pride for these distinguished service men and women as Senator SCHUMER and myself. It is no coincidence that when the initial troops were called into Afghanistan, soldiers from the 10th Mountain Division were among the first ones in. As one of the most frequently deployed missions in the U.S. Army, these flexible, mobile forces are a powerful weapon.

Mr. SCHUMER. Mr. President, it is my under standing that contained in the House version of the Military Construction Appropriations Act for fiscal year 2003 is an additional $18.3 million in military construction funding that will support the construction of two projects vital to the continued functioning of Fort Drum, located in upstate New York.

Mrs. CLINTON. The first of the two projects is a parallel taxiway at Wheeler-Sack Army Airfield, WSAAF at Fort Drum. This project will construct a new concrete taxiway parallel to the main runway to support operations at the airfield. The taxiway is required to enhance the capability, safety, and efficiency in the deployment of troops and equipment for the 10th Mountain Division, LI, and other fully functional units ready for combat from the installation. Fort Drum has experienced an increase in the number of air training missions and deployment operations in support of training, contingency, and NATO support missions. This construction project is necessary to keep the fort operating.

Mr. SCHUMER. The second project is the one- plus-one DIVARTY barracks expansion. This project consists of construction of a two-story barracks building with a 100-room unaccompanied enlisted personnel housing facility to include a built-in soldier community building. The project will upgrade the current barracks to meet the new Department of Defense enlisted personnel housing standards. The project is required to support the DIVARTY housing facilities for personnel in grades E1 through E6 to meet the one-plus standard. My colleague and I feel that this project is vital to New York as well as a number of States in the Northeast.

Mrs. CLINTON. Now more than ever, we must remain resolute in our defense of America's values, interests and security. Our safety at home, as well as abroad rests on the strength of our military response, and Fort Drum is an absolutely essential component. Senator SCHUMER and I plan to work with my colleagues to ensure that Fort Drum and the 10th Mountain Division continue to play a large role in defending our Nation.

Mr. SCHUMER. We are aware that there are many priorities that the Senate is considering, but would just like to bring to our distinguished colleague's attention that these projects would not be included in the Senate Bill because they were not authorized in accordance with Senate authorization criteria. This same criteria is not applicable in the House. We trust that the chairman looks favorably upon these construction projects and is willing to take the steps necessary to support the House's appropriation allocation.

Mrs. FEINSTEIN. I appreciate the remarks of the Senators of New York and assure them that we will do our best to retain these projects in conference.

Mr. CONRAD. Mr. President, I rise to offer for the RECORD the Budget Committee's official scoring for S. 2709, the Military Construction Appropriations Act for Fiscal Year 2003.

The Senate bill provides $10.622 billion in discretionary budget authority,

all classified as defense spending, which will result in new outlays in 2003 of $2.771 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the Senate bill total $10.12 billion in 2003.

Despite the bipartisan support of 59 Senators, the Senate was blocked on procedural grounds last month from approving a 302(a) allocation for the Appropriations Committee. Consequently, the Appropriations Committee voted 20–0 on June 27 to adopt a set of non-binding sub-allocations for its 13 subcommittees totaling $768.1 billion in budget authority and $793.1 billion in outlays. While the committee's subcommittee's allocations are consistent with both the amendment supported by 59 Senators last month and with the President's request for total discretionary budget authority for fiscal year 2003, they are not enforceable under either Senate budget rules or the Balanced Budget and Emergency Deficit Control Act.

For the Military Construction subcommittee, the full committee allocated $10.622 billion in budget authority and $10.122 billion in total outlays for 2003. The bill reported by the full committee on June 27 is fully consistent with that allocation. In addition, S. 2709 does not include any emergency designations or advance appropriations.

I ask unanimous consent that a table displaying the budget committee scoring of this bill be printed in the RECORD.

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

S. 2709, MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2003

[Spending comparisons—Senate-reported bill (in millions of dollars)]

	Defense	Mandatory	Total
Senate-reported bill:			
Budget Authority	10,622	.....	10,622
Outlays	10,120	.....	10,120
Senate committee allocation: [1]			
Budget Authority	10,622	.....	10,622
Outlays	10,122	.....	10,122
House-passed: [2]			
Budget Authority	10,083	.....	10,083
Outlays	10,052	.....	10,052
President's request: [2]			
Budget Authority	9,663	.....	9,663
Outlays	9,996	.....	9,996
SENATE-REPORTED BILL COMPARED TO:			
Senate committee allocation: [1]			
Budget Authority	.....	.....	.....
Outlays	(2)	.....	(2)
House-passed:			
Budget Authority	539	.....	539
Outlays	68	.....	68
President's request:			
Budget Authority	959	.....	959
Outlays	124	.....	124

[1] The Senate has not adopted a 302(a) allocation for the Appropriations Committee. The committee has set non-enforceable sub-allocations to its 13 subcomittees. The table compares the committee-reported bill with the committee's allocation to the Military Construction Subcommittee for informational purposes only.

[2] The cost of the House-reported bill does not include $6 million in 2003 outlays estimated by CBO to occur as a result of the House-passed 2002 supplemental. Outlays from the 2002 supplemental will be added after completion of the conference on that bill.

[3] The President requested total discretionary budget authority for 2003 of $768.1 billion, including a proposal to change how the budget records the accrual cost of future pension and health retiree benefits earned by current federal employees. Because the Congress has not acted on that proposal, for comparability, the numbers of the table exclude the effects of the President's accrual proposal.

Notes: Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions. Prepared by SBC Majority Staff, 7–16–01.

Mrs. FEINSTEIN. I believe that completes the military construction bill.

Mr. President, I yield back all my time. It is my understanding the vote will be tomorrow at 10:30.

The PRESIDING OFFICER. Under the previous order, the substitute amendment, as amended, is agreed to.

The amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mrs. FEINSTEIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Ohio.

A BUDGET DEFICIT REALITY CHECK

Mr. VOINOVICH. I rise today to discuss an issue that I have been known to have some thoughts about from time to time, and that is our Nation's fiscal situation and this body's approach to its budget responsibilities, something the President and I have talked about on many occasions.

The country's finances are in dire condition. We face a sea of red ink as far as the eye can see, and perhaps the worst thing about it is that few people in this body appear to recognize or acknowledge how bad that predicament is. The Federal Government is running a deficit and will for the foreseeable future, when just last year we had an on-budget surplus. Despite this, Congress continues to spend money like drunken sailors, refusing to prioritize and make the tough choices necessary to stop the bleeding and get us back on track.

In the rush to spend, we are not asking the basic question: Is this the best use of our limited funds at this point in time?

I want to emphasize to my colleagues how critical our budget situation has become. Over the past year, the budget outlook has worsened dramatically. Last year, the Congressional Budget Office predicted a unified budget surplus of $313 billion. That is for fiscal year 2002. That means the Social Security surplus and the on-budget surplus together equals $313 billion. We all thought everything was going great, and I was extremely pleased because Congress believed that we might be able to once again use the entire Social Security surplus to reduce the national debt, after all, we did it in 1999 and 2000. As a matter of fact, during that period of time we reduced the national debt $365 billion, the first time that had happened in almost 30 years. Unfortunately, it is not turning out that way. Instead of reducing the debt, we are going to add to it. Seven months ago CBO released budget projections that showed the Federal Government is in much worse fiscal condition than we all thought. These new projections show that the Federal Government will spend the entire Social Security surplus in both the current fiscal year and in fiscal year 2003.

Today, our fiscal condition continues to deteriorate. Figures from the Senate Budget Committee show that we will likely suffer a budget deficit of $152 billion this year. That means that this year we will borrow and spend the entire $157 billion Social Security surplus and on top of that we are going to have to borrow another $152 billion through the issuance of new debt. Put another way, the Federal Government will borrow a total of $310 billion this year. This is new debt on top of the staggering $6 trillion national debt we already owe.

It is no wonder that our constituents have such a hard time grasping the magnitude of the national debt when it is counted in unfathomable terms like trillions of dollars.

Unfortunately, next year it gets even worse. For fiscal year 2003, which begins October 1, if we maintain our current course of spending we will borrow and spend the entire $176 billion Social Security surplus and issue $194 billion in debt on top of that. Already, next year's budget deficit totals $370 billion, and that is before any supplemental spending, which we all know is inevitable.

If anyone believes these discouraging numbers can be turned around by a growing economy, I think they ought to understand that these projections for 2003 are based on a healthy inflation-adjusted economic growth rate of 3.4 percent.

I would like to draw everyone's eyes to this chart that I am talking about for fiscal year 2002 and fiscal year 2003. This year, fiscal year 2002, we were projected to have a $313 billion surplus, but instead we are going to take the Social Security surplus that the President and I talked about using to pay down debt and spend that to operate the government. Then on top of that we are going to borrow another $152 billion. So we are going to borrow nearly $310 billion.

Next year, the Social Security surplus will be $175 billion. Instead of using that money to pay down debt, we are going to spend it to run the Government, and then we are going to add another almost $200 billion of additional debt.

When people come to see me in my office and want something from the Federal Government, I ask the question of them: Is it so worthwhile that we should borrow the money? Does it justify spending the Social Security surplus or causing the Treasury to issue new debt?

We are filling the gap today in the only way we know; that is, we are putting the Treasury back in the business of auctioning new debt to raise the billions of dollars needed to pay for the Government's operations this year.

What I find very telling about the Treasury auctions is the duration of some of the new bonds. They mature in roughly 10 years. What that tells me is the U.S. Treasury recognizes the Federal Government will need to borrow money for a long time. This speaks volumes about our long-term budget predicament. We better take notice.

What we really need is a fiscal reality check. We are sinking deeper and deeper into deficits. But most disturbing of all, I don't hear any outcry. No one seems to be paying any attention. What I do hear are constant calls for more Government programs and for more Government spending.

The fact that our Nation faces several serious challenges right now, including a serious national security challenge, does not exempt us from the basic rules of fiscal policy. In fact, I believe the national security crisis we now face demands of us an even more vigilant look at what we are doing with our spending to make sure the needed funds go to the most pressing priorities.

Spending without check, wrapping every pork project in the flag and calling it a national security priority, saying yes to every major interest group, and playing politics with the public's purse are all irresponsible behaviors that will sentence us to another long term of deficit spending and increased national debt.

We recently passed a farm bill that even leading farm legislators decried as too expensive. Besides returning to the failed farm policies of the past, this legislation increased agricultural spending by $80 billion over the next 10 years. We have also just finished a Defense authorization bill that contains huge increases. The Senate-passed bill authorizes $393.4 billion in spending. That is an increase of $42 billion or about 12.2 percent over last year. We cannot have it all.

The White House is calling for a $45 billion increase in defense spending and a big increase in spending on homeland security. These are serious needs and deserve our attention. They require making some tradeoffs to meet them. We do need to increase defense spending, but let's examine whether $45 billion is the right number. I was heartened to learn that the House of Representatives acted to move about $2.3 billion in funding from defense allocations to other programs. The Senate should do the same, and then some, instead of forever increasing funding by adding additional spending to the total. We need to make some tough decisions to make tradeoffs and shift funding within given budget totals.

At the same time, the record growth of domestic spending over the past several years has been nothing short of meteoric. Given the huge increases many agencies and programs have had, do we really need to continue feeding them at these huge levels? If anything, I think agencies need a breather to spend the money Congress has been shoveling their way over the past several years. Anyone looking for the location of the recently departed surplus, need look no further than the huge increases in discretionary spending for fiscal years 1998 to 2002.

This is the chart that shows it: Agriculture, the average growth was 5.2 percent; total growth was 21 percent from 1998 to 2002; Commerce, 51 percent; Defense, 24 percent; Education, 60 percent; Energy, 23 percent; Health and Human Services, 50 percent; HUD, 44 percent.

These are unbelievable increases in spending. That is a lot of money in the pipeline. The fact is, at this stage of the game, we need to look at the spending we have already done during the last several years and scrutinize our domestic priorities to make sure our most pressing needs receive our limited budget dollars. This means making tough choices, telling some people no, and having the guts to stand up to groups that are considered untouchables and say we cannot afford them right now.

I am talking about lots of other requests we will be getting. For example, we are talking about Medicare and what we are going to do about that. What we have to understand is we just cannot rack up huge bills today that will come due tomorrow because tomorrow's bills will be even bigger than today's. I am talking about Social Security and Medicare. These two critical programs are headed toward serious financial trouble and will require huge infusions of cash to keep them going. On top of that, there is widespread agreement, myself included, that we need to provide a prescription drug benefit to seniors. And it is not going to be cheap. This is the issue now before the Senate.

We face a situation in a couple of decades in which spending on Social Security, Medicare, and other entitlements will equal what we spend today on the entire Federal Government. In a few short years, the percentage of overall spending that is left for defense and other domestic needs will be very little. To their credit, David Walker, the Comptroller General, and CBO Director, Dan Crippen, have made this point over and over again, before committee after committee, but no one seems to be listening.

Make no mistake, we will meet these obligations. The trillions of dollars in special issue Treasury bonds held by the Social Security trustees are going to be redeemed and made good by the Treasury. Some beltway pundits might dispute the reality of the Social Security trust fund, but they are dead wrong. The liabilities in the trust fund are real. The day will come, in 2015 or 2016, when the money coming into Social Security will not be enough to cover all the payments, and we will have to reach into that Social Security trust fund and begin redeeming those IOUs. To pay those IOUs we either have to borrow more money or raise taxes.

The fact is the day of reckoning is rapidly approaching. We need to start being concerned about it. Remember the money that was supposed to be kept in the lockbox to pay down the debt? I remember the lockbox. I was going to bring my lockbox from my office to demonstrate my point. We will not see the money in that lockbox paying down debt for probably a decade. We won't see an on-budget surplus for at least 10 years at the rate we are going.

Mr. President, I want my colleagues to recognize that the surpluses we refer to are on a unified basis. The public is being told we might go back to that unified budget. But I hope they understand that the unified budget includes the Social Security surplus. When we talk about a surplus, the surplus we are talking about includes the Social Security surplus. In my book that is not a true surplus because it requires raiding the Social Security surplus. The people that know, understand we will be using that Social Security surplus for a long time; not to pay down debt but to pay for the regular operation of the Federal Government.

When the day arrives in 2015 or 2016 and that Social Security surplus disappears, we will have to find additional money to pay for Social Security and Medicare.

Our budget process is broken and needs to be fixed. This year, the Senate is increasingly resigned to the fact that we will not adopt a budget resolution. I say, shame on the majority. This is the first time since 1974 that the Senate has not passed a budget resolution. What it tells us about the State of the budget process is this: It is a critical document that we need to manage our money, and we did not even write one. In its current form, the budget process is weak and meaningless and does nothing to control the endless congressional urge to splurge.

When the Budget Enforcement Act expires in September, Katy bar the door on the floor of the Senate when the spending rampage begins.

I fully support my colleagues efforts to extend the discretionary spending caps and extend the pay-go rules. These are important steps in reestablishing fiscal discipline. The problem is, these safeguards are not enough. These good rules have been circumvented repeatedly in the past, so we know that rules to enforce fiscal discipline can be ignored unless there is a broad-based sense of urgency that we must address our budgetary crisis. Until we change our thinking and recognize we must live within our means, we will continue to face a mounting deficit despite the rules.

In the absence of an enforceable budget document this year, one key

step for enforcing budgetary discipline in Congress would be to adhere to the aggregate discretionary spending total of $759 billion proposed in the President's budget and in the budget resolution that passed in the House of Representatives.

Many of my colleagues say it is not possible to limit spending to that amount. I disagree, and I applaud my colleagues in the House who understand that we have to make those hard choices. Drawing a line in the sand at $759 billion is a way to do that.

A few weeks ago my friend from Kentucky, Senator BUNNING, and I sent a letter to the President with 34 signatures from Members of the Senate pledging to back him up if he vetoes excessive spending bills. I hope the President will exercise his veto authority for any bills that would likely increase spending beyond $759 billion.

But the President has to understand that if he vetoes any spending over $759 billion, we cannot hold to that figure unless we shift money from the defense budget.

What I am suggesting is that we shift some of the money from the defense budget to the domestic side, rethink some of the large increases in domestic spending that are in the 2003 budget, and spread that money around to meet our other domestic needs. That means taking on things such as NIH, that we all love. That has almost increased 50 percent during the last several years.

The President knows, as a former State Governor, that when you have a financial problem, what you do is reconsider your spending plans. If you have some peaks in spending, you have to reduce those so you can make more money available to stay within your budget. This administration has to understand if they receive every dime they want for defense spending and do not do anything about the peaks they have on the domestic side of the budget, we are going to have a catastrophe at the end of this year. They will get their money for defense, the domestic money will be forthcoming, and we will go far beyond the $759 billion.

We will do the same thing that happened in the 1980s when I was mayor of the city of Cleveland and watched what was happening here in Washington. The President got his defense money, others got their domestic spending, and this terrible debt that we have, the $6 trillion debt we are paying for today is a result of that fiscal irresponsibility. We have to make sure it doesn't happen again.

As I said, these are the kinds of hard choices I had to make as a mayor and Governor. I did not have the option of just borrowing the money from our pension funds. I could not do that. If I told the people of Ohio, for example, when I was Governor, I was going to use the Public Employees Retirement Funds to run the State of Ohio, they would have run me out of office. But here in the Federal government it apparently is OK for Congress to use the Social Security money. It is unbelievable to me. We should be doing what cities are doing in this country today, what States are doing in this country today, and what families are doing. There are a lot of families in this country today who are reallocating their resources because the money is just not coming in. They are changing their priorities, and we should do the same thing. We are no better than America's families.

If people around here could not borrow the money or use pension funds, I can tell you things would be different. That is why we ought to have a balanced budget amendment, so we have the same kind of fiscal restraint we had as Governors and mayors and county officials.

This year is an anomaly, however, and I hope not to see it repeated. I hope that next year we will have in place an invigorated budget process that helps Congress resist its worst urges and control spending in a responsible way.

Yesterday, Federal Reserve Chairman Alan Greenspan said:

> . . . that the underlying disciplinary mechanisms that form the framework for Federal budget decisions over most of the past 15 years have eroded. The administration and Congress can make a valuable contribution to the prospects for the growth of the economy by taking measures to restore this discipline and return the Federal budget over time to a posture that is supportive of long-term economic growth.

If we do not get things under control, we are not going to have the economic growth necessary to take care of all our needs. That is why I have been developing a budget process reform bill with Senator FEINGOLD. This bill will extend important aspects of the existing budget process, such as the spending caps and PAYGO.

In addition, the bill contains several provisions aimed at providing more information on the true state of the budget so people understand what is going on around here. It is not hocuspocus.

The bill requires accrual accounting for Federal insurance programs. It requires CBO and the Joint Tax Committee to report how legislation changes interest costs. It requires the GAO to issue an annual report on the magnitude of liabilities facing the Federal Government. And it convenes another budget concepts commission, which last met in 1967, to assess whether the fundamental measures for the Federal budget are the right ones.

With some tough new guidelines to rework the budget process, a willingness to accept the fact that future expenses are as real and as important as today's, and the guts to make the tough choices necessary to prioritize our spending, we might just have a shot at achieving sound fiscal health.

Today, the Federal budget deficits are not as big as those we faced in the 1980s compared to the economy as a whole. But we are headed quickly in that direction. Given the rampant spending proclivities of Congress, it will not be long before our situation becomes just as bad as it was in the 1980s. I implore my colleagues to understand that we are on the edge of an abyss. We must stop before we commit fiscal suicide.

A lot of people will say that the 1980s were pretty great, but it is also part of the reason, as I mentioned, that we have the enormous debt we have today. I remind my colleagues that we spend 11 percent of the annual Federal budget to pay for our fiscal irresponsibility of the past; i.e., we were not willing to either pay for or do without things. We borrowed the money, used the Social Security surplus, and that is why we have the debt we have today.

We are now engaged in the war against terrorism at home and abroad, and we have some very pressing domestic needs. We have to understand that we cannot get the job done by practicing business as usual. We have to understand that. We just cannot do that anymore.

The decisions we make this year are going to have enormous impact on the United States of America, our ability to maintain a competitive position in the world, and on the quality of life of our children and grandchildren. Our country and their future are in our hands.

Let history record that we had the courage to prioritize our Nation's needs within the framework of fiscal responsibility—to make tough choices and exercise tough love today, for our children's and grandchildren's tomorrows.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant 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.

TERRORISM INSURANCE

Mr. REID. Mr. President, I am not going to formally ask this UC because there is no one here to object, but I want to again offer the UC regarding terrorism insurance. I will just lay on the record that when we initially offered this, we wanted a ratio of three Democrats to two Republicans, which is fairly standard. We were told by the minority they would rather have four and three. Remember, this is terrorism insurance. So we said: Fine, four-three. And now they won't agree to that. It is too bad.

The country needs this legislation. We can't do it until we go to conference. This is only appointing conferees.

I hope we are able to get this cleared in the immediate future. I ran into one of the President's lobbyists out here. The President has three or four people who cover the Senate. One of them told

me—I will not embarrass that person; I don't want to get him in trouble with anyone—he said: Keep pushing this. This is something we need.

We know that. But he should not be talking to me, although I am happy to talk to him anytime. He should be talking to whoever is holding this up.

WOMEN IN THE SENATE

Mr. REID. Mr. President, we were finally able to get the military construction appropriations bill completed. We will vote on it in the morning, but basically it is completed. That is our first appropriations bill. We will vote on that tomorrow. We will have 12 to go. I hope we can make good progress in the next couple of weeks and get more of those done. But before we leave the military construction appropriations bill, I want to make a few comments.

I had the good fortune of being able to chair that subcommittee for some time. I was ranking member after that. It was a great experience. It is a wonderful bill, to work on programs that directly affect military personnel. It affects them all over the world.

Construction takes place in Nevada at Nellis Air Force Base, Fallon Naval Air Station. Indian Springs, that used to be a full-fledged air base and now it is a base that deals principally with the drones, unmanned vehicles. It is not only a bill that is for Nevada, it is good for every State in the Union. As I indicated, construction takes place around the world.

The reason I wanted to comment on this is, I know this bill very well. I have to say Senators FEINSTEIN and HUTCHISON have done a remarkably good job.

I talked to Senator FEINSTEIN after she completed debate. I said: DIANNE, I just think you have done such a good job on this, you and Senator HUTCHISON. I don't want to say anything that is wrong, that will be untoward, but I think it speaks volumes that two women are handling the legislation dealing with the military personnel of our country.

She said to me that she recognized that.

And I said: Would you be offended in any way if I talk about that a little bit, the fact that here we have this multibillion-dollar bill that has been handled as well as any bill could be handled, and I think the American public should understand the great contribution made by these two female Senators.

I have seen the Senate change since I came here. Twenty percent of the Democratic caucus now are women. The Senate is a better place because of women serving here. Things have been accomplished that would not have been accomplished but for them.

I go back to something that really struck home with me. I was touring a ranch in northern Nevada. The ranch was run by the Glaser brothers. I know them well. One of them I served with in the State legislature for many years. He had retired at the time. He is now deceased.

We were out looking at this bird sanctuary he had created on his own with no Federal help, no State help, in the middle of this vast, beautiful ranch of his. We were talking about how much farm equipment costs.

Farm equipment is very expensive. But he said something to me I have never forgotten. He said: You know, Harry, any time that I can hire women to run these big pieces of heavy equipment, I do so.

I said: Norm, why is that?

He said: Because they take better care of it. I have found over the years that they are more gentle with the equipment. They don't do things to hurt the equipment. Any chance I get that I can hire women to run these big pieces of equipment, I do, because they do a better job than the men.

Well, I don't want to concede anything at this time, that these two Senators did a better job than has been done in the past. But I will have to tell you, it wouldn't take much to convince the rest of the Senate that they probably did a better job than has ever been done before.

I say the Senate and the country are better for having these women in the Senate. I hope that as the years go by there will be more women elected to the Senate. There are a lot of women around the country running for the Senate this year. In the years to come, there will certainly be more than 20 percent of the Democratic caucus that are women.

U.S.-CHINA SECURITY REVIEW COMMISSION ANNUAL REPORT

Mr. BYRD. Mr. President, the U.S.-China Security Review Commission on Monday released its first annual report, as directed by the Congress in its authorizing statute, P.L. 106–398, October 30, 2000. It is a broad-ranging analysis, with major recommendations for consideration. I will ask unanimous consent that the Executive Summary be printed in the RECORD at the conclusion of my remarks.

The report is extensive, thorough, and disturbing in many respects. It paints a detailed portrait of a China determined to: acquire a vast array of high technology; broaden and deepen its industrial base; expand its research and development capabilities; and attract substantial amounts of American and other foreign investment. China is on the move. But, it is worthwhile to note that China pays for much of its progress through a highly imbalanced trade relationship with the U.S. Last year the U.S. trade deficit with China exceeded $80 billion U.S. dollars.

One could simply say that the Chinese are intent on entering the modern era, and on building a strong nation state, financed by aggressively exporting goods to the U.S. But, Mr. President, there are some very troubling aspects of the U.S./Chinese relationship.

The Commission found that U.S. policy toward China has been and is alarmingly fragmented. It lacks consistency and depth. U.S. policy toward China has often been driven solely by commercial interests, specific human rights issues, or by a particular military crisis, rather than by a comprehensive examination of all the issues which impact upon this relationship. Furthermore, over the last 30 years U.S. policy toward China has been dominated by strong Executive branch personalities and compulsive secrecy. There seems to be little sustainable consensus on the long-term national interests of the U.S. vis a vis China.

The Report makes numerous recommendations designed to elicit a more comprehensive understanding of China by U.S. policy makers and by the general public. These include rebuilding the Library of Congress' China collection, new language and area studies programs, new efforts at open source collection by the intelligence community, and an upgrading of the Federal Broadcast Information Service. The fact is that we as a nation know far too little about China, and we need a better level of effort in this regard.

There is new information and analysis in the Commission's report regarding Chinese access to U.S. capital markets, and a renewed call for more effective consultations and consensus-building between the President and Congress on Taiwan policy. The report also recommends new tools which should be employed to encourage the Chinese to comply with their commitments—in proliferation practices, prison labor agreements, intellectual property agreements enforcement, and most importantly, with their far-reaching obligations under the WTO.

The report calls for increased scrutiny of corporate activities in China, and a new corporate reporting system to reveal what investment, R&D and technology is being sent to China. Transparency, disclosure and corporate accountability should be required of U.S. firms' operations in China, and are certainly of much interest to American shareholders and investors.

I am pleased that the Report is a strong bipartisan effort, a broad consensus of nearly all the Commissioners, who approved it by a vote of 11–1. It is both an educational report and an action document. Each chapter highlights findings and makes recommendations for action which flow from those findings. The executive summery gives the key 21 recommendations, but additional valuable proposals are found at the end of each chapter.

Some of the Report's key findings about the U.S.-China relationship include:

The U.S.-China bilateral relationship is poorly coordinated and lacks a sustainable consensus among elected officials in Congress and the Executive branch;

China's leaders see the United States as a declining power with important military vulnerabilities that can be exploited;

There are serious differences in perceptions each country holds of the other and a potential for misunderstandings that are compounded by the lack of bilateral institutions for confidence-building and crisis-management;

There is plausible evidence that the burgeoning trade deficit with China will worsen despite China's entry into the World Trade Organization (WTO);

The U.S. may be developing a reliance on Chinese imports that could in time undermine the U.S. defense industrial base;

The U.S. lacks adequate institutional mechanisms to monitor national security concerns involving Chinese and other foreign entities seeking to raise capital in the U.S. debt and equity markets;

China provides technology and components for weapons of mass destruction and their delivery systems to terrorist sponsoring states, presenting an increasing threat to U.S. security interests, in the Middle East and Asia in particular.

Radical changes in China's economic fortunes have been fueled by U.S. investors and multinational firms, and have come with severe sacrifices in the form of lost American manufacturing jobs.

Mr. President, there is much to recommend in this Report, and many recommendations which may be of interest to my colleagues.

I congratulate the Chairman and all of the commissioners who authored this fine report, as well as the staff members of the Commission who worked tirelessly on this important endeavor.

Mr. President, I ask unanimous consent that the executive summary be printed in the RECORD.

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

EXECUTIVE SUMMARY

Relations between the United States and China during the last half-century have not always been smooth. The two countries have sharply contrasting worldviews, competing geo-strategic interests, and opposing political systems. More recently, bilateral ties have centered on rapidly growing economic interactions that have muted political differences. For the moment, these relations have not softened China's egregious behavior on human rights nor changed its strategic perceptions that the U.S. is its principal obstacle to growing regional influence. No one can reliably predict whether relations between the U.S. and China will remain contentious or grow into a cooperative relationship molded by either converging ideologies or respect for ideological differences, compatible regional interests, and a mutually beneficial economic relationship.

However the relationship develops, it will have a profound impact on the course of the twenty-first century. The policies pursued today by both China and the United States will affect future relations. The Congress created the U.S.-China Security Review Commission to assess ''the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China'' and to report its conclusions annually to the Congress. It specifically directed the Commission to focus on our deepening economic, trade, and financial linkages with China. The Congress wanted the Commission to evaluate whether our economic policies with China harm or help United States national security and, based on that assessment, to make recommendations in those areas that will improve our nation's interests.

National security has come to include military, economic and political relationships. At any time, one of these concerns may dominate. They interact with one another and affect our overall security and well-being. Neglect of any one element will diminish our overall security as a nation. The United States must be attentive to the strength and readiness of our military forces, the health of our economy, and the vibrancy of our political relationships.

The Congress also asked the Commission to include in its Report ''a full analysis, along with conclusions and recommendations for legislative and administrative actions.'' This is the Commission's first Report. In keeping with the Congressional mandate, this Report provides a comprehensive analysis of the Commission's year-long review of U.S.-China relations, the principal findings that emerged from that investigation, and the recommendations or measures the Commission believes should be implemented to help safeguard our national security in the years ahead. This initial Report provides a baseline against which to measure and assess year-to-year changes in the relationship.

MAIN THEMES

Our relationship with China is one of the most important bilateral relationships for our nation. If if is not handled properly, it can cause significant economic and security problems for our country. China is emerging as a global economic and military power, and the United States has played, and continues to play a major role in China's development.

China's foreign trade has skyrocketed over the past twenty years (from approximately $20 billion in the late 1970s to $475 billion in 2000). Our trade deficit with China has grown at a sharp rate, from $11.5 billion in 1990 to $85 billion in 2000. Foreign investment—with America a leading investor—grew apace. This trade and investment has helped to strengthen China both economically and militarily.

America's policy of economic engagement with China rests on a belief that the transition to a free market economy and the development of the rule of law in China's business sector would likely lead to more political and social openness and even democracy. This belief, along with the desire to expand American commercial interests, drove U.S. support for China's entry into the World Trade Organization (WTO). Many also believe that a more prosperous China will be a more peaceful country, especially if it is fully integrated into the Pacific and world economies.

But these are hypotheses, and many leading experts are convinced that certain aspects of our policy of engagement have been a mistake. They argue that the PRC faces enormous economic and social problems, that its leaders are intractably antidemocratic, that they are hostile to the U.S. and its prominent role in Asia, and that we are strengthening a country that could challenge us economically, politically and military.

The Commission does not believe that anyone can confidently forecast the future of China and the U.S.-China relationship, and contends that while we may work and hope for the best, our policymakers should prepare for all contingencies.

Over the past twenty years, China has created a more market-based economy and allowed more social and economic freedom. Chinese participation in international security and economic regimes has grown. On the other hand, China has made little progress toward granting its citizens political and religious freedom, and protecting human and labor rights. In fact, the government has notably increased its repression of some religious practices, including its brutal campaign against the Alum Gong.

Chinese leaders have repeatedly stressed to their Communist Party support and the Chinese people that they have no desire to repeat in China the political and economic collapse that took place in the former Soviet Union. They seek to maintain and strengthen the Communist Party's political and social control while permitting freer economic activity. They consistently limit the freedom of the Chinese people to obtain and exchange information, practice their religious faith, to publicly express their convictions, and to join freely organized labor unions. Chinese leaders frequently use nationalistic themes to rally support for their actions, including crack downs on dissenters.

China is thus embarked on a highly questionable effort—to open its economy but not its political system—the outcome of which will influence the destinies of many countries, including our own. If the economy fails, or if the Chinese people demand full freedom instead of merely a taste of it, then the leaders will have to choose between reasserting central control and granting greater political and social freedom, with a consequent weakening of their own authority. On the other hand, if China becomes rich but not free, the United States may face a wealthy, powerful nation that could be hostile toward our democratic values, to us, and in direct competition with us for influence in Asia and beyond.

American policymakers must take these scenarios seriously, and to that end the Commission has established benchmarks against which to measure future change. There are important areas in which Chinese policy runs directly counter to U.S. national security interests, such as not controlling exports that contribute to the proliferation of weapons of mass destruction, its close relations with terrorist-sponsoring states like Iran, Iraq, Syria, Libya, Sudan and North Korea, its expanding long-range missile forces, its threatening policies toward Taiwan, and its pursuit of both asymmetric warfare capabilities and modern military technology that could menace American military forces.

China's leaders view the United States as a partner of convenience, useful for its capital technology, know-how and market. They often describe the United States as China's long-term competitor for regional and global military and economic influence. Much rhetoric and a considerable volume of official writings support this hypothesis. The recent empirical study of Chinese newspapers' coverage of the U.S., conducted by University of Maryland scholars for the Commission, found a divided perspective: articles in these newspapers, which we believe generally represent the views of the leadership, are consistently positive on trade and investment matters and applaud Sino-U.S. cooperation in these areas. In contrast, their coverage of U.S. foreign policy is largely negative and frequently depicts the U.S., as hegemonic and unilateralist.

In time we will learn whether China is to become a responsible world power or an aggressive, wealthy dictatorship, and whether the Communist Party maintains its monopoly of political power or shares it with the Chinese people. We will also learn whether the Chinese economy flourishes or stumbles and collapses under the burden of state-owned industries, a weak banking system, enormous debt, wide-scale corruption, social dislocation, and the new challenges of international competition brought about by its WTO entry.

Current U.S. policies and laws fail to adequately monitor the transfers of economic resources and security-related technologies to China, considering the substantial uncertainties and challenges to U.S. national interests in this relationship. This Report attempts to begin to address these uncertainties, trends, and challenges in a systematic manner. It proceeds on the premise that far more prudence must be displayed and far better understanding developed on the part of the Congress on the full extent of this relationship and its impact on U.S. interests. In addition, too little attention has been devoted to the adverse impact of recent Chinese economic strength on our Asian allies and friends. The Commission believes the U.S. must develop a better understanding of the vulnerabilities and needs of our Asian allies and friends, and must carefully construct policies to protect and nurture those relationships.

SUMMARY OF RECOMMENDATIONS

The Commission has identified its key findings and recommendations with each chapter in this Report. The Commission developed more than forty recommendations that are listed with each of the ten chapters. We have prepared a separate classified report providing additional details and recommendations. Here, we highlight and summarize those recommendations we believe are the highest priority and which we recommend for immediate action. A more extended analysis is contained in each of the Report's ten chapters.

CONFLICTING NATIONAL PERSPECTIVES

The United States Government is poorly organized to manage our increasingly complex relationship with China. We are not adequately informed about developments within China and about their leaders' perceptions of the U.S., and we dedicate insufficient resources to understand China. Because Chinese strategic thinking and analysis of military planning differ markedly from our own, our incomplete understanding enhances the possibilities for miscalculation, misunderstanding, and potential conflict.

Recommendation 1: The U.S. Government should expand its collection, translation and analysis of open source Chinese-language materials, and make them available to the larger community. Despite two studies advocating an improved collection of Chinese materials at the Library of Congress, its collection is nearly unusable and shameful. Congress should provide funds to implement recommendations already submitted by the two previous studies. In addition, the Commission recommends increased funding for Chinese language training and area studies programs, similar to the program in the National Defense Education Act of 1958, and incentives for post-secondary graduates to participate in government services. The relevant executive branch agencies should report annually to the Congress on steps taken to rectify this situation.

Recommendation 2: The U.S. should develop a comprehensive inventory of official government-to-government and U.S. Government-funded programs with China. The President should designate an executive branch agency to coordinate the compilation of a database of all such cooperative programs. The database should include a full description of each program, its achievements to date, and the benefits to the U.S. and should be prepared annually in both classified and unclassified forms. The Commission further recommends that the executive branch prepare a biannual report, beginning in 2004, on the cooperative Science and Technology (S&T) programs with China patterned on the report submitted to Congress in May 2002 at the request of Senator Robert C. Byrd. The President should establish a working group to set standards for S&T transfers, monitor the programs, and coordinate with the intelligence agencies.

Recommendation 3: The Commission recommends that Congress encourage the Department of Defense to renew efforts to develop military-to-military confidence building measures (CBMs) within the context of a strategic dialogue with China and based strictly on the principles of reciprocity, transparency, consistency, and mutual benefit.

MANAGING U.S.-CHINA ECONOMIC RELATIONS (TRADE AND INVESTMENT)

The United States has played a major role in China's rise as an economic power. We are China's largest export market and a key investor in its economy. Fueled by China's virtually inexhaustible supply of low-cost labor and large inflows of foreign direct investment (FDI), the U.S. trade deficit with China has grown at a furious pace—from $11.5 billion in 1990 to $85 billion in 2000. The U.S. trade deficit with China is not only our largest deficit in absolute terms but also the most unbalanced trading relationship the U.S. maintains. U.S. trade with China is only 5 percent of total U.S. trade with the world but our trade deficit with China is 19 percent of the total U.S. trade deficit. U.S. exports to China are only 2 percent of total U.S. exports to the world, while we import over 40 percent of China's exports.

Foreign direct investment has helped China leapfrog forward both economically and technologically. These developments have provided China with large dollar reserves, advanced technologies, and greater R&D capacity, each of which has helped make China an important world manufacturing center and a growing center of R&D, which are contributing to its military-industrial modernization. U.S. companies have difficulty competing with Chinese based companies, in large part, because the cost of labor in China is depressed through low wages and denial of worker rights. Essentially, Chinese workers do not have the ability to negotiate their wages. Attracted in part by the low wages in China, a growing number of U.S. manufacturers are now operating in China, many of whom are utilizing China as an ''export platform'' to compete in U.S. and global markets.

China's large trade surplus with the United States, the inflow of U.S. private investment into China, and China's access to U.S. capital markets each contributes, directly or indirectly, to China's economic growth and military modernization.

Recommendation 4: The Commission recommends the creation of a federally mandated corporate reporting system that would gather appropriate data to provide a more comprehensive understanding of the U.S. trade and investment relationship with China. The reporting system should include reports from U.S. companies doing business in China on their initial investment, any transfers of technology, offset or R&D cooperation associated with any investment, and the impact on job relocation and production capacity from the United States or U.S. firms overseas resulting from any investment in China.

Recommendation 5: The Commission recommends that the U.S. make full and active use of various trade tools including special safeguards provisions in the WTO to gain full compliance by China with its World Trade Organization (WTO) accession agreement.

CHINA'S WTO MEMBERSHIP: CONFLICTING GOALS

The U.S. and China hold differing goals for China's membership in the WTO. (The Chinese saying for this situation is: ''same bed, different dreams''). China's leadership sought WTO membership to further the nation's economic reform and growth through export production and the accumulation of foreign investment, capital, and technology in order to become a world power. U.S. support for China's WTO membership was intended to enhance market access for U.S. goods and services, and also to promote internal economic, political and civil reforms, including a more open society.

China has instituted legal reforms to supervise foreign direct investment (FDI), financial markets and private businesses in order to stimulate trade and investment and fulfill the country's WTO commitments. The development of a commercial rule of law in China faces numerous obstacles, including the lack of an independent judiciary and trained judges, local protectionism, and widespread corruption. Despite some advances in commercial legal reforms, China remains grossly deficient in granting its citizens civil and political freedoms, and makes widespread use of prison labor.

Recommendation 6: The Commission recommends that Congress renew the Super 301 provision of U.S. trade law and request the Administration to identify and report on other tools that would be most effective in opening China's market to U.S. exports if China fails to comply with its WTO commitments. In examining these tools, priority should be given to those industry sectors where China expects rapid economic growth in exports to the U.S. market.

Recommendation 7: Congress should authorize and appropriate additional funds to strengthen the Commerce Department's support for commercial rule of law reform in China, including intellectual property rights and WTO implementation assistance, and to strengthen the Department of State's promotion of capacity-building programs in the rule of law, administrative reform, judicial reform and related areas.

Recommendation 8: The U.S. should improve enforcement against imports of Chinese goods made from prison labor by shifting the burden of proof to U.S. importers and by more stringent requirements relating to visits to Chines facilities suspected of producing and exporting prison-made goods to the United States. (Note: The Commission made recommendations to Congress on this issue in a May 2002 letter).

Recommendation 9: The Commission recommends that Congress request the annual Trade Promotion Coordination Committee (TPCC) report prepared by the Department of Commerce include an assessment of China's progress in compliance with its WTO commitments, recommendations on initiatives to facilitate compliance, and a survey of market access attained by key U.S. industry sectors in China, including agriculture. The report should include comparisons of U.S. market access in those key industry sectors with those gained by the European union and Japan.

Recommendation 10: The Commission recommends that Congress urge the U.S. Trade Representative (USTR) to request WTO consultations on China's noncompliance with its obligations under the Trade-related Aspects

of Intellectual Property Rights (TRIPS) Agreement, particularly its inadequate enforcement, to deter China's counterfeiting and piracy of motion pictures and other video products. If China fails to respond, Congress should encourage the USTR to request a WTO dispute settlement panel be convened on the matter.

Recommendation 11: Congress mandated the Commission to evaluate and make recommendations on invoking Article XXI of the General Agreement on Tariffs and Trade (GATT), relating to security exceptions from GATT obligations. The Commission believes that the steel industry is a possible candidate for using Article XXI. If the Administration's current safeguard measures prove ineffective, the Commission recommends that Congress consider using Article XXI to ensure the survival of the U.S. steel industry.

ACCESSING U.S. CAPITAL MARKETS

Chinese firms raising capital or trading their securities in U.S. markets have almost exclusively been large state-owned enterprises, some of which have ties to China's military and intelligence services. There is a growing concern that some of these firms may be assisting in the proliferation of weapons of mass destruction of ballistic missile delivery systems. The U.S. lacks adequate institutional mechanisms to monitor national security concerns raised by certain Chinese and other foreign entities accessing the U.S. debt and equity markets. We also lack sufficient disclosure requirements to inform the investing public of the potential risks associated with investing in such entities.

Recommendation 12: The Commission recommends that foreign entities seeking to raise capital or trade their securities in U.S. markets be required to disclose information to investors regarding their business activities in countries subject to U.S. economic sanctions.

Recommendation 13: The Commission recommends that the Treasury Department, in coordination with other relevant agencies, assess whether China or any other country associated with the proliferation of weapons of mass destruction or ballistic-missile delivery systems are accessing U.S. capital markets and make this information available to the Securities Exchange Commission (SEC). state public pension plans, and U.S. investors. Entities sanctioned by the Department of State for such activities should be denied access to U.S. markets.

PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

China fails to control the export of dual-use items that contribute to the proliferation of weapons of mass destruction and their delivery systems. China is a leading international source of missile-related technologies. Its proliferation activities with terrorist-sponsoring and other states, despite commitments to the U.S. to ease such activities, present serious problems for U.S. national security interests, particularly in the Middle East and Asia.

Recommendation 14: The Commission recommends that the President be provided an extensive range of options to penalize foreign countries for violating commitments or agreements on proliferation involving weapons of mass destruction and technologies and delivery systems relating to them. All current statutes dealing with proliferation should be amended to include a separate authorization for the President to implement economic and other sanctions against offending countries, including quantitative and qualitative export and import restrictions, restricting access to U.S. capital markets, controlling technology transfers, and limiting U.S. direct investment.

Recommendation 15: The United States should work with the United Nations Security Council and other appropriate inter-governmental organizations to formulate a framework for effective multilateral action to counter proliferation of weapons of mass destruction and their delivery systems. Member states found in violation of the agreed framework should be subject to international sanctions.

Recommendation 16: The United States should continue to prohibit satellite launch cooperation with China until it puts into place an effective export-control system consistent with its November 2000 commitment to the U.S. to restrict proliferation of weapons of mass destruction and associated technologies to other countries and entities.

CROSS-STRAIT AND REGIONAL RELATIONS

Cross-strait relations are a major potential flashpoint in U.S.-China relations. Economic and people-to-people interactions between Taiwan and the Mainland have increased dramatically in recent years, raising prospects that such interactions could help ameliorate cross-strait political tensions. At the same time, China is enhancing its capability to carry out an attack across the Taiwan Strait with special operations, air, navy and missile forces. It continues to deploy short- and intermediate-range missiles opposite Taiwan and although the threat of an immediate attack appears to be low, this buildup appears designed to forestall pro-independence political movements in Taiwan and help bring about an eventual end to the Island's continued separate status.

China's economic integration with its neighbors in East Asia raises the prospects of an Asian economic area dominated or significantly influenced by China. The U.S. has an interest in China's integration in Asia if it gives all parties a stake in avoiding hostilities. Nonetheless, U.S. influence in the area could wane to a degree, particularly on economic and trade matters.

Recommendation 17: The Commission recommends that the Department of Defense continue its substantive military dialogue with Taiwan and conduct exchanges on issues ranging from threat analysis, doctrine, and force planning.

Recommendation 18: The Commission recommends making permanent those provisions in the fiscal years 2001 and 2002 Foreign Operations Appropriations Acts providing for executive branch briefings to the Congress on regular discussions between the administration and the government on Taiwan pertaining to U.S. arms sales to Taiwan.

Recommendation 19: The Commission believes that the Congress should encourage the Administration to initiate consultations with other Asian countries to assess and make recommendations on the impact of the ''hollowing out'' phenomenon with respect to China on regional economies and on U.S. economic relations with the region.

CHINA'S MILITARY ECONOMY

China's official defense spending has expanded by more than one-third in the past two years. The Commission estimates that China's official defense budget represents about one-third of its actual spending level. Its ability to increase defense spending in the face of competing priorities is supported by its rapid economic growth. China has the largest standing army in the world and ranks second in actual aggregate spending. The military's role in China's economy has been reduced in recent years, but the military derives extensive financial and technological benefits from the growth and modernization of the domestic economy, which is designed to serve it.

Recommendation 20: The Commission recommends that the Secretary of Defense prepare a biannual report on critical elements of the U.S. defense industrial base that are becoming dependent on Chinese imports or Chinese-owned companies. The Department of Defense should also update its acquisition guidelines and develop information from defense contractors on any dependency for critical parts of essential U.S. weapons systems.

TECHNOLOGY TRANSFERS AND MILITARY ACQUISITIONS

China has a well-established policy and program to acquire advanced technologies for its industrial development, military capabilities and intelligence services. Over the next ten years, China intends to acquire an industrial capability to build advanced conventional and strategic weapons systems. Current U.S. policies do not adequately consider the impact of the transfers of commercial and security-related technologies to China.

Recommendation 21: The Commission recommends that the Department of Defense and the FBI jointly assess China's targeting of sensitive U.S. weapons-related technologies, the means employed to gain access to these technologies and the steps that have been and should be taken to deny access and acquisition. This assessment should include an annual report on Chinese companies and Chinese PLA-affiliated companies operating in the United States. Such reports are mandated by statute but have never been provided to Congress.

The Commission cannot forecast with certainty the future course of U.S.-China relations. Nor can we predict with any confidence how China and Chinese society will develop in the next ten to twenty years. We do know that China now ranks among our most important and most troubling bilateral relationships and believe that China's importance to the United States will increase in the years ahead. As its economy and military grow and its influence expands, China's actions will carry increased importance for the American people and for our national interests.

For this reason, the Commission believes that there is a pressing need to fully understand the increasingly complex economic, political and military challenges posed by China's drive toward modernity. To gain such comprehension will require the allocation of more resources and the elevation of China in our foreign and national security priorities. The Commission hopes that U.S.-China relations will develop in a positive direction but we must urge that this outcome, though preferred, may not happen. The U.S. must, therefore, be prepared for all possible contingencies.

THE SILK ROAD: CONNECTING CULTURES, CREATING TRUSTS

Mr. KENNEDY. Mr. President, I welcome this opportunity to commend the Smithsonian Institution and Yo-Yo Ma for this year's extraordinary Folklife Festival, ''The Silk Road: Connecting Cultures, Creating Trusts.'' The festival, which was held from June 26 through July 7 on The Mall, enabled hundreds of thousands to experience the art of 375 musicians, dancers, cooks and storytellers from the nations along the famous Silk Road trade routes through central Asia centuries ago.

In the aftermath of September 11, it is more important than ever to expand our understanding of those cultures. Yo-Yo Ma, with broad support from Secretary of State Colin Powell, the

Aga Khan, and the Congressional Silk Road Caucus, and many others, helped us to embark on a journey of understanding and appreciation by bringing an incredible diversity of products and ideas that have emerged from central Asia to our Nation's front lawn—the Smithsonian Mall.

Yo-Yo Ma deserves special recognition for his unique ability to engage us all in an educational process that celebrates cultural differences. He is one of our Nation's preeminent musical artists. He is also an extraordinary cultural leader who has won the hearts of millions throughout the world with his outreach and education programs. He has used his incomparable talents to inspire us to learn about diverse peoples and cultures.

I commend all those who worked so effectively to make this year's Folklife Festival such an unequivocal success. It is a privilege to pay tribute to their efforts. I ask unanimous consent to include remarks at the opening ceremony of the Smithsonian Silk Road Project in the RECORD.

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

THE SILK ROAD: CONNECTING CULTURES, CREATING TRUST—SMITHSONIAN FOLKLIFE FESTIVAL OPENING CEREMONY, WASHINGTON, D.C., REMARKS BY SMITHSONIAN INSTITUTION SECRETARY, LAWRENCE M. SMALL

To all our distinguished guests, welcome to the Nation's Capital, welcome to the national mall, and the opening of the 36th annual Smithsonian Folklife Festival, The Silk Road: Connecting Cultures, Creating Trust.

We have assembled some 400 musicians, artists, and storytellers from more than 25 countries around the globe to 20 acres here on the mall, the nation's front yard.

And I must mention Kubla and Gobi who come from Texas, the two Bactrian camels, who have two humps. They have been specially trained to respond to commands in both English and Kazakh, which means you can now see the only double-humped, bilingual camels in the world.

The Smithsonian had plenty of help this year. This was truly an international effort, with many countries cooperating across borders for a common goal. As you look around, it's clear the goal has been accomplished. My congratulations to all involved, many are here today, many are in their home countries, we thank them all wherever they are.

The State Department has provided valuable assistance, and we have a special guest who will be here soon to officially open the Festival, the Honorable Colin Powell, Secretary of State.

The Smithsonian could not carry out its mission without the generous support of Congress, and we are always grateful for that. We thank Senator Brownback and Senator Biden, honorary co-chairs of the Folklife Festival. You'll hear from Senator Brownback soon.

We're very grateful for the help of Senator Kennedy; you'll hear from him in a moment. And thanks also to Congressman Pitts from the 16th district of Pennsylvania, and all the members of the Congressional Silk Road Caucus.

We also are grateful for the support of His Highness the Aga Khan, a true humanitarian whose caring and concern span the globe. We welcome the Honorable Fran Mainella, Director of the National Park Service.

A special thanks to Rajeev Sethi, the Festival scenographer, and head of the Asian Heritage Foundation, who collaborated closely with the Smithsonian in the design and the production of the Festival. And whose many wonders you see here on the mall. And, we would not be here without the incredibly generous contribution of time, talent, and resources of Yo Yo Ma. We're honored to be working with him and the organization he founded, the Silk Road Project. We're very thankful for their support. You will hear from Yo Yo Ma and the Silk Road Ensemble very soon.

Centuries ago, had you been a traveler on the storied trade route from Japan to Italy, you would have seen traders carrying textiles, tea, spices, silk, and much more from the Pacific to the Mediterranean. Perhaps most importantly, these traders carried art, music, literature, ideas, a way of life, a culture, from one land to the next. As a result, all the cultures were changed—and the change continues to this day.

The Silk Road lives not in the past but the present—influencing our lives every day.

This Festival will make abundantly clear why it is so important to continue open cultural exchange between diverse peoples and societies. Especially now.

I want to thank Richard Kurin, Richard Kennedy, Diana Parker, and all the staff at the Smithsonian Center for Folklife and Cultural Heritage for all their hard work in putting this together. This year, the Freer and Sackler galleries, The Smithsonian Associates, the Hirshhorn Museum and Sculpture Garden, the National Museum of Natural History, the National Museum of African Art, and the Smithsonian Magazine, have all picked up the Silk Road theme in their activities. Thanks to them also.

Later on in the program, Richard Kurin will tell you more about this remarkable event, including how many silk worms are needed to make one pound of silk, when is a 5-ton truck not a painting, what ''bushkazi'' is, and where polo comes from and when the polo matches start on the mall. Yes, I said polo.

REMARKS BY HIS HIGHNESS THE AGA KHAN AT THE OPENING OF THE SMITHSONIAN FOLKLIFE FESTIVAL—WASHINGTON D.C.

I am here to speak briefly about Central Asia. I wanted to share with you some of the reasons why the theme of the Smithsonian Folklife Festival this year is so important. As you know, Central Asia has been an area of considerable concern and instability for the world. Over the past decade, Central Asian countries have come into existence in difficult circumstances. Frontiers have been changed, ethnic groups have been divided, old traditions have been modified by the Soviet presence, and all this has caused considerable difficulty in looking ahead in that part of the world.

The period of deep change at the national and regional levels has prompted a search for new forces of stability. One that seems particularly important, I think, to the United States and to all of us, is the validation and vigorous promotion of human and cultural pluralism. Historically the Silk Route was a link that interconnected diverse aspects of human society and culture from the Far East to Europe, and did so on the basis of mutual interest. This suggests that for the new countries of Central Asia, the inherent pluralism of their societies can be regarded as an asset rather than a liability. In the wider sense, it can be a means of enlarging the frontiers of global pluralism. This is a goal with which we all can and should associate.

The remarkable work of Yo-Yo Ma has enthralled audiences, from all the countries of the Silk Route and beyond. By his leadership and imagination he has proved that the force of cultural pluralism to bind people is as necessary, powerful and achievable today as was the Silk Route in history.

It is my privilege and honor to be associated with the founder of the modern Silk Route, a cultural journey that inspires people to unity and joy through art.

REMARKS BY YO-YO MA AT THE OPENING OF THE SMITHSONIAN FOLKLIFE FESTIVAL

Your Highness, thank you for your kind words. The Silk road Project and I admire you for many reasons. In your cultural work you have created the Aga Khan Prize for Architecture, you have supported and founded Universities around the world, and you are doing important restoration work in cities like Cairo and now Kabul. We are honored to be working with you and the Aga Khan Trust for Culture on this year's Smithsonian Folklife Festival.

I would also like to single out someone who is both a friend of mine and of the Silk Road Project, the Senator from my home state of Massachusetts, Ted Kennedy. Senator Kennedy, thank you for your tireless work for arts organizations.

Secretary Powell, Senator Kennedy, Senator Brownback, Secretary Small, Your Highness, distinguished guests, welcome to the sights, sounds and scents familiar to over half the world's population. In the past, to experience all these elements you would need to travel by camel, by foot, by boat, and now, by plane. Today and for the next two weeks here on the National Mall we're providing the camels, the painted truck from Pakistan, and the rik-shaws, so all you need are your eyes, ears and imagination.

During twenty-five years of travel, I have been introduced to some of these sights, sounds and scents, and the many stories that accompany them.

Often the music you hear when I play the cello comes from these very stories. During this year's Smithsonian Folklife Festival, you can hear these stories for yourselves in encounters with four hundred artists from twenty-four countries.

Most of these artists will be strangers to you. Many of these artists are strangers to each other. We all meet strangers all the time. When the Silk Road Ensemble musicians and I first started playing together two years ago we had to find ways to trust each other onstage even though we had only just

met. To me, the best way to create this trust is to share something precious—a personal story or belief. In music, this process of sharing deepens the harmonies, but more broadly this process starts a true dialogue and strengthens our common world heritage. This festival is about that dialogue.

In the end, the goal of the Smithsonian Center for Folklife and Cultural Heritage, the Aga Khan Trust for Culture, and the Silk Road Project is the same: to draw on the wisdom of all of our cultures to enrich our world one encounter at a time.

REMARKS OF SENATOR EDWARD KENNEDY OPENING CEREMONY—FOLKLIFE FESTIVAL

Thank you, Mr. Kurin, for that generous introduction. It is an honor to be here this morning with all the exceptionally talented artists and the visionary sponsors of the Silk Road Project—the cornerstone of this year's Folklife Festival. The Folklife Festival is one of our capital city's most beloved traditions. Each year, it brings the customs and cultures of a unique region or ethnic population alive with music and dance, craft and culinary wonders.

I commend Lawrence Small, Secretary of the Smithsonian Institution. He is a dynamic leader of the Smithsonian, and I commend him for the success of this inspiring project.

It is a privilege to be here with Secretary of State, Colin Powell who is an effective advocate for the United States in these difficult times. He is skillful in the pursuit of peace across the world and I commend him for all he continues to do.

I also join in welcoming His Highness the Aga Khan who was an early supporter of the Silk Road Project. He is an impressive leader for our time and I commend all that he has done, especially in the field of education and cultural exchange. Now, more than ever, his voice is one that needs to be acknowledged and understood. We are honored to have him with us today.

It is especially important that the Smithsonian has embarked on this remarkable celebration of the cultural richness and diversity of the Silk Road countries. Centuries ago, the Silk Road trade routes gave birth to an unprecedented and extraordinary exchange of cultural and economic traditions. Today, more than ever, it is essential to remember the incredible diversity of products and ideas that have emerged from Central Asia.

The Mall is truly the Main Street of our nation's capital city. Today, it brings us exhibits and cultural performances representing the Silk Road countries, from Italy to India, Mongolia and Japan. There is something here for everyone to enjoy. And that is, after all, what the Folklife Festival is about. It is a starting point for exploration and education, and it is always about entertainment.

The Silk Road's artistic demonstrations and musical performances will bring the Mall to new life over the next several weeks.

We are especially privileged to have with us one of our nation's most preeminent artists. Yo-yo Ma is a musician who has won both critical and popular acclaim for his virtuosity. He has also won the hearts and minds of millions of people throughout the world, with his outreach and education projects.

From Sesame Street to Carnegie Hall, he has brought music to life, and life to music. He is the tireless and seemingly unstoppable energy behind youth orchestras across the country, and projects as musically diverse as the memorable ''Crouching Tiger, Hidden Dragon'' and his energetic Appalachian strings recordings.

He starred on David Letterman two nights ago, and today he is with us—on America's Main Street—to celebrate the beginning of the Folklife Festival. He inspires each of us to do all we can to embrace and celebrate diverse peoples and cultures through education and understanding.

After the tragic events of September 11th, it is more important than ever for each of us to understand and embrace new ideas and cultures. Today, we continue this journey of understanding with Yo-Yo Ma.

He has used his magnificent genius to bring the entire world closer together. He inspires people everywhere to seek peace and reconciliation, and he has done it all with his magical cello.

He is here with the performers of the Silk Road Ensemble and I am honored to introduce them now.

REMARKS AT THE OPENING OF THE SILK ROAD FESTIVAL—SECRETARY COLIN L. POWELL, SMITHSONIAN FOLKLIFE FESTIVAL ON THE MALL, WASHINGTON, DC

Secretary Powell: Thank you very much, ladies and gentlemen. Thank you so very much, Richard, for that kind introduction, and my congratulations to the Smithsonian for putting on this 36th Annual Folklife Festival. With each year's Folklife Festival, the Mall becomes a living cultural exhibition, not only for the citizens of this city, but for the citizens of the world who come to Washington, D.C. In the words of former Smithsonian Secretary S. Dillon Ripley, ''The Festival brings the museum out of its glass case and into real life.''

I want to thank you also, Yo-Yo Ma and your Silk Road Project, to the Aga Khan for his Trust for Culture, to Lawrence Small of the Smithsonian, for all the wonderful work they have done to make this such an exciting and important event. And I am very proud that the State Department had such a role to play in it, and some of my leaders from the Department who had a role to play are here. Under Secretary of State Charlotte Beers and Assistant Secretary of State Beth Jones, and I think Assistant Secretary of State Pat Harrison are here, and they also are deserving of your recognition.

In fact, we did have some diplomatic challenges in making this happen. The two yurts that are here, tents that you will see in due course, they had to be custom made to conform to American laws for access to the handicapped. And so our embassy in Kazakhstan worked closely with the Kazakh Government to make sure they were up to standard—and then helped ship them here in time for this Festival. So we are not only culturally pure, we are OSHA-pure as well. I want you to know that.

We have seen so many talented people this morning, and we have had such wonderful speakers. And I, as always, enjoyed Yo-Yo Ma. But Yo-Yo, I have to say the throat singers might have had a slight edge on you. It was marvelous, and I haven't heard throat singing like that since my last congressional appearance. And it was before the Senate, not the House.

But what these artists have done for you this morning so far is they have painted a marvelous picture of the old Silk Road and the central place that the Silk Road played in our own history, our own culture, and in our own civilization.

Listening to this morning's speakers, you can almost see Marco Polo trekking eastward toward lands unknown to Europeans, or hear the sounds of a merchant caravan heading west with its cargo of silks and spices.

The Silk Road of old was the main link between the civilizations of the east, Central Asia, and Europe. From Europe, the products and ideas of Central and East Asia then spread to the New World of the Americas. All of our peoples were enriched by the exchange of goods, the exchange of ideas, and the exchange of cultures.

But the Silk Road is more than a subject for magazines and museums. It is more than an image of past glories. The nations of Central Asia are once again joining the nations at either end of the Silk Road on a path to a better future for all. There is far to go, and the region's security, stability, and prosperity depend on critical economic and political reforms. But the Silk Road is once again a living reality, as the over 350 artists and craftspeople from 20 nations here testify.

Now, in our new age of globalization, we are restoring the linkages and the interchanges that once made the Silk Road so rich and so vital. We have been making up for lost time. Our political, economic, diplomatic, and security contacts have increased with all the nations along the central part of the Silk Road, boosted by our cooperation especially as we came together in the campaign against terrorism following 9/11 last year.

But even more important, our cultural and institutional ties have also grown. We are once again exchanging ideas and learning about cultures with all of the countries and peoples along the Silk Road.

The links between our peoples are the most vital and enduring elements of our ties. Festivals like the Smithsonian Silk Road Festival play a major role in helping us get reacquainted and start learning from each other once again. As the theme of this exhibition reminds us, it's all about ''Connecting cultures and creating trust.''

This Festival, like the future, stretches ahead before us. So without further delay, and with sincere thanks for your patience, let me now light the lamp that will allow us to embark on our journey along the Silk Road. Thank you very, very much.

Mr. CRAPO. Mr. President, I was unavailable to vote on the afternoon of July 10, and all of July 11, 12, 15 and 16 due to the death of my mother. Had I been able I would have voted as follows: Rollcall No. 169—''yea''; Rollcall No. 170—''yea''; Rollcall No. 171—''yea''; Rollcall No. 172—''yea''; Rollcall No. 173—''yea''; Rollcall No. 174—''yea''; Rollcall No. 175—''yea''; Rollcall No. 176—''yea''; Rollcall No. 177—''yea''.

STOCK OPTIONS

Mr. CLELAND. Mr. President, in this time of seemingly endless stories of corporate fraud and mismanagement, I would like to take the opportunity to salute a bold step recently taken by one of the world's most respected corporations. As you know, the Coca-Cola Company's world headquarters is located in Atlanta, GA.

The Coca-Cola Company announced on Sunday that it would expense the cost of all stock options the company grants, beginning with options to be granted in the fourth quarter of 2002.

I commend CEO Douglas Daft and the leadership of the Coca-Cola Company on their decision. Stock options are indeed a form of employee compensation and their characterization as a balance sheet expense will provide investors with a clearer picture of Coca-Cola's fiscal health.

Sunday's announcement is indicative of Coca-Cola's ongoing commitment to economic integrity and fairness. With this new policy, the company will be able to design whatever kind of options it believes will both best motivate employees and more align their interests with those of share owners, without regard for the options' accounting effects.

While Coca-Cola is the first company of its size to take this important step, I predict it will not be the last. As other corporations follow Coke's lead, investor confidence in our markets will grow once again.

NOMINATION OF DR. RICHARD CARMONA FOR SURGEON GENERAL

Mr. FRIST. Mr. President, this morning the members of the Senate Committee on Health, Education, Labor, and Pensions, HELP, voted to support the nomination of Dr. Richard Carmona for the position of U.S. Surgeon General. While the Surgeon General has played a major role on health care matters for more than one hundred years, the unique challenges confronting our Nation at the beginning of the 21st century require an elevated level of leadership.

The threat of bioterrorism is real—a fact made clear in the last year as anthrax attacks killed five people, infected 22, and exposed hundreds. These attacks highlighted the inadequacy of our Nation's public health infrastructure to prevent, detect, and respond to an infectious disease outbreak, whether such an outbreak is intentionally or naturally caused.

Since that time, much has taken place. We in Congress have passed, and the President has signed into law, the Public Health Security and Bioterrorism Preparedness and Response Act. We have significantly increased the Federal commitment to upgrading capacity in State and local health departments and we are now considering how a new Department of Homeland Security could enhance our efforts to prevent and respond to bioterrorism.

Despite these steps, we are still not fully prepared to meet the threat of bioterrorism and much work remains to be done to bolster our public health system. This will be one of the most important tasks facing the country and facing the incoming Surgeon General. Dr. Carmona's experience and expertise prepares him well for this effort.

As we strengthen the public health system's capabilities, we are also challenged by a growing epidemic of chronic disease that significantly impacts our Nation's health. Take, for example, obesity. Sixty-one percent of American adults and 13 percent of children and adolescents are overweight or obese, and these rates are increasing among all age groups. In my home State of Tennessee, the rate of obesity has grown from 12 percent to 22 percent over the past decade. An estimated 300,000 deaths each year in the United States are linked to being overweight or obese. Those who are obese have a 50- to 100-percent increased risk of premature death. This problem is now one of the most serious public health challenges facing the country. Next week, Senator BINGAMAN, Senator DODD, Senator STEVENS, and I will be introducing the Improved Physical Activity and Nutrition Act to help address this problem. I look forward to working with Dr. Carmona to address this issue.

Additionally, youth smoking and substance abuse are a significant concern. Twenty-five percent of adults smoke—with even higher rates among young adults. Tobacco use is the leading cause of preventable death in this country, and alcohol misuse contributes to one-third of motor vehicle crash related deaths. Over one-half of 10th graders have smoked tobacco. Sixteen percent of 8th graders have been drunk at least once in the past year. Twenty-five percent of high school seniors have used an illicit drug in the past 30 days.

There are a number of approaches we can take to these problems as legislators. Last Congress, we reauthorized the Substance Abuse and Mental Health Services Administration, in which we included a special emphasis on youth drug abuse. But the Surgeon General bears a special responsibility to help educate the Nation about the dangers of such behavior, and I am pleased that this will be a priority for Dr. Carmona as Surgeon General.

During the Health, Education, Labor, and Pensions Committee hearing on his nomination, Dr. Carmona emphasized that his priority will be prevention: to prevent unnecessary illness, disability and death. Many of the major health problems facing the country can be improved with a focus on prevention, and Dr. Carmona's focus on these issues will benefit the country as he serves us as Surgeon General.

Before the hearing on Dr. Carmona's nomination, there were concerns raised regarding some aspects of his professional background. The committee appropriately inquired about these issues during the hearing. Dr. Carmona's responses were forthright and direct, and I believe he has addressed concerns about his ability to perform the duties of the Surgeon General. His background and experience as a trauma surgeon, as a director of a county health system, and as an expert in emergency medical systems, along with her personal drive and commitment to improving the health of all Americans, will serve the country well. Mr. President, I intend to support Dr. Carmona's nomination. I urge my colleagues to support him as well.

CONFIRMATION OF LAVENSKI SMITH TO THE U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Mr. WELLSTONE. Mr. President, this week I voted not to confirm Lavenski Smith to the U.S. Court of Appeals for the Eighth Circuit, which includes my State of Minnesota. While I have supported the vast majority of administration appointments that have come to the floor to date, I voted against this nominee because I am concerned about his lack of experience and qualifications, as well as about what I consider to be an excessively ideological approach to important issues, such as women's reproductive rights, in his legal work so far.

Our district needs and deserves the best judges, especially because they receive lifetime appointments. I regret that the President did not nominate a person with a more distinguished record to this important position.

Mr. Smith has just 7 years' experience practicing law, in which time he has gained minimal Federal experience and minimal appellate experience. He has no experience arguing cases before the Eighth Circuit, the court to which he has now been confirmed.

In addition to his lack of experience, Mr. Smith has advocated ideologically tendentious legal positions that I believe may cast doubt on his ability to adjudicate cases fairly. In the one appellate case in which Mr. Smith took a lead role, his argument in relation to reproductive rights was unanimously rejected by the Arkansas Supreme Court. The court's decision observed that Mr. Smith disregarded both judicial precedent and the plain meaning of the Arkansas Constitution in making his case.

The circuit court of appeals is one step from the Supreme Court. Yet the Arkansas Times wrote of this nominee: ''Lavenski Smith of Little Rock is not the best qualified Arkansan President Bush could have chosen for the U.S. Eighth Circuit Court of Appeals, nor even close.'' Whatever State a nominee might come from, Minnesota and the Eighth Circuit deserve better.

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 last 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 February 6, 1995, in West Hollywood, CA. A gay man was punched and kicked by several youths who made anti-gay remarks. The assailants, three teens, were charged with battery and interference with civil rights.

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 and

changing current law, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

AN ESSAY BY SANFORD WEILL ON ACCOUNTING REFORMS

• Mr. HOLLINGS. Mr. President, I want to share with my colleagues an excellent essay by the best of the best, Sandy Weill. As the article points out, most corporate executives, like Sandy Weill, are honest and already enacting changes in their companies to provide better accounting disclosure policies.

As the message comes from someone who has distinguished himself as a business leader, it is a message I hope all American business executives not only hear, but heed.

I ask to print the essay in the RECORD.

The essay follows:

CORE VALUES START AT THE TOP

America has long had a financial system to be proud of and it is therefore critical—particularly at a time of danger and uncertainty—that both industry and government enact changes to address the recent corporate scandals that have shaken faith in the system and its corporate executives.

The country will come through this period stronger than ever, but only with the hard work of legislators, regulators and, most important chief executive officers. George W. Bush's call for a new ethic of corporate responsibility comes at the right time, with its emphasis on holding corporate officers more accountable, protecting small investors, moving accounting out of the shadows and providing better disclosure along with a stronger and more independent corporate audit system.

The president's proposal that corporate officers lose compensation they may receive by manipulating their accounting statements, and efforts by Harvey Pitt, chairman of the Securities and Exchange Commission, to make CEOs more individually accountable for their companies' financial disclosures should be welcomed.

Used correctly, option grants should not only reward good performance but encourage a long-term perspective. Many companies use them for this purpose: more should. I have long been a proponent of ''buy-and-hold'' investing, and at Citigroup, our senior managers and board abide by a rigorous stock ownership commitment. Every one of us makes a pledge—a ''blood oath''—to hold three-quarters of any stock or options we receive as long as we remain with the company, which reinforces our consistent focus on the long term. Also, we have never repriced stock options for our senior executives, and we never will. When companies do this, an alarm should sound that the long-term alignment of shareholder and management interests is not in place.

To ensure that everyone in a company is focused on appropriate long-term objectives, stock ownership should go as deep as possible within an organization. To encourage this, and to respond to concerns regarding excess compensation, I suggest that options be expended for the top five officers identified in the proxy, and that tax treatment be enhanced for options given to the rank and file earning less than $100,000 by allowing options to be included in 401(k) pension plans. Proposals to change the accounting or tax treatment of stock options should not hinder these programs—they should encourage other companies to adopt them.

In the wake of recent scandals, all CEOs should examine their governance principles. They must push for strong, independent boards and focus on full disclosure. Bullet-proof audit processes, with exhaustive internal and external checks and balances must be in place, reporting to an independent committee of the board whose involvement goes beyond quarterly meetings.

Audit partners should be rotated regularly and outside auditors should be used for audit and tax purposes only. Companies must also get back to basic accounting, based on Generally Accepted Accounting Principles, and be required to account for all revenues and expenses rather than producing pro forma or ebitda as their primary income measure.

One of the most distressing fall-outs of the current crisis is the public's reduced confidence in audited financial statements, for decades the very underpinning of America's financial system. We cannot make auditors out of lawyers, boards, rating agencies, research analysts or bankers. We need auditors to do their jobs and be accountable to one group alone: the shareholders.

I therefore applaud efforts by Senator Paul Sarbanes, Congressman Michael Oxley and the US Congressional leadership towards comprehensive accounting reform legislation. Just as concern over corporate disclosure during the Great Depression led to the creation of the SEC, a strong independent authority must be established to set accounting standards and oversee auditor conduct. In effect, we need an SEC for the accounting industry.

Eliot Spitzer, New York's attorney-general, has identified serious issues in the way investment banks and research analysts interact. Citigroup's Salomon Smith Barney was the first to adopt voluntarily the research reforms put forward by Mr. Spitzer. These, along with proposals from the SEC and the New York Stock Exchange, are setting higher standards for the industry.

Even so, we must do more. I believe the entire industry should be subject to additional rules that make research independent from investment banking. Analysts should be barred from attending any meeting with investment bankers soliciting business from public companies and from participating in any ''roadshow'' presentation to investors. Investment bankers should be barred from having any input in determining the compensation of research analysts and from previewing any research reports prior to publication.

The current crisis is an opportunity to recapture core values. But this will only be possible if CEOs accept the responsibility that comes with their rank. It is up to use to lead the way.•

DR. WILLIS HAVILAND CARRIER

• Mrs. CLINTON. Mr. President, I rise today to honor the accomplishments of a great New Yorker, Dr. Willis Haviland Carrier, who invented air-conditioning 100 years ago today.

Dr. Carrier was a man of humble background. Born in 1876 in Angola, NY, he delayed his education for 2 years to work on the family farm during the Depression of the mid-1890s. After finishing high school in Buffalo, he won a scholarship to attend Cornell University in Ithaca. While at Cornell, he founded a cooperative student laundry agency, the first of its kind. He graduated in 1901 with a degree in electrical and mechanical engineering, and went to work for the Buffalo Forge Company.

When the Sackett-Wilhelms Lithographing and Publishing Company of Brooklyn was looking for a solution to the problem of paper expansion due to heat and humidity, Carrier was assigned to the task. On July 17, 1902, he presented his design for a system to control temperature, humidity, air quality, circulation, and ventilation. The modern era of air conditioning was born.

Dr. Carrier had the business acumen to make his invention a success, and in 1915 he founded the Carrier Corporation in Syracuse. Movie theaters were among the first adopters of the new technology, soon to be followed by department stores, airplanes, and cars. Air conditioning came to the House of Representatives in 1928 and here to the Senate in 1929. After World War II, air conditioning became affordable for private homes, forever changing the American lifestyle.

Dr. Carrier held 80 patents at the time of his death in 1950. His company has continued his tradition of innovation, with the introduction in the 1950s of rooftop systems for skyscrapers eliminating the need for large and costly basement rooms. Today, Carrier Corporation is an industry leader in environmental responsibility, with chlorine-free alternative refrigerants in use across its entire product line.

Dr. Willis H. Carrier used his creativity and entrepreneurship to change the way we live and the way we work. We are fortunate to benefit from the contributions of this great New Yorker.•

CONGRATULATIONS TO THE WE THE PEOPLE . . . THE CITIZEN AND THE CONSTITUTION PARTICIPANTS FROM WYOMING

• Mr. ENZI. Mr. President, on May 4–6, 2002, more than 1,200 students from across the United States visited Washington, DC, to compete in the national finals of the We the People . . . The Citizen and the Constitution program, the most extensive educational program in the country developed specifically to educate young people about the Constitution and the Bill of Rights.

I am proud to report that the class from Green River High School from Green River represented the State of Wyoming in this national event. These young scholars worked diligently to reach the national finals and through their experience have gained a deep knowledge and understanding of the fundamental principles and values of our constitutional democracy.

The fine students from Wyoming who were chosen to participate include: Jamie Adams, Ashley Andersen, Melissa Bassett, Kimberly Bucheit, Michelle Edwards, Christina Gipson, Aaron Hayes, Daniel Johnson, Christopher Legerski, Michael Merkley, Nathaniel Steinhoff, Eric Stewart, Julia Stuble, and Katherine Tolliver. I would also like to recognize their teacher, Dennis Johnson, who deserves much of the credit for their success.

The 3-day national competition is modeled after hearings in the Congress. The hearings consist of oral presentations by high school students before a panel of adult judges on constitutional topics. The students' testimony is followed by a period of questioning by the judges who probe their depth of understanding and ability to apply their constitutional knowledge.

Administered by the Center for Civic Education, the We the People . . . program has provided curricular materials at upper elementary, middle, and high school levels for more than 26.5 million students nationwide. The program provides students with a working knowledge of our Constitution, Bill of Rights, and the principles of democratic government. Members of Congress and their staff enhance the program by discussing current constitutional issues with students and teachers and by participating in other educational activities.

It is inspiring to see these young people advocate the fundamental ideals of principles of our Government in the aftermath of the tragedy on September 11. These are ideas that identify us as a people and bind us together as a nation. It is important for our next generation to understand these values and principles which we hold as standards in our endeavor to preserve and realize the promise of our constitutional democracy.

I would once again like to congratulate Dennis Johnson and the fine students from Green River High School.●

TRIBUTE TO WARD F. CORRELL

● Mr. BUNNING. Mr. President, I rise today to pay tribute to one of Kentucky's leading citizens, Mr. Ward F. Correll. On the 27th day of this month, Mr. Correll will be presented with the 2002 Kentuckian Award by the A.B. ''Happy'' Chandler Foundation for his commitment to family, God, country, and the Commonwealth of Kentucky. Fellow recipients of this award include such greats as University of Kentucky basketball announcer Cawood Ledford and country music legend Loretta Lynn.

Born to a poverty-stricken family in Wayne County, KY, Ward Correll grew up as 1 of 13 children. As you can surely imagine, basic living necessities were quite scarce at times. After graduating from high school, Ward decided to hitchhike, with only $2.67 in his pockets, to Detroit, where he would begin what would become a memorable journey.

While living in Detroit, Ward Correll mowed lawns to make ends meet until he could find a more permanent and stable job opportunity. But before this could happen, our Nation went to war in Korea. Throughout the war, Ward served his country in the U.S. Army as part of an intelligence unit. After his time in the service came to an end, Ward packed up his bags and headed back to his old Kentucky home. Once back in Kentucky, he met his future bride-to-be and soulmate, Regina Tarter.

After discovering the woman of his dreams, Ward decided it was time to begin his life as a businessman. Ward let the words from the prayer by GEN Douglas MacArthur be his compass-''Lord, give me a son who will not let his wishbone take the place of his backbone.'' With a lot of hard work, a little luck, and the occasional helping hand, Ward Correll turned that $2.67 into a business empire.

Today, his many business enterprises include Cumberland Shell Oil, Inc. and Trade and Wind and Trade Way shopping centers in Somerset and Monticello. He is one of the top 10 jobbers in the Nation for Shell Oil. Furthermore, he is a major stockholder in First Southern National Banks, where his son Jesse is the CEO. You often hear people talk about living the American dream. Ward Correll skipped the talking part and moved straight to the living.

Besides his unwavering dedication to country and capitalism, Ward Correll has exemplified what it means to be a good Christian. He tithed the first penny he ever made as a child and has continued this practice even to this very day. He firmly believes God has blessed him financially and that he has a moral obligation to those less fortunate individuals whose pockets are as shallow as his once were. Throughout his lifetime, Ward Correll has assisted the needy, providing them with clothes, shoes, dishes and flatware—items that he and his family once struggled to possess.

Mr. President, I ask now that my fellow colleagues join me in praising Mr. Ward F. Correll for all that he has accomplished with his life. He is a devoted father and husband, a veteran and patriot, and a truly righteous man. He has worked tirelessly to make Kentucky and the United States of America a better place for us all to live. He is a tribute to the American spirit.

Finally, I would like to share with you, Mr. President, and my fellow Senators Mr. Correll's recipe for success. ''Apply the wisdom of what wise people have taught you during childhood to all you do; seek the advice of wise people, especially those who have experienced failure and picked themselves up to become successful again; always do more than what you are paid to do; empower yourself to be positive and say every day 'I feel happy, healthy and terrific and I can do all things through Christ who strengthens me.' ''●

IN MEMORY OF COLONEL RUBY BRADLEY, ARMY NURSE

● Mr. ROCKEFELLER. Mr. President, on July 2, 2002, a modern American hero was buried in Arlington National Cemetery. Her name is Ruby Bradley, and she is the most decorated woman ever to serve in the U.S. military.

Ruby was an Army nurse stationed in Manila. On September 23, 1943, she was captured by the Japanese Army. During her 3-year imprisonment, she was known as a member of the Angels in Fatigues. This small group of nurses took it upon themselves to care for those within the camp. Ruby assisted in 230 operations and delivered 13 babies while dropping to a weight of just over 80 pounds. She starved herself so the imprisoned children could eat, trusting that she would be able to cling to her own life.

On February 3, 1945, her faith paid off in the form of what she described as ''the best Saturday night performance I'll ever see in my life.'' American troops freed those who were being held captive, and Ruby returned to her home in Spencer, WV, to a hero's parade. But Ruby's military journey was not over.

Her sacrifice, generosity, and compassion took her to the Korean war, where she again found herself in the midst of grave danger. The Army sent a plane to retrieve Ruby, but she was the last person to board that plane. After running from her ambulance just before it was blown up by enemy bombs, she loaded the sick and wounded. Once again, she returned to Spencer as the honoree of a hero's parade.

In 1963, Ruby retired from the Army, having earned 34 medals and citations, including the Legion of Merit and the Bronze Star, in honor of her tenacious devotion to this Nation and all that we stand for.

I had the privilege of visiting Ruby in her home 3 years ago and presented her with replacement medals that had been lost over the years. In this short time, it was obvious to me what an inspiration she was to her family and community, and it was obvious why she was honored with the rank of colonel by the Army. Ruby Bradley was a woman whose soul knew no limits. Her heart had room for everyone, and she was not reluctant to assist those around her, no matter their age, race, or condition.

Ruby once said, ''I just want to be remembered as an Army nurse.'' Her family can rest assured that she will be remembered as an Army nurse, one of the best this Nation has seen and will ever see. Her courage in the midst of conflict serves as a shining example to those around her and will continue to be a beacon for bravery in the future for West Virginia and for America.●

LETTER DECLARING THE TEMPORARY TRANSFER OF POWER TO THE VICE PRESIDENT OF THE UNITED STATES—PM 103

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on June 29, 2002, during the adjournment of the Senate, received the following message from the President of the United States, together with accompanying papers; which was ordered to lie on the table:

Pursuant to the provisions of the 25th Amendment to the Constitution of the United States, the President of the

United States, on June 29, 2002, transmitted the following message to the President pro tempore of the Senate [Mr. BYRD].

THE WHITE HOUSE,
Washington, June 29, 2002.

Hon. ROBERT C. BYRD,
President pro tempore of the Senate, Washington, DC.

DEAR MR. PRESIDENT: As my staff has previously communicated to you, I will undergo this morning a routine medical procedure requiring sedation. In view of present circumstances, I have determined to transfer temporarily my Constitutional powers and duties to the Vice President during the brief period of the procedure and recovery.

Accordingly, in accordance with the provisions of Section 3 of the Twenty-Fifth Amendment to the United States Constitution, this letter shall constitute my written declaration that I am unable to discharge the Constitutional powers and duties of the office of President of the United States. Pursuant to Section 3, the Vice President shall discharge those powers and duties as Acting President until I transmit to you a written declaration that I am able to resume the discharge of those powers and duties.

Sincerely,

GEORGE W. BUSH.

LETTER DECLARING THE RESUMPTION OF DUTIES AS PRESIDENT OF THE UNITED STATES—PM 104

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on June 29, 2002, during the adjournment of the Senate, received the following message from the President of the United States, together with accompanying papers; which was ordered to lie on the table:

Pursuant to the provisions of the 25th Amendment to the Constitution of the United States, the President of the United States, on June 29, 2002, transmitted the following message to the President pro tempore of the Senate [Mr. BYRD].

THE WHITE HOUSE,
Washington, June 29, 2002.

Hon. ROBERT C. BYRD,
President pro tempore of the Senate, Washington, DC.

DEAR MR. PRESIDENT: In accordance with the provisions of Section 3 of the Twenty-Fifth Amendment to the United States Constitution, this letter shall constitute my written declaration that I am presently able to resume the discharge of the Constitutional powers and duties of the office of President of the United States. With the transmittal of this letter, I am resuming those powers and duties effective immediately.

Sincerely,

GEORGE W. BUSH.

MESSAGE FROM THE HOUSE

At 1:08 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5118. An act to provide for enhanced penalties for accounting and auditing improprieties at publicly traded companies, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 395. Concurrent resolution celebrating the 50th anniversary of the Constitution of the Commonwealth of Puerto Rico.

MEASURES REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 395. Concurrent resolution celebrating the 50th anniversary of the Constitution of the Commonwealth of Puerto Rico; to the Committee on the Judiciary.

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–7979. A communication from the Vice Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to a transaction involving U.S. exports to Luxembourg; to the Committee on Banking, Housing, and Urban Affairs.

EC–7980. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the OMB Cost Estimate for Pay-As-You-Go Calculations for Report Number 579; to the Committee on the Budget.

EC–7981. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the OMB Cost Estimate for Pay-As-You-Go Calculations for Report Number 580; to the Committee on the Budget.

EC–7982. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Change in Disease Status of Austria Because of BSE'' (Doc. No. 02–004–2) received on July 11, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7983. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Change in Disease Status of Austria Because of BSE'' (Doc. No . 02–004–2) received on July 11, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7984. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Methoxychlor; Tolerance Revocations'' (FRL7184–4) received on July 11, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7985. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Indoxacarb; Pesticide Tolerance'' (FRL7186–2) received on July 11, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7986. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Cethodim; Pesticide Tolerance'' (FRL7185–7) received on July 11, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7987. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Benomyl; Tolerance Revocations'' (FRL7177–7) received on July 11, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7988. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Atrazine, Bensulide, Diphnamid, Imazalil, 6-Methyl-1, 3-dithiolo (4,5–b) quinoxalin-2-One, Phosphamidon S-Propyl dipropylthiocarbamate, and Trimethacarb; Tolerance Revocations'' (FRL7182–5) received on July 11, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7989. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Asergillus flavus AF36 ; Amendment, Temporary Exemption From the Requirement of a Tolerance'' (FRL7185–4) received on July 11, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7990. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to Tennessee Implementation Plan'' (FRL7245–7) received on July 11, 2002; to the Committee on Environment and Public Works.

EC–7991. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans Tennessee: Approval and Revisions to Tennessee Implementation Plan'' (FRL7245–7) received on July 11, 2002; to the Committee on Environment and Public Works.

EC–7992. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Section 112(1) Authority for Regulating Hazardous Air Pollutants; Equivalency by Permit Provisions National Emissions Standards for Hazardous Air Pollutants from the Pulp and Paper Industry; State of Maine'' (FRL7240–7) received on July 11, 2002; to the Committee on Environment and Public Works.

EC–7993. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Commonwealth of Puerto Rico: Control of Emissions from Existing Municipal Solid Waste Landfills'' (FRL7246–7) received on July 11, 2002; to the Committee on Environment and Public Works.

EC–7994. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District'' (FRL7231–8) received on July 11, 2002; to the Committee on Environment and Public Works.

EC–7995. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Monterey Bay Unified

Air Pollution Control District and South Coast Air Quality Management District'' (FRL7220–6) received on July 11, 2002; to the Committee on Environment and Public Works.

EC–7996. A communication from the Acting Deputy General Counsel, Office of Size Standards, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled ''Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program'' (RIN3245–AE93) received on July 16, 2002; to the Committee on Small Business and Entrepreneurship.

EC–7997. A communication from the Acting Deputy General Counsel, Office of Size Standards, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled ''Small Business Size Standards; Travel Agencies'' (RIN3245–AE95) received on July 16, 2002; to the Committee on Small Business and Entrepreneurship.

EC–7998. A communication from the Director, National Legislative Commission, The American Legion, transmitting, pursuant to law, the Accountants' Report and Consolidated Financial Statements for 2001; to the Committee on the Judiciary.

EC–7999. A communication from the Administrator, General Service Administration, transmitting, the report of lease prospectuses that support the General Service Administration's Fiscal Year 2003 Capital Investment and Leasing Program; to the Committee on Environment and Public Works.

EC–8000. A communication from the Secretary of State, transmitting , pursuant to law, the Annual Report for 2001 on Voting Practices at the United Nations; to the Committee on Foreign Relations.

EC–8001. A communication from the Vice Chairman of the Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled ''Prohibited and Excessive Contributions: Non-Federal Funds of Soft Money'' (Notice 2002–11) received on July 16, 2002; to the Committee on Rules and Administration.

EC–8002. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Revisions and Clarifications to Encryption Controls in the Export Administration Regulations—Implementation of Changes in Category 5, Part 2 (''Information Security''), of the Wassenar Arrangement List of Dual-Use Goods and Other Technologies'' (RIN0694–AC61) received on July 3, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–8003. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the Semiannual Monetary Policy Report dated July 16, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–8004. A communication from the Under Secretary for Domestic Finance, Department of the Treasury, transmitting, pursuant to law, the Annual Report on the Resolution Funding Corporation for the calendar year 2001; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DORGAN, from the Committee on Appropriations, without amendment:

S. 2740: An original bill making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107–212) .

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

*Richard H. Carmona, of Arizona, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service for a term of four years.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BAUCUS:

S. 2737. A bill to amend the Trade Act of 1974 to consolidate and improve the trade adjustment assistance programs, to provide community-based economic development assistance for trade-affected communities, and for other purposes; to the Committee on Finance.

By Mr. JOHNSON (for himself and Mr. DASCHLE):

S. 2738. A bill to provide for the reimbursement under the medicaid program under title XIX of the Social Security Act of nursing facilities that are located on an Indian reservation in the State of South Dakota and owned or operated by an Indian tribe or tribal organization, and for other purposes; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. DEWINE, Mr. LOTT, Mr. DOMENICI, Mr. BUNNING, Mr. GRASSLEY, Mr. KYL, Mr. MCCONNELL, Mr. SESSIONS, Mr. SANTORUM, Mr. HUTCHINSON, Mr. THURMOND, and Mr. HELMS):

S. 2739. A bill to provide for post-conviction DNA testing, to improve competence and performance of prosecutors, defense counsel, and trial judges handling State capital criminal cases, to ensure the quality of defense counsel in Federal capital cases, and for other purposes; to the Committee on the Judiciary.

By Mr. DORGAN:

S. 2740. An original bill making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. GRASSLEY (for himself and Mr. NELSON of Nebraska):

S. 2741. A bill to amend title 38, United States Code, to improve procedures for the determination of the inability of veterans to defray expenses of necessary medical care, and for other purposes; to the Committee on Veterans' Affairs.

By Mrs. HUTCHISON (for herself, Mr. LEVIN, Mr. BINGAMAN, Mr. DOMENICI, Mr. MURKOWSKI, and Ms. CANTWELL):

S. 2742. A bill to establish new nonimmigrant classes for border commuter students; to the Committee on the Judiciary.

By Mr. KYL (for himself and Mr. MCCAIN):

S. 2743. A bill to approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes; to the Committee on Indian Affairs.

By Mr. DEWINE (for himself and Mr. VOINOVICH):

S. 2744. A bill to establish the National Aviation Heritage Area , and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BENNETT (for himself and Mr. HATCH):

S. 2745. A bill to provide for the exchange of certain lands in Utah; to the Committee on Energy and Natural Resources.

By Mr. FEINGOLD (for himself and Ms. COLLINS):

S. 2746. A bill to establish a Federal Liaison on Homeland Security in each State, to provide coordination between the Department of Homeland Security and State and local first responders, and for other purposes; to the Committee on Governmental Affairs.

By Mr. TORRICELLI:

S. 2747. A bill to provide for substantial reductions in the price of prescription drugs for Medicare beneficiaries and for women diagnosed with breast cancer; to the Committee on Finance.

By Mr. CONRAD:

S. 2748. A bill to authorize the formulation of State and regional emergency telehealth network testbeds and, within the Department of Defense, a telehealth task force; to the Committee on Armed Services.

By Mr. CORZINE (for himself, Mr. TORRICELLI, Mr. SCHUMER, Mrs. CLINTON, Mr. DODD, and Mr. LIEBERMAN):

S. 2749. A bill to establish the Highlands Stewardship Area in the States of Connecticut, New Jersey, New York, and Pennsylvania, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. Con. Res. 128. A concurrent resolution honoring the invention of modern air conditioning by Dr. Willis H. Carrier on the occasion of its 100th anniversary; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 267

At the request of Mr. AKAKA, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 267, a bill to amend the Packers and Stockyards Act of 1921, to make it unlawful for any stockyard owner, market agency, or dealer to transfer or market nonambulatory livestock, and for other purposes.

S. 411

At the request of Mr. LIEBERMAN, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 411, a bill to designate a portion of the Arctic National Wildlife Refuge as wilderness.

S. 540

At the request of Mr. DEWINE, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 540, a bill to amend the Internal Revenue Code of 1986 to allow as a deduction in determining adjusted gross income the deduction for expenses in connection with services as a member of a reserve component of the Armed Forces of the United States, to allow employers a credit against income tax with respect to employees who participate in the military reserve components, and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

S. 556

At the request of Mr. JEFFORDS, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 556, a bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes.

S. 776

At the request of Mr. BINGAMAN, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 776, a bill to amend title XIX of the Social Security Act to increase the floor for treatment as an extremely low DSH State to 3 percent in fiscal year 2002.

S. 948

At the request of Mr. LOTT, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 948, a bill to amend title 23, United States Code, to require the Secretary of Transportation to carry out a grant program for providing financial assistance for local rail line relocation projects, and for other purposes.

S. 960

At the request of Mr. BINGAMAN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 960, a bill to amend title XVIII of the Social Security Act to expand coverage of medical nutrition therapy services under the medicare program for beneficiaries with cardiovascular diseases.

S. 1626

At the request of Mr. BINGAMAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1626, a bill to provide disadvantaged children with access to dental services.

S. 2055

At the request of Ms. CANTWELL, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2055, a bill to make grants to train sexual assault nurse examiners, law enforcement personnel, and first responders in the handling of sexual assault cases, to establish minimum standards for forensic evidence collection kits, to carry out DNA analyses of samples from crime scenes, and for other purposes.

S. 2067

At the request of Mr. BINGAMAN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2067, a bill to amend title XVIII of the Social Security Act to enhance the access of medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve the Medicare+Choice program, and for other purposes.

S. 2210

At the request of Mr. BIDEN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2210, a bill to amend the International Financial Institutions Act to provide for modification of the Enhanced Heavily Indebted Poor Countries (HIPC) Initiative.

S. 2455

At the request of Mr. ENSIGN, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 2455, a bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a pilot program to provide regulatory compliance assistance to small business concerns, and for other purposes.

S. 2513

At the request of Mr. BIDEN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2513, a bill to assess the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence.

S. 2541

At the request of Mrs. FEINSTEIN, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 2541, a bill to amend title 18, United States Code, to establish penalties for aggravated identity theft, and for other purposes.

S. 2554

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of S. 2554, a bill to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

S. 2626

At the request of Mr. KENNEDY, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 2626, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2628

At the request of Mr. CORZINE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 2628, a bill to amend part A of title IV of the Social Security Act to require a State to promote financial education under the temporary assistance to needy families program and to allow financial education to count as a work activity under that program.

S. 2670

At the request of Mr. KYL, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 2670, a bill to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems.

S. 2674

At the request of Mr. BROWNBACK, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 2674, a bill to improve access to health care medically underserved areas.

S. 2714

At the request of Mrs. CLINTON, the names of the Senator from California (Mrs. BOXER) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 2714, a bill to extend and expand the Temporary Extended Unemployment Compensation Act of 2002.

S. 2715

At the request of Mrs. CLINTON, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2715, a bill to provide an additional extension of the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001.

S. 2734

At the request of Mr. KERRY, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 2734, a bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought.

S. RES. 239

At the request of Mr. ALLEN, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. Res. 239, a resolution recognizing the lack of historical recognition of the gallant exploits of the officers and crew of the S.S. Henry Bacon, a Liberty ship that was sunk February 23, 1945, in the waning days of World War II.

S. RES. 242

At the request of Mr. THURMOND, the names of the Senator from Utah (Mr. HATCH) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. Res. 242, a resolution designating August 16, 2002, as ''National Airborne Day''.

S. RES. 258

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of S. Res. 258, a resolution urging Saudi Arabia to dissolve its ''martyrs'' fund and to refuse to support terrorism in any way.

S. RES. 270

At the request of Mr. CAMPBELL, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. Res. 270, a resolution designating the week of October 13, 2002, through October 19, 2002, as ''National Cystic Fibrosis Awareness Week''.

S. CON. RES. 11

At the request of Mrs. FEINSTEIN, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. Con. Res. 11, a concurrent resolution expressing the sense of Congress to fully use the powers of the Federal Government to enhance the science base required to more fully develop the field of health promotion and disease prevention, and to explore how strategies can be developed to integrate lifestyle improvement programs into national policy, our health care system, schools, workplaces, families and communities.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS:

S. 2737. A bill to amend the Trade Act of 1974 to consolidate and improve the trade adjustment assistance programs, to provide community-based economic development assistance for trade-affected communities, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the Trade Adjustment Assistance Improvement Act of 2002.

You may ask why I am introducing this new bill now. After all, only about a month ago the Senate passed the Trade Act of 2002, a bill which prominently features a landmark expansion and improvement of the current Trade Adjustment Assistance program.

We all know that work on that trade bill is not yet complete. And I continue working diligently to get that bill through the conference process and on to the President's desk just as soon as possible.

Indeed, I am frustrated that so much time has been lost on this bill. Five weeks in the House as they worked through a very unusual process of appointing conferees. More time in the Senate while Republicans blocked efforts to get the bill to conference.

The TAA provisions in the trade bill that passed the Senate back in May are solid and important. They represent a huge improvement over current law. It is critical to remember, however, that they are the product of compromise, a compromise that was reached between Democrats and Republicans in the Senate and with the Administration.

In my view, the Senate-passed TAA reforms represent a good first step toward making TAA work for American workers. But we could do better. And we should do better.

That is why I am here introducing new TAA legislation today. I think American workers should know that my commitment to improve TAA will not end after we pass the current trade bill.

This new bill includes a number of provisions not included in H.R. 3009, the bill that passed the Senate. I would like to summarize a few of the most important new provisions now.

First, this bill makes training a full entitlement under TAA.

Under current law, TAA income support is an individual entitlement, but the training entitlement is subject to a funding cap. When funds run out, as they frequently do, workers cannot get the training to which they are entitled. In some cases, this results in denial of income support as well.

While H.R. 3009 raises the funding cap in an attempt to eliminate funding shortfalls for TAA training, I think this bill takes an even better approach. After all, TAA is fundamentally a retraining program. It just makes sense to make the same commitment to fully fund training that we already do to income support.

Second , this bill broadens the scope of eligibility to additional groups of trade-impacted workers who were dropped from TAA in the compromise language passed by the Senate. This includes, most importantly, a much broader definition of secondary workers.

In particular, this bill includes full TAA eligibility for downstream secondary workers, rather than limiting that eligibility to workers impacted by NAFTA.

It also includes coverage for workers who provide services under contract to trade-impacted firms and to truckers who may be adversely affected by the opening of the border to Mexican trucking services. In sum, this bill aims to make sure that every worker who loses his job as a result of trade gets fair and equitable access to services under TAA.

Third, this bill creates an easy and efficient process for providing TAA benefits on an industry-wide rather than firm-by-firm basis. We all know that there are industries in this country, like softwood lumber, steel, and textiles, just to name a few, that are experiencing declining employment on a national basis as a direct consequence of trade.

The bill addresses the problem two ways. In cases where an industry has already demonstrated adverse trade effects in a section 201 or ''safeguard'' investigation, the President must provide industry-wide TAA certification as part of the remedy.

It also requires the Secretary of Labor to use an industry-wide approach to certification in other industries when there is evidence that trade-related worker displacements are national in scope.

Finally, we restore the 75 percent health care tax credit for TAA participants that was reduced to 70 percent in the compromise trade bill. We also give workers additional choices for obtaining health care coverage.

Without strong and meaningful improvements in the TAA program, I think we would not have seen the wide, bipartisan support for the overall trade bill that allowed it to pass the Senate by a vote of 66–30.

For that reason, I view the Senate-passed TAA bill as a floor for what can reasonably be agreed to in conference. I don't think that something weaker is going to get us to a majority when the Senate considers the conference report.

As I mentioned before, many of the provisions included in this new bill were dropped from the trade bill that recently passed the Senate as part of a bipartisan compromise. Many, if not all, of them fall easily within the scope of the upcoming conference.

While I plan to vigorously defend the Senate bill in conference, I want to remind my colleagues in the House that the Senate bill already represents a bipartisan compromise, one worked out with the Administration.

In passing the rule to go to conference, my colleagues in the House have passed a bill that would completely gut the Senate-passed provisions. For example: the restrictions on coverage for secondary workers are so strict as to effectively eliminate coverage; the bill would not cover shifts in production to non-NAFTA countries; and the health care benefits have been significantly weakened. They would cover many fewer workers, for a shorter period of time, with reduced benefits that may be of little use.

I would suggest to my colleagues in the House that efforts to weaken the Senate bill will be met with equally strong efforts to strengthen it. It should come as no surprise that, if my House colleagues persist in trying to weaken TAA, I will feel obligated to raise some of the provisions that were dropped in the Senate negotiations.

As I have said many times, I believe an improved TAA program is critical to regaining public confidence in a liberal trade policy for our country. In future, I intend to keep working toward the goal of improving TAA in every way available. I think this new bill points us in the right direction and I am pleased to be introducing it today.

By Mr. JOHNSON (for himself and Mr. DASCHLE):

S. 2738. A bill to provide for the reimbursement under the Medicaid program under title XIX of the Social Security Act of nursing facilities that are located on an Indian reservation in the State of South Dakota and owned or operated by an Indian tribe or tribal organization, and for other purposes; to the Committee on Finance.

Mr. JOHNSON. Mr. President, South Dakota tribes are prevented from developing elder care on their reservations due to a State imposed moratorium on the construction or acquisition of additional nursing home beds. This impasse has gone on for nearly a decade, much too long.

Today I am introducing legislation along with my good friend and colleague Senator DASCHLE, that will facilitate the development and operation of nursing facilities that are owned or operated by an Indian tribe or tribal organization on Indian reservations that are located in the State of South Dakota. Additionally, the legislation will protect the right of members of Indian tribes and tribal organizations to

access health care provided by nursing facilities in the exercise of those members' entitlement to medical assistance under the Medicaid program.

The facts and information discussed during the Senate Indian Affairs July 10, 2002, Hearing on Elder Health Issues, confirms the need for this legislation. The National Resource Center on Native American Aging at the University of North Dakota, NRCNAA, reports that there is a ''greater level of need for personal assistance among the Native American elders than in the general population''. Only 6.5 percent of the Native American elders over 55 receive such services. This fact is especially alarming in light of the fact that Indian elders are affected disproportionately by disability and poor health. For example, the prevalence of diagnosed diabetes among American Indians and Alaska Natives age 65 and over, is 21.5 percent. This is nearly double the rate of 11 percent for the non-Hispanic white population, age 65 and over. Additionally, because of their rural isolation, poverty, and other barriers, reservation elders have little access to existing long term care delivery mechanisms that may serve mainstream or urban elderly populations.

This legislation will reduce existing barriers and give South Dakota tribes, their tribal elders, and their families long-term care alternatives. This legislation will assist tribes in their goal of providing their elders with care that preserves the individuals' dignity and health. I will continue to work closely with tribal leaders in South Dakota and Senator DASCHLE to address this critical problem facing the Native American community. I urge my colleagues to support passage of the South Dakota Tribal Nursing Facilities Act of 2002.

Mr. DASCHLE. Mr. President, today I join the Senator from South Dakota, Mr. Johnson, in introducing the South Dakota Tribal Nursing Facilities Act of 2002. I am proud to be an original cosponsor of this legislation, which will address the growing need for tribally-operated nursing homes on South Dakota's Indian reservations.

The Committee on Indian Affairs recently held a hearing on the growing health concerns facing Native American elders throughout Indian Country. Elderly Native Americans suffer from diabetes and other debilitating illnesses at rates hundreds of times higher than the general population. As more and more people live longer, it is necessary to find new ways to provide them with the health care, support, and services they need to lead productive, dignified lives.

American Indian elders are well respected and play a strong, central role in their communities. They are the storytellers, the historians, the teachers, and the link between the younger generation and the past. Unfortunately, Native American elderly in need of nursing home or other long-term care are forced to enter off-reservation facilities, or pay for private care, which many cannot afford. In rural States like South Dakota, many off-reservation facilities are hundreds of miles from the reservation, which places an increased burden on family members and ioslated the elders who are housed there. Many families cannot afford to visit their parents or grandparents in these distant nursing homes, and the elders often die forgotten and alone. While these nursing homes provide for the physical well-being, their spiritual health suffers.

There are only eleven tribally operated nursing home nationwide, and only one in South Dakota, operated by the Rosebud Sioux Tribe. The National Indian Council on Aging estimates that there are approximately 165,000 American Indians elderly nationwide, with less than 700 tribal nursing home beds available. Tribal nursing homes will allow tribal elders to remain in their communities, surrounded by friends and loved ones in their later years. In recent years, several South Dakota tribes have expressed an interest in establishing nursing homes on their reservations to provide for their tribal elderly. However, the South Dakota Legislature, in response to a surplus of nursing home beds and dwindling Medicaid funding, enacted a moratorium prohibiting the construction and licensing of new nursing homes.

While the moratorium does not apply to construction on Indian reservations in the State, the prohibition on licensing has the unfortunate effect of blocking access to a key and critical source of funding for any tribally-operated nursing home, Medicaid. Federal law requires that nursing homes be licensed by the State in which they are located to be eligible for reimbursement under Medicaid. The South Dakota Tribal Nursing Facilities Act of 2002 will overcome this obstacle by authorizing Indian tribes to construct, operate and license their own nursing homes. This will level the playing field to afford an opportunity to tribal governments that is afforded already to States. It is my hope this proposal will serve as a starting point so we can begin to address the long-term health care needs of American Indians across the country. I hope you will support our joint efforts.

By Mr. HATCH (for himself, Mr. DEWINE, Mr. LOTT, Mr. DOMENICI, Mr. BUNNING, Mr. GRASSLEY, Mr. KYL, Mr. MCCONNELL, Mr. SESSIONS, Mr. SANTORUM, Mr. HUTCHINSON, Mr. THURMOND, and Mr. HELMS):

S. 2739. A bill to provide for post-conviction DNA testing, to improve competence and performance of prosecutors, defense counsel, and trial judges handling State capital criminal cases, to ensure the quality of defense counsel in Federal capital cases, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, the issue of the death penalty in our country continues to spark significant debate. The recent Supreme Court decisions addressing capital punishment underscore the importance of this issue to the American people. It is an issue that engenders great passion, both among its supporters and among its opponents. The American people believe in the death penalty, especially for terrorists who have killed thousands of Americans. And all of us agree that the death penalty must be imposed fairly and accurately.

I have stated on numerous occasions my views on the death penalty. It is the ultimate punishment and it should be reserved only for those defendants who commit the most heinous of crimes. I am firmly convinced that we must be vigilant in ensuring that capital punishment is meted out fairly against those truly guilty criminals. We cannot and should not tolerate defects in the capital punishment system. No one can disagree with this ultimate and solemn responsibility.

In the last decade, DNA testing has evolved as the most reliable forensic technique for identifying criminals when biological evidence is recovered. While DNA testing is now standard in pre-trial investigations today, the issue of post-conviction DNA testing has emerged in recent years as the technology for such testing has improved. The integrity of our criminal justice system and in particular, our death penalty system, can be enhanced with the appropriate use of DNA testing. No one disagrees with the fact that post-conviction DNA testing should be made available to defendants when it serves the ends of justice.

In addition to post-conviction DNA testing, every defendant in our criminal justice system is afforded the guarantee by the 6th Amendment of our Constitution of competent and effective counsel. The Supreme Court has enforced this right in numerous decisions in order to ensure that all defendants are afforded the constitutional protections guaranteed to them.

Death penalty opponents argue that the system is broken and blame ineffective assistance of counsel. Their own evidence, however, indicates that the system is not broken. To the contrary, a recent Justice Department study concluded that ''[i]n both Federal and large State courts, conviction rates were the same for defendants represented by publicly financed and private attorneys.'' (Caroline Wolf Harlow, Defense Counsel in Criminal Cases, Bureau of Justice Statistics, November 2000). Further, 34 out of 38 States with capital punishment have adopted standards or have existing practices to ensure assignment of competent counsel. In my view, the appellate system and our habeas system, which was reformed in 1996, remain robust and entirely capable of identifying and rectifying instances of deficient representation or substantial error at the trial level.

We have all heard the horror stories of the attorney who fell asleep during

his client's trial and the attorney who showed up for trial intoxicated. Some opponents of the death penalty seek to portray these stories as ''par for the course.'' This view ignores the hundreds of capital cases in which no flaw was found in the quality of legal representation. It also ignores the hundreds of capital cases in which defendants were either acquitted, or sentenced to a penalty less than death, many times the result of outstanding representation by defense counsel. The truth is that in many cases prosecutors handling a capital case are out-manned and outgunned by defense teams funded by a combination of public and private sources.

The legislation I introduce today will ensure the integrity of our death penalty system. The Act addresses post-conviction DNA testing for defendants, provides grants to States to fund state post-conviction DNA testing programs, and creates new grant programs to train State prosecutors, defense counsel and judges to ensure that defendants receive a fair capital trial.

First, the Act authorizes post-conviction DNA testing where a federal defendant can show that the DNA test will establish his or her ''actual innocence.'' There has been considerable debate about when a convicted defendant should be entitled to post-conviction DNA testing. Under my proposal, when a defendant demonstrates that a favorable result would show that he or she is actually innocent of the crime, the defendant will be given access to DNA testing. Thus, DNA testing will not be permitted where such a test would only muddy the waters and be used by the defendant to fuel a new and frivolous series of appeals. When a DNA test shows that the defendant is actually innocent, then the Act authorizes the defendant to file a motion for a new trial. Under the Act, DNA testing in capital cases will be prioritized and conducted on a ''fast track,'' so that these important cases are handled quickly.

Second, in order to discourage a flood of baseless claims, the Act authorizes the prosecution of defendants who make false claims of innocence in support of a DNA testing request. Each defendant will be required to assert under penalty of perjury that they are, in fact, innocent of the crime. When DNA testing reveals that the defendant's claim of innocence was actually false, the defendant can then be prosecuted for perjury, contempt or false statements. Further, the Act allows DNA test results to be entered into the CODIS database and compared against unsolved crimes. If the test result shows that the defendant committed another crime, the defendant may then be prosecuted for the other crime.

Third, with respect to State defendants, the Act encourages States to create similar DNA testing procedures, and provides funding assistance to those States that implement DNA testing programs. Twenty-five of 38 States which have capital punishment already have enacted post-conviction DNA testing programs, and 6 States have pending legislation to create such a program. With the new source of funding, more States will enact DNA testing programs, and will provide such testing on an expedited basis.

Fourth, in order to improve the fairness and accuracy of state capital trials, the Act creates grant programs to train defense counsel, prosecutors and trial judges to ensure fair capital trials. While I do not believe that the system is broken, I do believe that our justice system can always be improved. The grants proposed under the Act will enable States to send prosecutors, defense counsel and trial judges to training programs to ensure that capital cases are handled more efficiently and effectively, and that every capital defendant will receive a fair trial under our justice system.

Starting in 2001 and continuing through this year, the Judiciary Committee, has conducted a number of hearings to examine these difficult issues relating to the death penalty system in our country. A competing proposal, S. 486, is now pending before the Committee. The alternative proposal would open the floodgates to frivolous litigation by allowing convicted Federal and State defendants to obtain post-conviction DNA testing even when they have never previously claimed they were innocent of the crime. Second, the alternative proposal tramples on the concept of federalism by stretching the 14th Amendment to mandate DNA testing and evidence preservation requirements on the States. Third, the alternative proposal would strip state courts of their traditional power to appoint counsel to represent indigent defendants; require states to comply with federally-mandated requirements for assignment of competent counsel; and fund new private capital resource litigation centers. Fourth, the alternative bill threatens to reduce valuable Byrne grants to State law enforcement agencies which are needed to fight crime in our local communities. Finally, the alternative bill would authorize a flood of private suits to enforce a set of new federal mandates on each of the states.

My bill will further our nation's commitment to justice, ensure that our country has a fair death penalty system, and protect the sovereignty of states from burdensome and unnecessary federal assertions of power.

I strongly urge my colleagues to join with me in promptly passing this important legislation. 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:

[Data not available at time of printing.]

By Mr. GRASSLEY (for himself and Mr. NELSON of Nebraska):

S. 2741. A bill to amend title 38, United States Code, to improve procedures for the determination of the inability of veterans to defray expenses of necessary medical care, and for other purposes; to the Committee on Veterans' Affairs.

Mr. GRASSLEY. Mr. President, today I am introducing legislation to address a problem in the way the Department of Veterans Affairs, VA, determines a veteran's eligibility category for health care, which results in an unfair misclassification of many veterans who are farmers. Veterans who do not have a service-connected disability but who are unable to defray the cost of necessary health care are placed in priority group 5 and are able to receive health care services from the VA at no cost to the veteran. In order to determine whether a veteran falls below the means test threshold and is thus eligible to enroll in priority group 5, the VA looks at the net worth of a veteran's estate, including any real property owned by the veteran or the veteran's spouse. When you add in the value of farm land, the net worth of many farmer-veterans can appear high on paper even though they may in fact have little or no income.

The current means test threshold for net worth is set at $80,000. Given the current average value of farm land in Iowa of $1,857, a farm in Iowa worth $80,000 would average a barely viable 44 acres. A more viable 80 acre farm would be worth $148,560 on average. In other words, almost any Iowa farm large enough to be viable would exceed the current means test threshold.

Under the current law, when the value of a veteran's estate exceeds the means test threshold, the veteran becomes ineligible to enroll in priority group 5 if the VA determines that ''it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance.'' I don't think it is ever ''reasonable'' that a veteran, who has little or no income or other assets, be asked to sell a portion of his family farm in order to pay his medical bills. Nevertheless, because of the way the law currently reads, these land-rich but cash-poor veterans are often placed in priority group 7, meaning they may only enroll in VA health care if they agree to pay co-payments to the VA and then only on a space-available and funds-available basis.

This problem was first brought to my attention by one of my constituents, Larry Sundall, who is a county veterans service officer in Emmet County, IA. In response, I convened a meeting in Des Moines in April of 2000, which was attended by county veterans service officers and State veterans affairs officers from Iowa, Minnesota, Nebraska, and South Dakota as well as VA staff. I heard many similar stories about low-income veterans who were in the same boat. In September of that year, I introduced legislation to fix this problem by excluding the value of real property from the calculation of

the net worth of a veteran's estate in determining a veteran's eligibility category for health care.

Unfortunately, my bill was not acted on before the end of the 106th Congress. In the first session of the 107th Congress, an unsuccessful attempt was made to address this issue in the context of legislation to make improvements to various veterans' programs. I am now reintroducing my legislation in hopes of fixing this problem once and for all.

In addition, my bill makes some adjustments to the way the VA determines the attributable income of a veteran that will make the process easier for both the VA and the veteran. The VA currently has the authority to verify a veteran's income using a quick and efficient computer process that matches VA records with data from the IRS and other Federal agencies. However, the data for the prior year is often unavailable making it impossible for the VA to perform this income verification for the majority of veterans at the time when the data is needed. My bill would allow the VA to use the data available for the year preceding the previous year to determine the attributable income of a veteran. This would not only help the VA to more easily and more accurately determine a veteran's income, it would also allow a veteran to check a box to let the VA use this procedure to gather the veteran's income data without the veteran having to dig through his financial records and fill out the information on a form. It can be frustrating for a veteran to have to fill out the paperwork necessary to apply for benefits and this change would make the application process easier for both the veteran and the VA.

My bill would correct a fundamental unfairness that adversely affects veterans who are farmers while making the application process for health benefits simpler for veterans and more efficient for the VA. In fact, taken together, these important reforms would actually save taxpayer dollars. According to data provided to me by the VA, over $8.7 million would be saved in fiscal year 2003 alone. This legislation is a win-win proposition and I would urge my colleagues to join me in supporting the swift passage of this measure.

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. 2741

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. IMPROVEMENT OF PROCEDURES FOR DETERMINATION OF INABILITY TO DEFRAY EXPENSES OF NECESSARY MEDICAL CARE.

(a) EXCLUSION OF CERTAIN ASSETS FROM ATTRIBUTABLE INCOME AND CORPUS OF ESTATES.—Subsection (f) of section 1722 of title 38, United States Code, is amended—

(1) in paragraph (1), by inserting before the period at the end the following: '', except that such income shall not include the value of any real property of the veteran or the veteran's spouse or dependent children, if any, or any income of the veteran's dependent children, if any''; and

(2) in paragraph (2), by striking ''the estates'' and all that follows and inserting ''the estate of the veteran's spouse, if any, but does not include any real property of the veteran, the veteran's spouse, or any dependent children of the veteran, nor any income of dependent children of the veteran.''.

(b) ALTERNATIVE YEAR FOR DETERMINATION OF ATTRIBUTABLE INCOME.—That section is further amended by adding at the end the following new subsection:

''(h) For purposes of determining the attributable income of a veteran under this section, the Secretary may determine the attributable income of the veteran for the year preceding the previous year, rather than for the previous year, if the Secretary finds that available data do not permit a timely determination of the attributable income of the veteran for the previous year for such purposes.''.

(c) USE OF INCOME INFORMATION FROM CERTAIN OTHER FEDERAL AGENCIES.—Section 5317 of that title is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following new subsection (f):

''(f) In addition to any other activities under this section, the Secretary may utilize income information obtained under this section from the Secretary of Health and Human Services or the Secretary of the Treasury for the purpose of determining the attributable income of a veteran under section 1722 of this title, in lieu of obtaining income information directly from the veteran for that purpose.''.

(d) PERMANENT AUTHORITY TO OBTAIN INFORMATION.—(1) Section 5317 of that title, as amended by subsection (c), is further amended by striking subsection (h).

(2) Section 6103(l)(7)(D) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)(D)) is amended in the flush matter at the end by striking the second sentence.

By Mrs. HUTCHISON (for herself, Mr. LEVIN, Mr. BINGAMAN, Mr. DOMENICI, Mr. MURKOWSKI and Ms. CANTWELL):

S. 2742. A bill to establish new nonimmigrant classes for border commuter students; to the Committee on the Judiciary.

Mr. LEVIN. Mr. President, I am pleased to join my colleague from Texas, Senator HUTCHISON, in introducing legislation to make part-time commuter students who are nationals of either Canada or Mexico and attend school in the United States eligible for student visas.

Thousands of Canadian nationals commute to attend schools part time in the United States and hundreds of these part-time students commute to schools in Michigan. Between 35 and 40 part-time Canadian students attend Baker College, in Port Huron, MI, each semester. And more than 400 Canadian students plan to attend Wayne State University in Detroit part time this fall alone. Other schools in Michigan, including Lake Superior State University in Sault Saint Marie, also have a number of part-time Canadian students. Unfortunately, current law does not establish an appropriate visa for these part-time commuter students.

Under the Immigration and Naturalization Act, aliens who reside in a foreign country and are pursuing a full course of study from a recognized vocational institution or an established college, university, or other academic institution in the United States are eligible for student visas. For purposes of granting student visas, the INS defines ''full course of study'' as 12 credits or more. Part-time commuter students, those who might be only taking a class or two, are not currently eligible for student visas.

However, some INS district offices have permitted part-time commuter students to enter the United States as visitors to pursue their studies. However, the INS recently announced its intention to eliminate this practice and enforce the full time, 12 credit hour requirement.

I agree with the INS that we need to tighten up enforcement of our immigration laws. However, achieving this goal does not mean that we have to prohibit all part-time commuter students from attending classes at schools in the United States. But absent a legislative remedy, that is exactly what will happen. Fortunately, the agency recently postponed enforcement of the policy until August 15, 2002, while administrative and legislative remedies are considered. The legislation we are introducing today appropriately addresses the problem facing part-time commuter students without opening new avenues for illegal immigration.

Our bill would amend 18 U.S.C. 1101 to make certain part-time commuter students eligible for student visas. The bill would allow nationals of Canada or Mexico who both maintain a residence and a place of abode in their country or nationality and who commute to school to enroll part time in schools in the United States. Part-time commuter student visas are restricted to nationals of Canada or Mexico. Our bill would not make political asylees, residents, or others who are nationals of third countries but simply live in Canada or Mexico eligible for the visas.

The legislation also enhances national security by ensuring that part-time commuter students are tracked through SEVIS, the Student and Exchange Visitor Information System. SEVIS was set up to make the Federal Government aware of changes in a foreign student's status that could affect their eligibility to remain in the United States. The Enhanced Border Security and Visa Entry Reform Act passed by the Senate in April and signed into law by the President on May 14, 2002, paved the way for full implementation of SEVIS. Certain schools began participating in a SEVIS this month and participation is mandatory by January 30, 2003. However, SEVIS only tracks nonimmigrant students and exchange visitors. Aliens admitted with visitor visas are not tracked through the system. Our bill will, for the first time, ensure that part-time commuter students from

Canada and Mexico are tracked through SEVIS.

Mr. President, the legislation we are introducing today is not only an improvement on current INS policy with regards to part-time commuter students but it closes an important loophole in INS's student tracking system. I am pleased to join Senator HUTCHINSON in introducing the bill and I look forward to seeing it pass the 107th Congress.

BORDER COMMUTER STUDENT ACT OF 2002

Ms. CANTWELL. Mr. President, I am joining today with Senator KAY BAILEY HUTCHISON to introduce the Border Commuter Student Act of 2002.

In my State and many other States along our borders, Canadian and Mexican students take advantage of our excellent community colleges and vocational schools. For many years, this system has worked well, providing economic benefits to the schools and to the surrounding communities while also helping Mexican and Canadian students to benefit from educational opportunities in this country.

Unfortunately, despite the fact that this is a system that has worked well for both Canadian students and the local communities the Immigration and Naturalization, INS, recently decided to begin enforcing a 50-year-old law that prohibits those students from attending U.S. schools on a part-time basis. As of August 15, students will no longer be allowed to cross the Canadian border to attend classes at Bellingham Technical College. This will result in a significant loss of funds for Bellingham Technical College and the surrounding community in Whatcom County which is already suffering from severely reduced border traffic in the wake of September 11 and the economic downturn in the State as a whole.

They will not be allowed to cross the border to attend El Paso Community College, D'Youville College in Buffalo, or Wayne State University in Detroit.

In my home State of Washington, Bellingham Technical College currently has many part-time students who commute from Canada, the vast majority of whom are enrolled in nursing, surgical technology, and dental assistant training programs. This action is being taken at the same time we are facing a devastating shortage of nurses and other health care professionals both in the United States and in Canada.

This bill will address this issue by creating a new category for students who do not intend to immigrate to this country. It will be limited to Canadian and Mexican commuter students residing in their home country and attending school on a full- or part-time basis at schools in many of our border States. In order to qualify for this visa, students will have to prove that they are who they say they are, and will be subjected to more strict requirements than Canadian visitors entering the U.S. for pleasure.

Our educational system is the best in the world, and the INS decision to terminate a system that has been extending that educational opportunity to those who live adjacent to our borders and that has been providing economic benefit to my State and many other States, is the wrong policy. With the introduction of this legislation today, we will address this problem and allow a system that has been working to continue. I am proud to be a cosponsor of the Border Commuter Student Act of 2002.

I would like to thank Senator HUTCHISON for her leadership on the bill and look forward to working with her and my other colleagues to pass this important legislation.

By Mr. KYL (for himself and Mr. MCCAIN):

S. 2743. A bill to approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes; to the Committee on Indian Affairs.

Mr. KYL. Mr. President, on behalf of Senator MCCAIN and myself I am introducing legislation today that would codify the settlement of the Zuni Indian Tribe's water rights for its religious lands in northeastern Arizona. Congress first recognized the importance of these lands in 1984 when it created the Zuni Heaven Reservation, Pub. L. No. 98–498, as amended by Pub. L. No. 101–486, 1990. The small communities upstream from this Reservation have been fully-appropriated, they have had more would-be water users than water, for nearly a century. The prospect of dividing this limited water with yet another user created great uncertainty. To resolve that uncertainty and to avoid expensive and protracted litigation, the Zuni Tribe, the United States on behalf of the Zuni Tribe, the State of Arizona, including the Arizona Game and Fish Commission, the Arizona State Land Department, and the Arizona State Parks Board, and the major water users in this area of Arizona negotiated for many years to produce a settlement that is acceptable to all parties.

This bill would provide the Zuni Tribe with the resources and protections necessary to acquire water rights from willing sellers and to restore and protect the wetland environment that previously existed on the Reservation. In return, the Zuni Tribe would waive its claims in the Little Colorado River Adjudication. In addition, the Zuni Tribe would, among other things, grandfather existing water uses and waive claims against many future water uses in the Little Colorado River basin. In summary, with this bill, the Zuni Tribe can achieve its needs for the Zuni Heaven Reservation while avoiding a disruption to local water users and industry. Furthermore, the United States can avoid litigating water rights and damage claims and satisfy its trust responsibilities to the Tribe regarding water for the Reservation. The parties have worked many years to reach consensus and I believe this bill would produce a fair result to all.

By Mr. DEWINE (for himself and Mr. VOINOVICH):

S. 2744. A bill to establish the National Aviation Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

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

Mr. DeWINE. Mr. President, I rise today with my friend and fellow Ohioan, Senator VOINOVICH, to introduce a bill that would establish a National Aviation Heritage Area within our home state of Ohio.

The year 2003 represents the 100th anniversary of manned flight. On December 17, 1903, Wilbur and Orville Wright, who are native Ohioans, invented controlled, heavier-than-air flight. This was the first step in the century-long progression of flight. The Wright Brothers' successful design and the science behind it were the forerunners to our modern airplanes and space vehicles.

There is obvious historical and cultural significance to the birth of aviation, and one of the unique educational aspects of aviation is the opportunity we can give children to interact with the subject outside of the classroom. This is why I am proud today to be introducing the National Aviation Heritage Area Act.

Our bill seeks to foster strong public and private investments in aviation landmarks. Some of these landmarks include the Wright Brother's Wright Cycle Company, located in Dayton, OH; the National Aviation Hall of Fame; the Wright-Dunbar Interpretive Center, where students of all ages can learn about the painstaking measures the Wright Brothers and many of their predecessors took to fly; and the Huffman Prairie Flying Field, where the Brothers perfected the design of the world's first airplane. Listed in the bill are several other important aviation sites that may be added into the Heritage Area at a later date, such as the NASA-Glenn Research Facility and the Captain Edward V. Rickenbacher House.

Mr. President, flight has become another important square in the patchwork of our nation's history. We are reminded of this every time we look skyward and see the crisscross of jet contrails. We are reminded of this every time we walk through the Rotunda of our very own U.S. Capitol and see the last frieze square that depicts the invention of flight by the Wright Brothers. And, we are reminded of this by one of the symbols of America, the eagle, a flying bird that represents the freedom of a people.

It is vital that we protect the sites that have played such an important role in aviation. Doing so, we can enhance the education and enrichment of our children and our grandchildren for many years to come.

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. 2744

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—NATIONAL AVIATION HERITAGE AREA

SECTION 101. SHORT TITLE.

This title may be cited as the ''National Aviation Heritage Area Act''.

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Few technological advances have transformed the world or our Nation's economy, society, culture, and national character as the development of powered flight.

(2) The industrial, cultural, and natural heritage legacies of the aviation and aerospace industry in the State of Ohio are nationally significant.

(3) Dayton, Ohio, and other defined areas where the development of the airplane and aerospace technology established our Nation's leadership in both civil and military aeronautics and astronautics set the foundation for the 20th Century to be an American Century.

(4) Wright-Patterson Air Force Base in Dayton, Ohio, is the birthplace, the home, and an integral part of the future of aerospace.

(5) The economic strength of our Nation is connected integrally to the vitality of the aviation and aerospace industry, which is responsible for an estimated 11,200,000 American jobs.

(6) The industrial and cultural heritage of the aviation and aerospace industry in the State of Ohio includes the social history and living cultural traditions of several generations.

(7) The Department of the Interior is responsible for protecting and interpreting the Nation's cultural and historic resources, and there are significant examples of these resources within Ohio to merit the involvement of the Federal Government to develop programs and projects in cooperation with the Aviation Heritage Foundation, Incorporated, the State of Ohio, and other local and governmental entities to adequately conserve, protect, and interpret this heritage for the educational and recreational benefit of this and future generations of Americans, while providing opportunities for education and revitalization.

(8) Since the enactment of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), partnerships among the Federal, State, and local governments and the private sector have greatly assisted the development and preservation of the historic aviation resources in the Miami Valley.

(9) An aviation heritage area centered in Southwest Ohio is a suitable and feasible management option to increase collaboration, promote heritage tourism, and build on the established partnerships among Ohio's historic aviation resources and related sites.

(10) A critical level of collaboration among the historic aviation resources in Southwest Ohio cannot be achieved without a congressionally established national heritage area and the support of the National Park Service and other Federal agencies which own significant historic aviation-related sites in Ohio.

(11) The Aviation Heritage Foundation, Incorporated, would be an appropriate management entity to oversee the development of the National Aviation Heritage Area.

(12) Five National Park Service and Dayton Aviation Heritage Commission studies and planning documents ''Study of Alternatives: Dayton's Aviation Heritage'', ''Dayton Aviation Heritage National Historical Park Suitability/Feasibility Study'', ''Dayton Aviation Heritage General Management Plan'', ''Dayton Historic Resources Preservation and Development Plan'', and Heritage Area Concept Study (in progress) demonstrated that sufficient historical resources exist to establish the National Aviation Heritage Area.

(13) With the advent of the 100th anniversary of the first powered flight in 2003, it is recognized that the preservation of properties nationally significant in the history of aviation is an important goal for the future education of Americans.

(14) Local governments, the State of Ohio, and private sector interests have embraced the heritage area concept and desire to enter into a partnership with the Federal Government to preserve, protect, and develop the Heritage Area for public benefit.

(15) The National Aviation Heritage Area would complement and enhance the aviation-related resources within the National Park Service, especially the Dayton Aviation Heritage National Historical Park, Ohio, and the Wright Brothers National Memorial, Kitty Hawk, North Carolina.

(b) PURPOSE.—The purpose of this title is to establish the Heritage Area to—

(1) encourage and facilitate collaboration among the facilities, sites, organizations, governmental entities, and educational institutions within the Heritage Area to promote heritage tourism and to develop educational and cultural programs for the public;

(2) preserve and interpret for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, structures, facilities, and sites within the National Aviation Heritage Area;

(3) encourage within the National Aviation Heritage Area a broad range of economic opportunities enhancing the quality of life for present and future generations;

(4) provide a management framework to assist the State of Ohio, its political subdivisions, other areas, and private organizations, or combinations thereof, in preparing and implementing an integrated Management Plan to conserve their aviation heritage and in developing policies and programs that will preserve, enhance, and interpret the cultural, historical, natural, recreation, and scenic resources of the Heritage Area; and

(5) authorize the Secretary to provide financial and technical assistance to the State of Ohio, its political subdivisions, and private organizations, or combinations thereof, in preparing and implementing the private Management Plan.

SEC. 103. DEFINITIONS.

For purposes of this title:

(1) BOARD.—The term ''Board'' means the Board of Directors of the Foundation.

(2) FINANCIAL ASSISTANCE.—The term ''financial assistance'' means funds appropriated by Congress and made available to the management entity for the purpose of preparing and implementing the Management Plan.

(3) HERITAGE AREA.—The term ''Heritage Area'' means the National Aviation Heritage Area established by section 4 to receive, distribute, and account for Federal funds appropriated for the purpose of this title.

(4) MANAGEMENT PLAN.—The term ''Management Plan'' means the management plan for the Heritage Area developed under section 106.

(5) MANAGEMENT ENTITY.—The term ''management entity'' means the Aviation Heritage Foundation, Incorporated (a nonprofit corporation established under the laws of the State of Ohio).

(6) PARTNER.—The term ''partner'' means a Federal, State, or local governmental entity, organization, private industry, educational institution, or individual involved in promoting the conservation and preservation of the cultural and natural resources of the Heritage Area.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(8) TECHNICAL ASSISTANCE.—The term ''technical assistance'' means any guidance, advice, help, or aid, other than financial assistance, provided by the Secretary.

SEC. 104. NATIONAL AVIATION HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State of Ohio, and other areas as appropriate, the National Aviation Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall include the following:

(1) A core area consisting of resources in Montgomery, Greene, Warren, Miami, Clark, and Champaign Counties in Ohio.

(2) The Neil Armstrong Air & Space Museum, Wapakoneta, Ohio, and the Wilbur Wright Birthplace and Museum, Millville, Indiana.

(3) Sites, buildings, and districts recommended by the Management Plan.

(c) MAP.—A map of the Heritage Area shall be included in the Management Plan. The map shall be on file in the appropriate offices of the National Park Service, Department of the Interior.

(d) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Aviation Heritage Foundation.

SEC. 105. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—For purposes of implementing the Management Plan, the management entity may use Federal funds made available through this Act to—

(1) make grants to, and enter into cooperative agreements with, the State of Ohio and political subdivisions of that State, private organizations, or any person;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.— The management entity shall—

(1) develop and submit to the Secretary for approval the proposed Management Plan in accordance with section 106;

(2) give priority to implementing actions set forth in the Management Plan, including taking steps to assist units of government and nonprofit organizations in preserving resources within the Heritage Area and encouraging local governments to adopt land use policies consistent with the management of the Heritage Area and the goals of the Management Plan;

(3) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area in developing and implementing the Management Plan;

(4) maintain a collaboration among the partners to promote heritage tourism and to assist partners to develop educational and cultural programs for the public;

(5) encourage economic viability in the Heritage Area consistent with the goals of the Management Plan;

(6) assist units of government and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the historical, natural, and architectural resources and sites in the Heritage Area; and

(D) restoring historic buildings that relate to the purposes of the Heritage Area;

(7) assist units of government and nonprofit organizations to ensure that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are placed throughout the Heritage Area;

(8) conduct public meetings at least quarterly regarding the implementation of the Management Plan;

(9) submit substantial amendments to the Management Plan to the Secretary for the approval of the Secretary; and

(10) for any year in which Federal funds have been received under this Act—

(A) submit an annual report to the Secretary that sets forth the accomplishments of the management entity and its expenses and income;

(B) make available to the Secretary for audit all records relating to the expenditure of such funds and any matching funds; and

(C) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of such funds.

(c) USE OF FEDERAL FUNDS.—

(1) IN GENERAL.—The management entity shall not use Federal funds received under this Act to acquire real property or an interest in real property.

(2) OTHER SOURCES.—Nothing in this Act precludes the management entity from using Federal funds from other sources for authorized purposes.

SEC. 106. MANAGEMENT PLAN.

(a) PREPARATION OF PLAN.—Not later than 3 years after the date of enactment of this Act, the management entity shall submit to the Secretary for approval a proposed Management Plan that shall take into consideration State and local plans and involve residents, public agencies, and private organizations in the Heritage Area.

(b) CONTENTS.—The Management Plan shall incorporate an integrated and cooperative approach for the protection, enhancement, and interpretation of the natural, cultural, historic, scenic, and recreational resources of the Heritage Area and shall include the following:

(1) An inventory of the resources contained in the core area of the Heritage Area, including the Dayton Aviation Heritage Historical Park, the sites, buildings, and districts listed in section 202 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), and any other property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, or maintained because of its significance.

(2) Recommendations for inclusion within the Heritage Area of suitable and feasible sites, buildings, and districts outside the core area of the Heritage Area. Such recommendations shall be included in the inventory required under paragraph (1) and may include the following:

(A) The Wright Brothers National Memorial, Kitty Hawk, North Carolina.

(B) The Captain Edward V. Rickenbacker House National Historic Landmark, Columbus, Ohio.

(C) The NASA Glenn Research Center at Lewis Field, Cleveland, Ohio.

(D) The Rocket Engine Test Facility National Historic Landmark, Sandusky, Ohio.

(E) The Zero Gravity Research Facility National Historic Landmark, Cleveland, Ohio.

(F) The International Women's Air & Space Museum, Inc., Cleveland, Ohio.

(G) The John and Annie Glenn Museum and Exploration Center, New Concord, Ohio.

(3) An assessment of cultural landscapes within the Heritage Area.

(4) Provisions for the protection, interpretation, and enjoyment of the resources of the Heritage Area consistent with the purposes of this Act.

(5) An interpretation plan for the Heritage Area.

(6) A program for implementation of the Management Plan by the management entity, including the following:

(A) Facilitating ongoing collaboration among the partners to promote heritage tourism and to develop educational and cultural programs for the public.

(B) Assisting partners planning for restoration and construction.

(C) Specific commitments of the partners for the first 5 years of operation.

(7) The identification of sources of funding for implementing the plan.

(8) A description and evaluation of the management entity, including its membership and organizational structure.

(c) DISQUALIFICATION FROM FUNDING.—If a proposed Management Plan is not submitted to the Secretary within 3 years of the date of the enactment of this Act, the management entity shall be ineligible to receive additional funding under this Act until the date on which the Secretary receives the proposed Management Plan.

(d) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—The Secretary, in consultation with the State of Ohio, shall approve or disapprove the proposed Management Plan submitted under this Act not later than 90 days after receiving such proposed Management Plan.

(e) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a proposed Management Plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions to the proposed Management Plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(f) APPROVAL OF AMENDMENTS.—The Secretary shall review and approve substantial amendments to the Management Plan. Funds appropriated under this Act may not be expended to implement any changes made by such amendment until the Secretary approves the amendment.

SEC. 107. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—Upon the request of the management entity, the Secretary may provide technical assistance, on a reimbursable or nonreimbursable basis, and financial assistance to the Heritage Area to develop and implement the Management Plan. The Secretary is authorized to enter into cooperative agreements with the management entity and other public or private entities for this purpose. In assisting the Heritage Area, the Secretary shall give priority to actions that in general assist in—

(A) conserving the significant natural, historic, cultural, and scenic resources of the Heritage Area; and

(B) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(2) OTHER ASSISTANCE.—Upon request, the Superintendent of Dayton Aviation Heritage National Historical Park may provide to public and private organizations within the Heritage Area, including the management entity, such technical and financial assistance as appropriate to support the implementation of the Management Plan, subject to the availability of appropriated funds. The Secretary is authorized to make grants and enter into cooperative agreements with public and private organizations for the purpose of implementing this subsection.

(b) DUTIES OF OTHER FEDERAL AGENCIES.—Any Federal agency conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this Act;

(3) to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(4) to the maximum extent practicable, conduct or support such activities in a manner which the management entity determines will not have an adverse effect on the Heritage Area.

SEC. 108. COORDINATION BETWEEN THE SECRETARY AND THE SECRETARY OF DEFENSE AND THE ADMINISTRATOR OF NASA.

The decisions concerning the execution of this title as it applies to properties under the control of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration shall be made by such Secretary or such Administrator, in consultation with the Secretary of the Interior.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—To carry out this title there is authorized to be appropriated $10,000,000, except that not more than $1,000,000 may be appropriated to carry out this title for any fiscal year.

(b) 50 PERCENT MATCH.—The Federal share of the cost of activities carried out using any assistance or grant under this title shall not exceed 50 percent.

(c) OTHER FEDERAL FUNDS.—Other Federal funding received by the management entity for the implementation of this Act shall not be counted toward the authorized appropriation.

SEC. 110. SUNSET PROVISION.

The Secretary shall not provide any grant or other assistance under this title after September 30, 2017.

TITLE II—WRIGHT COMPANY FACTORY STUDY

SEC. 201. STUDY.

(a) IN GENERAL.—The Secretary shall conduct a special resource study updating the study required under section 104 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419) and detailing alternatives for incorporating the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park.

(b) CONTENTS.—The study shall include an analysis of alternatives for including the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park that detail management and development options and costs.

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with the Delphi Corporation, the Dayton Aviation Heritage Commission, the Aviation Heritage Foundation, State and local agencies, and other interested parties in the area.

SEC. 202. REPORT.

Not later than 2 years after funds are first made available for this title, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the results of the study conducted under section 201.

By Mr. BENNETT (for himself and Mr. HATCH):

S. 2745. A bill to provide for the exchange of certain lands in Utah; to the

Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, it gives me great pleasure today to introduce for the Senate's consideration legislation that will benefit the school children of Utah and improve the management of the public lands within Utah. This legislation closely follows two previous legislated land exchanges, the ''Utah Schools and Lands Exchange Act of 1998'' and the ''Utah West Desert Land Exchange Act of 2000''. Each of these past exchanges has enabled the Federal Government to consolidate lands in Utah with significant resource value while the State of Utah has accumulated lands of lesser environmental significance, but with higher revenue generating potential. The Federal-Utah State Trust Lands Consolidation Act will only add to the successes earned through the last two land exchanges.

The Utah Enabling Act of 1894 granted to the State four sections, each section approximately 640 acres in size, in each 36 square-mile township. These lands were granted for the support of the public schools, and thus are referred to a school trust lands. Accordingly, the School and Institutional trust Lands Administration, SITLA, is required by law to generate revenue in accordance with its mission from approximately 3.5 million acres of widely dispersed land. The location of these lands, as they are not contiguous to each other, has made management by the State difficult. In addition, as school trust lands are interspersed with Federal lands, Federal land designations, such as wilderness study areas, national monuments, and national parks, have further complicated the state's ability to fully carry out its trust responsibility to its public schools.

The legislation I propose today will ratify an agreement signed by the State of Utah, the Department of the Interior, and the Department of Agriculture. Under the agreement the Federal Government will receive 108, 284 acres from SITLA while the Federal government will transfer to SITLA approximately 133,000 acres of federal lands. SITLA will exchange property with significant resource values including inholdings in the Manti-La Sal National Forest, the Red Cliffs Desert Reserve, and most importantly 102,000 acres in the San Rafael Swell. The San Rafael Swell is one of the most remarkable areas in the county. It is 900 square miles of rugged terrain sprinkled with amazing mesas, buttes, and canyons. The San Rafael Swell also contains significant natural, historical, and cultural resources and it is home to an important population of desert bighorn sheep. Furthermore, over the yeas the San Rafael Swell has been proposed to be designated as wilderness, a national conservation area, a heritage area, and a national monument. It is widely agreed that this area deserves special recognition. Because of the proposed designations and the overall importance of the San Rafael Swell, sizable school trust inholdings are not advisable; both the State and Federal Government would be better served by consolidated ownership.

The majority of the lands acquired by the SITLA are in the Uinta Basin, which will compliment current SITLA holdings. These lands are less environmentally sensitive but have good potential for development in the future, thereby allowing the State to maintain its trust responsibilities. Additional properties will be acquired in Emery, Washington, Sevier, and Utah counties.

During negotiations between the State of Utah and the Federal Government great care was taken to exclude from exchange Federal lands designated as wilderness study areas, areas proposed for wilderness designations in pending Federal legislation, significant endangered species habitat, significant archaeological resources, areas of critical environmental concern, or other lands known to raise significant environmental concerns of any kind. Additionally, the parties to this agreement expended substantial effort to ensure the value of the exchange was equal. To ensure the exchange was of comparable value the parties obtained the services of a nationally recognized real estate consultant who reviewed the methodologies and assumptions used to determine value. After completing a thorough review, the consultant supported the parties' conclusion that the exchange was of equal value.

This legislation has the strong support of Utah's delegation, the Utah State Office of Education, and the Utah Parent Teacher Association. I look forward to working with my colleagues to pass this legislation this year.

By Mr. FEINGOLD (for himself and Ms. COLLINS):

S. 2746. A bill to establish a Federal Liaison on Homeland Security in each State, to provide coordination between the Department of Homeland Security and State and local first responders, and for other purposes; to the Committee on Governmental Affairs.

Mr. FEINGOLD. Mr. President, I rise today with my colleague from Maine to introduce legislation to improve and streamline Federal support for first responders. Our proposal will also provide an avenue for our first responders, our fire fighters, law enforcement, rescue, and emergency medical service, EMS, providers, to help Federal agencies and the new Department of Homeland Security improve and coordinate existing programs and future initiatives.

The President has proposed a massive shift in the Federal Government by creating a new Department of Homeland Security. While Washington will surely be shaken up by this restructuring, nobody will feel the impact of this shift more than those on the front lines, our law enforcement, firefighters, rescue workers, EMS providers, and other first responders.

I am concerned that as the proposed Department of Homeland Security moves forward, one of the most important functions has not received enough consideration, supporting first responders.

A recent editorial by Amy Smithson, the Director of the Chemical and Biological Nonproliferation Project at the Henry L. Stimson Center, which was published in the New York Times, illustrates that even without this massive re-organization, Washington must do a more effective job in targeting the resources to the training and equipment programs that our communities need.

Ms. Smithson details how Washington has already shifted key training and equipment programs for firefighters, police, paramedics, and others from the Defense Department to the Justice Department and now on to the Federal Emergency Management Agency.

While these first responders are the most important people in any emergency, they received just $311 million of the more than $9.7 billion in counter-terrorism spending in 2001.

While I commend the Administration for raising the funding dedicated to first responders for 2003 fiscal year to $5 billion, I share Ms. Smithson's concern that with the new layers of bureaucracy and reorganization, that number could shrink significantly.

Providing resources is not the only answer. These resources need to be dedicated to those programs that meet the needs of the first responders serving our communities.

The Federal agencies in the Department of Homeland Security must listen to the priorities of our communities. After all, the needs of first responders vary between regions, as well as between rural and urban communities. In Wisconsin, I have heard needs ranging from training to equipment to more emergency personnel in the field, just to name a few.

We must listen to our law enforcement officials to identify which programs most effectively help them protect our communities. We must listen to our firefighters and fire chiefs to identify which programs most effectively prevent and respond to disasters.

Once we have identified these programs and perceived needs, the Federal agencies under the New Department of Homeland Security must coordinate their activities in an effective manner.

In the case of EMS providers, more than five Federal agencies currently support EMS services, but they lack coordination and the necessary input from our local EMS providers. Earlier this year, Congress approved legislation, sponsored by the Senator from Maine and myself, that would improve coordination between these services.

We must ensure that the agencies within the Department of Homeland Security promote this same kind of coordination and not fall into the trap of five separate initiatives to address the same problem.

Our legislation, the First Responder Support Act will promote effective coordination among Federal agencies under the Department of Homeland Security and ensure that our first responders, our firefighters, law enforcement, rescue, and EMS providers, can help Federal agencies and the new Department of Homeland Security improve existing programs and future initiatives.

Our proposal establishes a Federal Liaison on Homeland Security in each State, to provide coordination between the Department of Homeland Security and State and local first responders. This office will serve not only as an avenue to exchange ideas, but also as a resource to ensure that the funding and programs are effective. For example, they can help ensure that State and local priorities are matching up with those set out at the new Department. They can also identify areas of Homeland Security in which the Federal and State or local role is duplicative and recommend ways to decrease or eliminate unneeded resources.

It would also direct the agencies within the Department of Homeland Security to coordinate and prioritize their activities that support first responders, and at the same time, ensure effective use of taxpayer dollars.

As part of this coordination, the First Responders Support Act establishes a new advisory committee of those in the first responder community to identify and streamline effective programs.

I am submitting this proposal in the hope that the Committee charged with creating the new agency will consider it during their mark up of any legislation. I recognize, however, that this consideration does not prejudge which committee will be charged with oversight of this new department.

We must be aggressive in seeking the advice of our first responders, and helping them to attain the resources that they need to provide effective services. They are on the front lines, and deserve our support. In almost any disaster, the local first providers and health care providers play an indispensable role. If the Department of Homeland Security is to be effective, we need to ensure that the resources are delivered to the front line personnel in an effective and coordinated manner. I urge my Colleagues to join me in cosponsoring this proposal and support our first responders.

By Mr. CONRAD:

S. 2748. A bill to authorize the formulation of State and regional emergency telehealth network testbeds and within the Department of Defense, a telehealth task force; to the Committee on Armed Services.

Mr. CONRAD. Mr. President, today I am introducing the National Emergency Telemedical Communications Act of 2002 or NETCA. This bill would take important steps to strengthen our Nation's ability to respond to and manage biological, chemical, and nuclear terrorist attacks and other natural disasters.

Today, we live in a world forever changed by the September 11 attacks on our country. These events exposed weaknesses in our homeland defense; the anthrax attacks further showed how important it is to have a strong public health system and what happens when such a system has been neglected.

My bill would help address both of these issues. It would authorize two regional telehealth test beds, linking local and state health departments with the CDC, academic, VA, and DoD medical centers, Emergency Medical Services, and other health entities. Additionally, these efforts would be coordinated with local and State law enforcement, fire departments, and the National Guard. The system would then be tested for its ability to gather information in real-time, send timely alerts, and connect front-line responders with key support people to prevent or assist in managing a crisis. For instance, in a situation where there are mass casualties, an emergency room physician, while in the hospital, would be able to assist the emergency medical technician at the scene in triaging patients and directing where patients should be transported. They also would be able to participate directly in the treatment of patients in the field and not have to wait for them to arrive at the hospital. In these situations, minutes mean lives; enactment of this legislation would save lives.

But this system would do more than allow for medical specialist-to-patient consultations; it would permit disaster experts hundreds or even thousands of miles away to view the disaster area and communicate directly with front-line responders. For example, in a ''dirty'' bomb explosion, fire and rescue responders might not notice anything different than expected based upon their training for response to explosives. However, if their trucks and uniforms were equipped with devices that recognized this radiation, not only would they be alerted, but the information could be automatically relayed by the telehealth system to radiation experts who could then be ''brought'' to the scene to help direct the response and improve responder safety.

For such a system to work, everyone must be on the same page. This means the information being sent must be understood by all. We cannot have one part of the system use medical terminology typical for one region of the country, such as ''reactive airway disease'', and another part of the system using a different name, such as ''asthma.'' Thus, a common agreed upon language must be determined. Furthermore, each statewide network must be connected in a seamless fashion so this information can pass through smoothly and without interruption. My bill would create a task force of relevant experts from private and government to solve both of these challenges and then use the test beds to evaluate their solutions.

In the end, I envision an intelligent system, capable of gathering information real-time and proactively connecting front-line responders with key support people. It would provide timely alerts, crisis response, prevention, and prediction of medical and other dangers.

Ultimately, it is my hope that this project will lead to the formation of a secure National Emergency Telemedical Network. I am happy to say that there is broad support for this legislation in the telemedicine and information management communities, as well as in various State and Federal agencies. In particular, I am pleased that my bill has been endorsed by the American Telemedicine Association, the Center for Telemedicine Law, the American Association of Medical Colleges, the North Dakota Hospital Association, the North Dakota Medical Association, the North Dakota State Department of Health, the University of Texas Health Sciences Center, the University of Tennessee Health Sciences Center, and the Telemedicine Center of East Carolina University. I am also pleased that Senator Kay Bailey Hutchison has joined me in this effort, and I urge my other colleagues to support this important piece of legislation.

By Mr. CORZINE (for himself, Mr. TORRICELLI, Mr. SCHUMER, Mrs. CLINTON, Mr. DODD, and Mr. LIEBERMAN):

S. 2749. A bill to establish the Highlands Stewardshp area in the States of Connecticut, New Jersey, New York, and Pennsylvania, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. CORZINE. Mr. President, today along with Senator TORRICELLI, Schumer, Clinton, Dodd and Lieberman, I am introducing the Highlands Stewardship Act of 2002. I am proud to be joining my colleagues from the New Jersey, New York, and Connecticut delegations in the House of Representatives, who have introduced identical legislation in the House.

This legislation would help to preserve one of the last open space treasures in this country, the Highlands forest region that stretches from northwestern Connecticut, across the lower Hudson River valley in New York, through my State of New Jersey and into east-central Pennsylvania. This region encompasses more than two million acres of forest, farms, streams, wetlands, lakes and reservoirs and historic sites. It includes the Green, Taconic and Notre Dame Mountains. It also includes such historic sites as Morristown National Historic Park and West Point.

The value of the ecological, recreational and scenic resources of the Highlands cannot be overstated. 170 million gallons are drawn from the

Highlands aquifers daily, providing quality drinking water for over 11 million people. 247 threatened or endangered species live in the Highlands including the timber rattlesnake, wood turtle, red-shouldered hawk, barred owl, great blue heron and eastern wood rat. There also are many fishing, hiking and boating recreation opportunities in the Highlands that are used by many of the one in twelve Americans who live within 2 hours of travel of the Highlands.

Unfortunately, much of Highlands is quickly vanishing. According to a study issued by the United States Department of Agriculture we lost 3,400 acres of forest and 1,600 acres of farmland between 1995 and 2000 to development.

This legislation would designate a Stewardship Area amongst the four States in order to protect the most important Highlands projects. It would create a source of funding for conservation and preservation projects in the Highlands to preserve and protect the open space that remains. $7 million a year for seven years would be provided for conservation assistance projects in the four Highlands states. This funding could be used for items such as smart growth initiatives and cultural preservation projects. $25 million a year over ten years also would be provided for open space preservation projects in the four Highlands states. The source of this funding would be the Land and Water Conservation Fund.

I am proud to introduce this legislation to ensure that we to protect this resource, which is so critical to our quality of life.

I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 2749

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 ''Highlands Stewardship Act of 2002''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Highlands region is a geographic area that encompasses more than 2,000,000 acres extending from eastern Pennsylvania through the States of New Jersey and New York to northwestern Connecticut;

(2) the Highlands region is an environmentally unique and economically important area that—

(A) provides clean drinking water to over 11,000,000 people in metropolitan areas in the States of Connecticut, New Jersey, New York, and Pennsylvania;

(B) provides critical wildlife habitat, including habitat for threatened and endangered species;

(C) maintains an important historic connection to early Native American culture, colonial settlement, the American Revolution, and the Civil War;

(D) contains—

(i) recreational resources; and

(ii) cultural and multicultural landscapes relating to the development of commerce, transportation, the maritime industry, agriculture, and industry in the Highlands region; and

(E) provides other significant ecological, natural, tourism, recreational, educational, and economic benefits;

(3) an estimated 1 in 12 citizens of the United States live within a 2-hour drive of the Highlands region;

(4) more than 1,000,000 residents live in the Highlands region;

(5) the Highlands region forms a greenbelt adjacent to the Philadelphia-New York City-Hartford urban corridor that offers the opportunity to preserve natural and agricultural resources, open spaces, recreational areas, and historic sites, while encouraging sustainable economic growth and development in a fiscally and environmentally sound manner;

(6) continued population growth and land use patterns in the Highlands region—

(A) reduce the availability and quality of water;

(B) reduce air quality;

(C) fragment the forests;

(D) destroy critical migration corridors and forest habitat; and

(E) result in the loss of recreational opportunities and scenic, historic, and cultural resources;

(7) the natural, agricultural, and cultural resources of the Highlands region, in combination with the proximity of the Highlands region to the largest metropolitan areas in the United States, make the Highlands region nationally significant;

(8) the national significance of the Highlands region has been documented in—

(A) the Highlands Regional Study conducted by the Forest Service in 1990;

(B) the New York-New Jersey Highlands Regional Assessment Update conducted by the Forest Service in 2001;

(C) the bi-State Skylands Greenway Task Force Report;

(D) the New Jersey State Development and Redevelopment Plan;

(E) the New York State Open Space Conservation Plan;

(F) the Connecticut Green Plan: Open Space Acquisition FY 2001–2006

(G) the open space plans of the State of Pennsylvania; and

(H) other open space conservation plans for States in the Highlands region;

(9) the Highlands region includes or is adjacent to numerous parcels of land owned by the Federal Government or federally designated areas that protect, conserve, restore, promote, or interpret resources of the Highlands region, including—

(A) the Wallkill River National Wildlife Refuge;

(B) the Shawanagunk Grasslands Wildlife Refuge;

(C) the Morristown National Historical Park;

(D) the Delaware and Lehigh Canal Corridors;

(E) the Hudson River Valley National Heritage Area;

(F) the Delaware River Basin;

(G) the Delaware Water Gap National Recreation Area;

(H) the Upper Delaware Scenic and Recreational River;

(I) the Appalachian National Scenic Trail; and

(J) the United States Military Academy at West Point, New York;

(10) it is in the interest of the United States to protect, conserve, restore, promote, and interpret the resources of the Highlands region for the residents of, and visitors to, the Highlands region;

(11) the States of Connecticut, New Jersey, New York, and Pennsylvania, regional entities, and units of local government in the Highlands region have the primary responsibility for protecting, conserving, preserving, and promoting the resources of the Highlands region; and

(12) because of the longstanding Federal practice of assisting States in creating, protecting, conserving, preserving, and interpreting areas of significant natural, economic, and cultural importance, and the national significance of the Highlands region, the Federal Government should, in partnership with the Highlands States, regional entities, and units of local government in the Highlands region, protect, restore, promote, preserve, and interpret the natural, agricultural, historical, cultural, and economic resources of the Highlands region.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to recognize the importance of the natural resources and the heritage, history, economy, and national significance of the Highlands region to the United States;

(2) to assist the Highlands States, regional entities, and units of local government, public and private entities, and individuals in protecting, restoring, preserving, interpreting, and promoting the natural, agricultural, historical, cultural, recreational, and economic resources of the Highlands Stewardship Area;

(3) to authorize the Secretary of Agriculture and the Secretary of the Interior to provide financial and technical assistance for the protection, conservation, preservation, and sustainable management of forests, land, and water in the Highlands region, including assistance for—

(A) voluntary programs to promote and support private landowners in carrying out forest land and open space retention and sustainable management practices; and

(B) forest-based economic development projects that support sustainable management and retention of forest land in the Highlands region;

(4) to provide financial and technical assistance to the Highlands States, regional entities, and units of local government, and public and private entities for planning and carrying out conservation, education, and recreational programs and sustainable economic projects in the Highlands region; and

(5) to coordinate with and assist the management entities of the Hudson River Valley National Heritage Area, the Wallkill National Refuge Area, the Morristown National Historic Area, and other federally designated areas in the region in carrying out any duties relating to the Highlands region.

SEC. 4. DEFINITIONS.

In this Act:

(1) ELIGIBLE ENTITY.—The term ''eligible entity'' means any agricultural producer, regional entity, unit of local government, public entity, private entity, or other private landowner in the Stewardship Area.

(2) HIGHLANDS REGION.—The term ''Highlands region'' means the region that encompasses nearly 2,000,000 acres extending from eastern Pennsylvania through the States of New Jersey and New York to northwestern Connecticut.

(3) HIGHLANDS STATE.—The term ''Highlands State'' means—

(A) the State of Connecticut;

(B) the State of New Jersey;

(C) the State of New York; and

(D) the State of Pennsylvania.

(4) LAND CONSERVATION PARTNERSHIP PROJECT.—The term ''land conservation partnership project'' means a project in which a non-Federal entity acquires land or an interest in land from a willing seller for the purpose of protecting, conserving, or preserving the natural, forest, agricultural, recreational, historical, or cultural resources of the Stewardship Area.

(5) OFFICE.—The term ''Office'' means the Office of Highlands Stewardship established under section 6(a).

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(7) STEWARDSHIP AREA.—The term ''Stewardship Area'' means the Highlands Stewardship Area established under section 5(a).

(8) STUDY.—The term ''study'' means the Highlands Regional Study conducted by the Forest Service in 1990.

(9) UPDATE.—The term ''update'' means the New York-New Jersey Highlands Regional Assessment Update conducted by the Forest Service in 2001.

(10) WORK GROUP.—The term ''Work Group'' means the Highlands Stewardship Area Work Group established under section 6(c).

SEC. 5. ESTABLISHMENT OF HIGHLANDS STEWARDSHIP AREA.

(a) ESTABLISHMENT.—The Secretary and the Secretary of the Interior, shall establish the Highlands Stewardship Area in the Highlands region.

(b) CONSULTATION AND RESOURCE ANALYSES.—In establishing the Stewardship Area, the Secretary and the Secretary of the Interior shall—

(1) consult with appropriate officials of the Federal Government, Highlands States, regional entities, and units of local government; and

(2) utilize the study, the update, and relevant State resource analyses.

(c) MAP.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of the Interior shall prepare a map depicting the Stewardship Area.

(2) AVAILABILITY.—The map shall be on file and available for public inspection at the appropriate offices of the Secretary and the Secretary of the Interior.

SEC. 6. OFFICE OF HIGHLANDS STEWARDSHIP.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Under Secretary of Agriculture for Natural Resources and Environment, the Chief of the Natural Resources Conservation Service, the Administrator of the Farm Service Agency, the Chief of the Forest Service, and the Under Secretary for Rural Development, shall establish within the Department of Agriculture the Office of Highlands Stewardship.

(b) DUTIES.—The Office shall implement in the Stewardship Area—

(1) the strategies of the study and update; and

(2) in consultation with the Highlands States, other studies consistent with the purposes of this Act.

(c) HIGHLANDS STEWARDSHIP AREA WORK GROUP.—

(1) ESTABLISHMENT.—The Secretary shall establish an advisory committee to be known as the ''Highlands Stewardship Area Work Group'' to assist the Office in implementing the strategies of the studies and update referred to in subsection (b).

(2) MEMBERSHIP.—The Work Group shall be comprised of members that represent various public and private interests throughout the Stewardship Area, including private landowners and representatives of private conservation groups, academic institutions, local governments, and economic interests, to be appointed by the Secretary, in consultation with the Governors of the Highlands States.

(3) DUTIES.—The Work Group shall advise the Office, the Secretary, and the Secretary of the Interior on priorities for—

(A) projects carried out with financial or technical assistance under this section;

(B) land conservation partnership projects carried out under section 7;

(C) research relating to the Highlands region; and

(D) policy and educational initiatives necessary to implement the findings of the study and update.

(d) FINANCIAL AND TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—The Office may provide financial and technical assistance to an eligible entity to carry out a project to protect, restore, preserve, promote, or interpret the natural, agricultural, historical, cultural, recreational, or economic resources of the Stewardship Area.

(2) PRIORITY.—In determining the priority for financial and technical assistance under paragraph (1), the Office shall consider the recommendations of the study and update.

(3) CONDITIONS.—

(A) IN GENERAL.—The provision of financial assistance under this subsection shall be subject to the condition that the eligible entity enter into an agreement with the Office that provides that if the eligible entity converts, uses, or disposes of the project for a purpose inconsistent with the purpose for which the financial assistance was provided, as determined by the Office, the United States shall be entitled to reimbursement from the eligible entity in an amount that is, as determined at the time of conversion, use, or disposal, the greater of—

(i) the total amount of the financial assistance provided for the project by the Federal Government under this section; or

(ii) the amount by which the financial assistance has increased the value of the land on which the project is carried out.

(B) COST-SHARING REQUIREMENT.—The Federal share of the cost of carrying out a project under this subsection shall not exceed 50 percent of the total cost of the project.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $7,000,000 for each of fiscal years 2004 through 2010, to remain available until expended.

SEC. 7. LAND CONSERVATION PARTNERSHIP PROJECTS.

(a) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretary, the Office, and the Governors of the Highlands States, shall annually designate land conservation partnership projects that are eligible to receive financial assistance under this section.

(b) CONDITIONS.—

(1) IN GENERAL.—To be eligible for financial assistance under subsection (a), a non-Federal entity shall enter into an agreement with the Secretary of the Interior that—

(A) identifies—

(i) the non-Federal entity that will own or hold the land or interest in land; and

(ii) the source of funds to provide the non-Federal share under paragraph (2);

(B) provides that if the non-Federal entity converts, uses, or disposes of the project for a purpose inconsistent with the purpose for which the assistance was provided, as determined by the Secretary of the Interior, the United States shall be entitled to reimbursement from the non-Federal entity in an amount that is, as determined at the time of conversion, use, or disposal, the greater of—

(i) the total amount of the financial assistance provided for the project by the Federal Government under this section; or

(ii) the amount by which the financial assistance increased the value of the land or interest in land; and

(C) provides that use of the financial assistance will be consistent with—

(i) the open space plan or other plan of the Highlands State in which the land conservation partnership project is being carried out; and

(ii) the findings and recommendations of the study and update.

(2) COST-SHARING REQUIREMENT.—The Federal share of the cost of carrying out a land conservation partnership project under this subsection shall not exceed 50 percent of the total cost of the land conservation partnership project.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary of the Interior from the Treasury or the Land and Water Conservation Fund to carry out this section $25,000,000 for each of fiscal years 2004 through 2013, to remain available until expended.

(2) USE OF LAND AND WATER CONSERVATION FUND.—Appropriations from the Land and Water Conservation Fund under paragraph (1) shall be considered to be for Federal purposes under section 5 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–7).

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 128—HONORING THE INVENTION OF MODERN AIR CONDITIONING BY DR. WILLIS H. CARRIER ON THE OCCASION OF ITS 100TH ANNIVERSARY

Mr. DOOD (for himself and Mr. LIBERMAN) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 128

Whereas on July 17, 1902, Dr. Willis H. Carrier submitted designs to a printing plant in Brooklyn, New York, for equipment to control temperature, humidity, ventilation, and air quality, marking the birth of modern air conditioning;

Whereas air conditioning has become an integral technology enabling the advancement of society through improvements to the Nation's health and well-being, manufacturing processes, building capacities, research, medical capabilities, food preservation, art and historical conservation, and general productivity and indoor comfort;

Whereas Dr. Carrier debuted air conditioning technology for legislative activity in the House of Representatives Chamber in 1928, and the Senate Chamber in 1929;

Whereas the air conditioning industry now totals $36,000,000,000 on a global basis and employs more than 700,000 people in the United States; and

Whereas the year 2002 marks the 100th anniversary of modern air conditioning: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress honors the invention of modern air conditioning by Dr. Willis H. Carrier on the occasion of its 100th anniversary.

Mr. DODD. Mr. President, I rise today to mark the 100th anniversary of the modern air conditioner, which was invented by Dr. Willis H. Carrier in 1902. I join with my colleague Senator LIEBERMAN to submit a Resolution honoring this achievement.

It was 100 years ago today that a 25 year old engineer named Willis Carrier, while trying to address a printing problem caused by heat and humidity at the Sackett-Williams Lithographing

and Publishing Company of Brooklyn, developed a cooling solution which ended up revolutionalizing the world we live in.

Dr. Carrier had grown up an only child, surrounded by a large extended family on a farm in Angola, NY. He worked three jobs during his college years at Cornell to pay for his room and board, and showed a work ethic and tirelessness that carried over into his career as a mechanical engineer. His first job after graduation was with the Buffalo Forge Company planning heating mechanisms for the drying of coffee and lumber. It was soon after a promotion to head of the Forge Company's department of experimental engineering that he made his breakthrough with the control of heat and humidity for the Sackett-Williams Company that led to modern air conditioning.

Several years later, he and six friends formed their own company in Syracuse, NY, Carrier, that now has current annual revenues of $9 billion and clients in 170 countries. Indeed, not only has this company grown over the past century, but the expanding role and impact of modern air conditioning has been nothing short of tremendous. Air conditioning has afforded us such a dramatic improvement in quality of life that it is difficult now to conceive of its absence. It has increased our economic productivity and output, our comfort and our mood, and in some cases, our general health and welfare. Some have suggested that air conditioning is even responsible for keeping Washington as our Nation's capital, when long, unbearable summer months not only shortened the legislative session, but threatened to send politicians looking for a more climatically hospitable city to conduct their business in. Dr. Carrier brought air-conditioning to the House Chamber in 1928 and the Senate Chamber in 1929.

Indeed, on a 93 degree day such as today, I think we all see the special value of Dr. Carrier's life's work, and I ask my colleagues to join me remembering him today, and giving our thanks for modern air conditioner.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4299. Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) proposed an amendment to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

SA 4300. Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, and Mr. FEINGOLD)) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) supra.

SA 4301. Mr. COCHRAN (for himself, Mr. BREAUX, Mr. ROBERTS, Mr. SANTORUM, Mr. NICKLES, and Mr. HUTCHINSON) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) supra.

SA 4302. Mr. THOMAS (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) supra; which was ordered to lie on the table.

SA 4303. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 812, supra; which was ordered to lie on the table.

SA 4304. Mr. SMITH, of New Hampshire (for himself, Mr. ALLARD, Mr. GRASSLEY, Mr. HATCH, Mr. BURNS, Mr. CRAIG, Mr. CRAPO, and Mr. SANTORUM) submitted an amendment intended to be proposed by him to the bill S. 812, supra; which was ordered to lie on the table.

SA 4305. Mr. REID (for Ms. STABENOW) proposed an amendment to the bill S. 812, supra.

SA 4306. Mrs. FEINSTEIN (for herself and Mrs. HUTCHISON) proposed an amendment to the bill H.R. 5011, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes.

TEXT OF AMENDMENTS

SA 4299. Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) proposed an amendment to the bill S. 812), to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; and follows:

S. 812

At the end, add the following:

TITLE ____—IMPORTATION OF PRESCRIPTION DRUGS

SEC. ____01. IMPORTATION OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804 and inserting the following:

"SEC. 804. IMPORTATION OF PRESCRIPTION DRUGS.

''(a) DEFINITIONS.—In this section:

''(1) IMPORTER.—The term 'importer' means a pharmacist or wholesaler.

''(2) PHARMACIST.—The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(3) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug subject to section 503(b), other than—

''(A) a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(B) a biological product (as defined in section 351 of the Public Health Service Act (42 U.S.C. 262));

''(C) an infused drug (including a peritoneal dialysis solution);

''(D) an intravenously injected drug; or

''(E) a drug that is inhaled during surgery.

''(4) QUALIFYING LABORATORY.—The term 'qualifying laboratory' means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

''(5) WHOLESALER.—

''(A) IN GENERAL.—The term 'wholesaler' means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A).

''(B) EXCLUSION.—The term 'wholesaler' does not include a person authorized to import drugs under section 801(d)(1).

''(b) REGULATIONS.—The Secretary, after consultation with the United States Trade Representative and the Commissioner of Customs, shall promulgate regulations permitting pharmacists and wholesalers to import prescription drugs from Canada into the United States.

''(c) LIMITATION.—The regulations under subsection (b) shall—

''(1) require that safeguards be in place to ensure that each prescription drug imported under the regulations complies with section 505 (including with respect to being safe and effective for the intended use of the prescription drug), with sections 501 and 502, and with other applicable requirements of this Act;

''(2) require that an importer of a prescription drug under the regulations comply with subsections (d)(1) and (e); and

''(3) contain any additional provisions determined by the Secretary to be appropriate as a safeguard to protect the public health or as a means to facilitate the importation of prescription drugs.

''(d) INFORMATION AND RECORDS.—

''(1) IN GENERAL.—The regulations under subsection (b) shall require an importer of a prescription drug under subsection (b) to submit to the Secretary the following information and documentation:

''(A) The name and quantity of the active ingredient of the prescription drug.

''(B) A description of the dosage form of the prescription drug.

''(C) The date on which the prescription drug is shipped.

''(D) The quantity of the prescription drug that is shipped.

''(E) The point of origin and destination of the prescription drug.

''(F) The price paid by the importer for the prescription drug.

''(G) Documentation from the foreign seller specifying—

''(i) the original source of the prescription drug; and

''(ii) the quantity of each lot of the prescription drug originally received by the seller from that source.

''(H) The lot or control number assigned to the prescription drug by the manufacturer of the prescription drug.

''(I) The name, address, telephone number, and professional license number (if any) of the importer.

''(J)(i) In the case of a prescription drug that is shipped directly from the first foreign recipient of the prescription drug from the manufacturer:

''(I) Documentation demonstrating that the prescription drug was received by the recipient from the manufacturer and subsequently shipped by the first foreign recipient to the importer.

''(II) Documentation of the quantity of each lot of the prescription drug received by the first foreign recipient demonstrating that the quantity being imported into the United States is not more than the quantity that was received by the first foreign recipient.

''(III)(aa) In the case of an initial imported shipment, documentation demonstrating that each batch of the prescription drug in the shipment was statistically sampled and tested for authenticity and degradation.

''(bb) In the case of any subsequent shipment, documentation demonstrating that a statistically valid sample of the shipment was tested for authenticity and degradation.

''(ii) In the case of a prescription drug that is not shipped directly from the first foreign recipient of the prescription drug from the manufacturer, documentation demonstrating that each batch in each shipment offered for importation into the United States was statistically sampled and tested for authenticity and degradation.

''(K) Certification from the importer or manufacturer of the prescription drug that the prescription drug—

''(i) is approved for marketing in the United States; and

''(ii) meets all labeling requirements under this Act.

''(L) Laboratory records, including complete data derived from all tests necessary to ensure that the prescription drug is in compliance with established specifications and standards.

''(M) Documentation demonstrating that the testing required by subparagraphs (J) and (L) was conducted at a qualifying laboratory.

''(N) Any other information that the Secretary determines is necessary to ensure the protection of the public health.

''(2) MAINTENANCE BY THE SECRETARY.—The Secretary shall maintain information and documentation submitted under paragraph (1) for such period of time as the Secretary determines to be necessary.

''(e) TESTING.—The regulations under subsection (b) shall require—

''(1) that testing described in subparagraphs (J) and (L) of subsection (d)(1) be conducted by the importer or by the manufacturer of the prescription drug at a qualified laboratory;

''(2) if the tests are conducted by the importer—

''(A) that information needed to—

''(i) authenticate the prescription drug being tested; and

''(ii) confirm that the labeling of the prescription drug complies with labeling requirements under this Act;

be supplied by the manufacturer of the prescription drug to the pharmacist or wholesaler; and

''(B) that the information supplied under subparagraph (A) be kept in strict confidence and used only for purposes of testing or otherwise complying with this Act; and

''(3) may include such additional provisions as the Secretary determines to be appropriate to provide for the protection of trade secrets and commercial or financial information that is privileged or confidential.

''(f) REGISTRATION OF FOREIGN SELLERS.—Any establishment within Canada engaged in the distribution of a prescription drug that is imported or offered for importation into the United States shall register with the Secretary the name and place of business of the establishment.

''(g) APPROVED LABELING.—The manufacturer of a prescription drug shall provide an importer written authorization for the importer to use, at no cost, the approved labeling for the prescription drug.

''(h) PROHIBITION OF DISCRIMINATION.—

''(1) IN GENERAL.—It shall be unlawful for a manufacturer of a prescription drug to discriminate against, or cause any other person to discriminate against, a pharmacist or wholesaler that purchases or offers to purchase a prescription drug from the manufacturer or from any person that distributes a prescription drug manufactured by the drug manufacturer.

''(2) DISCRIMINATION.—For the purposes of paragraph (1), a manufacturer of a prescription drug shall be considered to discriminate against a pharmacist or wholesaler if the manufacturer enters into a contract for sale of a prescription drug, places a limit on supply, or employs any other measure, that has the effect of—

''(A) providing pharmacists or wholesalers access to prescription drugs on terms or conditions that are less favorable than the terms or conditions provided to a foreign purchaser (other than a charitable or humanitarian organization) of the prescription drug; or

''(B) restricting the access of pharmacists or wholesalers to a prescription drug that is permitted to be imported into the United States under this section.

''(i) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, section 801(d)(1) continues to apply to a prescription drug that is donated or otherwise supplied at no charge by the manufacturer of the drug to a charitable or humanitarian organization (including the United Nations and affiliates) or to a government of a foreign country.

''(j) WAIVER AUTHORITY FOR IMPORTATION BY INDIVIDUALS.—

''(1) DECLARATIONS.—Congress declares that in the enforcement against individuals of the prohibition of importation of prescription drugs and devices, the Secretary should—

''(A) focus enforcement on cases in which the importation by an individual poses a significant threat to public health; and

''(B) exercise discretion to permit individuals to make such importations in circumstances in which—

''(i) the importation is clearly for personal use; and

''(ii) the prescription drug or device imported does not appear to present an unreasonable risk to the individual.

''(2) WAIVER AUTHORITY.—

''(A) IN GENERAL.—The Secretary may grant to individuals, by regulation or on a case-by-case basis, a waiver of the prohibition of importation of a prescription drug or device or class of prescription drugs or devices, under such conditions as the Secretary determines to be appropriate.

''(B) GUIDANCE ON CASE-BY-CASE WAIVERS.—The Secretary shall publish, and update as necessary, guidance that accurately describes circumstances in which the Secretary will consistently grant waivers on a case-by-case basis under subparagraph (A), so that individuals may know with the greatest practicable degree of certainty whether a particular importation for personal use will be permitted.

''(3) DRUGS IMPORTED FROM CANADA.—In particular, the Secretary shall by regulation grant individuals a waiver to permit individuals to import into the United States a prescription drug that—

''(A) is imported from a licensed pharmacy for personal use by an individual, not for resale, in quantities that do not exceed a 90-day supply;

''(B) is accompanied by a copy of a valid prescription;

''(C) is imported from Canada, from a seller registered with the Secretary;

''(D) is a prescription drug approved by the Secretary under chapter V;

''(E) is in the form of a final finished dosage that was manufactured in an establishment registered under section 510; and

''(F) is imported under such other conditions as the Secretary determines to be necessary to ensure public safety.

''(k) STUDIES; REPORTS.—

''(1) BY THE INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMY OF SCIENCES.—

''(A) STUDY.—

''(i) IN GENERAL.—The Secretary shall request that the Institute of Medicine of the National Academy of Sciences conduct a study of—

''(I) importations of prescription drugs made under the regulations under subsection (b); and

''(II) information and documentation submitted under subsection (d).

''(ii) REQUIREMENTS.—In conducting the study, the Institute of Medicine shall—

''(I) evaluate the compliance of importers with the regulations under subsection (b);

''(II) compare the number of shipments under the regulations under subsection (b) during the study period that are determined to be counterfeit, misbranded, or adulterated, and compare that number with the number of shipments made during the study period within the United States that are determined to be counterfeit, misbranded, or adulterated; and

''(III) consult with the Secretary, the United States Trade Representative, and the Commissioner of Patents and Trademarks to evaluate the effect of importations under the regulations under subsection (b) on trade and patent rights under Federal law.

''(B) REPORT.—Not later than 2 years after the effective date of the regulations under subsection (b), the Institute of Medicine shall submit to Congress a report describing the findings of the study under subparagraph (A).

''(2) BY THE COMPTROLLER GENERAL.—

''(A) STUDY.—The Comptroller General of the United States shall conduct a study to determine the effect of this section on the price of prescription drugs sold to consumers at retail.

''(B) REPORT.—Not later than 18 months after the effective date of the regulations under subsection (b), the Comptroller General of the United States shall submit to Congress a report describing the findings of the study under subparagraph (A).

''(l) CONSTRUCTION.—Nothing in this section limits the authority of the Secretary relating to the importation of prescription drugs, other than with respect to section 801(d)(1) as provided in this section.

''(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''.

(b) CONFORMING AMENDMENTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301(aa) (21 U.S.C. 331(aa)), by striking ''covered product in violation of section 804'' and inserting ''prescription drug in violation of section 804''; and

(2) in section 303(a)(6) (21 U.S.C. 333(a)(6), by striking ''covered product pursuant to section 804(a)'' and inserting ''prescription drug under section 804(b)''.

SA 4300. Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, and Mr. FEINGOLD)) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; as follows:

In the amendment strike all after the first word and insert the following:

____—IMPORTATION OF PRESCRIPTION DRUGS

SEC. ____01. IMPORTATION OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804 and inserting the following:

"SEC. 804. IMPORTATION OF PRESCRIPTION DRUGS.

''(a) DEFINITIONS.—In this section:

''(1) IMPORTER.—The term 'importer' means a pharmacist or wholesaler.

''(2) PHARMACIST.—The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(3) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug subject to section 503(b), other than—

''(A) a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(B) a biological product (as defined in section 351 of the Public Health Service Act (42 U.S.C. 262));

''(C) an infused drug (including a peritoneal dialysis solution);

''(D) an intravenously injected drug; or

''(E) a drug that is inhaled during surgery.

''(4) QUALIFYING LABORATORY.—The term 'qualifying laboratory' means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

''(5) WHOLESALER.—

''(A) IN GENERAL.—The term 'wholesaler' means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A).

''(B) EXCLUSION.—The term 'wholesaler' does not include a person authorized to import drugs under section 801(d)(1).

''(b) REGULATIONS.—The Secretary, after consultation with the United States Trade Representative and the Commissioner of Customs, shall promulgate regulations permitting pharmacists and wholesalers to import prescription drugs from Canada into the United States.

''(c) LIMITATION.—The regulations under subsection (b) shall—

''(1) require that safeguards be in place to ensure that each prescription drug imported under the regulations complies with section 505 (including with respect to being safe and effective for the intended use of the prescription drug), with sections 501 and 502, and with other applicable requirements of this Act;

''(2) require that an importer of a prescription drug under the regulations comply with subsections (d)(1) and (e); and

''(3) contain any additional provisions determined by the Secretary to be appropriate as a safeguard to protect the public health or as a means to facilitate the importation of prescription drugs.

''(d) INFORMATION AND RECORDS.—

''(1) IN GENERAL.—The regulations under subsection (b) shall require an importer of a prescription drug under subsection (b) to submit to the Secretary the following information and documentation:

''(A) The name and quantity of the active ingredient of the prescription drug.

''(B) A description of the dosage form of the prescription drug.

''(C) The date on which the prescription drug is shipped.

''(D) The quantity of the prescription drug that is shipped.

''(E) The point of origin and destination of the prescription drug.

''(F) The price paid by the importer for the prescription drug.

''(G) Documentation from the foreign seller specifying—

''(i) the original source of the prescription drug; and

''(ii) the quantity of each lot of the prescription drug originally received by the seller from that source.

''(H) The lot or control number assigned to the prescription drug by the manufacturer of the prescription drug.

''(I) The name, address, telephone number, and professional license number (if any) of the importer.

''(J)(i) In the case of a prescription drug that is shipped directly from the first foreign recipient of the prescription drug from the manufacturer:

''(I) Documentation demonstrating that the prescription drug was received by the recipient from the manufacturer and subsequently shipped by the first foreign recipient to the importer.

''(II) Documentation of the quantity of each lot of the prescription drug received by the first foreign recipient demonstrating that the quantity being imported into the United States is not more than the quantity that was received by the first foreign recipient.

''(III)(aa) In the case of an initial imported shipment, documentation demonstrating that each batch of the prescription drug in the shipment was statistically sampled and tested for authenticity and degradation.

''(bb) In the case of any subsequent shipment, documentation demonstrating that a statistically valid sample of the shipment was tested for authenticity and degradation.

''(ii) In the case of a prescription drug that is not shipped directly from the first foreign recipient of the prescription drug from the manufacturer, documentation demonstrating that each batch in each shipment offered for importation into the United States was statistically sampled and tested for authenticity and degradation.

''(K) Certification from the importer or manufacturer of the prescription drug that the prescription drug—

''(i) is approved for marketing in the United States; and

''(ii) meets all labeling requirements under this Act.

''(L) Laboratory records, including complete data derived from all tests necessary to ensure that the prescription drug is in compliance with established specifications and standards.

''(M) Documentation demonstrating that the testing required by subparagraphs (J) and (L) was conducted at a qualifying laboratory.

''(N) Any other information that the Secretary determines is necessary to ensure the protection of the public health.

''(2) MAINTENANCE BY THE SECRETARY.—The Secretary shall maintain information and documentation submitted under paragraph (1) for such period of time as the Secretary determines to be necessary.

''(e) TESTING.—The regulations under subsection (b) shall require—

''(1) that testing described in subparagraphs (J) and (L) of subsection (d)(1) be conducted by the importer or by the manufacturer of the prescription drug at a qualified laboratory;

''(2) if the tests are conducted by the importer—

''(A) that information needed to—

''(i) authenticate the prescription drug being tested; and

''(ii) confirm that the labeling of the prescription drug complies with labeling requirements under this Act;

be supplied by the manufacturer of the prescription drug to the pharmacist or wholesaler; and

''(B) that the information supplied under subparagraph (A) be kept in strict confidence and used only for purposes of testing or otherwise complying with this Act; and

''(3) may include such additional provisions as the Secretary determines to be appropriate to provide for the protection of trade secrets and commercial or financial information that is privileged or confidential.

''(f) REGISTRATION OF FOREIGN SELLERS.—Any establishment within Canada engaged in the distribution of a prescription drug that is imported or offered for importation into the United States shall register with the Secretary the name and place of business of the establishment.

''(g) SUSPENSION OF IMPORTATION.—The Secretary shall require that importations of a specific prescription drug or importations by a specific importer under subsection (b) be immediately suspended on discovery of a pattern of importation of the prescription drugs or by the importer that is counterfeit or in violation of any requirement under this section or poses an additional risk to the public health, until an investigation is completed and the Secretary determines that the public is adequately protected from counterfeit and violative prescription drugs being imported under subsection (b).

''(h) APPROVED LABELING.—The manufacturer of a prescription drug shall provide an importer written authorization for the importer to use, at no cost, the approved labeling for the prescription drug.

''(i) PROHIBITION OF DISCRIMINATION.—

''(1) IN GENERAL.—It shall be unlawful for a manufacturer of a prescription drug to discriminate against, or cause any other person to discriminate against, a pharmacist or wholesaler that purchases or offers to purchase a prescription drug from the manufacturer or from any person that distributes a prescription drug manufactured by the drug manufacturer.

''(2) DISCRIMINATION.—For the purposes of paragraph (1), a manufacturer of a prescription drug shall be considered to discriminate against a pharmacist or wholesaler if the manufacturer enters into a contract for sale of a prescription drug, places a limit on supply, or employs any other measure, that has the effect of—

''(A) providing pharmacists or wholesalers access to prescription drugs on terms or conditions that are less favorable than the terms or conditions provided to a foreign purchaser (other than a charitable or humanitarian organization) of the prescription drug; or

''(B) restricting the access of pharmacists or wholesalers to a prescription drug that is permitted to be imported into the United States under this section.

''(j) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, section 801(d)(1) continues to apply to a prescription drug that is donated or otherwise supplied at no charge by the manufacturer of the drug to a charitable or humanitarian organization (including the United Nations and affiliates) or to a government of a foreign country.

''(k) WAIVER AUTHORITY FOR IMPORTATION BY INDIVIDUALS.—

''(1) DECLARATIONS.—Congress declares that in the enforcement against individuals of the prohibition of importation of prescription drugs and devices, the Secretary should—

''(A) focus enforcement on cases in which the importation by an individual poses a significant threat to public health; and

''(B) exercise discretion to permit individuals to make such importations in circumstances in which—

''(i) the importation is clearly for personal use; and

''(ii) the prescription drug or device imported does not appear to present an unreasonable risk to the individual.

''(2) WAIVER AUTHORITY.—

''(A) IN GENERAL.—The Secretary may grant to individuals, by regulation or on a case-by-case basis, a waiver of the prohibition of importation of a prescription drug or device or class of prescription drugs or devices, under such conditions as the Secretary determines to be appropriate.

''(B) GUIDANCE ON CASE-BY-CASE WAIVERS.—The Secretary shall publish, and update as necessary, guidance that accurately describes circumstances in which the Secretary will consistently grant waivers on a case-by-case basis under subparagraph (A), so that individuals may know with the greatest practicable degree of certainty whether a particular importation for personal use will be permitted.

''(3) DRUGS IMPORTED FROM CANADA.—In particular, the Secretary shall by regulation grant individuals a waiver to permit individuals to import into the United States a prescription drug that—

''(A) is imported from a licensed pharmacy for personal use by an individual, not for resale, in quantities that do not exceed a 90-day supply;

''(B) is accompanied by a copy of a valid prescription;

''(C) is imported from Canada, from a seller registered with the Secretary;

''(D) is a prescription drug approved by the Secretary under chapter V;

''(E) is in the form of a final finished dosage that was manufactured in an establishment registered under section 510; and

''(F) is imported under such other conditions as the Secretary determines to be necessary to ensure public safety.

''(l) STUDIES; REPORTS.—

''(1) BY THE INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMY OF SCIENCES.—

''(A) STUDY.—

''(i) IN GENERAL.—The Secretary shall request that the Institute of Medicine of the National Academy of Sciences conduct a study of—

''(I) importations of prescription drugs made under the regulations under subsection (b); and

''(II) information and documentation submitted under subsection (d).

''(ii) REQUIREMENTS.—In conducting the study, the Institute of Medicine shall—

''(I) evaluate the compliance of importers with the regulations under subsection (b);

''(II) compare the number of shipments under the regulations under subsection (b) during the study period that are determined to be counterfeit, misbranded, or adulterated, and compare that number with the number of shipments made during the study period within the United States that are determined to be counterfeit, misbranded, or adulterated; and

''(III) consult with the Secretary, the United States Trade Representative, and the Commissioner of Patents and Trademarks to evaluate the effect of importations under the regulations under subsection (b) on trade and patent rights under Federal law.

''(B) REPORT.—Not later than 2 years after the effective date of the regulations under subsection (b), the Institute of Medicine shall submit to Congress a report describing the findings of the study under subparagraph (A).

''(2) BY THE COMPTROLLER GENERAL.—

''(A) STUDY.—The Comptroller General of the United States shall conduct a study to determine the effect of this section on the price of prescription drugs sold to consumers at retail.

''(B) REPORT.—Not later than 18 months after the effective date of the regulations under subsection (b), the Comptroller General of the United States shall submit to Congress a report describing the findings of the study under subparagraph (A).

''(m) CONSTRUCTION.—Nothing in this section limits the authority of the Secretary relating to the importation of prescription drugs, other than with respect to section 801(d)(1) as provided in this section.

''(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''.

(b) CONFORMING AMENDMENTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301(aa) (21 U.S.C. 331(aa)), by striking ''covered product in violation of section 804'' and inserting ''prescription drug in violation of section 804''; and

(2) in section 303(a)(6) (21 U.S.C. 333(a)(6), by striking ''covered product pursuant to section 804(a)'' and inserting ''prescription drug under section 804(b)''.

SA 4301. Mr. COCHRAN (for himself, Mr. BREAUX, Mr. ROBERTS, Mr. SANTORUM, Mr. NICKLES, and Mr. HUTCHINSON) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; as follows:

On page 15, line 17, strike ''section.''.'' and insert ''section.'' and insert the following new subsection:

''(e) CONDITIONS.—This section shall become effective only if the Secretary of Health and Human Services certifies to the Congress that the implementation of this section will—

''(A) pose no additional risk to the public's health and safety, and

''(B) result in a significant reduction in the cost of covered products to the American consumer.''.''

SA 4302. Mr. THOMAS (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812), to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table, as follows:

Strike subsection (h) of section 804 of the Federal Food, Drug, and Cosmetic Act (as added by the amendment) and insert the following:

''(h) LABELING.—

''(1) APPROVED LABELING.—The manufacturer of a prescription drug shall provide an importer written authorization for the importer to use, at no cost, the approved labeling for the prescription drug.

''(2) DISCLAIMER.—The importer of any prescription drug under this section shall provide a labeling statement prominently displayed and in bold face type as follows:

''THIS DRUG HAS BEEN IMPORTED FROM CANADA.

SA 4303. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. ELIGIBILITY OF CHILDREN ENROLLED IN THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM FOR THE PEDIATRIC VACCINE DISTRIBUTION PROGRAM.

(a) IN GENERAL.—Section 1928(b)(2)(B)(ii)(I) of the Social Security Act (42 U.S.C. 1396s(b)(2)(B)(ii)(I)) is amended by inserting ''(other than a State child health plan under title XXI)'' after ''policy or plan''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to vaccines administered on or after the date of the enactment of this Act.

SA 4304. Mr. SMITH of New Hampshire (for himself, Mr. ALLARD, Mr. GRASSLEY, Mr. HATCH, Mr. BURNS, Mr. CRAIG, Mr. CRAPO, and Mr. SANTORUM) submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, which was ordered to lie on the table; as follows:

(The amendment will be printed in the RECORD of Thursday, July 18, 2002.)

SA 4305. Mr. REID (for Ms. STABENOW) proposed an amendment to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; as follows:

At the end, add the following:

SEC. ___. CLARIFICATION OF STATE AUTHORITY RELATING TO MEDICAID DRUG REBATE AGREEMENTS.

Section 1927 of the Social Security Act (42 U.S.C. 1396r–8) is amended by adding at the end the following:

''(l) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State from—

''(1) directly entering into rebate agreements that are similar to a rebate agreement described in subsection (b) with a manufacturer for purposes of ensuring the affordability of outpatient prescription drugs in order to provide access to such drugs by residents of a State who are not otherwise eligible for medical assistance under this title; or

''(2) making prior authorization (that satisfies the requirements of subsection (d) and that does not violate any requirements of this title that are designed to ensure access to medically necessary prescribed drugs for individuals enrolled in the State program under this title) a condition of not participating in such a similar rebate agreement.''.

SA 4306. Mrs. FEINSTEIN (for herself and Mrs. HUTCHISON) proposed an amendment to the bill H.R. 5011, making appropriations for Military Construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes; as follows:

Viz: At the appropriate place, insert the following:

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Army'', $8,000,000 may be provided for a parking garage at Walter Reed Army Medical Center, District of Columbia.

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Army'', $3,000,000 may be provided for

an Anechoic Chamber at White Sands Missile Range, New Mexico.

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Air Force'', $7,500,000 may be provided for a control tower at Dover Air Force Base, Delaware.

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Army National Guard'', $9,000,000 may be provided for a Joint Readiness Center at Eugene, Oregon.

SEC. Of the amount appropriated in this Act under the heading ''Military Construction, Air National Guard'', $8,400,000 may be provided for a composite Maintenance Complex, Phase II in Nashville, Tennessee.

NOTICES OF HEARINGS/MEETINGS

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 a full Committee hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Wednesday, July 24, at 3:00 pm in SD–366.

The purpose of the hearing is to conduct oversight to examine issues related to the need for and barriers to development of electricity infrastructure. The hearing will focus on the Department of Energy's National Transmission Grid Study, and on information developed in a series of technical conferences held by the Federal Energy Regulatory Commission starting in November of 2001.

Those wishing to submit written statements on this subject should address them to the Committee on Energy and Natural Resources, Attn: Leon Lowery, United States Senate, Washington, D.C. 20510.

For further information, please call Leon Lower at 202/224–2209 or Jonathan Black at 202/224–6722.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to conduct a hearing during the session of the Senate on Wednesday, July 17, 2002. The purpose of this hearing will be to discuss homeland security at 2:00 pm.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 17, 2002, at 9:30 am on the FTC Reauthorization.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Wednesday, July 17, 2002 at 10:00 a.m., to hear testimony on Schemes, Scams and Cons, Part IV: Fuel Tax Fraud.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 17, 2002 at 10:30 a.m. to hold a hearing on the Moscow Treaty.

AGENDA

WITNESSES

The Honorable Donald L. Rumsfeld, Secretary of Defense, Washington, DC; General Richard B. Myers, Chairman, Joint Chiefs of Staff, Washington, DC.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, July 17, 2002 at 2:00 pm to hold a hearing to consider the nomination of Mark W. Everson to be Deputy Director for Management, Office of Management and Budget.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate after the first vote of the day on Wednesday, July 17, 2002, in S–216 of the Capitol.

AGENDA

Richard H. Carmona, of Arizona, to be U.S. Surgeon General of the Public Health Service.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, July 17, 2002, at 10:00 a.m. in Room 485 of the Russell Senate Office Building to conduct an Oversight Hearing on the Protection of Native American Sacred Places.

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

SUBCOMMITTEE ON HOUSING AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Housing and Transportation of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, July 17, 2002, at 2:30 p.m. to conduct an oversight hearing on ''Transit: A Lifeline For America's Citizens.''

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

SUBCOMMITTEE ON THE CONSTITUTION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on the Constitution be authorized to meet to conduct a hearing on ''S.J. Res. 35, Proposing A Victim's Rights Amendment to the United States Constitution,'' on Wednesday, July 17, 2002, at 10:00 a.m. in SD226.

TENTATIVE WITNESS LIST

PANEL I

The Honorable John Gillis, Director, Office for Victims of Crime, U.S. Department of Justice, Washington, DC.

PANEL II

Arwen Bird, Survivors Advocating for an Effective System, Portland, OR.

Julie Goldscheid, Esq., General Counsel, Safe Horizon, New York, NY.

James Orenstein, Esq., Baker & Hostetler LLP, New York, NY.

Roger Pilon, Director, Center for Constitutional Studies, CATO Institute, Washington, DC.

Roberta Roper, Director, Stephanie Roper Committee and Foundation, Upper Marlboro, MD.

Steven J. Twist, Esq., General Counsel, National Victims Constitutional Amendment Network, Scottsdale, AZ.

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

PRIVILEGES OF THE FLOOR

Mr. GREGG. Mr. President, I ask unanimous consent that Madhavi Patt, with Senator HATCH, be granted the privileges of the floor during consideration of S. 812.

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

Mr. VOINOVICH. Mr. President, I ask unanimous consent that Lynn Borkon of my staff be granted the privilege of the floor during my statement.

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

EXECUTIVE SESSION

NOMINATION OF RICHARD R. CLIFTON, OF HAWAII, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. REID. Mr. President, I move to proceed to executive session to consider Calendar No. 825, Richard Clifton, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

CLOTURE MOTION

Mr. REID. Mr. President, we have no objection to the confirmation on this side of the aisle. We have, however, been advised there is an objection on the Republican side. As a result of that, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the

Standing Rules of the Senate, do hereby move to bring to a close the debate on Executive Calendar No. 825, the nomination of Richard Clifton to be U.S. Circuit Court Judge for the Ninth Circuit.

Jeff Bingaman, Patrick Leahy, Daniel Inouye, Harry Reid, Tom Daschle, Dianne Feinstein, Orrin Hatch, Chuck Grassley, Michael B. Enzi, Craig Thomas, Christopher Bond, Jeff Sessions, Jon Kyl, Rick Santorum, Pat Roberts, and Trent Lott.

Mr. REID. Mr. President, I ask unanimous consent that the live quorum under rule XXII be waived; that the Senate resume legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ORDERS FOR THURSDAY, JULY 18, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Thursday, July 18; that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period for morning business until 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each, with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the Republican leader or his designee; that at 10:30 a.m. the Senate resume consideration of the military construction appropriations bill, under the previous order.

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

PROGRAM

Mr. REID. Mr. President, as a result of the order previously entered, a rollcall vote will occur on passage of the military construction appropriations bill at approximately 10:45 a.m. Senator MCCAIN and the two managers of the bill, Senator HUTCHISON of Texas and Senator FEINSTEIN of California, will each have 5 minutes.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:02 p.m., adjourned until Thursday, July 18, 2002, at 9:30 a.m.